Public Service Labour Relations Board

Files: 585-09-60

IN THE MATTER OF
THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
and a Request for Arbitration affecting
the Research Council Employees Association, as bargaining agent,
and the National Research Council of Canada, as employer,
in respect of the bargaining unit comprised of all employees of the employer in the Operational Category ("OP bargaining unit")

BEFORE: Ian R. Mackenzie, Chairperson
Georges Nadeau and Guy Lauzé, arbitration board members

For the bargaining agent: Christopher Rootham and Joan Van Den Bergh

For the employer: Caroline Richard and Gerry Bauder

Heard at Ottawa, Ontario, March 19, 2014

Introduction

[1] The Terms of Reference of this Arbitration Board was established by the Chair of the Public Service Labour Relations Board (the "PSLRB") on November 21, 2013 (2013 PSLRB 151). Submissions on related Terms of References for the same employer and bargaining agent (2013 PSLRB 148, 2013 PSLRB 149, 2013 PSLRB 150 and 2013 PSLRB 152) were heard by the Arbitration Board on March 17, 2014. The parties agreed that submissions common to all bargaining units would be considered in this Award.

[2] The following individuals participated in the arbitration on behalf of the Research Council Employees' Association ("RCEA"): Christopher Rootham, Joan Van Den Bergh, Cathie Fraser, Mike Petherick and Peter Sullivan. The following individuals participated in the arbitration on behalf of the National Research Council of Canada ("NRC"):

Caroline Richard, Gerry Bauder, Sheri Enikanolaiye, Nick Haas, Betty Rodriguez and Louise Belisle.

[3] Prior to the establishment of the Arbitration Board, the parties came to an agreement on a number of matters in dispute. The parties requested that the Arbitration Board include these resolved issues in this Award (see Appendix).

Bargaining History

[4] The Collective Agreement for the Operational Category ("OP Category") expired on July 30, 2011. The Research Council Employees Association ("RCEA") served notice to bargain on May 31, 2011. The parties conducted bargaining on March 25 and 26, 2013. The RCEA filed a request for establishment of an Arbitration Board on April 29, 2013.

The Employer and the Bargaining Units

[5] The NRC is a separate agency of the federal government (under Schedule V of the *Financial Administration Act*). The NRC's mandate includes undertaking, assisting or promoting scientific research, publishing scientific information and operating astronomical observatories.

[6] The OP Category is composed of employees working as technicians and in the trades and includes the following occupations: mechanic, HVAC, plumber, steamfitters, electricians, plant assistants, laboratory service attendants and animal care assistants. There are approximately 73 employees in the bargaining unit.

[7] The RCEA also represents the Technical Category (TO) bargaining unit at the NRC. An arbitral award for this bargaining unit was issued on January 15, 2013.

Agreement of the Parties on Issues in Dispute

[8] In collective bargaining, the parties agreed to the following:

- Article 40.17: Overtime
- Article 40.18: Overtime

Issues withdrawn at the Hearing

[9] The RCEA stated that it would not be pursuing its proposals with regard to the following:

- Medical leave appointments extended beyond pregnant employees.

Issues in Dispute

[10] In reaching a determination on the issues in dispute, the Arbitration Board is governed by section 148 of the *Public Service Labour Relations Act*:

> *148. In the conduct of its proceedings and in making an arbitral award, the arbitration board 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 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.*

[11] The Arbitration Board has considered all of these factors in reaching its determination on the matters at issue.

[12] In light of the fact that the NRC's proposal relating to severance for voluntary departures includes proposed changes to a number of other articles in the collective agreement, this Award will address that proposal first. The Award will then address each proposal in the order of the collective agreement.

Severance Pay – Article 44

[13] The NRC proposed the elimination of the accrual of severance benefits in the event of voluntary departures (resignation and retirement). The employer proposal would preserve current entitlements and allow employees to cash-out some or all of severance or to defer collecting the current entitlement until departure from the NRC. As part of this proposal, the employer proposes an additional wage increase of 0.25% in 2011 and 0.5% in 2013, an increase in the amount of severance pay in the event of layoff, an increase in the amount of leave for bereavement and family responsibilities, and restoring sick leave credits to term employees upon re-hiring within one year. The NRC noted that this proposal was in line with collective agreements in the core public service.

