

Public Service Labour Relations and Employment Board

**File:** 585-24-50

***Public Service  
Labour Relations Act***

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BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

And

STATISTICAL SURVEY OPERATIONS

Employer

RE: Request for Arbitration Field Survey Interviewers [FI]

Before: Ken Norman, Chairperson  
Herbert and Guy Lauzé, Arbitration Board Members.

For the Bargaining Agent: Morgan Gay, Negotiator  
Shawn Vincent, Research Officer.

For the Employer: Gloria A. Tatone Blaker, Negotiator  
Yves Lachance, Regional Manager, Management Services.

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Hearing Dates: December 6, 2013 and January 17, 2014

Location: Ottawa

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**ARBITRATION BOARD AWARD**

(1) The Collective Agreement expired on November 30, 2011.

(2) On November 30, 2011, the Bargaining Agent filed a notice to bargain pursuant to s.105 of the *Public Service Labour Relations Act*.

(3) The parties met on eleven occasions culminating in a meeting on October 11, 2012, which left over 50 outstanding issues on the table.

(4) On October 26, 2012, the Bargaining Agent applied for arbitration.

(5) On March 26, 2013, David P. Olsen, Acting Chairperson of the PSLRB, established this Board of Arbitration by appointing Ken Norman as chairperson and Joe Herbert and Guy Lauzé as members.

(6) On August 27, 2013, our Board of Arbitration was provided with Terms of Reference by David P. Olsen in a decision rejecting the Bargaining Agent's claim that it was within the jurisdiction of our Board to incorporate into the collective agreement proposals dealing with the use of seniority.

(7) In light of this decision, the Bargaining Agent sought dissolution of our Board or, in the alternative, adjournment of the hearing pending the outcome of an application for judicial review of the Acting Chairperson's Terms of Reference decision.

(8) On November 6, 2013, the members of this Board agreed to advise the parties that s. 145 of the *Public Service Labour Relations Act* obligated us to proceed with the scheduled hearing dates and that, if the judicial review application succeeded, our Board would be prepared to schedule a further hearing date to deal with the seniority issues. The members further agreed to advise the parties that the Chairperson would author a formal decision on these two points if that was their wish.

(9) On November 22, 2013, the Bargaining Agent filed the promised application for judicial review with a request that the matter be heard together with a like application concerning the Acting Chairperson's similar jurisdictional decision concerning the Arbitration Board seized with the Regional Office [RO] bargaining unit's application for arbitration. On January 22, 2015, the Public Service Labour Relations and Employment Board advised that, on January 16, 2015, the Federal Court had dismissed the Bargaining Agent's application for judicial review. The statutory 30-day appeal period has now expired.

#### *The Field Interviewers' (FI) Bargaining Unit*

(10) FI's are hourly-rated employees hired on a temporary basis as part-timers. An FI self-schedules. Depending on the survey workload at any given time, the number of FI's ranges from 700 to 1200. The *Public Service Employment Act* is inapplicable.

#### *Issues in Dispute*

(11) Only a few marginal issues were resolved come the advent of this Board's hearing on December 6, 2013. This Award leaves it to the parties to incorporate these bits of common ground into the new collective agreement. By the end of our hearing and deliberative process, this Board came to the following determinations taking into account the factors posited in section 148 of the *Public Service Labour Relations Act*.

*Article 2 – Interpretations and Definitions*

(12) “assigned work week” In addition to the existing language, we direct the parties to negotiate language to ensure that the employer corrects inconsistencies between employees’ assigned work weeks and employees’ actual hours worked. Corrections are to be made on a go forward basis. This Board shall remain seized should the parties be unable to agree on the wording.

(13) “indeterminate employee” [NEW] means an employee whose employment does not have a predetermined end date.

*Article 14 – Leave With or Without Pay for Alliance Business*

(14) 14.14 [NEW] The Employer shall grant leave with pay to an employee acting on behalf of the Alliance for discussions with the employer as contemplated by Article 22.06.

*Article 20 – Job Security*

(15) 20.01 [NEW – Renumber as 20.03] It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by work force adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.

(16) 20.02 [NEW – Renumber as 20.04] Since indeterminate employees who are affected by work force adjustment situations are not themselves responsible for such situations, it is the responsibility of the Employer to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as SSO employees.

