

Arbitration Brief

Presented by
The Research Council Employees' Association
On behalf of

The Administrative Services (AS) Group

April 19 – 20, 2007

Chair: Joseph W. Potter
Employer Nominee: Peter Devitt
Union Nominee: Robert McIntosh

Contents

1. Description of the Administrative Services (AS) Group
2. History of Negotiations
3. Outstanding Employee Issues
4. Outstanding Employer Issues
5. Pay
6. Summary

Appendices

- A. Category Definition – Administrative Services
- B. Marriage Leave Converted to Vacation Leave –Treasury Board
- C. NRC Technical Category Collective Agreement Vacation Leave
- D. NRC Library Science Collective Agreement Vacation Leave
- E. NRC RO/RCO Collective Agreement Vacation Leave
- F. NRC HR Manual – Performance Planning and Review, Annex
- G. NRC Information Services Collective Agreement Vacation Leave
- H. NRC Purchasing and Supply Collective Agreement Vacation Leave
- I. NRC Operational Category Collective Agreement Vacation Leave
- J. *John King and Karen E. Holzer v. Canada Customs and Revenue Agency*, 2001 PSSRB 117 (Tarte)
- K. *Urs Breitenmoser and others v. Treasury Board*, 2004 PSSRB 103 (Mackenzie)
- L. Statistics Canada, The Daily, Feb. 26, 2006; Feb. 26, 2007-02-28
- M. Human Resources and Social Development Canada, Workplace Bulletin, Feb. 15, 2006; Feb. 15, 2007 and Survey of Employment Earnings and Hours
- N. Conference Board of Canada, News Release 07-57
- O. Watson Wyatt, Compensation Trends Canada
- P. WorldAtWork, Newslines, January 9, 2007.
- Q. Human Resources and Social Development Canada, Major Wage Settlement Summaries.
- R. Email correspondence between RCEA and NRC
- S. NRC Employment Philosophy

1. Description of the Administrative Services (AS) Group

Industry Minister Maxime Bernier's most recent report on the National Research Council of Canada (NRC) states:

NRC has a long history of making valuable scientific discoveries that strengthen Canadian industry and contribute to the well-being of Canadians and others worldwide.... A core strength of over 4,000 talented and dedicated people, 19 research institutes, 15 industrial partnership facilities, the Industrial Research Assistance Program (NRC-IRAP), the Canada Institute for Scientific and Technical Information (NRC-CISTI) and two technology centres¹.

The National Research Council of Canada (NRC) is the Government of Canada's premier organization for research and development. Twelve of NRC's 19 research institutes are primarily located in Ottawa. The remaining institutes are located at sites across Canada. Approximately two-thirds of the employees work in Ottawa.

The Administrative Services Group consists of 204 employees. They are represented by the Research Council Employees' Association (RCEA) which was founded in 1966. The RCEA is a multi-bargaining unit union representing over 2,200 employees of the NRC. In addition to the Administrative Services Group, the RCEA represents the Administrative Support (AD) Group, Computer Systems Administration (CS) Group, Operational (OP) Category, Purchasing and Supply (PG) Group, and Technical (TO) Category.

¹ Treasury Board of Canada – Estimates – Reports on Plans and Priorities – NRC – 2006-2007.

The Administrative Services Group was certified as a bargaining unit at the NRC on January 28, 1969. Employees in these positions are engaged “the planning, development, delivery or management of administrative and federal government policies, programs, services or other activities directed to the public or to the Public Service.”² (Appendix A)

These NRC positions are classified following the same classification standard found in the Federal Public Service with Treasury Board as Employer: This classification is found in the Program and Administrative Services Group in the Federal Public Service. Collective bargaining for the Treasury Board employees is conducted at Table 1 where the Public Service Alliance of Canada is the bargaining agent.

² Category Definition – Administrative Services

2. History of Negotiations

The collective agreement for this bargaining unit has an expiry date of April 30, 2005. Notice to bargain was sent to the employer on April 27, 2005. Bargaining demands were submitted to the employer in November, 2005 and bargaining was conducted in October, 2006. The application for arbitration was submitted to the Public Service Labour Relations Board on October 18, 2006.

The NRC, and most other separate employers, cannot enter into a collective agreement without the approval of the Governor in Council. Section 112 of the *Public Service Labour Relations Act (PSLRA)* states:

112. A separate agency may, with the approval of the Governor in Council, enter into a collective agreement with the bargaining agent for a bargaining unit composed of employees of the separate agency.

The Governor in Council delegates this authority to the Treasury Board. The NRC must therefore request a mandate from the Treasury Board before meaningful negotiations may begin.

In March, 2006 the NRC negotiator advised the RCEA negotiator that they did not yet have a mandate to begin negotiations. The RCEA expressed concern about this delay. In early May RCEA again asked about the delay and was advised that NRC should have its mandate approved by the end of May. In mid-July RCEA repeated its desire to begin negotiations if NRC had a mandate, but NRC management again replied that they did not yet have a mandate. In the last two

weeks of August RCEA submitted two further requests to NRC to set dates for collective bargaining. On August 31, 2006 NRC finally replied that Treasury Board would “soon” provide NRC with a mandate. Bargaining finally took place on October 3, 2006 over 17 months after the collective agreement had expired. Such delays, unfortunately, are not unusual and have been experienced in previous rounds of collective bargaining. After the 1997-1999 round of collective bargaining, an agreement included a signing bonus of \$700 to compensate for the delay.

