Board file: 590-34-45519

In the matter of a Public Interest Commission established under

the *Federal Public Sector Labour Relations Act*

Between:

The Canada Revenue Agency

and

The Public Service Alliance of Canada

Before:	William Kaplan, Chair Tony Boettger, CRA Nominee Joe Herbert, Alliance Nominee

Appearances

For PSAC:	Morgan Gay Negotiator, PSAC
For Canada Revenue Agency:	Marc Bellavance Negotiator, CRA

The matters proceeded to a hearing held by Zoom on January 27, 2023.

Public Interest Commission Report

Introduction

1. This is the Report of a Public Interest Commission (PIC) established under the Federal Public Sector Labour Relations Act (FPSLRA) relating to the renewal of the collective agreement between the Public Service Alliance of Canada (Alliance) and the Canada Revenue Agency (employer). More than 35,000 employees are represented in the bargaining unit. As a result of the COVID pandemic, more than 95% of these employees have been teleworking (up from 8% pre-COVID).

2. It is fair to say that the recent history of the collective bargaining relationship between these parties has been contentious, and in this round, unproductive. This current bargaining began with a January 11, 2022, meeting and exchange of proposals. After that and in total the parties met on only 17 occasions – but face to face for just 18 hours – and they were able to reach agreement on only four small matters leaving some 200 unresolved. Obviously, it is our recommendation that these four items form part of any successor collective agreement.

3. From the Alliance's perspective, the employer has consistently demonstrated through the content of its proposals and general approach to bargaining that it has no interest in meaningfully addressing the key issues raised by the union; nor has it indicated any willingness to move off its positions including its various concessionary and therefore unacceptable demands. From the employer's perspective, the Alliance has refused to come to the table willing to bargain – except on its own terms and in pursuit of its own demands – and has engaged in surface bargaining. On September 1, 2022, the Alliance declared an impasse and requested the establishment of a PIC (although it invited the Chair of the Public Service Labour Relations and Employment Board to exercise her discretion and not appoint one here and elsewhere). The employer resisted the timing of the appointment of this PIC, asking instead that the parties be directed to resume their collective bargaining. The Chair rejected that request, finding that the parties were at an impasse and appointing this PIC but also directing mediation in December 2022. This mediation never began for reasons well known to the parties and discussed in the briefs and at the hearing. The only action that resulted from the putative mediation was the filing of an unfair labour practice complaint by the employer.

Legislative Context

4. We begin with our mandate: “As soon as possible after being established the public interest commission must endeavour to assist the parties to the dispute in entering into or revising a collective agreement.” Our work is also guided by the factors listed in section 175. They are as follows:

- **(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 public interest commission 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.

5. Suffice it to say that the Alliance was of the view – expressed in its submissions and at the hearing – that these criteria manifestly supported its bargaining proposals while the employer saw matters differently. What was especially notable was their completely divergent views about the state of the Canadian economy and the Government of Canada’s fiscal circumstances.

6. The Alliance asserted the economy was resilient and robust, federal debt loads were manageable, recovery was at hand, and that its proposals were necessary and appropriate to ameliorate against a serious loss of buying power resulting from the demonstrable rise in the cost of living. The Alliance also insisted that its economic asks were justified by the normative application of the replication principle and that meant following public sector settlements that were increasingly and meaningfully catching up to inflation.

7. The employer had a completely contrary assessment of the economic situation, pointing to gathering economic headwinds brought about by the COVID pandemic, inflation and the war in Ukraine, to just mention three factors, together with the real possibility of a recession. According to the employer's costings, the Alliance's economic demands came in at $1.2 billion or 52.8% of the bargaining unit group wage base. In the employer's view, the Alliance's collective bargaining settlement comparators were not relevant (and some of those that were relied upon by the Alliance such as from British Columbia were, in its view, inapplicable outliers). The proper application of relevant comparators – reviewed by the employer in its submissions and at the hearing – supported its proposed wage and other economic outcomes.

Discussion

8. Normally, PICs approach their task by making extremely specific or, sometimes, more general, recommendations about the proposals both parties have brought forward. They do this because by bringing their expertise to bear by commenting on the outstanding proposals they can through recommendations provide guidance to the parties about where a potential settlement might lie. From the Alliance perspective, its key priorities in this collective bargaining round were clear: very broadly stated, they fall under the rubric of memorialized collective agreement entitlements for continuing telework, enhanced job security and contracting out protections, substantial wage and other economic increases that ameliorated inflation, together with real market adjustments based on wages received by similar occupations, as well as work-life balance provisions to establish clear entitlements and expectations.

9. For its part, the employer sought a small number of collective agreement amendments to incorporate advancements in technology, and various changes designed to modernize language, achieve flexibility, enhance operations and service. The employer expressed mystification about the objections of the Alliance to some of its proposals given their normative common-sense nature, not to mention demonstrated need. Insofar as the Alliance proposals were concerned, the employer's main objective was to actually collectively bargain – without restriction – about all of the issues in dispute, once the union had winnowed its inordinate number of proposals and focused on real priorities, not miscellaneous aspirational asks – which it identified in its brief and at the hearing – or various untenable proposals (including a number that have been repeatedly raised and rejected in earlier rounds). The employer observed that had any real bargaining occurred, real dialogue about the pros and cons of all outstanding proposals could have taken place – including, for example, robust discussion about work from home that balanced the needs of employees, the employer and the taxpayer. Unfortunately, from management's perspective, this had not yet happened. Indeed, the employer suggested that this PIC use its second scheduled date

– the hearing was concluded on the first one – to see if it could assist the parties in focusing on priorities in mediation.

