

IN THE MATTER OF AN ARBITRATION

Between:

Public Service Alliance of Canada

("the Alliance")

-and-

Treasury Board of Canada

("Treasury Board")

RE: TC Group – EG Wage Rate

Before: M.G. Mitchnick - Arbitrator/Mediator

Appearances:

For the Alliance:

Seth Sazant, Negotiator, PSAC
Silja Freitag, Research Officer, PSAC
Jean Cloutier, Team Member
Kevin Lundstrom, Team Member
Pat St-Georges, Team Member
Sharon DeSousa, PSAC National
Executive Vice-President

For Treasury Board:

Guillaume Hebert, Negotiator
Karine Beauchamp, Analyst
Giuseppe Di Raimo, Advisor/Economist

Formal hearing held by Videoconference, October 19th, 2021

AWARD

I have been appointed by the parties under s.182 of the *FPSLRA* to rule on a single issue pursuant to the terms of settlement for renewal of the parties' collective agreement that expired June 21st of 2021. As the parties recognize, I previously served as Chair of the Public Interest Commission with respect to that 2018-21 collective agreement for the "TC" Group of the CPA. Following the release of the PIC's Report on March 16th, 2020, the parties in July of 2020 reached agreement on the terms of that now expired collective agreement. That settlement, however, once again failed to include agreement by the parties on an added rate adjustment to be provided to the EG (Engineering and Scientific Support) Group within TC. Rather, the parties entered into a Memorandum of Understanding to be set out later, leaving the matter for further discussion, but this time with the inclusion of a process whereby the issue, if still unresolved, could be placed before a third party for final and binding determination. I am that third party.

As noted, the EG classification is a part of the Technical Services (TC) Group, which is itself composed of six different categories of employees certified by the Federal Public Sector Labour Relations and Employment Board (FPSLREB). According to the most recent information provided, the EG group has 6,241 employees, comprising 58.5% of the TC Group. Consequently, an adjustment for the EG classification will have a significant impact on the added wage cost for the TC Group in general, and has made a resolution of the issue a difficult one in bargaining.

EG's work in a variety of departments, performing different types of work. The table below shows the departments in which there are at least 100 EG's working. The named departments in the table make up more than 97% of the EG population.

Department	# of EGs
National Defence/ Défense nationale	1,508
Fisheries and Oceans Canada/ Pêches et Océans Canada	942

Agriculture and Agri-Food Canada/ Agriculture et Agroalimentaire Canada	874
Environment and Climate Change Canada/ Environnement et Changement climatique Canada	788
Public Services and Procurement Canada/ Services publics et Approvisionnement Canada	446
Natural Resources Canada/ Ressources naturelles Canada	380
Public Health Agency of Canada/ Agence de la santé publique du Canada	266
Indigenous Services Canada/ Services aux Autochtones Canada	239
Transport Canada/ Transports Canada	191
Health Canada/ Santé Canada	181
Royal Canadian Mounted Police (Civilian Staff)/ Gendarmerie royale du Canada (Personnel civil)	140
Correctional Service Canada/ Service correctionnel Canada	121

The common factor across these varied positions is that they have, as their primary purpose, responsibility for one or more of the following activities:

1. the conduct of analytical, experimental or investigative activities in the natural, physical and applied sciences; the preparation, inspection, measurement and analysis of biological, chemical and physical substances and materials; the design, construction, modification and assessment of technical systems and equipment or the calibration, maintenance and operation of instruments and apparatus used for these purposes; and the observation, calculation, recording and the interpretation, presentation and reporting of results of tests or analyses, including:
 - the performance of activities involving the application of the principles, methods, and techniques of engineering technology and a practical knowledge of the construction, application, properties, operation and limitations of engineering or surveying systems, processes, structures, buildings or materials, and machines or devices;
 - the planning of approaches, the development or selection and application of methods and techniques, including computer software, to conduct analytical, experimental or investigative activities; the evaluation and interpretation of results; and the preparation of technical reports;

- the observation and recording of events and the analysis of information relating to such fields as meteorology, hydrography, or oceanography and the presentation of the results of such studies; and the provision of data and information relating to meteorology;
 - the monitoring and investigating of environmental hazards or the provision of advice on those issues impacting upon compliance with public health legislation; and
 - the design, development or application of tests, procedures and techniques in support of the diagnosis, treatment and prevention of human and animal diseases and physical conditions;
2. the planning, development and conduct of training in, or the leadership of, any of the above activities.

