Date: 2020-04-29

File: 590-02-39493

IN THE MATTER OF

A PUBLIC INTEREST COMMISISON

UNDER THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*

BETWEEN

THE PUBLIC SERVICE ALLIANCE OF CANADA
AND
TREASURY BOARD

FOR THE OPERATIONAL SERVICES (SV) GROUP

Indexed as

Public Service Alliance of Canada v. Treasury Board

Before: Lorne Slotnick, chairperson,
Joe Herbert and Anthony Boettger, nominees

For the Bargaining Agent: Brenda Shillington, Negotiator and Darren Pacione, Research Officer

For the Employer: Allison Shatford, Negotiator, Treasury Board of Canada Secretariat, and Greg Enright, Treasury Board.

Heard at Ottawa,
January 22-24, 2020.

I. Introduction

[1] This is the Report of a Public Interest Commission (PIC) established under the *Federal Public Sector Labour Relations Act (FPSLRA)* relating to renewal of the collective agreement between the Public Service Alliance of Canada (PSAC) and the Treasury Board of Canada, for the Operational Services (SV) group.

[2] **NOTE: The hearing in this matter took place before the COVID-19 pandemic emergency, and this report is based on the briefs provided and presentations made at that time. We recognize that the situation has changed rapidly and may continue to do so.**

[3] The parties agreed to an extension of the 30-day time limit from the time of establishment for the commission's report, in accordance with section 176 of the *FPSLRA*.

[4] The SV group is a diverse category of nearly 10,000 employees, consisting of eight subgroups, listed below with their populations as provided by the employer at the start of bargaining:

Firefighters (FR group)	492
General Labour and Trades (GL group)	4,182
General Services (GS group)	3,033
Heating, Power and Stationary Plant (HP group)	405
Hospital Services (HS group)	247
Lightkeepers (LI group)	91
Ships' Crews (SC group)	1,351
Printing Operations, Supervisory (PR group)	4

[5] These employees work for various federal departments, including National Defence (fire fighters at military bases), Fisheries and Oceans (coast guard ships' crews

and lighthouse keepers), and Public Services and Procurement (trades). Some of these groups, such as GL, themselves contain a wide variety of classifications. As would be expected, working conditions for employees in a unit this diverse vary widely. There are collective agreement provisions tailored to each group, contained in appendices to the agreement.

II. Bargaining History

[6] The collective agreement being renewed had an expiry date of August 4, 2018. The bargaining agent gave notice to bargain on April 12, 2018.

[7] The parties met for a total of 10 days in four separate sessions between May and November 2018. The PSAC then requested appointment of a Public Interest Commission (PIC), but the chair of the Federal Public Sector Labour Relations and Employment Board denied the request, saying that there had not been enough serious bargaining at that point. After an additional nine days of meetings, the bargaining agent renewed its request in May 2019, and this commission was appointed.

[8] So far, only “housekeeping” changes have been agreed in principle.

[9] There are more than 20 proposals common to all four PSAC Treasury Board groups. Most are PSAC proposals. The parties discussed these at a common issues table at three sessions from June to December 2018. To avoid repetition, the common issues were argued only before the PIC for the largest group, the Program and Administrative Services (PA group). Those proposals, which deal with union-management relationships, various leaves of absence, holidays, vacations, and other issues, will not be addressed in this report.

[10] In addition, there are roughly about 55 SV-specific proposals from the bargaining agent – most of them monetary - and several from the employer.

[11] One major issue between the PSAC and the Treasury Board is being negotiated at a separate table: damages arising from problems with the Phoenix pay system. It is apparent that a settlement between any PSAC group and the Treasury Board will not be possible without a resolution of the Phoenix issue as part of the package.

[12] Regarding monetary issues, the employer relies on 34 collective agreements in the federal public sector that have been settled (nearly all for the 2018-21 period) with unions other than the PSAC. Those settlements contained increases of 2%, 2%, 1.5% and 1.5% for those four years, along with targeted adjustments totalling roughly 1% during the first two years of the agreement.

