Date: 2020-06-23

File: 590-13-40821

IN THE MATTER OF
A PUBLIC INTEREST COMMISSION
established under the *Federal Public Sector Labour Relations Act*
between the Public Service Alliance of Canada (the Alliance),
as Bargaining Agent,
and the Communications Security Establishment (CSE),
as Employer,
with respect to the employees of the Employer, excluding directors, persons above the rank of director, employees involved in the planning, development, delivery or management of human resources, and such other person employed in a managerial or confidential capacity.

Indexed as
Public Service Alliance of Canada v. Communications Security Establishment

Before: Morton Mitchnick, Chairperson;
Gary Cwitco (Alliance Representative); and
Benoit Chartrand (Employer Representative)

For the Bargaining Agent: Hassan Husseini and Omar Burgan

For the Employer: Nadia Desmeules and Bruce Grant

Heard via video-conferencing on June 2nd and 3rd, 2020.

[1] This is the Report of a Public Interest Commission appointed pursuant to the provisions of the *Federal Public Sector Labour Relations Act* to assist the Public Service Alliance of Canada and the Communications Security Establishment (CSE) in the renewal of their existing collective agreement.

[2] The mandate of the CSE is specified in sections 15 to 20 inclusive of the *Communications Security Establishment Act* which came into force August 1, 2019. That mandate in broad terms is:

> ***Mandate***
>
> ***15 (1)*** *The Establishment is the national signals intelligence agency for foreign intelligence and the technical authority for cybersecurity and information assurance.*
>
> ***Aspects of the mandate***
>
> ***15 (2)*** *The Establishment's mandate has five aspects: foreign intelligence, cybersecurity and information assurance, defensive cyber operations, active cyber operations and technical and operational assistance.*

[3] The bargaining unit is growing quickly and stands currently at some 2800 highly-skilled employees, made up of Intelligence Analysts, Engineers, Computer Scientists, Physicists, Mathematicians, and Financial and Administrative staff.

[4] Previously a part of the Department of National Defence, effective November 16, 2011, CSE became a "division or branch" of the Federal Public Service listed in Schedule I.1 of the *Financial Administration Act (FAA).* From that date onward, CSE met the *FAA* section 2 definition of a "department" and the Chief, CSE, became CSE's Accounting Officer in Schedule VI, Part II, of the *FAA.* CSE was and continues to be a Separate Agency under Schedule V of the *FAA*. It is not a part of the Core Public Administration for which Treasury Board is the employer. CSE is part of the federal public administration (FPA) as that term applies to all of the organizations specified in Schedule I, Schedule IV or Schedule V of the FAA. Notwithstanding that Separate Agency status, the CSE is required by section 14 of its *Act* to conclude any collective agreement in accordance with the mandate provided to it by Treasury Board.

[5] The parties' most recent collective agreement expired on February 9th, 2019. The parties have a well-functioning collective bargaining relationship and, as in previous

rounds, once again engaged for portions of the current round in what is generally known as “interest-based bargaining”. In all, the parties met on 15 separate days, culminating in an Employer Comprehensive Offer for Settlement in June 2019. The Alliance advises that that Offer was roughly modelled on the pattern of settlements achieved by Treasury Board and PIPSC for the Core Public Administration and other Agencies’ bargaining units, and was unacceptable to the Alliance. The Alliance accordingly filed the present application for a Commission to be appointed.

[6] The role of the Commission in this instance is a relatively limited one. The amount of money going toward Wage Increases is, as elsewhere for the Alliance, highly contentious. The parties’ Briefs provide detailed submissions on that, but, although latterly updated as would be expected, those Briefs were prepared at a time prior to the onset of the COVID pandemic, and all of the events and government responses that have flown from that. Obviously, the impact of these developments on any future settlements will be determined elsewhere, and ultimately provide the parties with their mandate for bargaining here. Similarly, there are a number of what are referred to as “common issues” outstanding at this table as at others, and these too will have to be addressed by the parties once these issues have run their course and been resolved elsewhere. For these “local” parties, the issues separating them are not extensive, and the Commission will comment on what, from our engagement with the parties, appear to be the principal obstacles to ultimate settlement.