At the October 3rd bargaining meeting, agreement was reached on a number of issues. Unfortunately, the NRC gave its “bottom line” on the RCEA’s primary demands and made it very clear that NRC’s position would not change. On October 18, 2006 the RCEA applied for the establishment of an arbitration board pursuant to subsection 140(1) of the *PSLRA*.

Collective bargaining in the broader public service has historically seen the same patterns of economic wage adjustments and leave entitlements for all bargaining units. Employees of the National Research Council are part of the broader public service, and they have historically been compensated following this pattern. NRC employees, however, have always had to wait for wage increases and improved leave entitlements to be negotiated by Treasury Board with its employees before such mandates were extended to NRC. Playing catch-up to “downtown” employees has resulted in financial disparities for NRC employees relative to employees in the same classifications employed by Treasury Board.

NRC employees have also been subject to the same staffing freezes and wage controls as employees under Treasury Board jurisdiction, e.g. *Public Sector Compensation Act* of 1991. However, these negative provisions have been applied immediately to all employees including those at the NRC. NRC employees have also been faced with many of the same limitations on leave entitlements such as the cap on vacation carry-over.

The adage “justice delayed is justice denied” has particular relevance to NRC employees. The repeated delays in NRC’s access to a mandate have resulted in losses of thousands of dollars in wages and leave entitlements over the years.

As noted above, NRC employees have belatedly followed the “pattern” of wages and benefits extended to Treasury Board employees. Now the NRC is unwilling to extend the most recent adjustment in the “leave pattern” to its own employees. The conversion of Marriage Leave to Vacation Leave has been extended to 118,893 of 139,739 employees (over 85%) of Treasury Board employees (Appendix B). NRC is also unwilling to provide any compensation for the wages and benefits lost as a result of long delays in obtaining bargaining mandates. Past collective bargaining experience and this round of bargaining have led employees of the AS Group to refer these issues to the arbitration process in the hope of achieving a fair and reasonable collective agreement that is comparable to other public service employees performing similar duties.

3. Outstanding Employee Issues

The outstanding issues referred to arbitration by the Research Council Employees' Association are as follows:

Article 31 Vacation Leave

~~31.1.1.3 one and ten-twelfth (1 10/12) days commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs:~~

~~31.1.1.4 one and eleven-twelfth (1 11/12) days commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs~~

31.1.1.5 two and one-twelfth days commencing with the month in which the employee's **fifteenth (15th)** anniversary of service occurs;

31.1.1.6 two and one-quarter (2 ¼) days commencing with the month in which the employee's **twenty-third (23rd)** anniversary of service occurs;

31.1.1.7 an employee shall earn an Additional half day (1/2) of vacation leave for each year of continuous service until such time as the employee reaches either the next threshold under this article or the maximum entitlement under this article.

31.1.1.8 two and one half (2 ½) days commencing with the month in which the employee's twenty-eighth (28th) anniversary of service occurs.

31.1.2 (a) An employee shall be credited with a one-time entitlement of five (5) days of vacation leave with pay on the first (1st) day of the month following the employee's second anniversary of service.

(b) Transitional Provisions

Effective (*date of signing*), employees with more than two (2) years of service, as defined in clause 31.9, shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay.

(c) The vacation leave credits provided in clauses 31.1.2 (a) above shall be excluded from the application of paragraphs 31.4 and 31.5 dealing with the Carry-over and/or Liquidation of Vacation Leave until the next fiscal year.

The proposals on vacation leave are intended to address three issues:

- access to the current vacation entitlements after a shorter period of employment (31.1.1.5 and 31.1.1.6);
- a more graduated approach to vacation leave entitlement (31.1.1.7), and
- a one-time entitlement to five days leave in exchange for the elimination of Marriage Leave (35.18).

In clause 31.1.1.5 we have proposed access to five week's vacation after 15 years of service (currently after 18 years) and in clause 31.1.1.6 we have proposed 27 days after 23 years of service (currently after 27 years). In clause 31.1.1.7 we have also proposed a more graduated entitlement by proposing an additional half day of vacation leave with each additional year of service until the next threshold is reached.

Access to the current vacation entitlements after a shorter period of employment is a valuable incentive for the retention of employees. The retirement of the 'baby boom' generation is now beginning. In December 2006 the unemployment rate fell to a 30 year low of 6.1%³.

³ Statistics Canada, The Daily, January 5, 2007.

The work force in the CPA [Core Public Administration] is much older than the general work force... The aging work force and looming retirement of the baby boomers has been a topic of increased concern in the past few years⁴.

NRC will be facing more retirements in the near future. These older employees may be more willing to continue working beyond their early retirement date if there is improved access to vacation leave to meet their desire for more leisure time away from the workplace. With declining unemployment rates, NRC will be facing a more competitive hiring environment.

Improvement to the current provisions is also an issue of internal equity. The Technical Officer (TO) Group (Appendix C) had the same eligibility period as the AD Group until July 1, 2003 when the TOs became eligible for four weeks after six years of service. Other NRC employees also have an earlier entitlement to four weeks vacation. The Library Science (LS) Group (Appendix D) is eligible for four weeks vacation after seven years and Research Officer/Research Council Officer (RO/RCO) Group (Appendix E) are entitled to four weeks vacation in the first year of employment. Approximately two-thirds of NRC employees have access to four weeks vacation leave after six years of service or less.

The proposal on clause 31.1.1.7 will also be a valuable recruitment tool. New employees currently must work for eight years before seeing an improvement in their vacation entitlement. This new clause would provide a graduated increase in vacation leave of an additional half-day of leave each year. Thus, new recruits will have a modest additional incentive with each year of employment. The National Research

⁴ Statistics Canada, The Daily, March 5, 2007

Council will need such incentives in what will likely be a very competitive job market in the near future.

