**IN THE PROVINCE OF NEW BRUNSWICK**

**IN THE MATTER OF THE *PUBLIC SERVICE LABOUR RELATIONS ACT*, RSNB, P-25**

**AND**

**IN THE MATTER OF A CONCILIATION BOARD HEARING ON A RENEWAL OF A COLLECTIVE AGREEMENT**

**BETWEEN:**

**HER MAJESTY IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK AS REPRESENTED BY TREASURY BOARD**

**Employer**

**- and -**

**THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1190, General Labour and Trades**

**Union**

# MAJORITY REPORT OF THE CONCILIATION BOARD

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|---|---|
| **DATES OF HEARING:** | July 25, 26 and 27, 2019<br>at Fredericton, New Brunswick |
| **APPEARANCES:** | For the Employer - Anne Craik<br>For the Union - Samuel LeBlanc, Gabrielle Ross-Marquette |
| **CONCILIATION BOARD:** | G.L. Bladon, Chair<br>Ron MacLeod – Employer Nominee<br>Rick MacMillan – Union Nominee |
| **DATE OF REPORT:** | July 24, 2019 |

## AWARD

### INTRODUCTION

1. This Conciliation Board was established pursuant to section 51(2) of the *Public Service Labour Relations Act* on March 8, 2019. Its purpose is to assist the parties in concluding the renewal of a Collective Agreement which expired December 15, 2017. The bargaining unit of approximately 2000 full-time, part-time and casual employees is funded by the Employer through 1530.83 positions.

The Occupational Category definition reads:

> The Operational category is composed of occupational groups engaged in the performance of a craft or of unskilled work in the fabrication, maintenance and repair activities, in the operation of machines, equipment and vehicles and in the provision of postal, protective, correctional, personal or domestic services.

And further, the General Laborer and Trades Occupational Group Definition reads:

> The performance of craft, semi-skilled and unskilled activities involved in providing a variety of services.

The unit contains 41 classifications.

### OUTSTANDING ISSUES

2. The negotiating history between the parties reflects 18 days of direct bargaining and two additional days of bargaining with the assistance of a Conciliator from June 1, 2017 through November 15, 2018. As a result, there are 37 matters outstanding at the commencement of this Conciliation Board hearing. Despite the efforts of the parties and the members of the Board, no further issues were resolved after 2½ days of negotiating. As to the atmosphere surrounding the negotiations, the following from the Union's Conciliation Board Submission is pertinent:

The Union would also like to clarify that the reason why there are 37 outstanding items before this Board is because the Employer has, to this day, never provided a response to monetary proposals made by the Union and further indicated that it did not have a proper mandate to negotiate monetary items during negotiations.

The overwhelming majority of the issues have a monetary component.

## GENERAL WAGE INCREASE

The Union's proposal:

"December 16, 2017 – 5%
December 16, 2018 – 5%
December 16, 2019 – 5%
December 16, 2020 – 5%"

3. The Employer's proposal:

"(1) **General Economic Increases (GEI) as follows:**

| Date | GEI |
|---|---|
| June 16, 2018 | 0.5% |
| December 16, 2018 | 0.5% |
| June 16, 2019 | 0.5% |
| December 16, 2019 | 0.5% |
| June 16, 2020 | 0.5% |
| December 16, 2020 | 0.5% |
| June 16, 2021 | 0.5% |
| December 16, 2021 | 0.5% |

**Term: 48 months**
New Collective Agreement to expire December 17 [sic], 2021

(1) **Wage rates adjusted to inflation.**

In addition to the 1% annual general economic increases (0.5% every 6 months), the Employer is prepared to offer additional wage adjustments of ***up to 1% per year*** on the condition that:

- the parties agree on improvements or better outcomes to be realized during the term of the collective agreement (improvements could include performance improvements* that results in better cost or quality of outcomes or contract language changes that allow for improved quality, effectiveness, flexibility or efficiency of service); and

- the improvement benchmarks* mentioned above are met.

