

Board file: 585-24-44403

IN THE MATTER OF AN INTEREST ARBITRATION
UNDER THE *FEDERAL PUBLIC SERVICE LABOUR RELATIONS ACT*

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

(the “Alliance”)

-and-

STATISTICS SURVEY OPERATIONS

(“SSO”)

Before: M.G. Mitchnick – Chairperson, Joe Herbert, Alliance Nominee and
Jean-Francois Munn, SSO Nominee

For the Applicant: Hassan Hussein, Negotiator and Saïd Apali, Research Officer

For the Respondent: Marc Thibodeau, M.Sc., CRIA, Chief Spokesperson and Negotiator
Bonnie Holte, Assistant Director, Statistics Canada

Hearings held by videoconference July 12, 13, and 14, 2022.

AWARD

[1] This arbitration panel has been constituted pursuant to the *Federal Public Service Labour Relations Act* to complete the terms of a collective agreement for the period commencing December 1st, 2018. The employer agency bears the name Statistical Survey Operations, created through Order-In-Council on November 6, 1987, pursuant to the *Financial Administration Act (FAA)* and the then *Federal Public Sector Labour Relations Act (FPSLRA)*. Its role is to collect data for Statistics Canada from Canadian businesses and households, with a strict mandate to maintain the confidentiality of the information provided.

[2] At the onset of the current collective bargaining round the Alliance represented the workforce in two separate bargaining units: the Regional Office (RO) Group and the Field Interviewers (FI) Group. Members of the RO group conduct survey interviews over the telephone from within a regional office, while members of the FI group, as the name suggests, conduct personal interviews in the field in assigned geographic areas across Canada. In June 2021, the FPSLRB, at the parties' request, amalgamated the two bargaining units into a single unit. At the same time, the parties agreed that the Regional Offices collective agreement would operate as the template for their continued discussions, meaning that its terms would remain in place subject to any additions or revisions that came to form part of the ultimately-concluded bargaining process (now in the hands of this Board).

[3] The SSO workforce is hired under *Section 5* of the *Statistics Act* as temporary workers for the purpose of collecting the statistical information. The employees essentially work on a part-time basis. Their work schedules are primarily determined by the type of survey being undertaken and on respondent availability. The employees are remunerated on an hourly basis for the hours worked. The number of employees on strength at any given time depends on the requested survey workload, and at time of hearing the number was approximately 1500. Historically there were two classifications of employees within the two groups: Interviewer, and Senior Interviewer.

[4] The head offices of Statistics Canada and the Statistics Survey Operations are located in Ottawa. As an organization, SSO does not have its own management or administrative structure. Rather, the employees are managed by Statistics Canada which accomplishes this function primarily through a Regional Office management structure. In March of 2021 Statistics Canada announced its decision to essentially move the "Senior Interviewer" level into Statistics Canada itself. The parties in their

bargaining have generally looked for guidance to the CPA's Program and Administrative Services (PA) group, where the employees of Statistics Canada represented by the Alliance reside, and in joining that workforce the Senior Interviewers were slotted at the CR-5 level.

[5] On August 13, 2021, the Alliance confirmed that the Dispute Resolution Mechanism for the amalgamated bargaining unit would be Arbitration. The parties met in negotiations between December 1, 2020, and March 3, 2022, for a total of 10 sessions and 20 days, attempting to reach agreement on the terms of this new composite agreement. The parties recognized they were at impasse during that final March 3, 2022 session, however, and the SSO filed for the establishment of the Arbitration Board on March 21, 2022. The Terms of Reference have subsequently been modified by decision of the FPSLRB.

[6] The Board has now received the parties' full submissions, and has reviewed those in detail. There were a large number of issues outstanding, and it is the award of the Board that the amalgamated renewal agreement will take the form of the expired Regional Offices collective agreement subject to the additions or revisions that have been agreed to by the parties, as well as those set out below as determined and awarded via this arbitration process. All items below are effective the date of the Board's award unless specified otherwise.

Article 11 - Information

11.02 The Employer agrees to supply each employee with a copy of the collective agreement. For the purpose of satisfying the Employer's obligation under this clause, employees may be given electronic access to this agreement, or supplied a printed copy when requested in writing by an employee.

Article 23 - Hours of Work

23.04 Subject to clause 23.17, the scheduled workweek shall be a maximum of thirty-seven and one-half (37 ½) hours from Monday to Sunday inclusive and the scheduled workday shall be a maximum of seven and one-half (7½) consecutive hours, exclusive of a meal period, between the hours of six (6) a.m. and eleven (11) p.m.