As mentioned in Section 2, NRC employees have received contract improvements often years after other employees in the public service. It is time for NRC employees to see new provisions in annual leave to address the situation of an aging workforce without having to wait for the rest of the Public Service.

The final element in the vacation proposals is simply a matter of equity with the Public Service. The replacement of five days Marriage Leave with a one time entitlement to Vacation Leave was first implemented in the public service in 2004 for the Law Group, with the Professional Institute of the Public Service as bargaining agent, in response to legal challenges related to same-sex marriages. In response to this proposal, the NRC has stated that legislation has since eliminated the grounds for such legal challenges. Parliament, however, revisited this issue in December 2006, and it will likely continue to be on the agenda of some political interest groups. More importantly, the Treasury Board continues to reach voluntary collective agreements with its own employees granting five additional days of vacation leave in exchange for the deletion of Marriage Leave. To date 118,893 out of 139,739 public service employees now have access to this additional vacation entitlement (see Appendix B). Recent negotiations at which this change was made include: Translation Group (signed June 29, 2006), Computer Systems Group (signed July 24, 2006), Economics and Social Science Services Group (signed August 14, 2006), Financial Management Group (signed December 22, 2006). Treasury Board continues to extend this new

benefit to its employees regardless of the legal framework affecting same sex marriages.

NRC argues that this proposal “would set a precedent that would require providing the same benefit to all NRC employees which would entail a cost of 5.5 million dollars...” First, the precedent which NRC is worried about has already been set. It would be fair and reasonable to extend this leave entitlement to employees of the AS Group in exchange for the proposed deletion of the Marriage Leave clause. Second, the cost estimates by NRC are highly exaggerated. NRC rarely, if ever, replaces employees who are on vacation leave. The inclusion of clause 31.1.2 in the collective agreement for the AS Group would provide comparability with the broader public service.

ARTICLE 44

PAY ADMINISTRATION

44.5.4 **The Council may deny a pay increment to an employee if it is satisfied the employee is performing the duties of his/her position in an unsatisfactory manner.** Where the Council intends to deny a pay increment the NRC shall give the employee notice in writing of this decision at least two (2) weeks and not more than six (6) weeks prior to the date the pay increment would otherwise have been effective had it been authorized.

The current collective agreement states:

” The Council may deny a pay increment to an employee if it is satisfied the employee is not performing the duties of his/her position satisfactorily. ...”

NRC states that the Performance Planning and Review Policy is currently under review, and that the RCEA will have input into the Policy. NRC also states that any changes to the collective agreement should reflect the terminology of the revised policy. This response is disingenuous as the RCEA was not consulted the last time this Policy was revised and has not yet been invited to provide input on the review of the current Policy.

The Current Performance Planning and Review Policy (Appendix F) defines three performance category definitions: “Unsatisfactory”, “Needs Improvement” and “Fully Satisfactory”. As such, the wording of the present collective agreement is not in alignment with the current policy. Any interpretation of this clause should not depend upon the possibility that this policy will be revised in the future. The term “unsatisfactory” is defined in the current policy, it is the term currently used in performance reviews, and it should be incorporated into this clause.

ARTICLE 60

DURATION, RENEWAL AND AGREEMENT REOPENER

- 60.1 The duration of the Collective Agreement shall be from the date it is signed to **30 April 2008** inclusive and unless otherwise expressly stipulated the provisions of this Agreement shall become effective on the date it is signed.

The proposed duration of this collective agreement will be addressed in the section dealing with pay.

4. Outstanding Employer Issues

There are essentially four outstanding employer issues in addition to pay and duration: Marriage Leave (35.18), Call-Back Pay (40), Pay Administration (44.5.4), the conversion of days to hours throughout the collective agreement, and editorial changes.

ARTICLE 35 OTHER LEAVE WITH OR WITHOUT PAY

35.18 Marriage or **Public Commitment Ceremony** Leave with Pay

- 35.18.1 After the completion of one (1) year's continuous employment in the Public Service, and providing an employee gives the Council at least five (5) **calendar** days' notice, the employee shall be granted ~~five (5) days'~~ **thirty-seven decimal five (37.5) hours'** marriage leave with pay for the purpose of getting married.

The NRC's proposal to amend the Marriage Leave clause by adding the phrase "**or Public Commitment Ceremony**" acknowledges the problems that have surrounded this clause since it was first introduced in the public service. Treasury Board has now agreed to replace the Marriage Leave clause with additional vacation leave for 85% of its workforce and continues to agree to this change in recent voluntary agreements.

The elimination of this clause and its replacement with five additional vacation leave days as proposed by the RCEA would provide comparability with the broader public service. (See Section 3 for further details on the RCEA proposal.)

ARTICLE 40 - CALL-BACK PAY

~~40.5 An employee who is called back by the Council to perform work that has not been scheduled in advance but who is able to complete the required work from his/her place of residence without having to return to his/her place of work, is entitled to the greater of:~~

~~40.5.1 compensation at the applicable overtime rate; or~~

~~40.5.2 compensation equivalent to two (2) hours' pay at the applicable overtime rate for each reporting to a maximum of eight (8) hours compensation, at the straight-time rate, in an eight (8) hour period.~~

Replace existing 40.5 with new language below

40.5 An employee who receives a call to duty or responds to a telephone or data line call after completing his or her work for the day and leaving his or her place of work may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees, and receive compensation for time worked in accordance with the Overtime Article. In such instances, employees shall not be entitled to the minimum compensation under clause 40.1.2.