(17) 20.03 [NEW – Renumber as 20.05] A person who has been laid-off pursuant to clause 20.04 is entitled to a priority for appointment without competition to a position in SSO for which, in the opinion of the Employer which shall not be unreasonably exercised, he/she is qualified. This priority is accorded for one year following the lay-off date.

*Article 23 – Hours of Work*

(18) 23.16 [NEW] – Where operational requirements permit, the Employer will endeavor to offer additional work available at a work site to readily available qualified employees at that work site, irrespective of the nature of the survey, prior to hiring additional staff. Subject to the foregoing, the Employer may hire additional staff and is not precluded from hiring additional staff prior to providing employees with full time hours.

*Article 25 – Premium for Evening and Weekend Work*

(19) 25.03 [NEW] – Premium pay increased from ninety cents (\$0.90) to one dollar and ten cents (\$1.10).

*Article 30 – Vacation Leaves*

(20) 30.03 [NEW] For the purpose of clause 30.02 only, all service within the Public Service and Statistical Survey Operations, whether continuous or discontinuous, shall count toward vacation leave except where a person who, on leaving Statistical Survey Operations or the Public Service, takes or has taken severance pay. However, the above exception shall not apply to an employee who receives severance pay on lay-off and is reappointed to Statistical Survey Operations or the Public Service within one year following the date of lay-off. For greater certainty, severance payments taken under Article 46.05 to 46.09, or under similar provisions in other collective agreements do not reduce the calculation of service for persons who have not yet left Statistical Survey Operations.

*Article 31 – Bereavement Leave With Pay*

(21) 31.01 [NEW] - Delete third sentence “During such period, the employee shall be paid in accordance with the provisions of Article 29.05.”

(22) 31.05 [NEW] – An employee shall be paid for the number of hours that would have been paid but for the bereavement leave.

*Article 38 – Leave Without Pay for Family-Related Responsibilities*

(23) 38.02 [NEW] –

(a) to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;

(d) for needs directly related to the birth or to the adoption of the employee’s child, which may be divided into two (2) periods and granted on separate days.

*Article 42 – Leave Without Pay for Other Reasons*

(24) 42.01 [NEW] – At its discretion, the Employer may grant leave without pay for purposes other than those specified in this Agreement. Such leave shall not be unreasonably denied.

*Article 46 – Severance Pay*

(25) Effective one month following the date of this award, Articles 46.01(b) and (d) are to be deleted from the collective agreement, with the subsection letter references amended accordingly.

46.01 Under the following circumstances and subject to clause 46.02, an employee shall receive severance benefits calculated on the basis of his or her averaged weekly rate of pay:

(a) Lay-Off

(i) On the first lay-off, for the first complete year of continuous employment, two (2) weeks' pay, or three (3) weeks' pay for employees with ten (10) or more but less than twenty (20) years of continuous employment, or four (4) weeks' pay for employees with twenty or more years of continuous employment, plus one (1) week's pay for each additional complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365).

(ii) On second or subsequent lay-off, one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), less any period in respect of which the employee was granted severance pay under 46.01(a)(i).

(b) Resignation

On resignation, subject to clause 46.01(d) and with ten (10) or more years of continuous employment, one-half ( $\frac{1}{2}$ ) week's pay for each complete year of continuous employment up to a maximum of twenty-six (26) years with a maximum benefit of thirteen (13) week's pay.

(c) Rejection on Probation

On rejection on probation, when an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of rejection during a probationary period, one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-seven (27) weeks' pay.

(d) Retirement

(i) On retirement, when an employee is entitled to an immediate annuity under the *Public Service Superannuation Act* or when he or she is entitled to an immediate annual allowance, under the *Public Service Superannuation Act*;

or

(ii) an employee, who regularly works more than thirteen and one-half ( $13\frac{1}{2}$ ) but less than thirty (30) hours a week, and who, if he/she were a contributor

under the *Public Service Superannuation Act*, would be entitled to an immediate annuity thereunder, or who would have been entitled to an immediate annual allowance if he/she were a contributor under the *Public Service Superannuation Act*, a severance payment in respect to the employee's complete period of continuous employment, comprised of one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by 365, to a maximum of thirty (30) week's pay.

