

Board file: 585-02-26

IN THE MATTER OF THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE TREASURY BOARD

(The "Employer")

- and -

THE PUBLIC SERVICE ALLIANCE OF CANADA
TECHNICAL SERVICES GROUP

(The "Union")

BOARD OF ARBITRATION

David K.L. Starkman
Jock Climie
Jim Wolfgang

Chair
Employer Representative
Union Representative

APPEARANCES FOR THE EMPLOYER

Josée Lefebvre
John Park

Negotiator
Senior Compensation Analyst

APPEARANCES FOR THE UNION

Mike McNamara
Seth Sazant

Negotiator
Research Officer

A Hearing in this matter was held on July 6 and 7, 2009 at Ottawa, Ontario

AWARD

The Union represents approximately ten thousand employees employed by Treasury Board in the categories of Drafting and Illustration, Engineering and Scientific Support, General Technical, Photography, Primary Products Inspection and Technical Inspection. In May, 2007 the parties commenced bargaining for a renewal collective agreement and certain items were agreed to. In November, 2008 the Union applied for Arbitration with respect to the outstanding issues.

Both parties made submissions concerning a number of issues and, after considering the submissions, this Board of Arbitration has decided to address the following matters. If an item is not specifically addressed in this Award, the request for its inclusion or deletion or alteration in the wording of the collective agreement, as the case may be, is denied. The renewal collective agreement therefore shall consist of the items in the expired collective agreement, the changes agreed to by the parties, and the following changes ordered by this Board. No item shall have retroactive effect unless explicitly provided for.

1. TRAVEL TIME

Amend article 34.09(a) to provide as follows:

34.09 Travel Status Leave***Exclusions***

This clause does not apply to employees covered by Appendix I - Engineering and Scientific Support Group.

- (a) *An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his or her permanent residence for twenty (20) nights during a fiscal year shall be granted seven decimal five (7.5) hours off with pay. The employee shall be credited with one additional*

period of seven decimal five (7.5) hours for each additional twenty (20) nights that the employee is away from his or her permanent residence to a maximum of eighty (80) additional nights.

2. INJURY ON DUTY LEAVE

The Union seeks to amend clause 41.01 to provide that all employees shall be granted injury-on-duty leave with pay for the period of time that the applicable workers' compensation authority has recognized that the employee was unable to work because of an injury, illness or disease. According to the Union there are instances in which an employee is unilaterally switched from injury-on-duty leave to direct workers' compensation payments resulting in a loss of take home pay.

The Employer submitted that it has an "Injury-on-Duty Leave" Guideline which is applicable to all employees in the public service and the Employer's Guideline should not be changed in this Arbitration process.

Nothing in the materials filed by the Union indicates whether the issue being addressed by its proposal for a language change is of widespread concern, or whether it presents as a problem in only a small number of workplaces. Without this information, the Board is unable to determine, at this time, whether a change in the collective agreement is warranted. The Board recommends however, that if this matter is to be pursued in future rounds of bargaining that the Union compile and provide statistical and perhaps anecdotal information concerning the nature and scope of the difficulties and its impact on individual bargaining unit members.

The Board also notes that the Employer's Injury-on-Duty Leave Guideline does not provide any specific guidelines to Managers as to the circumstances under which consideration should be given to removing an employee from injury-on-duty leave to direct workers' compensation payments. The Board therefore recommends that the parties discuss the Injury-on-Duty Leave Guideline with a view to providing greater specificity as to under what circumstances and according to what time lines an employee can be placed on direct workers' compensation payments.

3. ENTITLEMENT TO VACATION LEAVE WITH PAY

Delete article 38.04 and re-number the remaining articles.

4. WAGES

The Union is seeking a pay increase of 2.3% effective June 22, 2007, 1.5% effective June 22, 2008, 1.5% effective June 22, 2009, 1.5% effective June 22, 2010 and 13.5% effective June 22, 2011. In the Union's view the requested wage increase for the years 2007 until 2010 are well below the average wage settlements for the other major groups in the core public administration, and the wage increase for 2011 is justified by the compensation comparability study conducted by the Public Service Staff Relations Board (PSLRB) with input from both the Union and the Employer and which, in its view, demonstrates an average wage deficiency between members of the bargaining unit and their counterparts in the private sector of at least 13.5%.

