

Public Service Labour Relations Board
Before a Public Interest Commission

BETWEEN

THE CANADIAN FEDERAL PILOTS ASSOCIATION

BARGAINING AGENT

AND

THE TREASURY BOARD OF CANADA

EMPLOYER

Re: Report of a Public Interest Commission
Aircraft Operations (AO) Group

Before: Yvon Tarte, Chairperson and
Frederick von Veh and Anthony Boettger, members

For the Bargaining Agent: Greg Holbrook

For the Employer: Cynthia Nash

Heard at Ottawa
October 29, 2012

- (1) On December 22, 2011, the Canadian Federal Pilots Association (the Bargaining Agent) requested conciliation to further the process of collective bargaining with the Treasury Board of Canada (the Employer).
- (2) This round of collective bargaining commenced on September 27, 2010, when the Bargaining Agent filed notice to bargain pursuant to section 105 of the Public Service Labour Relations Act (the Act).
- (3) Following the expiration of the old collective agreement on January 25, 2011, the parties exchanged proposals on February 15, 2011.
- (4) On several days during the months of February, June, October, November and December 2011, the parties met to bargain collectively.
- (5) The Aircraft Operations (AO) Group comprises positions that are primarily involved in inspecting, licensing and regulating aircraft, aviation personnel, air carriers, aircraft operators, airports and supporting facilities; determining certification; developing aviation legislation, standards and information and ensuring compliance with them; and piloting aircraft.
- (6) As of September 30, 2010, the AO bargaining unit contained 419 employees, the great majority of which work within the Department of Transport Canada. Approximately two dozen members of the bargaining unit are employed at the Transportation Safety Board.
- (7) As of September 30, 2010, the AO group was very much male dominant with a gender composition of 91.2% males and 8.8% females. More than half of the bargaining unit has less than 11 years of service in the federal government. The average age for members in the AO group is greater than the public service average despite their low number of years of service.
- (8) A Public Interest Commission (PIC) was established on February 28, 2012, to confer with the parties and endeavor to assist them in entering into or revising their collective agreement.
- (9) Prior to the hearing in this matter, the parties exchanged briefs on October 19, 2012. The briefs were submitted to the PIC in advance of the hearing.
- (10) The PIC met with the parties on October 29, 2012, at which time the parties were given a full opportunity to make representations.
- (11) Following the hearing, the PIC met to discuss and consider the evidence and submissions of the parties, in light of the factors enumerated in section 175 of the Act.

- (12) The PIC believes that all the factors listed in section 175 of the Act must be considered in making its recommendations 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 a PIC on the basis of the briefs, evidence and submissions presented to it.
- (13) The factors enumerated in section 175 of the Act deal with recruitment and retention, compensation comparability with internal and external comparators, the maintenance of appropriate relationships between classification levels in the public service, the need to establish fair and reasonable compensation and conditions of employment and finally the state of the Canadian economy. The PIC may also consider any other factor it considers relevant in any particular case.
- (14) In this case there does not appear to be significant recruitment and retention problems for employees in the AO group, nor was there evidence of disparity between the group and its external and internal comparators.

The Issues in Dispute and the PIC's Recommendations

Rates of Pay, Severance Pay and Allowances

- (15) As is often the case in collective bargaining, the major issues between the parties revolve around money. The Employer proposes economic increases over a 4 year agreement as follows:

Effective January 26, 2011 : 1.5%

Effective January 26, 2012 : 1.5%

Effective January 26, 2013 : 1.5%

Effective January 26, 2014 : 1.5%

It should be noted that the first year of the proposed agreement, from January 26, 2011 to January 25, 2012, is subject to the provisions of the Expenditure Restraint Act, 2009 that dictate an economic increase of no more than 1.5% for that period.

- (16) The Employer also 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.