This proposal by the NRC is unreasonable and the proposed wording is confusing. If this language were accepted, an employee could be called at home at any hour of the night to respond to a question by telephone without receiving any compensation. This untenable result could occur because the clause refers back to the Overtime Article which has a minimum work period of 15 minutes to qualify for overtime compensation. There is no definition proposed for "data line call" and no explanation has been provided for what this would cover. The placement of the phrase "at the discretion of the Employer" could make the payment itself discretionary. Finally, it should be noted that there has been little or no incidence of call-back of employees in the AD Group.

The NRC has not provided any evidence that there is a problem with the application of the current wording of Article 40. The RCEA proposes that the current language be renewed.

ARTICLE 30 - LEAVE GENERAL

- 30.1 For purposes of earned leave credits or other leave entitlements, a day shall be equal to seven decimal five (7.5) hours.**
- 30.2 When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.**
- 30.3 Notwithstanding the above, Article 35.2 Bereavement Leave, a day will mean a calendar day.**

Renumber following paragraphs

- ~~30.1~~ **30.4**
- ~~30.2~~ **30.5**
- ~~30.3~~ **30.6**
- ~~30.4~~ **30.7**
- ~~30.5~~ **30.8**
- ~~30.6~~ **30.9**

The above proposal would result in the conversion of all leave entitlements from days to hours with the exception of Bereavement Leave. Other forms of compassionate leave should be provided on the basis of a 24 hour day as supported by several PSSRB decisions. (See pg. 21 for further details.)

The RCEA is not in agreement with the above proposal.

**ARTICLE 31
VACATION LEAVE**

31.1 Accumulation of Vacation Leave Credits

31.1.1 An employee shall earn in respect of each fiscal year, annual vacation leave with pay at the following rates for each calendar month in which the employee receives at least ~~ten (10) days' seventy-five (75) hours'~~ pay:

- 31.1.1.1 ~~one and one-quarter (1 1/4) days~~ **nine decimal three seven five (9.375) hours** until the month in which the anniversary of the employee's eighth (8th) year of service occurs;
- 31.1.1.2 ~~one and two-thirds (1 2/3) days~~ **twelve decimal five (12.5) hours** commencing with the month in which the employee's eighth (8th) anniversary of service occurs;
- 31.1.1.3 ~~one and ten-twelfths (1 10/12) days~~ **thirteen decimal seven five (13.75) hours** commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;
- 31.1.1.4 ~~one and eleven-twelfth (1 11/12) days~~ **fourteen decimal three seven five (14.375) hours** commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;
- 31.1.1.5 ~~two and one-twelfth (2 1/12) days~~ **fifteen decimal six two five (15.625) hours** commencing with the month in which the employee's eighteenth (18th) anniversary of service occurs;
- 31.1.1.6 ~~two and one-quarter (2 1/4) days~~ **sixteen decimal eight seven five (16.875) hours** commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;
- 31.1.1.7 ~~two and one-half (2 1/2) days~~ **eighteen decimal seven five (18.75) hours** commencing with the month in which the employee's twenty-eighth (28th) anniversary of service occurs;

31.4 – CARRY-OVER PROVISIONS

31.4.1 Delete current article and replace with the following:

Employees shall be entitled to carry earned but unused vacation credits over into the following fiscal year to a maximum of two hundred and sixty-two decimal five (262.5) hours leave. The 262.5 hours limit may only be exceeded where the Council cancels a previously scheduled period of vacation leave and reschedules the excess for use at a later date or where the employee was unable to schedule vacation leave based on management's request. Earned and unused vacation leave credits in excess of the 262.5 hours shall be paid by cheque at the end of the fiscal year at the employee's daily rate of pay.

The vast majority of NRC employees do not have a limit on the number of days of vacation leave that may be carried over. Specifically, there are over 2,000 employees in the Technical Category (Appendix C), Library Science Group (Appendix d), Research Officer/Research Council Officer Group (Appendix E), Information Services Group (Appendix G), Purchasing and Supply Group (Appendix H), and the Operational Category (Appendix I) have the same carry-over provisions as the AS Group.

31.5 – LIQUIDATION OF VACATION LEAVE

31.5.1 Upon application by the employee and at the discretion of the Council, earned but unused vacation leave credits in excess of ~~fifteen (15) days~~ **one hundred twelve decimal five (112.5) hours** may be paid by cheque at the employee's daily rate of pay as calculated from the employee's classification.

The RCEA is not in agreement with a limitation on the carry-over of unused vacation leave. The RCEA, however, is in agreement with the conversion of days to hours in Article 31.

ARTICLE 33 – SICK LEAVE

33.1 Credits

33.1.1 An employee shall earn sick leave credits at the following rate,

33.1.1.1 ~~one and one-quarter (1 1/4) days~~ **nine decimal three seven five (9.375) hours** for each calendar month in which ~~he/she the employee~~ has received pay for at least ~~ten (10) days~~ **seventy-five (75) hours**

and such leave credits shall be on a cumulative basis from year to year.

33.2 Granting of Sick Leave

33.2.2.1 if the period of leave requested does not exceed ~~five (5) thirty-seven decimal five (37.5) working days~~ **hours**, and

33.2.2.2 on the understanding that in any given fiscal year, the employee may be granted up to a maximum of ~~ten (10) days' seventy-five (75) hours'~~ sick leave wholly on the basis of statements signed by the employee.