The Employer submitted that compensation for members of the bargaining unit was restricted by the provisions of the *Expenditure Restraint Act* (ERA) which received Royal Assent on March 12, 2009. In its view, the legislation provided for maximum increases for the bargaining unit as requested by the Union for the years 2007 through to 2010. The 13.5 per cent increase requested by the Union for 2011 was not indicated by the PSLRB study which, in the opinion of the Employer was flawed, and the Employer seeks to rely on a wage comparability study it commissioned from Deloitte Inc. and which purports to indicate that there are not significant compensation differences between members of the bargaining unit and similarly employed persons in the private sector. The Union contends that the Deloitte study is flawed and that preference should be given to the study conducted by the PSLRB.

This Board has been presented with conflicting detailed studies concerning the comparability of wages between members of the bargaining unit and positions in the private sector, and without hearing evidence as to how the studies were prepared, and the reliability of the results it is not

possible for this Board, at this time, to draw meaningful conclusions as to the extent, if any, of a wage deficiency. For this reason the Union's request for a 13.5% wage increase in June 2011 is denied.

In its submissions the Union advised that it is challenging the legality of the ERA in Court. Accordingly, nothing in this Award is intended as a commentary on the ERA or any provision thereof.

The Board awards the following:

Increase all rates of pay in Appendix A as follows:

June 21, 2007	2.3%
June 21, 2008	1.5%
June 21, 2009	1.5%
June 21, 2010	1.5%

As required these wage increases are to be paid retroactively.

5. APPENDIX D

Amend Appendix D as follows:

*APPENDIX D
MEMORANDUM OF AGREEMENT
APPLICABLE TO CERTAIN EMPLOYEES
IN THE GENERAL TECHNICAL GROUP,
WORKING ON ROTATING OR IRREGULAR BASIS
(COAST GUARD MARINE SEARCH AND*

*RESCUE (SAR) CONTROLLERS OF THE
RESCUE COORDINATION CENTRES AND
MARINE RESCUE SUBCENTRES AND
HOVERCRAFT PERSONNEL)*

The provisions of this collective agreement, with the amendments noted below, shall apply to Coast Guard Marine Search and Rescue (SAR) Controllers of the Rescue Co-ordination Centres and Marine Rescue Sub-Centres and Hovercraft Personnel working on a rotating or irregular basis.

*ARTICLE 25
HOURS OF WORK*

1. *Delete Clause 25.09 except 25.09 (c) and add as follows:*

25.09

For employees who work on a rotating or irregular basis, the normal hours of work of thirty seven decimal five (37.5) hours per week and seven decimal five (7.5) hours per day may be arranged so that employees are scheduled:

- (a) to work an average of thirty seven decimal five (37.5) hours per week;*
- (b) to work over a period not exceeding sixty-three (63) days;*
- (c) to work shifts of twelve (12) hours duration (except as may be otherwise agreed), where a shift is defined as the continuous duration of time between the employee's scheduled start time and the scheduled stop time;*
- (d) Notwithstanding the provisions of this article, it may be operationally advantageous to implement changes to the duration of a shift from those currently in place. Any such change may be advanced by either party and must*

be mutually agreed between the Employer and the majority of employees affected.

(e) to work, subject to operational requirements, consecutive shifts of not more than four (4) twelve (12) hour shifts where twelve (12) hour shifts are in place;

(f) to obtain an average of two (2) days of rest per week.

2. *The Employer will make every reasonable effort:*

(a) to avoid excessive fluctuations;

(b) to provide at least two (2) consecutive days of rest, except when days of rest are separated by a designated paid holiday that is not worked;

(c) to consider the wishes of the majority of the employees concerned in the arrangements of shifts within a shift schedule;

(d) to have each schedule posted at least fourteen (14) days in advance of its starting date. If an employee is given less than seven (7) days advance notice of a change in his/her shift schedule, the employee will receive a premium rate of time and one-half (1 ½) for work performed on the first shift changed. Subsequent shifts worked on the new schedule shall be paid for at the hourly rate of pay;

(e) to provide a meal break during the employee's full shift and, where operational requirements do not permit a meal break, the employee will remain at work and eat the meal on the job.

3. *Provided sufficient advance notice is given and with the approval of the Employer, employees may exchange shifts if there is no increase in cost to the Employer. Once an exchange of shifts has been approved, it will be the responsibility of the employees involved to report for duty in accordance with the approved exchange.*

4. *Employees to whom this memorandum applies shall be subject to clauses 25.10 to 25.13 of this collective agreement.*

6. **TERM OF THE COLLECTIVE AGREEMENT**

The term of the collective agreement shall be June 22, 2007 until June 21, 2011.

The parties are directed to prepare and execute a collective agreement in accordance with this Award. The Board will remain seized of all issues until a collective agreement is in effect.

Dated at Maberly, Ontario this 24th day of September 2009.

**Original Signed by
Original signé par**

David K.L. Starkman
Chairperson of the Board