- (17) Under the Employer's proposal, employees would have certain options as to cash out of accumulated benefits. Finally, the Employer offers additional increases of 0.25% in year 2 and 0.5% in year 4 of a 4-year agreement in exchange for the elimination of severance pay in resignation and retirement cases.
- (18) One of the proposed amendments to Article 23 of the collective agreement dealing with vacation leave is consequential to the proposed changes to severance pay. For a more detailed discussion of this issue, refer to paragraphs 48 and 49 of this report.
- (19) The Employer points out that in the present round of bargaining, 10 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 as well as for the Canadian Forces and RCMP members. Finally, arbitral awards for the EC, EL, TR and SR-C groups have eliminated severance pay provisions for voluntary resignation and retirement.
- (20) The Bargaining Agent accepts the economic increases proposed by the Employer as long as the Aircrew Aviation Allowance (AAA) and the Extra Duty Allowance (EDA) are rolled in to the pay grid as of January 26, 2012. These allowances are considered for pension purposes but do not form part of salary.
- (21) The Bargaining Agent argues that since "non-salary" allowances form a substantial part of the AO wage package, it is not acceptable to arbitrarily exclude them from the application of any increase to the rates of pay.
- (22) **The PIC recommends that the Employer's proposal on rates of pay and the elimination of severance pay be adopted in the new collective agreement. Current settlements and arbitral awards make it impossible to recommend otherwise.**
- (23) **The AAA was negotiated into the collective agreement in the late 1990's to deal with recruitment and retention issues. Several years later the allowance was equalized for all members in the bargaining unit and renamed as the Aviation Aircrew Allowance. Given the nature of this allowance, its universality and its existence for over 15 years, the PIC recommends that the AAA be renewed for the first 3 years of the new agreement at which time (on January 25, 2014) it should be rolled into the pay grid. The economic increase recommended for January 26,**

2014 (see paragraphs 15 and 17 above) would then apply to the revised pay grid.

- (24) The PIC further recommends that the EDA be renewed as is for the life of the new agreement.**
- (25) Finally, the PIC recommends that employees in the bargaining unit who hold classifications other than those found in the AO group should have their salaries and benefits determined by the collective agreement for those outside groups. For a more detailed discussion of this issue, please refer to paragraphs 62 to 66 of this report.**

Article 2 – Interpretation and Definitions

- (26) The Employer proposes that the reference to the “Public Service Terms and Conditions of Employment Regulations be removed from the article since the regulations in question no longer exist and have been replaced by the “Directive on Terms and Conditions of Employment”.
- (27) The Bargaining Agent proposes to incorporate into the new agreement, the Treasury Board Directive on Terms and Conditions of Employment that was in effect on April 1, 2009. The Bargaining Agent also proposes to add to the article a definition of what constitutes a higher classification level.
- (28) The PIC recommends that the language proposed by the Employer be adopted in the new collective agreement.**
- (29) The PIC also recommends that the remainder of Article 2 be renewed without change.**

Article 3 – Application

- (30) The Bargaining Agent again proposes that the April, 2009 Treasury Board Directive on Terms and Conditions of Employment be incorporated into the new collective agreement.
- (31) The PIC recommends that Article 3 be renewed without change.**

Article 18 – Hours of Work

- (32) The Employer proposes that the goalposts for normal hours of work be changed from 0700 to 1800 hours to 0600 to 2200 hours.

- (33) The Employer also proposes that the notice period that must be given to an employee whose normal hours of work it wishes to change, be reduced from 12 to 5 days.
- (34) The Employer is proposing these changes to give it more flexibility in scheduling hours of work and also to address the fact that some employees have requested flex hours outside the normal 0700 to 1800 hours of work.
- (35) The PIC recommends that the normal hours of work continue to be the hours between 0700 and 1800.**
- (36) The PIC also recommends that the notice period for a change in an employee's hours of work be reduced from 12 to 8 days.**
- (37) The PIC believes that the issue of flex hours outside the normal hours of work should be the subject of further negotiations between the parties and would be better dealt with at a later date as a MOU between the parties.**

Article 19 – Overtime

- (38) The Employer proposes that compensatory leave be scheduled as leave and/or paid in cash at the direction of the Employer or at the request of the employee and the discretion of the Employer.
- (39) The Employer also wishes to include a provision whereby it could direct an employee to take compensatory leave when it is of the opinion that the employee requires adequate rest before going back to work.
- (40) The PIC recommends that the language proposed by the Employer for the liquidation of compensatory leave be incorporated into the new agreement.**
- (41) The PIC also recommends that the remainder of Article 19 be renewed without change. The PIC believes that the safety issues raised by the Employer would best be dealt with at the local level in discussions between union and management.**

Article 20 – Travelling Time

- (42) Both the Employer and the Bargaining Agent propose changes to Article 20 dealing with travelling time.

- (43) The PIC recommends that Article 20 dealing with travelling time be renewed without change.**

Article 21 – Pay Administration

- (44) As it proposed for Article 2, the Employer again proposes that the reference to the “Public Service Terms and Conditions of Employment Regulations” be removed from the Article and be replaced by a reference to the “Directive on Terms and Conditions of Employment”.
- (45) The Bargaining Agent proposes the addition of a clause to the article to deal with situations where an employee agrees to perform the duties of a position with a lower pay level.
- (46) The PIC recommends that the changes proposed by the Employer dealing with the “Directive on Terms and Conditions of Employment” be incorporated into the new collective agreement.**
- (47) The PIC further recommends that the remainder of Article 21 dealing with Pay Administration be renewed without change.**