33.3 – ADVANCE OF CREDITS

33.3.1 When an employee has insufficient credits to cover granting of sick leave with pay under the provisions of clause 33.2, sick leave with pay may, at the discretion of the Council, be granted

33.3.1.1 for a period of up to ~~twenty-five (25) working days~~ **one hundred eighty-seven decimal five (187.5) working hours** if ~~he/she the employee~~ is awaiting a decision on an application for injury-on-duty leave, or

33.3.1.2 for periods of up to ~~fifteen (15) working days~~ **one hundred twelve decimal five (112.5) working hours** if ~~he/she the employee~~ has not submitted an application for injury-on-duty leave, provided that an employee's total sick leave deficit shall not exceed ~~fifteen (15) days~~ **one hundred twelve decimal five (112.5) hours**,

The RCEA is in agreement with the conversion of days to hours for article 33.

35.17 Leave with Pay for Family-Related Responsibilities

35.17.3.1 When alternate arrangements are not possible an employee shall be granted up to ~~one (1) day~~ **seven decimal five (7.5) hours** for a medical or dental appointment when the dependent family member is incapable of attending the appointment by himself or herself, or for appointments with appropriate authorities in schools or adoption agencies. An employee requesting leave under this provision must notify his/her supervisor of the appointment as far in advance as possible;

35.17.3.3 ~~two (2) days'~~ **fifteen (15) hours'** leave with pay for needs directly related to the birth or to the adoption of the employee's child. This leave may be divided into two (2) periods.

35.17.4 The total leave with pay which may be granted under 35.17.3.1, 35.17.3.2 and 35.17.3.3 shall not exceed ~~five (5) days~~ **thirty-seven decimal five (37.5) hours** in a fiscal year.

35.19 Volunteer Leave

35.19.1 Subject to operational requirements as determined by the Council and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, ~~one (1) day~~ **a single period of up to seven decimal five (7.5) hours** of leave with pay to work as a volunteer for a charitable or community organization or activity, other than for activities related to the National Research Council Workplace Charitable Campaign.

35.20 Personal Leave

- 35.20.1 Subject to operational requirements as determined by the Council and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, **one (1) day a single period of up to seven decimal five (7.5) hours** of leave with pay for reasons of a personal nature.

35.22 Medical Appointment for Pregnant Employees

- 35.22.1 Up to **one half (1/2) a day three decimal seven five (3.75) hours** of reasonable time off with pay will be granted to pregnant employees for the purpose of attending routine medical appointments.

Article 35 deals with various forms of compassionate leave which is granted to employees under a wide variety of circumstances. In this article the NRC has proposed replacing the term “day” with “7.5 hours.” This change would have a detrimental affect on employees who work in excess of 7.5 hours per day when they take leave on a compassionate basis. The NRC acknowledges this impact in its proposal on clause 30.3 which excludes Bereavement Leave from this change. They fail, however, to acknowledge the other forms of compassionate leave in this article. This is particularly significant for employees of this female dominated group who often bear primary child care responsibility.

Adjudicators have reviewed this issue in recent years in relation to Leave for Family Related Responsibilities. In the King decision Board Chair Yvon Tarte stated: “A normal interpretation of the word day as a period of 24 hours is consistent with the intent and scheme of the collective agreement.” (Appendix J) In 2004, then Board

Member Ian Mackenzie confirmed the significance of using the term “day” for this type of leave by citing Justice Gibson in his review of the King decision (Appendix K):

Justice Gibson stated that even a cursory analysis of the collective agreement reveals that paid leave for family related responsibilities is a type of compassionate leave - the entitlement to which arises on the basis of need rather than as an earned credit such as vacation or sick leave: *Canada (Attorney General) v. King*, [2003] FCJ No. 777 (TD) at para. 23.

The RCEA is opposed to the conversion of “days” to “hours” in Article 35.

ARTICLE 36 - HOURS OF WORK

36.1 The scheduled work week shall be thirty-seven ~~and one-half (37 1/2)~~ **decimal five (37.5)** hours from Monday to Friday inclusive, and the scheduled work day shall be seven ~~and one-half (7 1/2)~~ **decimal five (7.5)** consecutive hours, exclusive of a lunch period, between the hours of 07:00 and 18:00 hours daily with Saturdays and Sundays as days of rest.

36.5 Variable Hours of Work (VHW)

36.5.1 Notwithstanding the provisions of clause 36.1, upon request of an employee and with the concurrence of the Council, an employee may complete the weekly hours of work in a period of other than five (5) full days provided that over a period of fourteen (14), twenty-one (21) or twenty-eight (28) calendar days, the employee works an average of thirty-seven ~~and one-half (37 1/2)~~ **decimal five (37.5)** hours per week.

36.5.4 The scheduled hours of work of any day as set forth in a variable schedule specified in clause 36.8.6, may exceed or be less than seven ~~and one-half (7 1/2)~~ **decimal five (7.5)** hours; starting and finishing times, meal breaks and rest periods shall be determined according to operational requirements as determined by the Council and the daily hours of work shall be consecutive.

36.5.5 Such schedules shall provide an average of thirty-seven ~~and one-half (37 1/2)~~ **decimal five (37.5)** hours of work per week over the life of the VHW schedule.

a) **Overtime**

Overtime shall be compensated for all work performed in excess of an employee's scheduled hours of work on regular working days or on days of rest at time and three-quarters ($1\frac{3}{4}$).

c) **Designated Holidays**

i) A designated paid holiday shall account for seven ~~and one-half ($7\frac{1}{2}$)~~ **decimal five (7.5)** hours.

g) **Leave**

i) **For purposes of earned leave credits or other leave entitlements, a day shall be equal to seven decimal five (7.5) hours.**

ii) **When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.**

The RCEA is in agreement with these changes to Article 36.