PSAC PROPOSAL

Effective July 21, 2020, add one new step to the top of all EG pay scales that is 3.32% higher than the existing maximum. This increased amount is in line with the maximum rate of each respective level of the EG pay scale at CFIA.

All employees who have been at their maximum rate for at least twelve months as of July 21, 2020 shall move to this new rate on that date.

BACKGROUND TO THE DISPUTE

The history of this matter from the Alliance's perspective is set out in the following excerpt from their Brief:

The wage disparity between the EGs of the TC group and the EGs working at the CFIA [the Canadian Food and Inspection Agency] has been a long-standing issue between the parties in negotiations. This is due to the fact that there are two groups of employees employed by the federal government, evaluated identically and according to the same standard, yet one group earns 3.3% more than the other.

There has been incremental progress on the Union's clear and consistent call for parity between EGs over the past three rounds of collective bargaining.

The gap was partially closed in the round concluding in 2013. At that time, the parties agreed to include an allowance that was worth 1.5% of salary for all TC EGs, which lessened the gap between the two different groups of EGs.

In the following round, concluding in 2018, that allowance was rolled directly into the salary of all TC EGs, which made this amount applicable to overtime and reinforced that the allowance is pensionable. Further, the parties agreed to a Memorandum of Understanding to meet between rounds to determine if there is any bona fide difference between the groups of EGs.

The parties met between rounds to do the work contemplated by the MOU. At that time, the parties agreed that there is no substantive difference between the two groups of EGs and confirmed that they are evaluated using the exact same classification standard. In fact, the agreement signed by the parties stated that:

The CFIA ... confirmed that they use the Treasury Board of Canada Secretariat (TSB) EG Job Evaluation standard.

...

[T]he parties agree that the EG Classification in the TC bargaining unit and at CFIA are essentially equivalent and directly comparable for the purposes of collective bargaining. (Exhibit E)

Finally, in the round of bargaining which concluded in July 2020, the parties agreed to the process for which this submission has been produced...

The Union sent a letter to the Employer to initiate the process on January 11, 2021 (Exhibit G). The parties met on March 15, 2021 to begin the process outlined in Appendix FF of the Collective Agreement. The Union presented its proposal to the Employer at that time. The parties had set aside further dates in March to continue negotiations. The Union expected to receive a counter-proposal or a position from the Employer at that time. Before those dates, however, the Employer cancelled, stating that they would not have a mandate to provide a position to the Union.

With nothing coming from the employer thereafter, the Union filed for the present arbitration process on June 21st of 2021, the day the existing collective agreement expired.

THE ALLIANCE’S POSITION

The Alliance’s position, in light of all of the above, is succinctly summarized in its Brief as follows:

There are two groups of employees working for the federal government either directly or indirectly through a separate agency. These two groups do the same work as identified by the Employer’s own classification system, but are paid different amounts. The work is evaluated using the same EG classification standard. The levels are identical. The work is, in many cases, identical. The Employer does not dispute any of these facts. In fact, the parties agreed on an MOU in 2018 stating that:

“The EG classification in the TC bargaining unit and at CFIA are *essentially equivalent* and *directly comparable* for the purposes of collective bargaining.” [emphasis added]

There is no mystery and no dispute about who the parties should be comparing to for the purposes of a wage adjustment. The Employer has agreed that these are directly comparable groups.

...

The principle that it is fair for an employer to provide the same pay for the same work, regardless of where that work is housed is self-evident. The Employer has never raised a market-based concern nor other reasons for the difference in wage rates.

While the group of EGs is diverse, this is true for both TC and CFIA. The lack of parity between the groups of EGs remains a long-standing issue of fairness. The Union is making a clear and uncomplicated comparison with respect to what the Government of Canada is paying for these two groups.

TREASURY BOARD'S POSITION

The lack of any response to the proposal tabled by the Alliance last March may be explained by the fact that the mandate that the Treasury Board bargaining team was operating under was at that point “zero”. That continues to the present, as is set out and explained in the government’s Brief as follows:

In the present situation, further to a careful review which will be elaborated in this document, the Employer submits that there is no evidence to support a particular wage adjustment to the EG group, even though EGs employed at CFIA earn a slightly higher maximum salary.

The salary gap between the maximum salaries of EGs in the CPA and those at CFIA was created in 2001, some twenty years ago, after a Conciliation Board issued its non-binding recommendations which included a restructure of the EG classification at CFIA by adding a new step equivalent to 4% to all levels, moving all employees at the top step of all levels of the EG group to the new added top step, as well as applying a 4% economic increase, effective June 1, 2001.