Clauses 23.08 and 23.09 apply to regular hours only and not to additional hours.
23.08

(a) The Employer shall set up a master hours of work schedule of at least twenty eight (28) calendar days, posted fifteen (15) days in advance, which will cover the normal requirements of the work area.

(b) Notice of regular hours of work will reflect a period of at least twenty-eight (28) calendar days.

(c) During periods where an employee is required to work seven and one-half (7 ½) hours per day and thirty-seven and one-half (37 ½) hours per week, the hours of work will be scheduled so that the employee obtains two (2) consecutive days of rest at any one time, unless otherwise agreed by the Employer and the employee. The consecutive days of rest may be in separate calendar weeks.

(d) Subject to operational requirements, during periods where an employee is required to work five (5) days and a minimum of thirty-five (35) hours per week, the Employer will endeavour to schedule the hours of work so that the employee obtains two (2) consecutive days off at any one time, unless otherwise agreed by the Employer and the employee. The consecutive days off may be in separate calendar weeks.

Where an employee is required to work on such days off, the employee will be paid at the straight-time rate for all hours worked subject to Article 24, Overtime.

23.09 The Employer will endeavour to inform employees by written notice, at least fifteen (15) days in advance, of their scheduled hours of work.

Article 24 – Overtime

24.01 For the purpose of this Article:

(a) “maximum workweek” means thirty-seven and one-half (37 ½) hours from Monday to Sunday inclusive;

(b) “maximum workday” means seven and one-half (7 ½) consecutive hours, exclusive of a meal period, between the hours of six (6) a.m. and eleven (11) p.m.;

24.13

(a) An employee who works three (3) or more hours of overtime immediately before or immediately following his/her scheduled hours of work, shall be reimbursed his/her expenses for one meal in the amount of twelve (\$12.00) except where free meals are provided.

(b) When an employee works overtime continuously extending four (4) hours or more beyond the period provided for in (a) above, he/she shall be reimbursed for one additional meal in the amount of twelve (\$12.00) except where free meals are provided.

(c) Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that he/she may take a meal break either at or adjacent to the employee’s place of work.

(d) Meal allowances under this clause shall not apply to an employee who is in travel status which entitles the employee to claim expenses for lodging and/or meals.

Article 30 – Vacation Leave

Carry-over and/or Liquidation of Vacation Leave

30.08

a) Where in any vacation year, an employee has not used all of the vacation leave credited to him/her, the unused portion of his/her vacation leave up to a maximum of two hundred and sixty-two decimal five (262.5) hours of credits shall be carried over into the following vacation year. All vacation leave credits in excess of two hundred and sixty-two decimal five (262.5) hours shall be automatically paid in cash at his/her hourly rate of pay for his/her substantive position on the last day of the vacation year.

b) Notwithstanding paragraph (a), if on the date of signing of this agreement or on the date an employee becomes subject to this Agreement, an employee has accumulated vacation leave credits in excess of two hundred and sixty-two decimal five (262.5) hours, the employee may apply for vacation leave subject to the provisions of this article in order to liquidate excess leave credits. All unused vacation leave credits in excess of two hundred and sixty-two decimal five (262.5) hours shall be paid in cash at the employee's hourly rate of pay for his/her substantive position on March 31st of the previous fiscal year.

c) The total amount of vacation leave that an employee may have to his/her credit on March 31st shall not exceed two hundred and sixty-two decimal five (262.5).

Article 31 – Sick Leave With Pay

31.08

(New) Sick leave credits earned but unused by an employee during a previous period of employment at SSO shall be restored to an employee whose employment was terminated due to the end of a specified period of employment, and who is reappointed at SSO within one (1) year from the end of the specified period of employment.

Article 37 – Leave Without Pay for the Care of Family

37.02 For the purpose of this article, “family” is defined per Article 2 and in addition:

(a) a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.

37.03 An employee shall be granted leave without pay for the care of family in accordance with the following conditions:

- a) an employee shall notify the Employer in writing as far in advance as possible but not less than four (4) weeks in advance of the commencement date of such leave, unless, because of urgent or unforeseeable circumstances, such notice cannot be given;
- b) leave granted under this article shall be for a minimum period of three (3) weeks;
- c) the total leave granted under this article shall not exceed five (5) years during an employee's total period of employment in the SSO;

Article 39 -Leave With Pay for Family-Related Responsibilities

39.01 For the purpose of this article, family is defined as:

- a) spouse (or common-law partner resident with the employee);
- b) children (including foster children, step-children or children of the spouse or common-law partner, ward of the employee), grandchild;
- c) parents (including step-parents or foster parents);
- d) father-in-law, mother-in-law, brother, sister, step-brother, step-sister, grandparents of the employee;
- e) any relative permanently residing in the employee's household or with whom the employee permanently resides;
- f) any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee.

or

- g) a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.