10. Both parties were, however, categorical that they were not actually looking for our guidance on the numerous specific outstanding issues. After all, there are more than two hundred in play. Instead, as just noted, the employer sought a recommendation that the parties return to bargaining, having reduced and refined their proposals to reflect actual priorities, while the Alliance sought no more and no less than the prompt issue of our Report, even in summary fashion, so that bargaining could then resume in a post-PIC context.

11. It is quite clear that with the limited bargaining that has taken place, the parties are no closer to a collective agreement than they were when this process began more than one year ago. It is also clear that neither party has signalled to the other anything that would lead it to believe that further bargaining – at this time – would be fruitful. There will be a return to the bargaining table, but the timing has to be right. Indeed, when at the conclusion to the hearing the employer suggested that the PIC convene a mediation session (on a second previously scheduled date in mid-February), the Alliance expressed the view – given the trajectory of the bargaining to date and the positions taken by the employer throughout – that this would not be useful. The Board considered that request after the hearing that was held on January 27, 2023 and concluded that mediation would not be productive at this time (and the parties were duly informed).

12. Our job, as mandated by statute, is to assist the parties in entering into or revising a collective agreement. At some point the time will be ripe. In the meantime, it is obvious to us that until there is a bargaining mandate refinement or reset – by both sides – or an outcome elsewhere in the public service, for instance at the common issues table in the core public administration, the current logjam will persist. (Informing this view, at least in part, is the fact that any agreement reached by these parties is subject to Treasury Board approval.) Put another way, it is our view that when both parties have identified their true priorities and have clear mandates, a negotiated agreement will be possible as that will set the stage for the parties to meaningfully address the (hopefully substantially reduced) list of issues in dispute.

13. Nevertheless, is apparent to us, having carefully reviewed and discussed all the outstanding proposals, that there are many areas of potential compromise and trade-off. But the logjam must be broken first – either by a decision of the parties to re-evaluate or by the introduction of some pressure into the system. Once either event has occurred, the meritorious proposals of both the Alliance and the employer can be focused and then bargained, either directly or through mediation.

DATED at Toronto this 14th day of February 2023.

"William Kaplan"

William Kaplan, Chair

See below.

Tony Boettger, CRA Nominee

See below.

Joe Herbert, PSAC Nominee

Employer Nominee Comments

I agree that the parties must return to the bargaining table with a sharper focus on their true priorities and clear mandates to achieve a negotiated settlement. Over the past year the Employer has made 13 proposals during the bargaining sessions to deal with the issues in dispute, but as noted in the report, virtually no progress has been made.

The employer is still faced with an unreduced compensation demand from the union of 53% of its wage base, costing over 1.2 billion dollars and over 200 other PSAC /UTE proposals on the table. The union continues to base its pay demand, in addition to inflationary concerns, using comparators that have been litigated and rejected three times in the last 10 years.

It is not realistic to expect progress in these negotiations under these conditions.

When the parties return to the table, any contemplation of wage increases or compensation changes will necessarily have to include consideration of all relevant factors including appropriate job comparators and inflation if there is to be a realistic chance of a successful conclusion.

ADDENDUM

I agree with the Report drafted by Mr. Kaplan, a balanced one that like other PIC Reports issued this round, ought to have been sufficient without any additional commentary. Specifically, I reject the comments that have been added by the CRA Nominee to the Commission, Mr. Boettger, attached hereto, and I do not intend to allow those comments to go unanswered. Those comments add no value to the Report and serve no apparent legitimate purpose. It is difficult to see the CRA Nominee's comments as anything more than an effort to promote a number he hopes is large enough to attract attention and provoke reaction, while simultaneously claiming that the CRA is not responsible for the outcome of the collective bargaining process to which it is a party. That is obviously not the proper role for a member of a Public Interest Commission, nor is it an appropriate addition to Mr. Kaplan's Report.

Prior to the Commission's hearing, the CRA unsuccessfully asked the FPSLREB to postpone the hearings. When that failed, the CRA used the hearing not to advance solutions to problems which might move the parties toward a settlement, but instead to attack the bargaining agent. Attacking the very party that one is tasked with meeting in negotiations immediately afterward, is seldom a strategy adopted by sophisticated, successful parties in collective bargaining. And now, as the Report is issued, by way an inappropriate addition to the Report from its Nominee, CRA claims to have no responsibility for the situation in which it finds itself.

Those experienced in collective bargaining know that it is perseverance and creative approaches that lead the way to solutions to bargaining problems, not antics like trying to provoke letters to newspaper editors. At this point, one would be forgiven the impression that CRA may be primarily interested in which direction the finger is pointed should bargaining break down, rather than trying to make that bargaining succeed.

Dated February 7, 2023.
Joe Herbert