ARTICLE 39

OVERTIME

Overtime Compensation on a Workday

39.11 Except for employees to whom the provisions of clause 39.14 apply and subject to clause 39.3, an employee who is required by the Council to work overtime on a normally scheduled working day shall receive overtime compensation at time and one-half ($1\frac{1}{2}$) for each of the first seven ~~and one-half ($7\frac{1}{2}$)~~ **decimal five (7.5)** hours of overtime worked by him/her in excess of his/her normal work day, and double (2) time for each hour of overtime worked in any contiguous period by him/her thereafter.

Overtime Compensation on a Day of Rest

39.14 Subject to clause 39.3

39.14.1 an employee who is required to work on a first day of rest is entitled to compensation at time and one-half (1 ½) for the first seven ~~and one-half (7 ½)~~ **decimal five (7.5)** hours and double (2) thereafter;

Monetary Compensation ~~in cash~~ or Leave With Pay

39.20 Earned compensatory leave credits that are not used by the end of September of each calendar year shall be liquidated by means of **monetary** compensation ~~by cheque~~ on the basis of one (1) hour's pay at straight-time rate for each hour of compensatory leave credits so liquidated, except that an employee, upon application, shall be permitted to carry over to the beginning of October of that calendar year an amount of compensatory leave credits of seven ~~and one-half (7 ½)~~ **decimal five (7.5)** hours or more to a maximum of thirty-seven ~~and one-half (37 ½)~~ **decimal five (37.5)** hours.

The RCEA is in agreement with these changes to Article 39.

ARTICLE 44

PAY ADMINISTRATION

44.5 Pay Increments

44.5.2 For the purpose of computing periods of service for pay increments a "month" is a calendar month in which an employee receives pay for at least ten **(10) days seventy-five (75) hours**. Periods of leave without pay...

The RCEA is in agreement with the conversion of days to hours in Article 44, however, there are other employee proposals for this article dealing with pay increments.

5. Pay

Employees in the AS Group deserve fair compensation for the duties they perform. Unfortunately, the salaries of these employees have not kept pace with inflation. Furthermore, these employees have experienced unacceptable delays in receiving salary adjustments causing further hardship. Despite the fact that the federal government has a substantial surplus, it has been unwilling to rectify these wage disparities.

As described in Section 2 above, the NRC must obtain its mandate for collective bargaining from the Treasury Board. The Treasury Board is also an employer in its own right with nearly 200,000 employees, the vast majority of whom have collective bargaining rights. It is not surprising, therefore, that the mandating process for separate employers such as the NRC is overshadowed by Treasury Board's negotiations with its own employees. This section will outline the detrimental effect this has had on the terms and conditions of employment of NRC employees.

Current Rates of Pay

As shown in Table 1 below, there are currently 204 employees in the AS Group with an average salary of \$53, 866. Seventy-four percent of the employees are at the maximum of their salary range.

Table 1
AS Payroll Sept 2006

Pay Scale Group	Salary	# of Employees	Payroll
AS-1	39720	1	39720
AS-1	41230	1	41230
AS-1	42246	1	42246
AS-1	42734	2	85468
AS-1	44237	1	44237
AS-1	46317	5	231585
<u>AS-1</u>	<u>48494</u>	<u>9</u>	<u>439446</u>
TOTAL	AS-1	20	920,932
AS-2	44205	9	397845
AS-2	45898	6	275388
AS-2	47586	6	285516
AS-2	49822	9	448398
<u>AS-2</u>	<u>52163</u>	<u>82</u>	<u>4,277,366</u>
TOTAL	AS-2	112	5,684,513
AS-3	50551	1	50551
<u>AS-3</u>	<u>55414</u>	<u>32</u>	<u>1,773,248</u>
TOTAL	AS-3	33	1,823,799
AS-4	57022	4	228088
<u>AS-4</u>	<u>59702</u>	<u>10</u>	<u>597020</u>
TOTAL	AS-4	14	825,108
AS-5	61892	1	61892
AS-5	64269	1	64269
AS-5	66739	3	200217
<u>AS-5</u>	<u>69303</u>	<u>15</u>	<u>1,039,545</u>
TOTAL	AS-5	20	1,365,923
AS-6	68704	2	137408
<u>AS-6</u>	<u>77027</u>	<u>3</u>	<u>231081</u>
TOTAL	AS-6	5	368,489
# of Employees			204
Total Payroll			10,988,764

The Economy

The research and development functions of the National Research Council of Canada make NRC a valuable participant in Canada's growing economy. In 2006 the economy saw a 2.4% increase in Gross Domestic Product⁵. Unemployment declined to 6.1% as of December 2006⁶, a 30 year low. Furthermore, Canada continues to operate with a healthy surplus that is the envy of the G7 countries, as reported by the Department of Finance:

According to Organisation for Economic Co-operation and Development (OECD) estimates for the total government sector, Canada was the only Group of Seven (G7) country to record a surplus in calendar year 2005. Canada's surplus for 2005 is estimated at 1.7 per cent of GDP, compared to an average deficit of 3.7 per cent in the G7 countries. Moreover, Canada is expected to continue to be the only G7 country to post a total government surplus again in 2006 and 2007⁷.

Employees of the NRC deserve to share in this prosperity. With Canada's robust economy and the government's healthy fiscal situation, the proposed salary increase would have no detrimental effect on NRC or the federal government.