(e) Death

If an employee dies, there shall be paid to the employee's estate a severance payment in respect of the employee's complete period of continuous employment, comprised of one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by 365, to a maximum of thirty (30) weeks' pay, regardless of any other benefit payable.

(f) Termination for Cause for Reasons of Incapacity

When an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of termination for cause for reasons of incapacity pursuant to Section 12(2)(d) of the Financial Administration Act, one week's pay for each complete year of continuous employment with a maximum benefit of twenty-eight (28) weeks.

46.02 Severance benefits payable to an employee under this Article shall be reduced by any period of continuous employment in respect of which the employee was already granted any type of termination benefit. Under no circumstances shall the maximum severance pay provided under clause 46.01 and 46.06 be pyramided.

For greater certainty, payments made pursuant to 46.05 to 46.09 or similar provisions in other collective agreements shall be considered as a termination benefit for the administration of this clause.

(26) 46.03 The weekly rate of pay referred to in the above clauses shall be the weekly rate of pay to which the employee is entitled on the date of the termination of his/her employment.

(27) 46.04 Notwithstanding the provisions of this Article, the amount of the severance benefit to be paid shall be calculated as follows: to determine the number of complete years of continuous employment in respect of which the severance benefit is

to be paid, the period of continuous employment eligible for severance pay shall be established and the total of all straight-time hours worked in that period shall be divided by nineteen hundred and fifty (1950). The number of complete years of employment so established shall be multiplied by the appropriate weekly rate of pay to produce the severance benefit.

#### 46.05 Appointment to another Public Service Employer

(28) An employee who resigns to accept an appointment with another organization listed in Schedule I, IV or V of the Financial Administration Act shall be paid all severance pay resulting from the application of 46.01.

#### (29) 46.06 Severance Termination

(a) Subject to 46.02 above, ongoing employees employed by Statistical Survey Operations on the 30<sup>th</sup> day following the date of this award shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), to a maximum of thirty (30) weeks.

(b) Subject to 46.02 above, term employees employed by Statistical Survey Operations on the 30<sup>th</sup> day following the date of this award shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks.

#### Terms of Payment

#### (30) 46.07 Options

The amount to which an employee is entitled shall be paid, at the employee's discretion, either:

(a) as a single payment at the rate of pay of the employee's substantive position as of the 30<sup>th</sup> day following the date of this award, or

(b) as a single payment at the time of the employee's termination of employment from Statistical Survey Operations, based on the rate of pay of the employee's substantive position at the date of termination of employment from Statistical Survey Operations, or

(c) as a combination of (a) and (b), pursuant to 46.08(c).

#### (31) 46.08 Selection of Option

(a) The Employer will advise the employee of his or her years of continuous employment no later than three (3) months following the official date of signing of the collective agreement.

(b) The employee shall advise the Employer of the term of payment option selected within six (6) months from the official date of signing of the collective agreement.

(c) The employee who opts for the option described in 46.07(c) must specify the number of complete weeks to be paid out pursuant to 46.07(a) and the remainder to be paid out pursuant to 46.07(b).

(d) An employee who does not make a selection under 46.08(b) will be deemed to have chosen option 46.07(b).

(32) 46.09 Appointment from a Different Bargaining Unit

This clause applies in a situation where an employee who resigns from an organization listed in Schedule I, IV or V of the *Financial Administration Act* in order to take a position with the Employer, and is appointed to a position in the Regional Office Interviewer bargaining unit where, at the date of appointment, provisions similar to those in 46.01(b) and (d) are still in force.

(a) Subject to 46.02 above, on the date an ongoing employee becomes subject to this Agreement after the 30<sup>th</sup> day following the date of this award, he or she shall be entitled to severance payment equal to one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), to a maximum of thirty (30) weeks, based on the employee's rate of pay of his or her substantive position on the day preceding the appointment.

(b) Subject to 46.02 above, on the date a term employee becomes subject to this Agreement after the 30<sup>th</sup> day following the date of this award, he or she shall be entitled to a severance payment equal to one (1) week's pay for each complete year of continuous employment, to a maximum of thirty (30) weeks, based on the employee's rate of pay of his or her substantive position on the day preceding the appointment.