[13] The bargaining agent acknowledges the economic pattern contained in the 34 federal public sector settlements for 2018-21, but notes that this involves unions other than PSAC. It says the PSAC, by far the largest federal union, traditionally sets the pattern for the sector, whereas the employer is asking now for "the tail to wag the dog." It also argues that the 1% allocated for adjustments is a completely arbitrary figure that should not act to thwart larger adjustments when they are warranted.

III. **Statutory Criteria**

[14] In considering the matters at issue, the commission has had regard to the factors listed in Section 175 of the FPSLRA, which reads as follows:

> 175 In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, in addition to any other factors that it considers relevant:
>
> (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 public interest commission 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.

IV. Rates of Pay and Allowances

[15] As noted above, the employer relies on the pattern negotiated for the 2018-2022 period with 34 bargaining units, none represented by the PSAC. This four-year pattern contains increases totalling 7% (2% + 2% + 1.5% +1.5%) and targeted adjustments totalling another 1% in the first two years (0.8% + 0.2%).

[16] The bargaining agent's proposal is for a three-year agreement expiring in August 2021 with increases in each year of 3.25%. However, in addition, the bargaining agent has tabled adjustments to be applied before the general increase for a wide range of the sub-groups within the SV group, comprising about two-thirds of the employees: 9% for the general labour group (GL), 19.5% for fire fighters (FR), 21% for ship's crews and lightkeepers (SC and LI), and 39% for heating and power employees (HP).

[17] Moreover, the bargaining agent is proposing adjustments to the wage grid for five of the eight sub-groups, including adding steps to the top of the grid for some groups, and removing steps at the bottom for others. Finally, the bargaining agent has proposed increases and restructuring for allowances paid to various groups of employees, as well as some new or broadened allowances.

[18] Many of the bargaining agent's proposals for adjustments flow from a joint employer-union study completed in 2015 by the management consulting company Hay Group. The study collected data from 47 external employers and matched them to 17 federal government jobs in the SV group. It found that pay for several positions in the SV group lagged external comparators. The parties' settlement in early 2017 included adjustments to numerous groups, effective in August 2016 – including 15% for the fire fighters (FR) and the heating and power sub-group (HP) and smaller adjustments for other groups. The tentative agreement states that the market adjustments are "to resolve the issues identified" in the Hay Group study. Consequently, the employer

argues that any gaps with external comparators revealed by the study have been put to rest.

[19] Nevertheless, the bargaining agent argues that gaps persist. It has taken the Hay study results and added averages of major wage settlements from 2014 to 2017 in applicable sectors, such as utilities and construction, to compare federal government rates to the external market for various occupations. It says its proposals for adjustments would narrow the gap that it says exists for most of the SV group.

[20] Proposals for the ships' crew group (SC) stem from a different study. (SC jobs were not included in the Hay study.) In the last round of negotiations, the SC group received a 5% adjustment, and the parties agreed on a separate study of compensation for this group. A contract was awarded to Mercer (Canada) Ltd., which issued a report in March 2019 concluding that the four benchmark classifications studied were within Mercer's defined market competitive range (i.e. within 10% of the 50th percentile median of the eight outside organizations studied.) The bargaining agent, however, disputes Mercer's methodology, saying data weighted by incumbency rather than organization, use of averages rather than medians, and use of the 75th percentile rather than the 50th, would show a substantial gap between the federal government pay and external comparators. Further, the bargaining agent points to a 2017 arbitration award that gave ships' officers at 12% adjustment effective in 2017.

[21] The employer response on the monetary issues includes reference to a 2019 study conducted by Mercer (unlike the ships' crew study and the Hay study, it was not a joint study with PSAC involvement). The study examined 2017 rates of pay for 18 benchmark positions in the SV group, and found that all but one was competitive with 2018 rates of pay in the external market (five others could not be matched with the databases used). This study was performed using secondary research (i.e. material from Mercer's database and databases from two other consulting firms), and again, its methodology was criticized by the bargaining agent at the hearing.