[14] In addition, the NRC proposed the addition of the following to article 44.2 to clarify that severance payouts are included in Workforce Adjustment calculations:

> *For greater certainty, payments made pursuant to 44.15 to 44.18 or similar provisions in other collective agreements shall be considered as a termination benefit for the administration of this clause. This payment shall also be included in Workforce Adjustments (WFA) calculations with respect to the maximum total layoff benefits to which a surplus employee is entitled under the NRC WFA Policy.*

[15] The WFA Policy forms part of the collective agreement. The WFA Policy provides the following lay-off benefits (section 3.6.13.1 and 3.6.13.6):

- *A notice period of 20 weeks plus one week for every year of continuous service or portion thereof;*
- *An outplacement benefit equivalent to 8 weeks' pay or $8,000 whichever is greater;*
- *Severance pay on lay-off as per the applicable collective agreement…*

The maximum total benefits to which a surplus employee is entitled under this policy shall be an amount not exceeding the equivalent of 70 weeks' pay…

…

The employee's notice period entitlement, comprised of either notice worked, a lump sum in lieu of notice or a combination thereof, will be reduced as necessary to maintain a cap of 70 weeks of pay entitlement.

[16] The bargaining agent recognized that the removal of severance for voluntary departures and the associated improvements to the collective agreement had been established as the pattern in bargaining across the federal public service. It noted that the additional article proposed by the employer with regards to WFA calculations was not part of the pattern. The bargaining agent submitted that this language is inconsistent with what was agreed to for the TO Group; is inconsistent with collective agreements in the core public service; and is grossly unfair and entirely without justification. The bargaining agent argued that the employer was seeking an extraordinary concession at arbitration and arbitration is not the proper forum for such a significant breakthrough: *Air Canada v. C.A.W., Local 2002 (Pension Agreements for New Hires)*, 2011 CLB 23851.

[17] The employer submitted that this language was not included in the TO collective agreement because it was determined by the arbitration panel that the proposal was submitted late and was not included in its terms of reference. The employer further submitted that the clarification it was seeking was not required in agreements in the core public service because the WFA provisions were different for those bargaining units. The employer also submitted that not including this clarification could result in employees being paid more than the 70-week cap contained in the WFA Policy.

[18] The Arbitration Board awards the employer proposal with regard to the elimination of severance for voluntary departures, as set out in Schedule 2 of the Terms

of Reference. In addition, the Arbitration Board awards the clarification language proposed by the employer. The intent in the WFA Policy is clear that the limit on compensation is 70 weeks. The clarification language proposed by the employer is consistent with this intent and takes into account severance payments received in the context of the severance payout.

[19] The Arbitration Board has addressed the other related employer proposals in the relevant sections of this Award.

Time-off for Association Business – Article 11

[20] The employer proposed an additional clause to Article 11 to clarify that leave for collective bargaining was leave without pay. Currently, there is no provision in the collective agreement for leave for collective bargaining. The NRC stated that it directs managers to code time off for collective bargaining as leave without pay. It submitted that the purpose of the proposal was to "unequivocally clarify, for managers and employees alike" that time off for Association business was time-off without pay. The RCEA submitted that this provision was not included in the TO collective agreement. It further submitted that employees on the bargaining team use their own time to prepare for negotiations and are entitled to leave with pay under the joint consultation provision of the agreement.

[21] The Arbitration Board declines to award the employer proposal.

Vacation Leave – General – Article 31.2

[22] The NRC proposed the following new articles (31.2.5 and 31.2.6)

> *31.2.5 An employee's vacation shall normally be taken in the fiscal year in which the employee becomes eligible to take it. The Council shall, subject to operational requirements as determined by the Council, make every reasonable effort:*
>
> > *31.2.5.1 to schedule an employee's vacation leave at a time or times requested by the employee; and*

31.2.5.2 after October 1st and after consultation with the employee, to assign the employee available vacation periods if the Council has been unable to schedule vacation during the periods preferred by the employee or if the employee has not filed with the Council his preference by October 1st.

31.2.6 The Council reserves the right to schedule an employee's vacation leave earned in the current or prior fiscal year(s).

[23] The RCEA noted that this was not contained in the TO agreement. It also noted that the proposed 31.2.5 was already in the AD, AS, PG and CS collective agreements and it had no objection to this article being included if its other proposals were adopted. With regards to 31.2.6, the RCEA noted that although similar provisions existed in other core public service agreements, those provisions contained more protections for employees.

[24] The Arbitration Board declines to award the employer's proposal.

Designated Holidays – Meal Allowance – Article 32.5.2

[25] The RCEA proposed to amend the meal allowance provision for designated holidays to provide a meal allowance for every additional four hour period of continuous work. It stated that its proposal replicates the existing language in the TO Group collective agreement and is found in the SV Group collective agreement between Treasury Board and the Public Service Alliance of Canada.

