

Arbitration Brief

**Presented by
The Research Council Employees' Association**

On behalf of

**The Computer Systems Administration
Group**

April 23 – 26, 2007

**Chair: David Kwavnick
Union Nominee: Robert McIntosh
Employer Nominee: Peter Devitt**

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1. Description of the Computer Systems Administration (CSA) 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 Computer Systems Administration (CSA) Group was certified as a bargaining unit at the NRC on May 26, 1969. "Employees in these positions are primarily involved in the application of computer systems knowledge to the planning, development, installation and maintenance of information technology processing systems to manage, administer or support federal government programs and activities.." ² (Appendix A)

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

² Group Definition – Computer Systems Administration

NRC CS positions are classified following the same classification standard as is used in the Federal Public Service with Treasury Board as Employer, the one for the Computer Systems Administration Group. Collective bargaining for the Treasury Board CS employees is conducted with the Professional Institute of the Public Service of Canada (PIPSC) as the bargaining agent.

2. History of Negotiations

The collective agreement for this bargaining unit has an expiry date of December 21, 2004. Notice to bargain was sent to the employer on December 6, 2004. Bargaining demands were submitted to the employer on August 29, 2005 and NRC provided its demands 13 months later on September 29, 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.

As noted above, it took NRC 13 months to present its bargaining proposals after the RCEA tabled their proposals. Bargaining took place on October 15 and was scheduled to resume on November 1, 2006. This date was postponed until November 20, 2006 due to the fact that NRC did not yet have a mandate from Treasury Board. Unfortunately, this is not a new experience for the RCEA. In two of the last three collective agreements the RCEA has been in

a position to serve notice to bargain less than 90 days after the previous agreement was signed. **In other words, notice to bargain could be served before NRC had implemented the wage adjustments from the previous agreement!** Such delays, unfortunately, have become the norm for collective bargaining at NRC. On December 6, 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. This has been especially true for employees in the CSA Group. Employees of the National Research Council are part of the broader public service, and they have historically been compensated following this pattern. The lengthy wait for Treasury Board to conclude negotiations with its employees before such mandates are extended to NRC is unacceptable. 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. **In the last four collective agreements CS employees have received an average of 16 months of retroactive wage adjustments³. Such delays result in higher rates of income tax, and the need to borrow money in response to rising costs.**

³ Based upon an estimate of 60 days to implement wage adjustments following the signing of collective agreements. See Table 3.

While NRC employees have had lengthy delays in receiving improved compensation, they have not experienced any delays in becoming subject to wage and staffing freezes. NRC has been subject to the same staffing freezes and wage controls as employees under Treasury Board jurisdiction, e.g. *Public Sector Compensation Act* of 1991. 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 CSA 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 AND FURLOUGH LEAVE

- 31.1.1.1 one and one quarter (1 $\frac{1}{4}$) days until the month in which the employee's ~~eightth (8th)~~ **sixth (6th)** anniversary of service occurs;
- 31.1.1.2 one and two thirds (1 $\frac{2}{3}$) days commencing with the month in which the employee's ~~eightth (8th)~~ **sixth (6th)** 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 (2nd) anniversary of service.**
- (b) **Transitional Provision**
- Effective on May 1, 2005, employees with more than two (2) years of service shall be credited with a one-time entitlement of five (5) days of vacation leave with pay. All other employees shall receive this entitlement on the (1st) day of the month following his second (2nd) anniversary of service.**
- (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.**

Renew rest of article

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

- access to the current vacation entitlements after a shorter period of employment (31.1.1.1 and 31.1.1.2);
- a one-time entitlement to five days leave in exchange for the elimination of Marriage Leave (35.18).

In clause 31.1.1.1 and 31.1.1.2 we have proposed access to four week's vacation after 6 years of service (currently after 8 years). 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%⁴.

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 years. These workers may play a key role in transferring the institutional memory as their experience and skill in occupations may be essential to the knowledge-based economy⁵.

With declining unemployment rates, NRC will be facing a more competitive hiring environment. Earlier access to four weeks of annual vacation leave would be very good recruitment incentive in a tightening labour market.

Improvement to the current provision is also an issue of internal equity.

The Technical Officer (TO) Group (Appendix C) had the same eligibility period as

⁴ Statistics Canada, The Daily, January 5, 2007.