[22] The employer also says wage growth for most SV employees has outpaced inflation significantly since 2000. It says the Government of Canada's stated objective is to provide compensation that is competitive with, but not leading, compensation provided for similar work in relevant external labour markets. Furthermore, the

employer says wage studies like those referred to above have limitations and are in any event only one of many tools that are used for determining fair salaries. In addition, superior pensions and benefits in the federal public sector mean that several categories in the SV group lead the market in total compensation according to another Mercer study, the employer says.

[23] In our view, both the employer's 2019 Mercer study and the union's extrapolation of the 2015 Hay study suffer from substantial limitations and cannot be accorded the kind of weight that each party advocates. In any event, we agree that study results are only one factor in the blend of considerations that make up a settlement acceptable to both parties. As for the ships' crew study, the commission heard a presentation from the Mercer partner who led the project. While in our view he offered a credible defence of his methodology, he would not reveal which organizations were used as comparators and whether their employees were unionized.

[24] The employer quantifies the bargaining agent's monetary proposals as a 37.87% increase over the base wages of the SV employees in 2018. The employer describes this bargaining relationship as a mature agreement that does not require major changes. It says it is willing to offer the four-year economic increase agreed to by the non-PSAC bargaining agents, as well as other changes agreed to in all those settlements, such as domestic violence leave, caregiving leave, an expanded definition of family for bereavement leave and other provisions, and changes to parental leave.

[25] Even a cursory review of the bargaining agent's proposals on wages and allowances reveals that a more focused approach will be necessary before the parties can move toward a settlement. To that end, the commission suggests that the pattern of general economic increases with the non-PSAC bargaining agents cannot be ignored. However, a settlement for the SV group may require a renewed mandate with more than the additional 1% overall that the employer has offered for targeted adjustments and other increases.

[26] The commission would suggest attention to the following areas in the bargaining agent's proposals on adjustments and allowances:

<u>Fire Fighters (FR group)</u>

[27] Despite the 15% adjustment in the last settlement, pay for this group (which was not included in the latest Mercer study) is still behind most municipal fire fighters by a considerable margin. The employer argued at the hearing that, even though federal government fire fighters have the same training as their municipal counterparts, they are stationed at military bases, a controlled environment where there are few fires, where most personnel leave the base after work, and where there are no high-rise buildings or long-term care homes, and where all buildings are regularly inspected and have sprinklers. However, while this may reduce certain risks, it is also notable that fire fighters at military bases undergo additional training, for example, in handling fires on ships (a third of the fire fighters are stationed at the two bases with dockyards, Halifax and Esquimalt), and on issues relating to ammunition depots at four bases.

[28] Further, we note that the bargaining agent's proposal for long service pay to be expressed as a percentage instead of an annual rate would conform to what is used by municipal fire departments.

General Labour and Trades (GL group)

[29] Machine Driving-Operating Sub-Group (GL-MDO) is the only classification within the SV group where pay was found by the 2019 Mercer study to be more than 10% below the 50th percentile of the external market. This discrepancy should be addressed.

[30] In the last collective agreement, an $8,000 annual allowance was introduced for refrigeration HVAC technicians in the GL-MAM sub-group, which, according to the employer, is received by 65 employees. It was designed to deal with recruitment and retention issues. The bargaining agent has proposed broadening this to include building service technicians and raising the value to $10,500. The employer has indicated a willingness to make improvements within the context of an overall settlement within its offer. This would appear to be an area of potentially fruitful discussion.

[31] Also within the GL group, it appears that an adjustment in pay for the Electrical Installing and Maintaining Sub-Group (GL-EIM) and the Vehicle and Heavy Equipment Maintaining Sub-Group (GL-VHE) may merit consideration.