As noted in the Conciliation Board’s report (annex 1), the Board’s recommendation came at the time where Canada was facing two major public health crises (*‘mad-cow’ disease and ‘foot-in-mouth’ affliction*), which called on its inspector workforce, the now EGs at CFIA, to provide, without interruption, inspection services. Given an aging inspector workforce, increasing EG compensation at CFIA, it seemed at the time, was paramount to minimize employee retention issues in the middle of a public health crisis.

The employer submits that circumstances in the CPA now are significantly different than those prevailing at CFIA in 2001, and that there is no demonstrated need to close the wage-gap in the EG group amongst the two employers. Wage increases that seemed reasonable in 2001 at CFIA when it was at risk of losing its inspectors to retirement and departures and one of its most valuable resource

needed to address the epidemics, would not be warranted today in the CPA, particularly in the current time of economic and financial crisis.

Throughout this brief, the Employer will demonstrate that:

- there are no recruitment or retention problems affecting the EG sub-group in the CPA that would justify a particular wage adjustment;
- EG wages in the CPA are competitive with the external labour market. In addition, the CFIA is only one part of the labour market landscape and it would be inappropriate, and contradictory to the spirit and intent of the Employer's Policy Framework on the Management of Compensation to rely on only one external comparator to set rates of pay for an occupational group in the CPA; and that
- previous increases have been consistent with those of other occupational groups in the CPA over the past ten years.

Additionally, although the Employer acknowledges that the CPA and CFIA classifications are comparable for the purposes of collective bargaining, it strongly disagrees with the premise that this should constrain the Employer to pay the same salaries. CFIA uses the same job evaluation standard as the CPA for its EGs, but it applies it differently. The vast majority of EG employees at the CFIA are inspectors. EGs in the CPA have a larger scope of work with multiple types of positions, and there are no EGs doing food inspection in the CPA. As such, *EG positions may be comparable in certain respects, but they are not the same* [emphasis added].

...

The Employer examined the National Occupational Classification (NOC) with respect to both the CPA and the CFIA. NOC codes provide an idea of the roles and responsibilities performed by employees in different occupations across Canada. Of relevance is NOC code 2222 (agriculture and fish products inspectors). These employees inspect agricultural and fish products for conformity to prescribed production, storage, and transportation standards. Some examples of inspection within the NOC were agriculture, crop, dairy, fish, fruit and vegetable, grain, livestock, and plant.

The results of the Employer's examination showed that approximately 82% of EG employees at the CFIA were found within that NOC. It was also confirmed by the CFIA that 82% of their EG employees are currently inspectors.

Conversely, only 0.02% of EG employees in the CPA were found within that NOC. Of 6158 EG employees in the CPA, only 0.9% held positions that included "inspection" in the job title...

ANALYSIS AND DECISION

At bottom, the position the employer has adopted in its Brief is a rejection of the notion of true comparability between the tasks performed within these two groups of employees. It has in fact submitted somewhat revised figures for the Inspector component of the CFIA, with the most recent figures showing a total EG population at the Agency of 2,873, of which 2,429 are inspectors (being 84.5% of the EG group).

I understand the point that Treasury Board seeks to make here. History, however, works dramatically against the government in the stance it is now adopting. As the Alliance fairly asserts, the issue of the EG rate within TC has never been about external comparators: the parties have a long history of viewing the issue entirely through the lens of the internal disparity, and have invested a great deal of time examining the issue. In 2013 Vince Ready as Chair of that year's PIC for these parties wrote:

59) The Union demonstrated that the wages in this classification are consistently 3.28% behind those paid to employees at the Canadian Food Inspection Agency (CFIA). The Commission notes that the employees at CFIA in the EG classification used to be part of this bargaining unit and paid the same wages.

Further, that since a reorganization separated the two groups those employed at CFIA have moved ahead of their colleagues in this bargaining unit.

(60) The Commission finds that there can be no stronger and compelling internal comparator. This falls squarely within the parameters set out in section 175(b) of the Act.

(61) The Commission recommends that a new increment of 3.28% be included at the top of all pay scales in the EG classification effective April 1, 2013.