> This proposal reflects the fact that the Province has heard the union's concerns about wage increases keeping up with inflation. The proposal also reflects the fact that the employer, the employees and the unions must do better, together, to ensure the success and sustainability of public services, which in turn will help pay for better wage increases.
>
> ***For improvement benchmarks rather than contract language changes, the parties will need to agree on data sources, data collection, baselining current performance, establishing measurable and achievable improvement targets, and possibly other considerations as identified by the parties. The improvement benchmarks would need to be measurable (i.e. clearly demonstrable) and achievable.*" [Emphasis added]

4. Unfortunately, the Employer's proposal is not realistic. It is contingent, as it concedes, on the parties' further negotiations and agreement on the "improvement benchmarks" identified by the Employer, notwithstanding that the former collective agreement expired some 19 months ago. The Employer's so-called "proposal" may, at best, be taken to indicate the financial ability of the Employer to accommodate an overall 2% wage increase per year over 4 years.

5. The Employer's "proposal" is novel. Putting it forward for the first time at the Conciliation Board stage of bargaining handicaps the Employer's negotiating team as it tends to erode the trust, so essential to successful collective bargaining, built up between the parties to this point.

## MONETARY PROPOSALS

6. Since its release in 1976, evaluation of monetary proposals in the public service context begins with the principle set out in *Re British Columbia Railroad Co. and The General Drivers and Helpers Union, Local 331* – unreported (June 1, 1976) – Owen Shime, Q.C. There the

arbitrator set out the fundamental principle that *public employees should not be required to subsidize the community or the industry by accepting substandard wages and working conditions*. The components used to address public service wages are, firstly, the acknowledgment that public employees wages should be adjusted to reflect the increase in the cost of living, and secondly, that public employees should benefit from increases in national productivity. With this principled foundation, conciliators and arbitrators are driven to an objective result "based on a more scientific analysis". See *Re CUPE, Local 1252 and New Brunswick*, unreported (December 9, 2000), Donald MacLean, at para. 24.

7. As we see in this instance, there is no debate on the cost of living statistic. The Employer notes in the previous ten-year period from 2007 to 2017, that the average NB CPI increase was 20.16% and the employee wages in this unit increased by 19.24%; *i.e.*, approximately 2% per year. This result no doubt underlies the Employer's "proposal" here of 1 + 1% subject to undefined "improvement benchmarks".

8. The Union's proposal, in part, notes Statistics Canada CPI increases for 2017 at 2.30% and 2018 at 2.10%. The averaged forecast of three national banks indicates a CPI increase for 2020 of 1.6% and for 2021 of 2.2%. This approximate 2% unanimity is the starting point. Both parties recognize that CPI increases are a *maintenance standard*. See *Re RBC Railway, supra*, at page 10. As the Employer states in its submission to this Board at p. 21. "The cost of living adjustment the Employer is proposing will ensure wages will continue to keep pace with inflation".

9. The second recognized component of the public service employee's wages is the employee entitlement to benefit from increases in national productivity – the rationale being that public employees have a legitimate claim on advances in the wealth enjoyed by the community as a whole. The "scientific" foundation used today in making this measurement is the Gross Domestic Product ("GDP").

10. Statistics Canada notes an increase in the New Brunswick – GDP of 2% in 2017 and 0.1% in 2018. The growth forecast for 2019 and 2020 averages 0.7% and 0.9% respectively. The New Brunswick Department of Finance projects GDP increases of .06% in 2019 and 1.1% in 2020.

11. The Employer did not address this second component directly, but it did make the "ability to pay" argument. The position taken by the Employer, rightly in my view, is that it cannot be looked upon as having unlimited deep pockets because it is in a position to raise taxes, directly or indirectly, to cover the cost of providing public services. While some funding choices made by the government are understandably political, when one considers that 40% of the government expenditure is wages, some appreciation for the government's ability to pay must play a part in the overall analysis. As one arbitrator put it "One must not accept the Employer's 'ability to pay' argument without careful scrutiny, but it is a factor which, like others, must be considered and given the appropriate weight in the circumstances" – *NSGES Union and Nurses Union and NS*, 2001 (unreported) Susan Ashley, and see *Re Halifax (Regional Municipality) and I.A.F.F., Local 265* (1998), 71 L.A.C. (4$^{th}$) 129 (QL), (Thomas Kuttner, Q.C.).