Ships' Crews (SC group)

[32] The 2019 ships' crew joint study conducted by Mercer raises some questions. Only eight organizations were surveyed, and some of them did not have employees in two of the classifications studied. Mercer did not disclose whether employees in these organizations were unionized. An illustration of the limitations can be found in a draft of the report that showed engine room assistants in the SC group 16% behind the 50^{th} percentile of the external market; in the final report, one organization was added, and that classification ended up on par with external comparators. Other ways of looking at the data (for example, use of the 75^{th} percentile rather than the 50^{th}) show a significant pay gap. In addition, the 12% adjustment awarded to ships' officers may create an internal relativity issue.

[33] For these reasons, we suggest that an adjustment for this group should be considered.

[34] Increases for various allowances for the SC group (rescue specialist, armed boarding, diving duty) and a new confined space allowance have been proposed by the bargaining agent. The employer has indicated a willingness to increase the three existing allowances. The parties should be able to agree on the amount of the increases with some further discussion.

Lightkeepers (LI group)

[35] The supplementary allowance paid to lightkeepers merits a substantial increase.

Inmate Training Differential

[36] This differential applies to about 1,800 employees in the GL, GS and HP groups who work for the Correctional Service of Canada as vocational training instructors for inmates. It has a complex history that is not necessary to detail here, except to note that it currently ranges from 4% to 20%, depending on an employee's responsibilities. The employer is proposing that it be replaced with a new Inmate Training Differential

Allowance at a flat rate of 7%. This percentage is received by nearly 60% of employees paid the differential, and another 8% receive a lower differential and as such would benefit from the employer's proposal. Employees currently paid a higher differential would be grandparented under the employer proposal. We recommend adoption of this proposal.

V. Other Issues

[37] As noted above, there are 23 "common issues" that have been raised at all four Core Public Administration bargaining tables, including this one. By agreement of the parties, they were presented only to the PIC covering the largest bargaining unit, the Program and Administrative Services (PA) group.

[38] Aside from the common issues, nearly all the issues raised in bargaining are monetary. We have highlighted some of them above. The remaining language issues are not difficult. We are confident the parties can reach agreement on these with further discussion.

April 29, 2020

''Original signed by''

Lorne Slotnick, Chair

COMMENTS OF THE EMPLOYER NOMINEE

[39] I would like to acknowledge the hard work done by the Public Interest Commission (PIC) in preparing this report in the current extraordinary context and offer the following comments as I join the other Board members in issuing the report to allow the process to follow its course.

[40] As noted in the Report, this PIC report is being issued under dramatically different circumstances than when the hearings took place in late January and some

amplification of these circumstances is offered. Since January, the COVID-19 pandemic and a collapse in oil prices have brought an already fragile world economy to the brink of a recession. Every sector of the Canadian economy will be affected. Already, Canada has suffered major job losses and a record number of employment insurance claims have been submitted – three and half million Canadians had applied for Employment Insurance or the new Canada Emergency Response Benefit at end of the first day of eligibility for the new benefit.

[41] There is tremendous uncertainty and risk regarding the economic outlook. Forecasters are now warning of prolonged economic pain due to increased barriers to international trade, disruptions to supply chains and shaken consumer confidence. There is the potential for a number of international and domestic risks -- if they become manifest -- to further deepen the economic disruption created by COVID-19 and the decline in oil prices.

[42] The support the government is providing to Canadians to help them deal with the current situation, combined with the current economic slowdown, will significantly increase the federal deficit and debt. In this regard, the Parliamentary Budget Office (PBO) has developed a scenario based on social distancing restrictions and self-isolation measures continuing until August 2020, and benchmarked to economic developments during the 2008-09 Global Financial Crisis. PBO's scenario entails a fall in real GDP of 5.1% in 2020, an unemployment rate of 12.4% and a deficit of $184.2B, or 8.5% of GDP, taking into account revenue losses and new expenditure measures.