Although that was not a unanimous recommendation, it appears Treasury Board did respond in part, as noted above, and agreed to narrow the gap by creating for the EG's at TC an allowance of 1.5%. In the next round, for the collective agreement expiring in 2018, that "allowance" was rolled into the rate itself. Negotiations for that collective agreement concluded in 2017, and as part of that settlement the parties agreed to continue between rounds with a joint study of the comparable value of the work and compensation between the EG's at TC and those at the Agency. Intended to "provide proposals to the parties to inform the next round of collective bargaining", that MOU stipulated a report date from the committee no later than September 30th, 2018. The committee, as anticipated, carried out further investigation and confirmation of the evaluation standards that were and could be used in assessing the CFIA positions; but as the "end date" of September 30th was approaching, with no agreement yet on a recommendation regarding rate adjustment, the committee appears instead to have signed off its work with a summative conclusion. That full June 2018 MOU, incorporating some of the history just referred to, read as follows:

[Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada With Respect to Comparability at Canadian Food and Inspection Agency – Appendix FF](#)

The Technical Services (TC) collective agreement expiring June 21, 2018 includes the following appendix.

“The Union and the employer agree to create a Joint Committee consisting of an equal number of Union and employer representatives. The committee will convene within 90 days of the signing of the collective agreement and will complete its work by September 30, 2018.

The joint committee will undertake a comparability of the value of work and compensation of EGs working in the core public administration with their comparators working in the Canadian Food and Inspection Agency. This committee will provide proposals to the parties to inform the next round of collective bargaining.

In the event that the parties are unable to reach consensus on their proposals, the parties may seek the services of a mediator. The parties agree to seek the mediation services of the following two individual mediators according to their availability: John Jaworsky and Tracey O’Brien.

The deadline for completion of work may be extended by mutual consent of both parties to this agreement.”

The MOU then continued with the following update:

In order to complete a comparability of the value of work and compensation of EGs, the Canadian Food Inspection Agency (CFIA) was contacted to request a copy of their EG job evaluation standard and copies of their EG job descriptions. The CFIA complied and confirmed that they use the Treasury Board of Canada Secretariat (TBS) EG Job Evaluation standard.

TBS Workforce and Classification undertook a further review of the CFIA EG job descriptions and determined that the content could be evaluated using the factors found in the TBS EG job evaluation standard.

And again, with the next round of bargaining coming upon them, the parties agreed to sign off on their work with the following statement:

As the mandate of this Joint Union-Management Committee was to provide a forum to carry out the requirements of the Memorandum of Understanding at Appendix FF of the Technical Services Group (TC) Collective Agreement, the parties agree that the EG classification in the TC bargaining unit and at CFIA are *essentially equivalent* and *directly comparable for the purposes of collective bargaining*. (emphasis once again added)

Treasury Board in its Brief acknowledges that this MOU eliminates any issue over whether the EG group at CFIA is, to paraphrase, an “appropriate” comparator for compensation purposes for the EG group of the CPA. But the MOU goes well beyond that: it expressly acknowledges, after all of the study that had jointly been done, that the two groups are not only “directly comparable”, but are “essentially equivalent” for the purpose at hand. That, it has to be said, is a long way from the statement underpinning the government’s position now placed before me in its Brief that “EG positions may be comparable in certain respects, but they are not the same”.

That June 2018 revision to Appendix FF was of course before the Public Interest Commission for TC that I chaired in 2019, and on this issue the Commission wrote:

The EG Group – CFIA Comparability

[1] A long-standing gap, currently shown as 3.3%, has existed between those classified as EG’s in the TC/CPA Group and those similarly classified at the CFIA. The parties previously agreed to study the respective jobs jointly, and in June 2018 the study group issued its report, concluding:

The parties agree that the EG classification in the TC bargaining unit and at CFIA are essentially equivalent and directly comparable for the purposes of collective bargaining.

[2] Bridging that wage gap, however, is an expensive proposition: the EG classification makes up roughly 60% of the overall TC unit, and Treasury Board costs the impact of such an adjustment on the total TC wage base at 2.04%. Nonetheless, there has been a recognition on the employer's part that this gap at least in some measure needs to be addressed this round, and it is important that this internal equity issue be given the parties' attention.

