

Date: July 12, 2012
File: 585-02-38

Public Service Labour
Relations Board

Before an Arbitration Board

BETWEEN

THE CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Bargaining Agent

and

THE TREASURY BOARD OF CANADA
Employer

Re: Request for Arbitration
Economics and Social Science Services (EC) Group

Before: Yvon Tarte, Chairperson and
William Krause and Guy Lauzé

For the Bargaining Agent: Peter Engelman

For the Employer: Cynthia Nash

Heard at Ottawa, Ontario
June 18 and 19, 2012

(1) The EC collective agreement expired on June 21, 2011. The Canadian Association of Professional Employees (“the Bargaining Agent”) filed notice to bargain on April 28, 2011.

(2) The Bargaining Agent and the Treasury Board of Canada (“the Employer”) bargaining teams met on Friday, June 17, 2011 to exchange proposals. The parties then met again on September 1, 2011 to discuss the proposals and sat down for negotiations on October 11, 12 and 13, November 22, 23 and 24 and December 13, 2011.

(3) Following these negotiating sessions, the Bargaining Agent requested arbitration on December 14, 2011 pursuant to section 136 of the Public Service Labour Relations Act (“the Act”). Along with its request, the Bargaining Agent provided a list of the terms and conditions of employment that it wished to refer to arbitration.

(4) By letter of December 28, 2011, the Employer provided its position on the terms and conditions of employment that the Bargaining Agent wished to refer to arbitration. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration.

(5) By letter of January 6, 2012, the Bargaining Agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration.

(6) The Terms of Reference of this Arbitration Board were set by the Chairperson of the Public Service Labour Relations Board (“the PSLRB”) on February 14, 2012 (2012 PSLRB 18).

(7) The parties, with the help of a PSLRB mediator appointed at their request, met in May 2012 to attempt to resolve their differences. Although quite a few issues were resolved during these mediation sessions, a full and final settlement on all matters was not reached.

(8) Prior to the hearings in this matter, the parties exchanged briefs which were submitted to the Arbitration Board.

(9) Pursuant to section 146 of the Act the parties were both given a full opportunity to present evidence and make representations at the hearings held in Ottawa on June 18 and 19, 2012.

(10) Following the hearings, the Arbitration Board met to discuss and consider the evidence and submissions of the parties as well as the factors enumerated in section 148 of the Act.

(11) The Arbitration Board believes that all the factors listed in section 148 of the Act must be considered in making its award and that none of the factors has more

importance than the other. Each factor must be looked at and applied to the circumstances of any given case by an arbitration board on the basis of the evidence presented to it.

(12) In this case while there does not appear to be significant recruitment and retention problems for employees in the EC group, there was evidence presented by the Bargaining Agent showing some lagging with internal and external comparators. Although the Employer denied the usefulness of that evidence, it did not present any evidence to the contrary.

(13) The factor contained in subsection 148(e) dealing with the state of the Canadian economy and the Government's fiscal circumstances is somewhat more problematic since the political voices on this issue give us a mixed message. Trying to get a firm grip on the state of the Canadian economy and the Government's fiscal circumstances is akin to squeezing jello. The end result is never satisfactory.

(14) In any event, the factors enunciated in section 148 must be taken into account by an Arbitration Board. They are not however shackles which take away the independence of this or any other Arbitration Board.

The Issues in Dispute and the Award

Article 20 – Designated Paid Holidays

(15) The Employer has proposed that the word "required" in the clause be changed to "scheduled" to more clearly indicate that the provisions are only applicable when an employee is scheduled to report for work.

(16) Furthermore, the Employer requests that language be added to the article to ensure that the minimum compensation of 3 hours at applicable overtime rates be available only once during an 8 hour period.

(17) The Bargaining Agent objects to these proposals stating that the word "scheduled" in this context is too restrictive and since the Employer controls the hours of work, there is no need to limit the amount of compensation in an 8 hour period.

(18) The Arbitration Board determines that clause 20.06 shall be renewed without change.

Articles 24, 25 and Appendix B – Severance Pay and Consequential Amendments

(19) The Employer proposes the deletion of severance pay provisions for cases of voluntary resignation and retirement. Severance pay would continue to accumulate for reasons of death, lay-off and termination for incapacity or incompetence.

(20) Under the Employer's proposal, employees would have certain options as to cash out of accumulated severance benefits. Finally the Employer offers additional increases of 0.25% in year one and 0.5% in year 3 of a 3 year agreement in exchange for the elimination of severance pay in resignation and retirement cases.

(21) The proposed amendments to Article 24 and Appendix "B" of the collective agreement are consequential to the proposed changes to severance pay in Article 25.

(22) The Employer points out that in the present round of bargaining, 9 collective agreements, covering more than 100,000 unionized employees, have been ratified, all of which have included the elimination of severance pay in resignation and retirement cases. Furthermore, the same severance benefits were eliminated for approximately 13,000 executives and non-represented employees.

(23) The Bargaining Agent suggests that the Employer has not properly costed out the negative financial effect of its proposal on members of the bargaining unit and as such it is patently unfair.