[26] The NRC submitted that the existing provision was generous and sufficient. It also submitted that there was no demonstrated need for the proposed change.

[27] The Arbitration Board awards the bargaining agent proposal.

Sick Leave Credits After Layoff or Termination – Article 34

[28] The RCEA proposed amending article 34.3.4 so that employees can carry over sick leave credits as a result of any involuntary end of employment if rehired within one year. This provision would apply to term employees. The employer agreed to this

proposal in principle as part of its proposal on severance pay. It proposed language that mirrors the language of recent agreements in the core public service:

> *Sick leave credits earned but unused by an employee during a previous period of employment in the public service shall be restored to an employee whose employment was terminated due to the end of a specified period of employment and who is reappointed within the National Research Council within one (1) year from the end of the specified period of employment.*

[29] The Arbitration Board awards this proposal using the proposed language of the employer.

[30] The RCEA proposed that the employer be responsible for the payment of doctor's notes required by the employer. The employer objected to this proposal on the basis that it did not exist in any other agreement at the NRC or in the core public service. The RCEA submitted that if the provisions contained in the TO collective agreement were ordered then it would abandon this proposal.

[31] The Arbitration Board declines to award this proposal.

Bereavement Leave – Article 35.2

[32] The RCEA proposed changing the bereavement leave entitlement from five calendar days to five working days. In the alternative, it proposed bereavement leave of seven calendar days. As part of its severance proposal, the NRC agreed to an increase in the entitlement to seven calendar days.

[33] The Arbitration Board awards an increase in bereavement leave entitlement to seven calendar days.

Family-Related Responsibility Leave – Article 35.17

[34] The RCEA proposed adding three types of paid leave for family-related responsibilities: for temporary childcare problems, to attend school functions, and to attend appointments for leave for financial advice (for a total of up to 7.5 hours of the

existing 37.5 hours for leave under this Article). As part of its severance package the NRC agreed to this proposal.

[35] The Arbitration Board awards this proposal.

Volunteer Leave – Article 35.18

[36] The bargaining agent proposed that employees be allowed to split personal and volunteer leave into increments less than one day. It submitted that it was not insisting upon this proposal if other provisions contained in the TO collective agreement were accepted.

[37] The bargaining agent proposed eliminating the requirement that an employee account for their activities during volunteer or personal leave. The bargaining agent submitted that no one has ever been asked to justify personal leave.

[38] With regards to volunteer leave, the bargaining agent referred to the arbitral award for the TO Group:

> *[24] The Arbitration Board notes that there appears to be an inconsistently applied practice within the NRC of asking for details of volunteer activity. The practice within the core public service is not to require employees to identify the nature of their volunteer activity. The Arbitration Board agrees that paid volunteer leave should be used for volunteer activity, which is the intended purpose of the article. The Arbitration Board also agrees that the norm in the core public service of not requiring proof or justification for volunteer leave is appropriate.*
>
> *[25] It is the view of the Arbitration Board that the resolution of this issue is best addressed outside of the collective agreement, in the way that it has been addressed in the core public service (through an employer policy document).*

[39] The bargaining agent noted that the NRC had refused the RCEA request to discuss the employer's practice. The RCEA submitted that in light of this response, it is pursuing the proposal for these groups.

[40] The NRC submitted that there was no demonstrated need for the proposal. It submitted that in most cases validation is not insisted upon and whatever validation is provided is minimally intrusive. The NRC stated that the bargaining agent's proposal would open the door to potential misuse of the leave entitlement.

[41] The Arbitration Board declines to award the bargaining agent's proposals. Splitting of the leave provisions is not consistent with the TO collective agreement or other public service collective agreements. There is not sufficient evidence of a problem with the existing article with regards to accounting for the use of personal or volunteer leave. The bargaining agent did not provide evidence that employees have been required to identify their volunteer activity. The Arbitration Board encourages the parties to have further discussions on the application of this article, as suggested by the Arbitration Board for the TO Group arbitration.

Shift and Weekend Premiums – Article 39 and Appendix B

[42] The RCEA proposed a change to the shift and weekend premium so that the premium is paid on all hours worked (outside 8 a.m. to 4 p.m. and on weekends), including overtime. It submitted that its proposal was identical to the provision in the SV collective agreement.

[43] The NRC submitted that this proposal was a major change to the collective agreement and a significant increase in compensation. It also submitted that there was no evidence of any problems with the current provision and that simply because it was in the SV collective agreement was not sufficient to justify its inclusion in the collective agreement.

[44] The Arbitration Board declines to award the bargaining agent's proposal.