Consumer Price Index

Economic wage increases for the AS Group must also be looked at in the context of inflation. The Consumer Price Index (CPI) is generally accepted as a good measure of inflation. The CPI is calculated on the basis of a "basket of goods" which consists of food, clothing and household expenses. The major portion of salaries of employees in the AS Group is committed to the purchase of these goods. Thus, the relativity of these salaries to the CPI is very important. The rates of pay for employees in the AS Group have not kept pace with increases in the CPI. As shown in Table 2,

⁵ Statistics Canada, 3rd quarter – 2006.

⁶ Statistics Canada, The Daily, January 5, 2007.

⁷ Canada – Department of Finance, Annual Financial Report of the Government of Canada Fiscal Year 2004–2005, Fiscal Year 2005-2006.

AS Group rate adjustments have fallen 12.75% behind the increase in the CPI for the period 1986-2006. This has resulted in reduced purchasing power for essentials for these employees than they had twenty years ago.

Table 2
Economic Increases for AS Group Compared to CPI Increases

Consumer Price Index, historical summary (1986 to 2005)			AS Group Econ. Adj.	Percentage Difference	
Year	All-items 1992=100	Change %	%	%	Notes
1986	78.1	4.1	3.25	-0.85	
1987	81.5	4.4	3.6	-0.8	
1988	84.8	4	5	1	
1989	89	5	0	-5	
1990	93.3	4.8	5	0.2	
1991	98.5	5.6	0	-5.6	Wage controls 1991-1996 (PSCRA).
1992	100	1.5	3	1.5	
1993	101.8	1.8	0	-1.8	
1994	102	0.2	0	-0.2	
1995	104.2	2.2	0	-2.2	
1996	105.9	1.6	0	-1.6	
1997	107.6	1.6	2.5	0.9	
1998	108.6	0.9	2	1.1	
1999	110.5	1.7	2	0.3	
1999			4.1	4.1	Additional increment for levels 1, 2, 3 & 4.*
2000	113.5	2.7	2	-0.7	
2001	116.4	2.6	3	0.4	
2001			0.6	0.6	Additional adjustments for levels 5 & 6.*
2002	119	2.2	2.5	0.3	
2003	122.3	2.8	2.5	-0.3	
2004	124.6	1.9	2	0.1	
2005	127.3	2.2	-	-2.2	
2006	129.9	2.0	-	-2.0	
Totals		55.8	43.05	-12.75	
Note: Annual average indexes are obtained by averaging the indexes for the 12 months of the calendar year. Source: Statistics Canada, CANSIM, table (for fee) 326-0002 and Catalogue nos. 62-001-X , 62-010-X and 62-557-X . Last modified: 2007-01-23.			*Costing adjusted for population of levels 1-4 (87%) and levels 5 & 6 (13%).		

Wage Adjustments in Canada

Statistics Canada's Survey of Employment, Payrolls and Hours (SEPH) covers almost all employers in Canada.

The Survey of Employment, Payrolls and Hours is Canada's only source of detailed information on the total number of paid employees, payrolls, hours at detailed industrial, provincial and territorial levels.⁸

Statistics Canada reported from SEPH that average weekly earnings increased by 3.1% in 2005⁹ and 3.0% in 2006¹⁰. (Appendix L)

Human Resources and Social Development Canada (HRSDC) reports on wage adjustments in major collective agreements covering 500 or more employees. For the federal public sector HRSDC reported the average annual wage adjustments of 2.6% in 2005¹¹ and 2.7% in 2006¹². (Appendix M)

Industrial Relations Outlook for 2007

On February 1, 2007 the Conference Board of Canada released its Industrial Relations Outlook for 2007 (Appendix N) which forecast wage increases of 3% in 2007.

Canada's continued economic growth is proving to be a boon to both employers and unions. The bargaining climate will remain stable. Wage increases for unionized employees, forecast at three per cent in 2007, are expected to exceed the cost of living¹³.

⁸ Statistics Canada, Survey of Employment Payrolls and Hours, Record Number 2612.

⁹ Statistics Canada, The Daily, February 27, 2006.

¹⁰ Statistics Canada, The Daily, February 26, 2007.

¹¹ Human Resources and Social Development Canada, Workplace Bulletin, February 15, 2006.

¹² Human Resources and Social Development Canada, Workplace Bulletin, February 15, 2007.

¹³ Conference Board of Canada, News release 07-57, February 1, 2007.

Watson Wyatt's 37th and 38th Annual Canadian Salary Surveys have reported that base salary increases for "Admin/Support" was 3.2% in 2005, 3.5% in 2006 and forecast to be 3.5% in 2007. (Appendix O) WorldatWork has forecast that "base compensation for administrative professionals across Canada is expected to rise an average of 4.5% in 2007". (Appendix P)

There have been very few settlements to date which include wage adjustments beyond 2006 for bargaining units under the *Public Service Labour Relations Act*. For the year 2007 these wage adjustments range from 3% for Staff of the Non-Public Funds, Canadian Forces to 2% for the CX Group. The principle issue in the CX Group settlement was an unprecedented agreement to remove the age requirement for retirement under the Public Service Superannuation Plan plus a reduction in pension contributions which aligned the CX Group pensions with those enjoyed by members of the RCMP. Furthermore, the CX Group employees received wage scale restructuring which provided additional compensation. The economic wage adjustment for the CX Group was likely discounted as a trade off for these improvements. Computer Systems employees of the Canada Food Inspection Agency will receive a wage adjustment of 2.4% in 2007.