⁵ Statistics Canada, The Daily, March 5, 2007

the CSA 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 members of the 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 second 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) and the Audit Services Group at the Office of the Auditor General of Canada (agreed clause reported in arbitral award dated February 17, 2007).

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 CSA 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 CSA Group would provide comparability with the broader public service.

ARTICLE 35.18

MARRIAGE LEAVE WITH PAY

35.18.1 **delete**

This proposal is tied to the proposal on 31.1.2 above.

ARTICLE 39

OVERTIME

Add New Clause and renumber rest of Article

39.24 For every additional four (4) hour period of continuous overtime, the employee shall be reimbursed, in addition to the meal allowance provided for in sub-clause 39.23, for an additional meal in the amount of ten dollars and fifty cents (\$10.50), except where free meals are provided.

Employees in the CSA Group are required to perform significant amounts of overtime. Due to operational considerations, the overtime must often be performed on days of rest. On a normal working day a second overtime meal allowance is provided after seven hours of overtime (clause 39.22) which is after 14.5 hours of work. The current proposal would provide a second overtime meal allowance after 15 hours of work on a day of rest as clause 39.23 requires 11 hours of work before the first overtime meal is provided. It also provides for additional meal allowances for every additional 4 hours of overtime worked. This is to recognize that the need for a meal does not end after either 11 or 15 hours, but extends as do the hours worked. The current proposal is therefore a logical extension of the existing provisions for overtime meal allowances. NRC has already agreed to identical proposals for its Purchasing and Supply (PG) (Appendix F), Administrative Services (AS) (Appendix G) and Administrative Support (AD) (Appendix H) Groups.

ARTICLE 44

PAY ADMINISTRATION

Renew article except for the following change

44.5.4 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~~ **is performing the duties of his/her position unsatisfactorily. (renew rest of clause)**

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 I) 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 this Collective Agreement shall be from the date it is signed to ~~21 December 2004~~ **21 December 2007** inclusive and unless otherwise expressly stipulated the provisions of this Agreement shall become effective on the date it is signed.
- 60.2 This Agreement may be amended by mutual consent of the Council and the Association at any time during the life of the agreement.

APPENDIX A

Revise dates and renew

APPENDIX B

Delete

Appendix B is unique to the CSA Group at the NRC. It was introduced and amended in past rounds of bargaining based on NRC's stated intention to provide longer hours of service in some parts of the organization. This appendix allows NRC to create shift work without requirements for posting shift schedules and penalties for shift changes found in other collective agreements. Despite its past and current statements, this Appendix has never been used by NRC. It should therefore be deleted due to the lack of use and because of the potential for unregulated shift operations. If there are operational requirements for employees to work after 18:00 hours, the employees should be entitled to an overtime premium just as employees in other occupational groups.

APPENDIX C

Renew

4. Outstanding Employer Issues

There are essentially three outstanding employer issues in addition to pay and duration: the conversion of days to hours throughout the collective agreement, hours of work and editorial changes.

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. The different forms of compassionate leave should continue to be provided on the basis of a 24 hour day as supported by several PSSRB decisions. (See pg. 24 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 ~~thirty-five (35) days~~ **two hundred and sixty-two decimal five (262.5) hours** leave. The ~~35-day~~ **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 ~~35 days~~ **262.5 hours** shall be paid by cheque at the end of the fiscal year at the employee's daily rate of pay.

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 Employer's submissions at 31.4.1 and 31.5.1 are different than the proposals submitted during the course of collective bargaining. The language as proposed by NRC during bargaining is found below and reflects actual contract language with the only proposed change being that of the conversion of days to hours. We assume this is merely an oversight on the part of NRC.

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 ~~thirty-five (35) days~~ **two hundred and sixty-two decimal five (262.5) hours** leave. **This** 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 ~~35 days~~ **262.5 hours** shall be paid ~~by cheque~~ at the end of the fiscal year at the employee's daily rate of pay.

31.5 – LIQUIDATION OF VACATION LEAVE

- 31.5.1 At any time during the fiscal year and 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 in agreement with the conversion of days to hours in Article 31, based on existing contract language. The RCEA does not agree with the non-conversion proposals in the above clauses. As well, there are other employee proposals for this article dealing with Vacation Leave.