Overtime – Article 40

[45] The NRC proposed that the collective agreement be changed to allow a period of one year to accrue and utilize compensation leave credits and six additional months during which an employee may use accrued compensation leave credits before the

cash-out provisions take effect. It submitted that this proposal was the norm in federal public service collective agreements.

[46] The RCEA conceded that this proposal was accepted in the SV collective agreement but noted that the SV collective agreement has no cap on compensatory overtime leave during the course of the year. It submitted that the NRC's proposal to eliminate the one-week carryover was unnecessary given the existing cap on compensatory overtime.

[47] The Arbitration Board awards this proposal.

[48] The RCEA proposed that the existing cap on compensation for a day of rest be eliminated. It also proposed eliminating the cap on overtime and call-back compensation. It further proposed that the default for compensation for overtime be changed from cheque to leave.

[49] The NRC submitted that there was no demonstrated need for this proposal. It also submitted that it would rather pay for overtime than provide compensatory leave.

[50] The Arbitration Board declines to award the removal of the caps on compensation. However, it awards the bargaining agent's proposal to change the default to compensatory leave.

Call-back Pay – Article 41

[51] The RCEA proposed that the caps on compensation for call-back pay be eliminated and that the default method of compensation be changed from cheque to leave.

[52] The NRC submitted that there was no demonstrated need for this proposed change and that it would rather pay for call-back than provide compensatory leave.

[53] The Arbitration Board declines to award the elimination of the cap. The Arbitration Board awards the bargaining agent's proposal to change the default to compensatory leave.

Duration – Article 60

[54] The employer proposed a duration of the collective agreement of three years (to July 30, 2014). The bargaining agent proposed a duration of four years.

[55] The bargaining agent submitted that the *PSLRA* requires a fourth year, because of the limitations set out in section 156:

> *156. (1) The arbitration board must determine the term of the arbitral award and set it out in the arbitral award.*
>
> *(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.*
>
> *(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.*

[56] The bargaining agent referred the Arbitration Board to *PIPSC v. National Energy Board*, PSLRB file no. 585-26-21 (2008) where the arbitration board concluded that "an unexceptional case such as this, requires an arbitral award to be for a term of not less than 1 year from the day on which it becomes binding on the parties".

[57] The NRC submitted that an arbitration board has the discretion to order a duration of less than one year and that this discretion should be exercised. It submitted that the NRC was on the same bargaining cycle as the core federal public service and that this consistency should be maintained.

[58] An arbitral award cannot be for a term of less than one year from the date on which it becomes binding, unless the arbitration board determines otherwise where paragraphs 2(a) or (b) apply. Paragraph 2(a) is not applicable here. The Arbitration Board must therefore take the following into account in determining whether a term of less than one year is appropriate:

> (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.*

[59] The general rule is that the term of the arbitral award must not be less than one-year from the date it is issued (the binding date). A three-year duration would result in the expiry of the collective agreement within three months of the issuance of this Award. The Arbitration Board is not convinced that there is an exceptional situation that would justify a term of less than one year. In addition, the Arbitration Board accepts that it makes little labour relations sense to have a collective agreement that expires shortly after the issuance of its Award. The parties will be required to start collective bargaining almost immediately and will have no opportunity to see how the new collective agreement works. For this reason, the Arbitration Board determines that a four-year term is appropriate.

Rates of Pay (Appendix A)

Economic increases

[60] Both the employer and the bargaining agent agreed that economic increases of 1.5% per year in 2011, 2012 and 2013 were appropriate.

[61] The bargaining agent proposed that an appropriate increase for the fourth year of the collective agreements was 2%. The bargaining agent pointed to a number of federal public service agreements where employees received an increase of 2% in 2014. It also submitted that its proposal was in keeping with projected wage increases for employees across Canada.

[62] The employer submitted that it did not have a mandate for an increase in a fourth year. It also noted that the 2% increases provided for the two core public service bargaining units in 2014 was the third-year of their agreements, and included the severance payout top up of 0.5%.

[63] As noted above, the employer proposed an additional 0.25% in 2011 and 0.5% in 2013 in exchange for its severance proposal. There are few comparators for salary increases for 2014 in the federal public service. In all cases, the increases for federal public service groups in 2014 are in the third year of a collective agreement and include the 0.5% top-up related to the removal of severance entitlements for voluntary departures. The only federal public service comparators would therefore justify an increase of 1.5% for 2014.

[64] The Arbitration Board determines that the annual increase in salaries shall be 1.5% in 2011, 2012 and 2013, with an additional 0.25% effective May 1, 2011 and an additional 0.5% effective May, 2013. For the fourth year for the Arbitration Board awards 1.5%.