Article 43 - Bereavement Leave With Pay

43.01 For the purpose of this article, "family" is defined per Article 2 and in addition:

- a. a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee. An employee shall be entitled to bereavement leave under 43.02(a) only once during the employee's total period of employment in the public service.

43.02 When a member of the employee's family dies, an employee shall be entitled to a bereavement leave with pay. Such bereavement leave, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. In addition, the employee may be granted up to three (3) days' leave with pay for the purpose of travel related to the death.

(a) At the request of the employee, such bereavement leave with pay may be taken in a single period of seven (7) consecutive calendar days or may be taken in two (2) periods of a maximum of five (5) working days.

(b) When requested to be taken in two (2) periods:

(i) The first period must include the day of the memorial commemorating the deceased or must begin within (2) days following the death; and

(ii) The second period must be taken no later than twelve (12) months from the date of death for the purpose of attending a ceremony.

(iii) The employee may be granted no more than three (3) days' leave with pay, in total, for the purposes of travel for these two (2) periods.

Wages and Term

[7] As noted at the outset, this arbitration award will establish a collective agreement whose period commences on December 1st of 2018. The Alliance has suggested an award of 3 years from that date. That would take the new collective agreement to November 30th of 2021 - - a date almost a year earlier than the time that this award is being issued, and putting the parties back into immediate bargaining. The reason the Alliance seeks such a limited award is that, in its view, there is no governing pattern that it considers to have set in its bargaining with the federal government for the years beyond that third year. For its part, the employer notes that this will be the parties' first agreement for these units on an amalgamated basis, and suggests that, apart from the normal question of some period of labour respite, there is value in the parties having a period of experience under this new format before bargaining its renewal.

[8] The *FPSLRA* in s. 56 contains a mandate for the Board with respect to "term" as follows:

(3) 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.

[9] And paragraph 2 provides:

(2) In determining the term of an arbitral award, the arbitration board must take the following into account:

(a) if a collective agreement applicable to the bargaining unit is in force or has been entered into but is not yet in force, the term of that collective agreement; or

(b) if no collective agreement applying to the bargaining unit has been entered into,

(i) the term of any previous collective agreement that applied to the bargaining unit, or

(ii) the term of any other collective agreement that it considers relevant.

[10] In the Board's view, there is no need to look beyond paragraph 3 of s. 156. The parties have been through an extensive period of bargaining, and the Board sees value in giving the parties' an agreement that maintains a reasonable period of life beyond the issuance of its award. Section 156(3) clothes the Board with authority to provide an award that gives the parties a term running to November 30th of next year. As a practical matter, the parties historically have been guided very much by the bargaining for Statistics Canada employees falling within the PA Group (which now includes the "Senior Interviewers"), and that reality can be captured by including for the latter period some form of the traditional "me too" clause.

[11] On the Wage rates themselves there is really no dispute between the parties as to what the settlement pattern is for the Alliance for the first three years of this new collective agreement, being 2.8%, 2.2%, and, for the third year, a total of 1.5% made up of a 1.35 general increase plus an additional .15% for group-specific measures. With respect to the initial three years for this remaining group, therefore, the Board awards the following increases to the rates:

Effective December 1st, 2018 2.8%

Effective December 1st, 2019 2.2%

Effective December 1st, 2020 1.5%

[12] For the additional two years that the employer has requested, the SSO, in addition to the protection for its employees of the "me too" clause, has also offered to

implement an interim increase of 1.5%, pending the ultimate settlement for the PA Group. The Board accordingly awards as well the following:

Effective December 1st, 2021, and again on December 1st, 2022, an “interim” increase of 1.5%. Should the bargaining between the Alliance and the CPA’s PA Group ultimately provide a general increase for either of those years that is higher than 1.5%, this group shall be entitled to retroactively receive the difference.

[13] That, however, is not an end to the wage issue. The statutory criteria that the Board is to consider, it should be noted, include the following:

- a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
- b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;
- c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;
- d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and
- e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

[14] There are no direct comparators for this “interviewer” job in the CPA, and the rates at the SSO appear to be competitive with those in the external private sector. The last two arbitration awards between the parties did, in broad terms, however, note the federal public-sector status of this bargaining group and took incremental steps to move their rates of pay closer to that of the core public administration. The union now points as well to the Senior Interviewers who departed to StatsCan in July 2021, and who are part of the PA unit.