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 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.

33.1.1.2 a shift worker shall earn additional sick leave credits at the rate of ~~one sixth (1/6)~~ **one decimal twenty-five (1.25) hours** of a day for each calendar month during which he or she works shifts and he or she receives pay for at least ~~ten (10) days~~ **seventy-five (75) hours**. Such credits shall not be carried over in the next fiscal year and are available only if the employee has already used ~~fifteen (15)~~ **one hundred twelve decimal five (112.5) hours** sick leave credits during the current fiscal 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,**

subject to the deduction of such advanced leave from any sick leave credits subsequently earned, or if an employee resigns any salary overpayment shall be recovered by the Council from the employee by other means.

The RCEA is in agreement with the conversion of days to hours in Article 33. It should be noted that the current collective agreement language already contains the reference to the “employee”, thus the deletion of he/she is not required.

ARTICLE 35

OTHER LEAVE WITH OR WITHOUT PAY

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.

The proposal submitted by the Employer at 35.17.3.1 does not reflect what was agreed to and signed off at the bargaining table. There is an agreement to delete the word "dependent." . We assume this is merely an oversight on the part of NRC.

The proposal submitted by the Employer at 35.17.3.3 is different than the proposal submitted during the course of collective bargaining. That proposal was as follows:

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 **and granted on separate days.**

35.18 Marriage 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.

35.20 Medical Appointment for Pregnant Employees

- 35.20.1 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.

35.25 Volunteer Leave

- 35.25.1 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.

35.26 Personal Leave

- 35.26.1 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.

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.

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.

In articles 35.25 and 35.26 the NRC proposes limiting the granting of Personal and Volunteer Leave to a single period of 7.5 hours. Other forms of leave are regularly granted in fractions of a day. Furthermore, these leaves are granted “subject to operational requirements as determined by the Council and with an advance notice of at least five (5) working days.” This restriction is not found in the following NRC collective agreements: AD, AS, Operational, RO/RCO, LS, IS, or TR.

ARTICLE 36
HOURS OF WORK

36.5 Variable Hours of Work (VHW)

36.5.8.1(g)

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

(ii) A designated paid holiday shall account for seven decimal five (7.5) hours.

The RCEA is not in agreement with the conversion of days to hours in article 36.5.8.1(g) (i), as it relates to “other leave entitlements”. The preceding arguments with respect to compassionate leave also apply here.

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 CSA Group deserve fair compensation for the duties they perform. They also deserve to receive this compensation in a timely manner and without unacceptable delays in receiving salary adjustments. Such delays result in potential financial consequences for CSA Group employees.

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.

NRC Wage Proposal

The NRC tabled the following package A in exchange for concession B:

A.

1. Effective December 22, 2004 – increase all rates of pay by 2.25%
 2. Effective December 22, 2005 – increase all rates of pay by 2.4%
 3. Effective December 22, 2006 – increase all rates of pay by 2.5%
- Deletion of the first three (3) steps of CS-1 level effective on the date of signing;
 - Deletion of the Terminable Allowance (Appendix A) effective on 20 December 2006; as per Public Services research, there no longer is a retention problem;

- And as of 21 December 2006, rolling into salary of an inclusive amount of \$900.

B.

Agreement on conversion of days to hours and fractions to decimals.

The RCEA did not accept the NRC wage proposal.

RCEA Wage Proposal

The RCEA proposes the following pay adjustments:

SCHEDULE 1 CSA GROUP

RATES OF PAY

1. Effective December 22, 2004 – increase all rates of pay by 2.5%
2. Effective December 22, 2005 – increase all rates of pay by 2.5%
3. Effective December 22, 2006 – drop bottom 3 steps of CS-1 range
4. Effective December 22, 2006 – increase all rates of pay by 2.5%
5. Effective Date of Signing of New Agreement – provide a signing bonus to all members of the group on this date of \$1000.00

The RCEA has maintained that Appendix A – Memorandum of Understanding – Terminable Allowance – be renewed.

