

Public Service Labour Relations Board
Before a Public Interest Commission

BETWEEN

THE PROFESSIONAL ASSOCIATION OF FOREIGN SERVICE OFFICERS
BARGAINING AGENT

AND

THE TREASURY BOARD
EMPLOYER

Re: Request for the Establishment of a Public Interest
Commission
FS Group

Before: Yvon Tarte, Chairperson and
Michael McNamara and Jock Climie, members

For the Bargaining Agent: Ron Cochrane

For the Employer : Kevin Marchand

Heard at Ottawa
September 29 and 30,

2009

REPORT

(1) On December 23, 2008, the Professional Association of Foreign Service Officers, the Bargaining Agent (BA) requested conciliation to further the process of collective bargaining with the Treasury Board (TB).

(2) Prior to the request for conciliation, the parties had met to exchange proposals and discuss their positions on 14 different occasions from February to September, 2008.

(3) Discussions came to a halt in November 2008, when the TB communicated to the BA a final offer from which there would be no movement.

(4) Included in the BA's request for conciliation and the TB's response thereto were a number of items in dispute which will be dealt with later in this report.

(5) The Foreign Service (FS) Group comprises positions that are primarily involved in the planning, development, delivery and promotion of Canada's diplomatic, commercial, human rights, cultural, promotional and international development policies and interests in other countries and in international organizations through the career rotational foreign service.

(6) As of December 31, 2006, the FS bargaining unit contained 1,189 employees distributed in 11 different departments. However, 96% of the FS bargaining unit works for the Department of Foreign Affairs and International Trade and Citizenship and Immigration Canada.

(7) Approximately half (46.43%) of the members of the BA are posted abroad while the remainder (50.04%) work in Canada, principally in the National Capital Region.

(8) At the request of the parties, a Public Interest Commission (PIC) was established on June 2, 2009, to endeavour to assist the parties to the dispute in entering into or revising their collective agreement.

(9) Prior to the hearing in this matter, the parties exchanged briefs which were submitted to the PIC.

(10) The PIC met with the parties on September 29 and 30, 2009 during which, the parties were given a full opportunity to make representations. In addition, the PIC endeavoured, unsuccessfully, to help the parties reach an agreement.

The issues in dispute and the PIC's recommendations

(11) Article 3 Check-off – The TB has proposed that the check-off clause be amended to put on the BA, the responsibility to determine whether a member of the bargaining unit is a member of a religious organization whose doctrine prevents the member, as a matter of conscience, from making financial contributions to an employee organization.

The PIC recommends that the existing clause be renewed without change.

(12) Article 7 Suspension and Discipline – The BA believes that work performance issues such as a demotion should be included in the clause. As well, it requested that the notice period given to an employee who is required to attend a meeting covered by the clause, be increased from one (1) day to two (2) days.

The TB proposed that the period of time referred to in clause 7.05 following which documents relating to disciplinary action must be destroyed, should be automatically extended by the length of any period of leave without pay taken by the employee.

The PIC recommends that Article 7 be amended to include Demotions as defined in paragraph 12(1(c) of the Financial Administration Act. Furthermore the PIC recommends that the notice period contained in clause 7.01(a) be increased from one (1) day to two (2). Finally, the PIC recommends that the period of time referred to in clause 7.05 be automatically extended by the length of time of any period of leave without pay of three (3) months or more.

(13) Article 21 Sick Leave with Pay – The BA proposes that an employee who is eligible for sick leave but has no sick leave credits be granted leave without pay for the duration of their illness or injury. The PIC recommends that Article 21 be renewed without change. We do recognize that the BA’s proposal raises important issues that were discussed by the parties during negotiations and should be addressed again. Of interest on this issue is the Sketchley case heard in the Federal Court of Appeal ((2005) F.C.R. 392). This is a Canadian Human Rights Act case which deals with standards of review and discrimination. We therefore recommend that the matter be further discussed by the parties and resolved in an appropriate forum.

(14) Article 28 – Marriage Leave – During negotiations, the TB proposed that the marriage leave provisions of the collective agreement be replaced by new language giving employees a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay to be granted on the first day of the month following the employee’s second anniversary of service. The BA did not object to this proposal.

The PIC recommends that the existing marriage leave provisions of the collective agreement be replaced by the marriage leave clause proposed by the TB in its brief. This change would bring the FS collective agreement in line with many other Public Service collective agreements on this issue.

(15) Article 41 Harassment – The BA proposes that the clause be broadened to include any type of harassment. The changes proposed by the BA also deal with situations where the Deputy Minister is a respondent in a harassment complaint. The PIC recommends that the existing article be renewed without change.

(16) Article 46 Pay Administration – Recovery of Overpayments – The BA seeks an addition to the existing language to prevent burdensome recoveries of overpayments to the employees by the Employer.

The PIC recommends that the following language be added to the collective agreement:

“Where an employee, through no fault of his or her own, has been overpaid, the appropriate pay office will, before recovery action is implemented, advise the employee of the intention to recover the overpayment. Where the amount of overpayment is in excess of fifty dollars (\$50.00), and where the employee advises his or her local management that the stated recovery action will create a hardship, arrangements will be made by the employer with the appropriate pay office to limit recovery action to not more than ten per cent (10%) of the employee’s pay each pay period until the entire amount is recovered.”

(17) Rates of Pay – The BA initially proposed increases in rates of pay and restructuring to bring the FS rates of pay in line with certain comparables which appear to have been agreed to by the parties in the past. Of particular interest to the BA is the historical

comparability between the Foreign Service Development Program (FSDP) and the Management Trainee Program (MTP) rates of pay. The Expenditure Restraint Act (part of the Budget Implementation Act 2009) sets maximum rates of pay for employees at prescribed percentages for any 12 month period beginning during any fiscal year between 2006-2007 and 2010-2011.

Furthermore, section 23 of the Expenditure Restraint Act prohibits restructuring of rates of pay for any period that begins during the restraint period which is defined by the Act as beginning on April 1, 2006 and ending on March 31, 2011.

Given the very specific language of the Expenditure Restraint Act, the PIC has no choice but to recommend that the pay rates proposed by the TB in its brief (covering the period from July 1, 2007 to June 30, 2011) be adopted.

(18) Implementation – The TB requests that the time to implement the provisions of the collective agreement be set at 120 days. The BA disagrees.

Given that the parties cannot agree on these issues, the PIC recommends that the standard 90 day period set out in section 117 of the Public Service Labour Relations Act be applied and respected by the Employer.

Yvon Tarte
For the Public Interest

Commission

Ottawa, Ontario October 22, 2009