

BETWEEN

RESEARCH COUNCIL EMPLOYEES' ASSOCIATION

Bargaining Agent

and

NATIONAL RESEARCH COUNCIL OF CANADA

Employer

Request for Arbitration – Computer Systems Administration (CS) Group

Before: David Kwavnick, Chairperson, and Robert McIntosh and Peter Devitt, Members

For the Bargaining Agent: Joan Van Den Bergh

For the Employer: Russell MacCrimmon, Counsel

Heard at Ottawa, Ontario,
April 23 to 26, 2007

A number of matters not resolved by the parties at negotiation were referred to the Board. As a result of mediation efforts by the Board, a number of these issues were resolved by the parties.

The parties agreed to convert from “day” to “hours” and from “fractions” to “decimals” for the following articles as proposed by the employer:

- (a) Article 30 – Leave General
- (b) Article 31.1 – Vacation Leave Quantum Conversion
- (c) Article 31.4.1 – Vacation Leave Carry-Over as per current agreement
- (d) Article 31.5 – Vacation Leave Liquidation as per current agreement
- (e) Article 33 – Sick Leave as per current agreement
- (f) Article 37.17.2.1 – Family Related Responsibility Leave with deletion of the word “dependent”.
- (g) Article 35.17.2.3 - Family Related Responsibility Leave with no deletion of “granted on separate days”
- (h) Article 35.25 – Volunteer Leave
- (i) Article 35.26 – Personal Leave
- (j) Article 35.20 – Medical Appointments for Pregnant Employees
- (k) Article 36.5 – Variable Hours of Work, including sub-section 36.5.8.1 (g)
- (l) Article 44.5.2 – Pay Administration
- (m) Appendix C – Carry-Over of Vacation Leave Credits

The parties also agreed to the renewal of current language for the following provisions:

- (a) Article 39.24 – Overtime Meal Allowance
- (b) Article 44.5.4 – Pay Administration
- (c) Appendix B – Flexible Hours of Work

The parties also agreed to the following economic increases:

Effective December 22, 2004 – 2.25%

Effective December 22, 2005 – 2.40%

Effective December 22, 2006 – 2.50%

The parties also agreed to a three (3) year agreement with an expiry date of December 21, 2007.

A number of items were left to be decided by the Board. In deciding these items the Board took the view that the collective agreement between the Treasury Board of Canada and the Professional Institute of the Public Service of Canada in respect of the Computer Systems (CS) Group is a very important comparator. This does not mean that the Board will blindly apply the terms of that collective agreement without consideration of any special or particular circumstances of the parties.

The following items were decided by the Board:

- (a) **Articles 31.1.1.1 and 31.1.1.2** – Vacation Leave – the bargaining agent asked that the words “8 years” be changed to read “6 years”. The decision of the Board is that the current language be renewed.

- (b) **Article 35.18** – Marriage Leave – the bargaining agent asked that this provision be eliminated and replaced by a one-time grant of five days of annual leave for all employees in the bargaining unit. The decision of the Board is that this Article be retained unchanged.
- (c) **Appendix A** – Terminable Allowance – the employer asked that this provision be eliminated in favour of certain other payments. The decision of the Board is that this provision be renewed unchanged.
- (d) **Pay Scales** – CS 1 Level – the bargaining agent asked that the three bottom steps of the CS 1 pay scale be eliminated. The decision of the Board is that the three bottom steps of the CS 1 pay scale be eliminated.
- (e) **Lump Sum Payment or Signing Bonus** – The bargaining agent asked that each employee be granted a signing bonus of \$1000.00. The decision of a majority of the Board is that each employee in the bargaining unit be granted a lump sum payment of \$700.00 upon execution of a collective agreement.

In the view of a majority of the Board, certain observations should be made concerning the lump sum payment. The request by the bargaining agent was originally based on the indisputable fact that the employees had been denied the use of their money (i.e. the economic adjustments) as a result of delays in the process of arriving at a collective agreement. It was pointed out that the members of this bargaining unit have not had a general pay increase since December 2003. The position of the bargaining agent was that the employees were entitled to be compensated for this delay in the payment of their earnings.

During the discussion of this item before the Board, matters degenerated to the point where the parties were trading accusations of deliberate negligence, foot-dragging and so on. The lump sum payment was cast in a punitive light. From the point of view of the bargaining agent the payment became a form of punishment inflicted on a foot-dragging employer. The representative of the employer, on the other hand, argued that the bargaining agent bore at least some of the blame for the delay.

The Board wishes to make clear that the payment it has awarded has nothing to do with alleged foot-dragging or delaying tactics and is not intended to be punitive in any way. In the opinion of the Board there is no blame to be apportioned. A collective bargaining system in an organization such as the Public Service of Canada will necessarily involve a certain degree of complexity and complexity means delay. In the case of a separate employer such as the National Research Council the delays are especially long. Negotiation for Separate Employer Bargaining Units, it appears, are normally mandated by Treasury Board after the completion of collective bargaining for similar employees in the Public Service. The delays experienced by the parties are an unintended, unavoidable and unfortunate part of securing a workable regime of labour relations in the Public Service.

That said, the fact remains that the ultimate employer - not the National Research Council but the Government of Canada – has, since December 2003, enjoyed the use of monies properly belonging to the members of this bargaining unit. The ultimate employer was

able to use this money to retire maturing obligations or to reduce the amount of such obligations it had to roll over with the result that it realized savings in interest costs. The employees, on the other hand, were denied the use of that money. Perhaps some of them would have used the money to pay down their mortgages or reduce credit card balances and thus save themselves interest costs. Or, perhaps they would have done something else with the money. Exactly what they would have chosen to do with their money is irrelevant. The fact is that they were denied the use of their money and money has a time value.

In sum, the delays inherent in the system of collective bargaining have had the entirely unintended consequence of conferring a benefit upon the employer at the expense of imposing certain costs upon the employees. The lump sum payment awarded by the Board is intended as a simple matter of equity, it is an attempt to remedy these unintended consequences.

May 16, 2007

David Kwavnick
Chairperson