Current Rates of Pay

As shown in Table 1 below, as of July 4, 2006 there were 292 employees in the CSA Group with an average salary of \$68,017. Eighty-three percent of the employees are at levels CS-2 and CS-3. Thirty-five percent of the employees are at the maximum of their salary range.

| TABLE 1 | | | |
|--------------------------------|------------------|------------------|----------------------|
| CSA Payroll - July 2006 | | | |
| Group Level | Basic pay | Pop/Level | Payroll/Level |
| CS1 | 36,671.00 | 3 | 110,013 |
| CS1 | 38,522.00 | 1 | 38,522 |
| CS1 | 42,192.00 | 4 | 168,768 |
| CS1 | 44,034.00 | 3 | 132,102 |
| CS1 | 45,866.00 | 2 | 91,732 |
| CS1 | 47,696.00 | 2 | 95,392 |
| CS1 | 49,317.00 | 2 | 98,634 |
| CS1 | 50,938.00 | 4 | 203,752 |
| CS1 | 52,619.00 | 2 | 105,238 |
| <u>CS1</u> | <u>54,245.00</u> | <u>7</u> | <u>379,715</u> |
| CS 1 | | 30 | 1,423,868 |
| CS2 | 53,646.00 | 10 | 536,460 |
| CS2 | 55,604.00 | 6 | 333,624 |
| CS2 | 57,568.00 | 12 | 690,816 |
| CS2 | 59,525.00 | 9 | 535,725 |
| CS2 | 61,484.00 | 19 | 1,168,196 |
| CS2 | 63,512.00 | 15 | 952,680 |
| CS2 | 65,608.00 | 29 | 1,902,632 |
| <u>CS2</u> | <u>67,363.00</u> | <u>42</u> | <u>2,829,246</u> |
| CS2 | | 142 | 8,949,379 |
| CS3 | 64,436.00 | 2 | 128,872 |
| CS3 | 66,677.00 | 3 | 200,031 |
| CS3 | 69,176.00 | 2 | 138,352 |
| CS3 | 71,529.00 | 9 | 643,761 |
| CS3 | 73,881.00 | 13 | 960,453 |
| CS3 | 76,318.00 | 13 | 992,134 |
| CS3 | 78,838.00 | 17 | 1,340,246 |
| <u>CS3</u> | <u>81,067.00</u> | <u>41</u> | <u>3,323,747</u> |
| CS3 | | 100 | 7,727,596 |

| | | | |
|-------------|-------------------------|-----------|-------------------|
| CS4 | 79,959.00 | 1 | 79,959 |
| CS4 | 82,588.00 | 2 | 165,176 |
| CS4 | 85,313.00 | 4 | 341,252 |
| CS4 | 88,128.00 | 2 | 176,256 |
| <u>CS4</u> | <u>90,687.00</u> | <u>11</u> | <u>997,557</u> |
| CS 4 | | 20 | 1,760,200 |
| | Total Population | | 292 |
| | Total Payroll | | 19,861,043 |

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 Product⁶. Unemployment declined to 6.1% as of December 2006⁷, 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 percent 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 2007⁸.

Employees of the NRC deserve to share in this prosperity.

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.⁹

⁶ Statistics Canada, 3rd quarter – 2006.

⁷ Statistics Canada, The Daily, January 5, 2007.

⁸ Canada – Department of Finance, Annual Financial Report of the Government of Canada Fiscal Year 2004–2005, Fiscal Year 2005-2006.

⁹ Statistics Canada, Survey of Employment Payrolls and Hours, Record Number 2612.

Statistics Canada reported from SEPH that average weekly earnings increased by 3.1% in 2005¹⁰ and 3.0% in 2006¹¹. (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 2005¹² and 2.7% in 2006¹³. (Appendix M)

In the Federal Public Service the minimum wage adjustments have been 2.25% in 2004, 2.4% in 2005 and 2.5% in 2006. Several agreements (e.g. Applied Science and University Teachers) also included additional pay increments or wage scale restructuring. The RCEA proposal is in line with these adjustments.

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 living¹⁴.

¹⁰ Statistics Canada, The Daily, February 27, 2006.

¹¹ Statistics Canada, The Daily, February 26, 2007.

¹² Human Resources and Social Development Canada, Workplace Bulletin, February 15, 2006.

¹³ Human Resources and Social Development Canada, Workplace Bulletin, February 15, 2007.