Article 23 – Vacation Leave

- (48) At the hearing the parties advised the PIC that they had signed a MOU dealing with vacation leave and that the only matter left to be dealt with was the consequential amendment to Article 23 as a result of the elimination of severance pay in resignation and retirement cases.
- (49) The PIC recommends that the consequential changes to Article 23 proposed by the Employer be incorporated into the new collective agreement.**

Article 25 – Other Leave with or without Pay

- (50) The Bargaining Agent proposes changes to this Article dealing with bereavement leave and leave for family related responsibilities.
- (51) The PIC recommends that the language proposed by the Bargaining Agent dealing with bereavement leave with pay be incorporated into the new collective agreement.**
- (52) The PIC further recommends that the language dealing with pay for family related responsibilities found in the Program and**

Administrative Services collective agreement be incorporated into the new AO agreement.

Article 43 – Call Back

- (53) The Employer proposes the application of a single call-back premium for each 8 hour period worked provided that the call-back period worked by the employee is not contiguous to the employee's normal hours of work.
- (54) The PIC recommends that changes to the call-back premium proposed by the Employer be incorporated into the new collective agreement. The PIC also suggests that the proviso for contiguous work in both clauses 43.01(b) and 43.02 be joined to the main body of the text by the use of the conjunction "and". By way of example, in clause 43.02 the new text would read in part: "... when the employee first commences work and provided that the period worked by the employee is not contiguous to the employee's normal hours of work".**

Article 47 – Professional Aviation Currency

- (55) The Employer proposes that the reference to a "Pilot Proficiency Check" be removed from Article 47 since not all employees in the bargaining unit are required to obtain a pilot proficiency check to carry out their duties. The Employer believes that this issue would best be discussed by the parties at meetings of the Steering Committee on the Professional Aviation Currency Policy.
- (56) The PIC recommends that Article 47 dealing with Professional Aviation Currency be renewed without change. The PIC believes that more comprehensive data showing the existence of a problem is required to justify the removal of the reference to a Pilot Proficiency Check from the collective agreement.**

Article 52 – Job Security

- (57) The Bargaining Agent proposes that reductions in the work force should be accomplished through alternation and attrition. The present clause refers only to attrition. Furthermore the Bargaining Agent proposes that specific references to the Employer's Policy on Classification System and Delegation of Authority as well as to the Workforce Adjustment Directive be made in the new agreement.

- (58) The PIC recommends that Article 52 dealing with Job Security be renewed without change.**

Article 54 – Duration and Renewal

- (59) The PIC recommends that the new collective agreement be in effect from January 26, 2011 to January 25, 2015.**

New XX – TI Terminable Allowance

- (60) The Bargaining Agent proposes that members of the AO bargaining unit classified as Technical Inspectors (TI) receive for the first year of the new collective agreement, an annualized allowance in the amount of \$9,118.
- (61) The PIC recommends that the language proposed by the Bargaining Agent concerning a TI terminable allowance not be incorporated into the new collective agreement.**

New – MOU dealing with the Terms and Conditions of Employment for certain employees of the Program Management (PM) and Technical Inspectors (TI) categories who are members of the AO Bargaining Unit

- (62) The Employer proposes a MOU that would deal with situations where employees who are not classified in the AO classification structure are nevertheless found to be members of the AO bargaining unit.
- (63) The Employer’s proposals in this regard stem from a Public Service Labour Relations Board (PSLRB) decision (2008 PSLRB 42) which dealt with the inclusion of one PM and two TI positions in the AO bargaining unit. Judicial review of that decision in both the Federal Court and the Federal Court of Appeal was denied.
- (64) The PIC believes that the parties should resolve these issues through continued negotiations. The PIC therefore recommends that the language proposed by the Employer not be included in the new collective agreement.**
- (65) The PIC finds unacceptable the present statutory framework which allows the PSLRB to determine in which bargaining unit a position will be while simultaneously giving the Employer the sole authority to determine that position’s classification. Such a disjointed system leaves us with situations where positions classified as PM and TI are now included in the AO bargaining unit.**

- (66) These issues go beyond the negotiations between the parties in this case and demand a review of the legislative framework that allows the existence of such a paradox.**

New – Appendix B – MOU – Salary Protection

- (67) The Bargaining Agent proposes the inclusion of a MOU that would protect the AAA and the EDA allowances when an employee is reclassified outside the AO group.
- (68) PIC recommends that the Bargaining Agent’s proposal dealing with salary protection not be included in the new collective agreement. The PIC wishes to point out that this issue was to some extent resolved by the suggested roll-in of the AAA on January 25, 2014. (see paragraph 23 above).**

Yvon Tarte, for the Public Interest Commission

Ottawa, November 9, 2012