[15] The Board in the present award is prepared to grant a degree of further adjustment in that regard, leaving it to the parties beyond that to assess on a joint basis how this group compares to their CPA colleagues. It is accordingly the further award of the Board that, prior to the application of the 1.5% interim increase of December 1st, 2021, an across-the-board adjustment of 5% shall be made to the rates.

[16] Implementation of the awarded wage increases shall be in accordance with the Annex that has been agreed to by the parties, with the number that has remained in dispute in paragraph 3(c) of that Annex being awarded by this Board to be \$500.

[17] Retroactivity shall be paid to current and former employees, and the latter shall be notified within sixty (60) days by registered mail to their last address known to the employer of their entitlement to claim retroactive payment.

Appendix H - Personal Expense Allowance

[18] This type of provision exists only at the SSO and as this unit moves to harmonize itself more closely with the terms of the core public administration, the provision becomes increasingly anomalous in character. It is the award of the Board, therefore, that in light of the other provisions of this award, this clause shall not be carried forward into the new collective agreement, and shall cease to have effect as of the first pay period following the pay period during which this award is issued.

[19] During the negotiation sessions, the Board would note, the parties were able to sign off for this new amalgamated collective agreement on the following articles:

- Article 1 - Purpose of Agreement
- Article 3 - Application
- Article 4 - State Security
- Article 5 - Precedence of Legislation and the Collective Agreement
- Article 6 - Managerial Responsibilities
- Article 7 - Recognition
- Article 8 - Employee Representatives
- Article 9 - Use of Employer Facilities
- Article 10 - Check-off
- Article 12 - Employees on Premises of Other Employers
- Article 13 - Joint Consultation
- Article 14 - Leave With or Without Pay for Alliance Business
- Article 15 - Illegal Strikes
- Article 16 - No Discrimination
- Article 17 - Sexual Harassment
- Article 18 - Technological Change
- Article 19 - Health and Safety
- Article 21 - Discipline
- Article 22 - Grievance Procedure
- Article 28 - Religious Observance
- Article 29 - Leave - General
- Article 32 - Injury-on-duty Leave
- Article 33 - Maternity-Related Reassignment or Leave
- Article 34 - Medical Appointment for Pregnant Employees
- Article 35 - Maternity Leave Without Pay

Article 36 - Parental Leave Without Pay
Article 38 - Compassionate Care Leave
Article 40 - Leave Without Pay for Personal Needs
Article 41 - One Time Vacation Leave
Article 42 - Leave Without Pay for Relocation of Spouse
Article 44 - Court Leave
Article 45 - Personnel Selection Leave
Article 46 - Education Leave Without Pay and Career Development Leave
Article 47 - Leave With or Without Pay for Other Reasons
Article 48 - Restriction on Outside Employment
Article 49 - Statement of Duties
Article 50 - Employee Performance Review and Employee Files
Article 52 - Severance Pay
Article 53 - Pay Administration
Article 54 - Agreement Reopener
Annex C - Archived Provisions for the Elimination of Severance Pay for Voluntary Separations (Resignation and Retirement)
Annex D - Dental Care Plan
Annex E - National Joint Council Directives

[20] At the same time, however, the parties referred to the Board as part of this process their continuing dispute with respect to the following Interviewer Position Title:

Article 2 - Interpretation and Definitions
Article 11 - Information
Article 20 - Job Security
Article 23 - Hours of Work
Article 24 - Overtime
Article 25 - Evening and Weekend Premiums
Article 26 - Designated Paid Holidays
Article 27 - Travelling Time
Article 30 - Vacation Leave
Article 31 - Sick Leave With Pay
Article 37 - Leave Without Pay for the Care of Family
Article 39 - Leave With Pay for Family-Related Responsibilities
Article 43 - Bereavement Leave With Pay
Article 51 - Call Centre Employees
Article 55 - Duration
Annex A - Hourly Rates of pay and Pay Notes
Annex B - Reclassification
Annex F - Social Justice Fund
Annex G - Operational Requirements
Annex H - Personal Expenses Allowance
Annex H - Supporting Employee Wellness and Mental Health in the Workplace
Annex XX - MOU - Implementation of the CA

[21] A number of these items have now been dealt with above. The Board has reviewed the remaining items as well, but awards no change either way in this round.

[22] The Board will remain seized of this matter in the usual way until such time as the new collective agreement has been signed off by the parties.

Dated at Toronto this 28th day of October, 2022

“Original signed by”

M.G. Mitchnick, Chair,
on behalf of the Board