[7] The parties, with their usual constructive relationship, have agreed that the Market Allowance at some point in the agreement will be rolled into Salary, as long sought by the Alliance; and that at some point all employees will be at one of the levels of a new six-step salary grid that is sought to be introduced by the employer. The Alliance has taken and continues to take the position that the roll-in of the Allowance should be effective as of the start of this agreement; the employer, however, is looking now to perhaps Year 2 or 3 for that to happen, being on a *pro*spective basis only. The Alliance is willing to agree to such delay, but only on the condition that its members be indemnified for the cost of that delay by having the general increases, whenever they come to be determined, be applied to the Allowance in the way they would have been had the roll-in occurred at the outset. That, the Alliance indicates, is the way the general increases have been applied by the employer in every preceding round, with the single exception of the round constrained by the *Expenditures Restraint Act*, and

the Alliance is firm in its position that the current circumstances do not justify another exception.

[8] For its part, the employer as noted is seeking to introduce a new compensation structure, in the interest of minimizing the kinds of problems and delays that all parties in the federal public service have had to deal with under Phoenix. The current system provides salary ranges defined only by minima and maxima, and that has resulted in no fixed pattern for the determination of salaries falling in between, particularly at the stage of hiring. Under Phoenix, that requires a great deal of manual inputting, and is hugely problematic now. The employer accordingly seeks through the course of this collective agreement to convert all employees, divided into "sub-groups", onto the kind of step-grid (in this case having 6 levels) generally found elsewhere in the federal public sector. To make the transition of the staff onto this new, uniform grid more attractive, the employer is proposing that employees move across to either the matching step on the grid (which is likely to be rare) or to the next highest level. As an interim step, however, to soften that added cost impact, the employer wishes to create effectively an 11 or 12-step grid (depending on the band) rather than a 6-step grid, so that employees in this transitioning move are bumped up a maximum of 1.75% rather than 3.5%. (On their anniversary date employees would continue to move up the mandated 3.5%.) The employer wishes this interim grid to continue as long as it takes to get all employees onto a level that forms part of the new 6-step grid, which to a degree would likely carry it into the term of the next collective agreement. The Alliance feels strongly that this 11/12 step "interim" not have a life beyond the end of this collective agreement, and to enable that would require that any employee, by the expiry of the agreement not yet at one of the 6 levels of the grid, be bumped up whatever portion of a further 1.75 % it would take to get the employee to such level. The employer strongly disputes the need or justification for such a second cost burden being assumed by it in the implementation of a pay system that it considers to be much to the benefit of all.

[9] Those are the positions that currently prevent the parties from reaching a resolution of these two principal issues – and notwithstanding this excellent relationship, the degree of entrenchment appears remarkably high. To assist the parties in finding a way through it, the Commission, after much deliberation and dialogue, would suggest the parties consider the implementation of the new pay structure as follows:

1) The transitioning of employees off of the “interim” grid need not be completed by the end of this collective agreement, and accordingly no “second bump”, insisted on by the Union for this transformation, would be required. Rather, employees who after the first bump are still not at one of the 6-step levels, would be "green-circled" at their own rate until such time as natural movement on the grid takes them to one of the 6-step levels, whether or not that process extends beyond the term of this new collective agreement.

2) The employer's proposed interim 11/12-step grids will be set out in a Memorandum of Understanding so that it is clear to employees, managers and pay administrators alike what the source of every employee's rate is. One of the Pay-notes accompanying the new 6-step grid in the collective agreement would advise that for employees not currently slotted at one of the steps in the (6-step) grid above, their rate is set out in the expanded grid contained in the MOU entitled "Transitional Step-grid". That Memorandum would expressly state that it does not form part of the collective agreement, and that it expires once the last employee to whom it applies has moved onto one of the (6) grid steps in the collective agreement. (Other Pay Notes would have to be reviewed as well, for example with respect to movement on a promotion, to ensure consistency with the new pay structure being put in place.)

[10] That would achieve the employer’s systemic transformation goal, in a time frame and at a cost that it indicates is acceptable to it. To complete the deal, however, the timing of the MA roll-in needs to be considered as well. That timing once again the Alliance is prepared to leave in the hands of the employer; but only on the condition that its members be made whole for any delay beyond the start-date of the collective agreement that the employer considers to be necessary. We recognize that at the present moment the employer’s hands are strictly tied with respect to the outlay of money, but if the employer is looking for a path to settlement, our sense is that there

will come a time when the employer will have to decide whether the amount of money involved warrants the continued existence of this issue as an impediment.

[11] All of which we respectfully leave in the hands of the parties.

Dated at Toronto, this 23rd day of June, 2020

"M.G. Mitchnick"
For the Public Interest Commission