Other public sector wage adjustments for 2007 include over 13,000 Manitoba Government employees, including a 3,000 member clerical component, who received a 2.5% adjustment in 2007. The Liquor Control Commission of Manitoba also reached an agreement for a 2.5% adjustment in 2007 for its employees. Calgary Public Library employees will receive a 3.5% adjustment in 2007. The Municipality of Iqaluit's employees will receive 3% in 2007 and the City of Whitehorse employees will receive 3.25% in 2007. (Appendix Q)

NRC employees should not be penalized because they are one of the first groups in their jurisdiction to be awarded a wage adjustment for 2007.

Compression in the AS Pay Scales

The AS Group has a major problem with compression between levels. As noted earlier, three-quarters of the employees in the AS Group are at the maximum rate of pay for their classification level. The difference between maxima is so small that most of these employees find themselves at the maximum of their new level upon promotion. This is especially true for employees promoted to AS levels 2, 3 and 4. This leaves very little incentive for taking on the additional responsibilities of the higher classifications. Table 4 illustrates the differences between maxima of levels, the minimum increase to which an employee is entitled upon promotion, and the placement of employees in the pay scale of the new level upon promotion.

Table 4

AS Group Promotion Increases

Promotion	Difference Between Maxima	Minimum Increase on Promotion	Placement in New Level
AS – 1 to AS – 2	\$3510	\$2239	Fifth Step (Maximum)
AS – 2 to AS – 3	\$3109	\$2379	Fifth Step (Maximum)
AS – 3 to AS – 4	\$4104	\$2563	Fifth Step (Maximum)
AS – 4 to AS – 5	\$9184	\$2453	Second Step
AS – 5 to AS – 6	\$7388	\$2756	Third Step

The proposal for two additional steps would provide immediate relief for employees at their maxima. This adjustment is especially important at levels AS -2, AS - 3 and AS - 4.

Delayed Wage Adjustments

Treasury Board establishes the pattern of wage adjustments with its own employees before it provides a mandate to NRC. Over the past twenty years NRC employees have had their wage adjustments delayed by NRC's inability to obtain mandates in a timely manner. In the current round of bargaining, NRC did not obtain a mandate from the Treasury Board until 17 months after the collective agreement had expired despite repeated requests by the RCEA (see Appendix R). This phenomenon is not unusual at NRC. As shown in Table 3, the past three collective agreements took an average of nearly two years to renegotiate.

Table 3

AS Group – Duration of Negotiations

Expiry Date	Signing Date	Retroactive Period
30 April 1997	24 September 1999	29 Months
30 April 2001	25 November 2002	19 Months
30 April 2003	1 October 2004	17 Months
30 April 2005		24+ Months

The present round of collective bargaining has experienced longer delays than the average, and the date of a new agreement will be at least two years after the

expiration date of the previous agreement. The administration of collective bargaining for these employees has created a de facto policy whereby the majority of wage adjustments are paid retroactively rather than concurrently with the performance of duties. Such lengthy delays in wage adjustments create cash flow problems that have significant financial implications for employees in these salary ranges. The increased costs in housing, food and other essentials are not delayed while these employees are waiting for their wage adjustments. These delays have a significant impact on the purchasing power of these employees.

Pay Proposals

The NRC tabled the following pay proposal:

1. Effective May 1, 2005 – increase all rates of pay by 2%
2. Effective May 1, 2006 – increase all rates of pay by 2.25%

These proposed wage adjustments are not competitive and they will not address the erosion of the purchasing power of AS Group salaries as a result of inflation.

NRC's Employment Philosophy (Appendix S) states the following:

- Recruit and retain outstanding people
- Competitive salaries, benefits and prospects for job continuity
- Recruit and retain the best of the best
- Achieve high levels of employee commitment, affiliation and retention.

To meet these goals, NRC employees must receive wages which are fair and competitive. The RCEA therefore proposes the following pay adjustments:

Schedule 1 – AS Group – Rates of Pay

- 1. Effective May 1, 2005 – add two steps (value of each 3.5%) to the maximum of each range.**
- 2. Effective May 1, 2005 – increase all rates of pay by 3%**
- 3. Effective May 1, 2006 – increase all rates of pay by 2.8%**
- 4. Effective May 1, 2007 – increase all rates of pay by 2.8%**
- 5. Effective Date of Signing of New Agreement – provide a signing bonus to all members of the group on this date of \$1500.00**

The proposed economic adjustments are well within wage adjustment trends and forecasts presented in this brief, and will allow these employees to keep pace with inflation as outlined in Table 2 above.

To partially address the historic shortfall in wages experienced as a result of the delays in compensation adjustments for NRC employees, the RCEA proposes a modest lump sum payment of \$1500 to be paid to all employees on the date of this arbitration board's award.

6. Summary

The Public Service Labour Relations Act outlines the following factors that must be taken into account in making an arbitral award:

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.

This brief has outlined why employees of the AS Group should receive amendments to their collective agreement which the NRC has been unwilling to provide.

- We have pointed out that the recruitment and retention of employees will be an increasing challenge with an aging workforce and reduced unemployment rates.
- We have shown that compensation and other terms and conditions of employment need to be comparable to those of employees in similar occupations.

- The proposed changes would be fair and reasonable as these employees perform similar work to employees who have received greater compensation and additional benefits.
- We have also shown that the state of the Canadian economy and the Government of Canada's fiscal circumstances are healthy and could easily accommodate these adjustments.

We respectfully request that this arbitration board award revised terms and conditions of employment for the AS Group as proposed by the Research Council Employees Association.