- Effective July 31, 2011: 1.75%
- Effective July 31, 2012: 1.5%
- Effective July 31, 2013: 2.0%
- Effective July 31, 2014: 1.5%

Restructuring for Certain Classifications

[65] For the purposes of this arbitration, the RCEA accepted the employer's comparator classifications to classifications in the core public service. The RCEA

submitted that the wages of some classifications were out of step with the comparators. The RCEA proposed that the following classifications of employees in the OP Category should receive an additional increase as a restructuring effective July 31, 2011 (the amount of the increase for each classification is in parentheses):

- Plumber/steamfitter (1.09%)
- Building/Structural (5.51%)
- Electrical/Electronic (2.82%)
- Plant Assistant 3 (5.28%)
- Electrical/Electronic Apprentice (9.69%)
- PRO-OFO-12 (7.94%)
- Laboratory Service Attendant 5 (7.17%)
- Research Animal Care 2 (10.48%)
- Research Animal Care 3 (7.72%)

[66] The RCEA submitted that in order to maintain internal relativities for the Plant Assistant and Laboratory Service Attendant positions, each level should receive an increase of 7.6%.

[67] The NRC submitted that in 2009, the Treasury Board agreed to move from regional rates of pay for these occupational classifications to a national rate of pay. Prior to that change, it submitted, the rates of pay at the NRC were equivalent to Treasury Board rates in Ontario (where the majority of NRC employees work). The NRC submitted that the change to a national rate was as a result of an exchange for concessions, which are not being sought here. It also submitted that there was no evidence of recruitment or retention problems with employees in these classifications. It noted that any improvements to wages would have to be funded out of existing budgets. It submitted that there was no demonstrated need for a restructuring.

[68] The NRC did not dispute that the comparators relied upon by the bargaining agent were accurate. It also did not disagree with the salary figures relied upon by the bargaining agent. The Arbitration Board must consider a number of factors, not simply

the fiscal circumstances of the employer. It is the view of the Arbitration Board that the following factors are relevant in assessing the bargaining agent's proposal:

> *(*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.*

[69] Applying these four factors, the Arbitration Board has determined that there is a need to address the differences in wages between the classifications identified by the bargaining agent and the comparable classifications in the core public service. Recruitment and retention is only one of the four factors. The *PSLRA* also mentions the "necessity" of offering comparable compensation to those in similar occupations, as well as the need to establish compensation that is fair and reasonable in relation to qualifications, work performed, responsibilities and the nature of the services rendered. There is no evidence that the work done by the employees in the listed classifications is different in any way from the work performed within the core public service. Although the history of how these employees in the core public service is interesting, it cannot justify differences in wages. The employer could not point to any difference in compensation or terms and conditions of employment that would justify a difference in wages paid for the same work.

[70] In replicating what the parties would have achieved in bargaining, it is not realistic to accept that the full deficit in wages would have been attained in one round of

bargaining. Accordingly, the Arbitration Board will award the following increases, effective July 31, 2013:

Plumber/steamfitter: 0.5%

Building/Structural: 2.7%

Electrical/Electronic: 1.4%

Plant Assistant 3: 2.6%

Electrical/Electronic Apprentice: 4.8%

PRO-OFO-12: 4.0%

Laboratory Service Attendant 5: 3.6%

Research Animal Care 2: 5.2%

Research Animal Care 3: 3.8%

Plant Assistant, level 1 and level 2: 3.8%

Laboratory Service Attendant, levels 2, 3 and 4: 3.8%

Memorandum of Understanding on Salary Protection on Reclassification – New (All Groups)

[71] The bargaining agent proposed the inclusion of a Memorandum of Understanding on Salary Protection in the collective agreement. The bargaining agent noted that there was a current classification review for the AS and AD Groups underway, making this a pressing issue for these groups. The Employer submitted that there was an existing Salary Protection Policy and there was no demonstrated need to include an MOU in the collective agreement. It also submitted that there was no classification review expected in the near future.

[72] The Arbitration Board notes that there are no demonstrated problems with the existing salary protection policy of the employer. However, the Arbitration Board notes

that the current policy is subject to unilateral change and does not provide for recourse to adjudication if it is breached. Accordingly, the arbitration board has determined that the employer's salary protection policy, as of the date of this Award, shall be included in the collective agreement as an Appendix.

[73] The Arbitration Board shall remain seized of this matter for a period of four weeks from the date of this award, in the event that the parties encounter any difficulties in its implementation.

Ian R. Mackenzie

(Original signed by)

For the Arbitration Board

June 3, 2014