¹⁴ 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 "Prof/Technical" was 3.3% in 2005, 3.6% in 2006 and forecast to be 3.6% 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)

The compensation analysis firm of Robert Half predicts information technology salaries to increase by at least 3.5% in 2007 (as reported by the Ottawa Citizen - Appendix Q).

Starting salaries for information technology professionals will increase by an average of 3.5 per cent this year, according to Robert Half Technology. The staffing agency's new 2007 salary guide predicts base salary increases of more than twice that average in certain high-demand positions... "The demand for skilled IT professionals continues to be strong as companies expand and upgrade their systems," said Sandra Lavoy, vice-president of Robert Half Technology, in a statement released yesterday.¹⁵

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

¹⁵ The Ottawa Citizen, January 12, 2007.

additional compensation. The economic wage adjustment for the CX Group was likely discounted as a trade off for these improvements. The most recent decision, an Arbitral Award, saw the Computer Systems employees of the Canadian Food Inspection Agency 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 R)

If the arbitral award is for a period greater than 36 months, NRC employees deserve a wage adjustment for 2007 that is based upon recent trends and forecasts. They should not be penalized because they are one of the first groups in their jurisdiction to be awarded a wage adjustment for 2007.

Recruitment and Retention

There is a popular misconception that there is a surplus of information technology specialists following the bursting of the dot com bubble several years ago. The Information and Telecommunications Technology Council (formerly the Software Human Resources Council) is a non-profit sector council, based in

Ottawa, which relies on the support and participation of members and partners from industry, government and education. In an April 2006 report (Appendix S) it stated:

The unemployment rate for all IT workers has been consistently below the national average for the labour force as a whole. It has also been more volatile. The dot-com boom and bust in the early 2000s appears to be evident as the unemployment rate soared from a low of 2 percent in the fall of 2000 to a high of 5.8% in the summer of 2002. Since the spring of 2003, there has been a trend downwards in the unemployment rate for all IT workers. At the end of 2005, the rate stood at 1.9 percent, a very tight labour market indeed!¹⁶

Terminable Allowance

A terminable allowance was negotiated with NRC in 1998 to address retention problems in the CSA Group. As noted above, the labour market for this occupational group is as tight as it was when the allowance was first negotiated. NRC has proposed discontinuing the allowance without any data to substantiate the need for such a drastic reduction in income and pension entitlements for these employees.

The allowance was first negotiated nine years ago in an agreement signed April 28, 1998. The allowance had an initial lump sum payment on the date the collective agreement was signed, monthly payments for 12 months and a large payment on the expiry date of the agreement. The NRC continued to make the monthly payments following the expiry of the collective

¹⁶ Software Human Resources Council, Analysis of Labour Force Survey Data for the Information Technology Occupations 2000-2005. April 2006.

agreement. Details of the allowance payments of the first agreement are described in Table 2.

Table 2

1998 Terminable Allowance Agreement

| Level | 29-Apr-98 | Monthly Payments 1 April 98- 1 April 99 | 30-Apr-99 | Total |
|-------|-----------|--|-----------|---------|
| CS-1 | \$995 | \$130 | \$450 | \$3,135 |
| CS-2 | \$1,265 | \$165 | \$570 | \$3,980 |
| CS-3 | \$1,555 | \$205 | \$695 | \$4,915 |
| CS-4 | \$1,795 | \$235 | \$805 | \$5,655 |
| CS-5 | \$2,060 | \$270 | \$925 | \$6,495 |

As detailed above, the allowance was initially constructed as a retention incentive with a large payment to employees who continued their employment until the expiry date of the collective agreement on April 30, 1999. Initially the allowance was paid separately from normal salary payments. Subsequently, the allowance has been paid in the same cheque or bank transaction with the employees' regular pay.

The allowance is part of salary for pension purposes only. Thus, employees have been paying pension contributions of 7.5% on the allowance. If the allowance was discontinued, these pension contributions would have been to no avail as it would no longer be included in the calculation for determining an employee's pension. For example, a CS-3 employee who

received approximately \$23,000 in allowance payments over nine years would have contributed \$1,725 in pension payments. If that employee retired five or more years after the allowance payments ended, none of those earnings would be included in the calculation of the employee's pension.