(c) An employee entitled to a severance payment under sub-paragraph (a) or (b) shall have the same choice of options outlined in 46.08; however the selection of which option must be made within three (3) months of being appointed to the bargaining unit.

(d) An employee who does not make a selection under 46.09(c) will be deemed to have chosen option 46.07(b).



(33) *Wages and Economic Increases**Hourly Rates of Pay*

- A - Effective December 1, 2011 (1.75% increase)
- B - Effective December 1, 2012 (1.5% increase)
- X - Effective December 1, 2013 (retention adjustment)
- C - Effective December 1, 2013 (2.0% increase)

Interviewer

From: \$	14.72	15.48	16.13	16.81	17.48	18.18
To: A	14.98	15.75	16.41	17.10	17.79	18.50
B	15.20	15.99	16.66	17.36	18.06	18.78
X		15.99	16.87	17.75	18.63	19.53
C		16.31	17.21	18.11	19.00	19.92

Senior Interviewer

From: \$	18.04	18.90	19.68	20.46	21.30	22.13
To: A	18.36	19.23	20.02	20.82	21.67	22.52
B	18.64	19.52	20.32	21.13	22.00	22.86
X		19.52	20.58	21.65	22.71	23.77
C		19.91	20.99	22.08	23.16	24.25

PAY NOTES*Retention Adjustment*

(34) Effective December 1, 2013, employees shall be paid on the 'X' scale at the rate nearest to, but not less than their rates of pay as of close of business on November 30, 2013. Movement to the 'X' scale does not affect the pay increment period of employees.

*Pay Increments*

No amendments.

*Promotions*

No amendments to (a).

Sub-paragraph (b) is amended as follows:

Notwithstanding the above, an employee at the fourth level or at the maximum rate of pay of the Interviewer level who is promoted to the Senior Interviewer level will move to the second step in the Senior Interviewer level rates of pay.

(35) *ANNEX "H" [NEW]* An employee able to demonstrate to the Employer, where required to do so by the Employer, expenses for any personal equipment utilized on behalf of the Employer's operation, shall be reimbursed up to twenty dollars (\$20.00) per pay period for all such expenses. It is understood that travel expenses are exempt from this provision.

#### *Duration*

(36) On the question of duration, the parties had reached agreement on a three-year term, expiring November 30, 2014. We are cognizant, however, of section 156(3) of the PSLRA which stipulates that "an arbitral award may not be for a term of less than one year or more than two years from the day on which it becomes binding on the parties, unless the arbitration board determines otherwise in any case where paragraph 2(a) or (b) applies". In the unique facts before us, it is our considered opinion that an operative term outside the prescribed time periods is warranted and that the exception under section 156 para 2(b)(ii) applies.

(37) We note that previous collective agreements applicable to this bargaining unit have traditionally corresponded with the prevailing bargaining cycles and collective agreements in the federal public service. Currently all collective agreements in the federal public service have expired in 2014 with two minor exceptions, which expired in January of 2015. Complying with the time periods prescribed in section 156(3) would therefore place the bargaining two years forward of the other collective agreements and represent an untenable situation. Due to the exceptional nature of the delay caused by the judicial review process described earlier for which a Federal Court decision was rendered on January 16, 2015, with expiration of the appeal period a month later, on February 16, 2015, the parties agreement, and application of 156(2)(b)(ii) we hereby stipulate that the duration of the collective agreement will be from December 1, 2011 to November 30, 2014 inclusive.

#### *Incorporation and Effectiveness*

(38) All other items in dispute agreed to by the parties are hereby made part of this Award. All items, whether agreed by the parties or awarded by this Board are effective the date of the Board's award.

(39) We shall remain seized of this matter until a collective agreement is completed in the event that the parties encounter any difficulties in executing a collective agreement.

(40) Heartfelt thanks to Board members Joe Herbert and Guy Lauzé for their professionalism and courtesy throughout this protracted hearing and deliberative process.

FOR THE BOARD

A handwritten signature in black ink that reads "Ken Norman". The signature is written in a cursive style with a large initial 'K'.

SIGNAT-1.JPG

Ken Norman, Chairperson

March 30, 2015