[43] The disruption is expected to be considerably larger than that Canada experienced during the 2008-09 Global Financial Crisis when real GDP declined by 3.2%, the unemployment rate reached 8.3% and the deficit stood at $56.4B. Moreover, the last time the deficit was near such a high level in percent of GDP than is assumed under the PBO's scenario was in 1984-85. In the PBO's scenario, year-over-year inflation rates would decline to 0.9% in 2020, which would be far lower than the Employer's economic offer for that year.

[44] This new reality will need to be taken into consideration as parties return to the table, in a manner that takes into account the valuable work provided by public

servants in support of Canadians, but that equally recognizes the dire circumstances created by recent developments.

Other comments

[45] I would also note that wage increases, or compensation changes need to take into account all relevant factors, and not simply the internal/external wage comparisons on which there is little agreement at this time. As noted in this Report, “study results are only one factor in the blend of considerations that make a settlement acceptable to both parties”.

[46] Leaving aside deteriorating economic conditions, indicators clearly show that the government is able to recruit and retain qualified employees. The data that was presented to the PIC showed normal retention patterns and robust pools of qualified candidates in virtually all sub-groups. This data provides direct evidence regarding the reasonable compensation and attractive terms and conditions of employment that employees currently enjoy and, that the government treats its employees fairly. This information cannot be ignored particularly under the changed circumstances in which we find ourselves. Indeed, a government job will even more attractive these days, to the millions of Canadians who have lost their jobs and watched their retirement savings eroded by stock market declines!

[47] Internal relativity is another consideration for the parties. Compressions between groups is certainly something that would need to be avoided.

-- Anthony Boettger

ADDENDUM OF BARGAINING AGENT NOMINEE

[48] I cannot, on the whole, disagree with the Chair’s approach to the Report, although I might have placed emphasis in different places. I do wish however, to add additional comments to the recommendation.

[49] First of all, the Report identifies frailties in the wage studies relied upon by the Treasury Board and by the PSAC. It is obvious to anyone reviewing the wage studies

provided to the Commission, that the one provided by the Treasury Board is at best to be afforded no weight, and at worst, is not one intended to provide a serious address to the issue before the Commission. The Treasury Board's (TB) wage analysis undertaken by Mercer appears intended instead to provide a superficial 'spin', spin that is easily dismissed and that fails to do justice to the importance of the wage issue before the Commission. Indeed, if the Commission were acting as an arbitration board it is inconceivable that such a study could be submitted with the anticipation that it would be afforded weight. In particular, the Mercer study:

a) Failed to disclose the identity of purported comparators;

b) Failed to disclose the number of employees involved with each purported comparator;

c) Failed to disclose whether the wage rates were the result of collective bargaining or were set without recourse to collective bargaining, and;

d) Failed to include any readily available rates not already included in the database.

[50] As an example of the latter, the rates for firefighters, easily accessible throughout the country, in a highly unionized sector, were not reported at all in the TB/Mercer survey and are not supportive of the rates currently paid. Obviously this serves not only to undermine the utility of the wage survey, but calls into question its credibility.

[51] The other area requiring some comment is the Inmate Training Differential. This is an area where the TB proposal hoped to provide rationalization yet was perceived by the union as concessionary in nature.

[52] The present differential system awards additional responsibilities on a sliding scale, depending on the extent of additional responsibility assumed by an employee. The TB proposal, in seeking to replace the current sliding scale with a flat rate differential, may require some nuanced 'tweaking' where it addresses those employees assuming the highest levels of additional responsibility. Because the current system of remuneration provides a differential based upon actual additional responsibility, 'red-

circling' current employees won't necessarily address the problem of ongoing, higher-end responsibility.

[53] Finally in this regard, I found the 'no pyramiding' element of this proposal confusing. Pyramiding properly refers to duplication of premiums paid for the same purpose and there is no indication of any other differential paid for this purpose.

-- Joe Herbert