Notwithstanding any of that lead-up, the parties once again were unable to reach a consensus on a rate adjustment when in July of 2020 they settled the terms of that 2018-21 collective agreement. Rather, the matter once again was put off for further discussion -- this time, however, with a critical difference: as noted earlier, in the absence of agreement on any special adjustment to be accorded this group, the matter could be submitted to a third party for "final and binding determination". The new Appendix FF reads in whole as follows, with italicizing by myself for relevant emphasis:

**Memorandum of Understanding Between the Treasury Board of Canada and
the Public Service Alliance of Canada With Respect to Comparability at
Canadian Food and Inspection Agency**

Under the previous collective agreement, the Union and the Employer had agreed to create a Joint Committee to undertake a comparison of the value of work and compensation of employees working in the Engineering and Scientific Support (EG) group in the core public administration with their comparators working at the Canadian Food Inspection Agency. This committee was to provide proposals to inform the current collective agreement. This Committee came to an agreement that "the EG classification in the TC bargaining unit and at CFIA are essentially equivalent and directly comparable for the purposes of collective bargaining." However, despite the efforts of the parties, they were unable to reach agreement on wage adjustments for the EG group.

This memorandum of understanding outlines a process for resolving the work of the Joint Committee, and to resolve the dispute on the appropriate wage adjustment for the EG group.

Following notice to bargain being served for the next round, the parties will consider a specific wage adjustment proposal for the EG group. In the event that the parties are unable to reach agreement on an appropriate wage adjustment, following the expiry of the current agreement either party may refer this matter to binding determination, as permitted under section 182 of the Federal Public Sector Labour Relations Act, for final and binding determination. The collective

agreement will be adjusted according to the decision issued as a result of this process. For further clarity, this referral to binding determination may occur before the parties have concluded a negotiated renewal to the collective agreement.

If the parties go to binding determination, they agree to use Mort Mitchnick as the chairperson of the process or of the board if the parties agree to form a three-person panel. If Mr. Mitchnick is not available and a mutually acceptable alternative cannot be identified, the chairperson shall be appointed by the Federal Public Sector Labour Relations and Employment Board.

Any increase in salary included in the decision of the chairperson *will be subject to* the memorandum of understanding with respect to implementation of collective agreement, *Appendix S*, signed between the parties *for the round of collective bargaining concluded in 2020*, exclusive of section 3.

This memorandum of understanding forms part of the collective agreement.

As it turns out, the parties have a different perspective on whether the “collective agreement” that may be “adjusted” by any increase that I award includes the now-expired 2018-21 collective agreement, or is limited to the ultimate renewal collective agreement that the parties are about to negotiate. Treasury Board points to the provisions I have high-lighted in the Memorandum which clearly defer the cost of any awarded adjustment to the *next* round of bargaining; the Alliance, seeking retroactivity on the other hand, notes that this proceeding came about as part of the consummation of the *prior* round of bargaining, and points in particular to the express recognition that Appendix S of that round would apply to it.

Looking at the full history as well as the current context of this matter, I am of the view that this “interpretive” disagreement need not be further inquired into, nor decided. This dispute has encumbered the parties’ bargaining for a considerable period of time, and I would have thought the government’s acknowledgement in June of 2018 of the “essential equivalency” of the two groups for this rate-comparability purpose would have brought the issue very close to finality. The Public Interest Commission for the 2018-21 collective agreement, in the face of that acknowledgement, anticipated some movement on the gap, but in the end no such movement materialized. Rather than re-visit the discussions that subsequently took place, I am persuaded that the proper balance in the prevailing economic circumstances is, on the one hand, to impose no additional cost

burden on the government for the concluded 2018-2021 collective agreement; but, on the other, to bring this issue to a full and final close through the course of the collective agreement that the parties are now bargaining. The single most significant factor influencing today's "economic conditions", together with its direct impact on both the government's revenue and expenditure side, is the pandemic, and that factor is clearly still with us. I do not, therefore, find it appropriate to add any "special adjustment" to the financial costs that otherwise lie ahead for the first year of the new collective agreement, commencing June 22nd of 2021, but instead will spread the elimination of the gap over the following two anniversary dates of the start of this new collective agreement (whatever may be the term of the next collective agreement that the parties finally agree upon). I accordingly award as follows:

Effective June 22, **2022**, add one new step to the top of the EG pay scale that is **1.5%** higher than the existing maximum. All employees who have been at the existing maximum rate for at least twelve months as of that date shall move to this new rate on that date.

Effective June 22, **2023**, add 1.8% to that new top step of the scale.

Both of these adjustments are to take place prior to the application of any general wage increase for that year.

That is my award in the matter. I note that the parties have agreed that the Implementation Period set out in Appendix S will be applicable to the rate adjustments.

I will remain seized in the usual way until such time as the parties are in agreement that the above adjustments have been properly implemented.

Dated at Thornbury, Ontario, this 6th day of January, 2022

A handwritten signature in black ink, appearing to read "MGP Matetich". The signature is written in a cursive, flowing style.

Sole Arbitrator