Since the allowance payments began they have continued to be improved and renewed without interruption. In the agreement signed in December 1999, the monthly terminable allowance payments were increased as follows: CS-1 \$139, CS-2 \$176, CS-3 \$212, CS-4 \$248 and CS-5 \$285. The allowance was renewed in the next two CSA collective agreements which were signed in November 2001 and December 2003 when unemployment rates were at a high of 5.8% for this group. The NRC has continued to pay the allowance since the current collective agreement expired in December 2004.

The concept of the terminable allowance is not unique to the CSA Group or to the NRC. Employees in the Research Officer/Research Council Officer Group at NRC receive a terminable allowance of \$8,000 per year which is paid bi-weekly. Similar recruitment and retention allowances have been added to the compensation of many other occupational groups in the Public Service including Architects, Engineers, Land Surveyors, Patent Examiners, Defence Scientists, Research Scientists, Psychologists, Psychiatrists, Medical Doctors, Community Health Nurses, Aircraft Operations, and Technical Inspectors (Marine, Aviation and Rail).

Employees in the Computer Systems classification of other federal employers have also received a terminable allowance. Computer Systems employees of the Treasury Board received an allowance until December 2006 when the allowance ended as part of a voluntary agreement between the Professional Institute of the Public Service of Canada (PIPSC) and Treasury Board. Computer Systems employees of the Canada Revenue Agency (CRA) continue to receive a terminable allowance. Their allowance will end in July 2007 as part of a voluntary agreement between PIPSC and CRA. Most recently in a February 14, 2007 arbitral award, the Computer Systems employees the Canadian Food Inspection Agency have had their terminable allowance renewed in an agreement that expires in May 31, 2008. (Appendix T)

CS-1 Pay Structure

The CS-1 pay scale has 11 steps. The RCEA has proposed dropping the bottom three steps which were populated by only four employees in July 2006. NRC has also proposed the deletion of these three steps as part of their last pay proposal. Unfortunately this was not resolved as the NRC attached unacceptable conditions to that proposal. As the minimum salary for the CS-1 level has been increased to \$47,575 for CS employees at Treasury Board (effective December 22, 2006), and \$ 48,412 for CS employees at Canada Revenue Agency (effective December 22, 2006), the elimination of the bottom three steps would narrow the gap between NRC and these major employers.

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. As shown in Table 3, the past three collective agreements took an average of nearly two years to renegotiate.

**Table 3
Duration of
Negotiations
TB vs. NRC**

CS Group - TB

CSA Group - NRC

| Expiry Date | Signing Date | Duration in Months | Expiry Date | Signing Date | Duration in Months* | Percent of TB Duration |
|-------------|--------------|--------------------|-------------|--------------|---------------------|------------------------|
| 22-Dec-04 | 22-Jul-06 | 19 | 22-Dec-04 | June, 2007? | 30 | 158% |
| 1-May-02 | 3-Jun-03 | 13 | 1-May-02 | 8-Dec-03 | 19 | 146% |
| 1-May-00 | 28-Jun-01 | 14 | 1-May-00 | 8-Nov-01 | 18 | 129% |
| 1-May-99 | 11-Jun-99 | 1 | 1-May-99 | 17-Dec-99 | 7.5 | 750% |
| 1-May-97 | 2-Dec-97 | 7 | 1-May-97 | 29-Apr-98 | 12 | 171% |

*estimated for 2007

The present round of collective bargaining has experienced longer delays than the average, and the signing date of a new agreement will likely be two and one-half 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 also have a significant impact on the purchasing power of these employees.

In 1999 the members of another NRC Group (the AD Group) received a lump sum payment of \$2,000 (\$1,000 for employees with less than one year of service) to address a 29 month delay in reaching a new collective agreement. This round of collective bargaining for the CSA group has seen similar delays which have been described above. To partially address these delays the RCEA proposes a modest lump sum payment of \$1000 to be paid to all employees on the date of this arbitration board's award.

NRC's Employment Philosophy (Appendix U) 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's pay proposal is reasonable, substantiated and in line with the NRC's stated philosophy.

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 CSA 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 are not comparable to those of employees in similar occupations and need to be adjusted.
- The proposed changes would be fair and reasonable as these employees perform similar work to employees who have received wage adjustments in line with our proposals.
- 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 CSA Group as proposed by the Research Council Employees Association.