(24) The Bargaining Agent proposes the status quo or as a first alternative, a pay adjustment of 0.3% for the sole elimination of severance upon resignation or in the second alternative, an increase of 0.5% in year one and 1.0% in year three of a three year collective agreement.

(25) The Arbitration Board determines that the Employer's proposal and consequential amendments relating to severance pay shall be incorporated into the new collective agreement.

Article 28 Hours of Work and Overtime

(26) Article 28 of the collective agreement contains a subparagraph (28.11c) (ii) which limits overtime payments to 1.5 times the normal rate when the overtime is worked on a second day of rest at the request of the employee.

(27) These provisions were added to the collective agreement by the parties in 2004.

(28) The Bargaining Agent wants the subparagraph removed to better mirror other existing collective agreements in the public sector. The Bargaining Agent further argues that any additional costs brought about by the implementation of this proposal will be nominal and are totally within the control of the Employer who has the exclusive right to approve any request for overtime.

(29) The Employer argues that there is no need for the change. Bargaining Unit members receive double time for work performed on a second day of rest as long as the employee has also worked on his or her first day of rest.

(30) The Arbitration Board determines that subparagraph 28.11c) (ii) shall be deleted from the Collective Agreement.

Article 30 Travelling Time

(31) The Employer is proposing the addition of language to this Article to state that a period of work and travel which takes place over two days shall be deemed to have taken place on the day it starts.

(32) The Bargaining Agent submits that the status quo should be maintained. The changes proposed by the Employer would be unfair to employees who are required to travel on very long journeys over two days.

(33) The Arbitration Board determines that Article 30 of the collective agreement shall be renewed without change.

Appendix C

(34) The Bargaining Agent is proposing to change the life of variable work schedules so that they are extended from 28 days to 52 weeks.

(35) The language proposed is similar to the language found in the Financial Management Group collective agreement. The Bargaining Agent submits that the new language would be beneficial to the Employer and employees by giving them greater flexibility to deal with organizational goals and to meet family needs and other commitments.

(36) The Employer has concerns that these changes will be overly burdensome to administrators.

(37) The Arbitration Board determines that the changes to Appendix "C" of the collective agreement, proposed by the Bargaining Agent shall be incorporated into the new collective agreement.

Sabbatical Leave

(38) The Bargaining Agent is proposing the addition of a new appendix to the collective agreement dealing with sabbatical leave. The proposed leave for a period of 12 consecutive months would be funded primarily by the employee and more modestly by the employer.

(39) The Employer points to other provisions in the collective agreement as well as other policies which can now be used by employees to achieve the same results.

(40) The Arbitration Board determines that the Bargaining Agent's proposal dealing with sabbatical leave shall not be incorporated into the new collective agreement.

Classification Standard Review

(41) The Bargaining Agent proposes the inclusion of a new appendix which would require the parties to meet during the life of the agreement to review the current EC classification standard and guidelines.

(42) Under this proposal, impasses would be referred to the PSLRB which would issue, within a reasonable period of time as determined by the parties, a non-binding report.

(43) The Employer believes that the inclusion of an Appendix dealing with Classification Standard Review would be in violation of the clear provisions of Section 150 of the PSLRA.

(44) The Arbitration Board determines that the Bargaining Agent's proposal dealing with Classification Standard Review shall not be incorporated into the new collective agreement.

Article 53

(45) The Arbitration Board determines that the new collective agreement shall be for a period of 3 years and shall expire on June 21, 2014.

Appendix "A" – Pay Adjustments

(46) The Employer has proposed economic increases over the 3 year agreement as follows:

Effective June 22, 2011 : 1.5%
Effective June 22, 2012 : 1.5%
Effective June 22, 2013 : 1.5%

(47) As indicated in paragraph (25) of the award there would also be a 0.25% increase effective June 22, 2011 and a 0.5% increase effective June 23, 2013 as compensation for the elimination of severance pay upon resignation and retirement.

(48) During the hearing before the Arbitration Board, the Bargaining Agent proposed the addition of a 3.5% step to each level of the EC group pay scales as of June 22, 2011.

Once that 6th step in the pay grid has been added, the Bargaining Agent proposes economic increases over the 3 year agreement as follows:

Effective June 22, 2011 : 1.75%
Effective June 22, 2012 : 1.75%
Effective June 22, 2013 : 1.75%

(49) Given our comments earlier, in particular those contained in paragraph (12) of this award, the Arbitration Board determines that the economic increases for the EC group shall be as follows:

- a) Effective June 22, 2011 : 1.5%
- b) Effective June 22, 2012 : 1.5%
- c) Effective June 22, 2013 : the addition of a 3.45% step to the EC pay scales and the removal of the first step in each of those scales (the 3.45% represents the average of all increments in the EC pay scales).
- d) Effective June 22, 2013 : 1.5%

Given the Arbitration Board's determination in paragraph (25) of this award, the effective economic increases for the EC group will be 1.75% in year one and 2% in year three of the new collective agreement.

(50) The Arbitration Board shall remain seized of this matter for a period of two weeks from the date of this award in the event the parties encounter difficulties in its implementation. In such case, the Arbitration Board shall be advised forthwith of the difficulty and shall deal with the matter as expeditiously as possible.

Yvon Tarte

Ottawa, July 12 2012

For the Arbitration Board