12. The Employer argues, in part, that its ability to increase wages is constrained by the fact that New Brunswick is "among the highest in overall tax rates in the nation". And while there has been some improvement from 2017 to 2018 generating a surplus of $67M for the March 31, 2018 fiscal year, the long-term forecast remains challenging. For example, the Employer submits that New Brunswick, when compared to Nova Scotia and Saskatchewan, had the highest net debt per capita at $18,300.00 in 2018 and that is expected to rise to $19,000.00 in 2019. Credit rating agencies have downgraded New Brunswick's financial standing. Notwithstanding some economic pluses in 2018-2019, the overall economic picture for this province is not strong.

13. Other scientific yardsticks used in the analysis of monetary proposals suggested in the Shime decision are (i) comparison with wage rates paid to other groups employed by the same public-sector employer, *i.e.*, internal comparisons; (ii) comparisons with similar kinds of jobs in the public sector, *i.e.*, external comparisons in the same industry; and (iii) comparisons with workers performance in similar jobs in the private sector. In my view, these three comparators are dangerous. The objective statistics are only as good as the accuracy of the comparisons. The Employer does provide a table of internal comparisons which indicates that the wages paid to the same classification of members of this local are roughly consistent with the wages paid to employees in other CUPE locals in the spring of 2017. At the same time, it acknowledges the dilemma:

> The Employer conducted a comparison of the most populous classes in CUPE 1190 with other comparable jobs in government (Parts I, II and III). The job matches below in the table could be described as **"fair" matches** meaning that there is ***some similarity*** in the responsibilities and educational requirements of the position but there are also some ***differences***. They are ***not an exact match or even a good match*** and this could account in part to the differences in the wages. There are no Mechanic or Bridgeworker positions to compare to in the rest of government. [Emphasis added]

14. With respect to external comparators, the Union provides two tables for municipal workers in New Brunswick for two classifications from which it concludes that the labourers in this CUPE local make $3.98 less an hour than the average wage rate paid to labourers in 23 New Brunswick municipalities. The Operator classification in this unit is paid $4.46 per hour less than the average wage rate paid to operators in 17 New Brunswick municipalities. However, like the Employer, the Union acknowledges "...it can be quite difficult to identify a single comparative group". The Employer did not attempt the exercise for external workers.

15. The comparison drawn by the Union for the last collective agreement period from 2014 to 2017 for wage increases in Atlantic Canada shows an increase of 2.5% in Nova Scotia, 9% in PEI, and 5% in Newfoundland in contrast with the 4% increase in New Brunswick.

16. When comparisons with New Brunswick private industry was undertaken by the Union, the result reflects that the wages of this bargaining unit in 2017 in every classification examined were less than those in the private industry by as much as 30%. But once again, the Union prefaces its conclusion by saying "It is very difficult to identify wage information from the private, for profit companies because of the level of secrecy and competition present in the sector, mostly stemming from the bidding process".

17. Comparators are useful in illustrating trends perhaps, but they must be carefully examined to determine what weight is to be given to them in the assessment of the particular monetary proposals.

18. **The Board recommends** the following **General Economic Increase** within a 4-year Collective Agreement from December 16, 2017 to December 15, 2021:

| | | |
|---|---|---|
| December 16, 2017 | - | 3% |
| December 16, 2018 | - | 3% |
| December 16, 2019 | - | 1.5% |
| June 16, 2020 | - | 1.5% |
| December 16, 2020 | - | 1.5% |
| June 16, 2021 | - | 1.5% |

19. Counting broadly, 35 items of the unresolved 37 issues have a financial impact. Each has, directly or indirectly, a benefit that favours employees for the most part. It is unrealistic to expect resolution of all 35 items in bargaining for the next four-year collective agreement. That does not mean that those monetary issues should be ignored, but it is the view of this Board, having dealt with the General Economic Increase, that the monetary proposals by the Union or the Employer should only generate comments from the Board where the status quo is substantially out of line with the general treatment of the particular issue or there is a compelling reason to make a change. In this respect, the Board will address the following items: Articles 22.07, 24.03, 27.01, 29.03, 32.06, 32.07, 34.04 and 39.01.

**Article 22.07 – Call-Back**

20. The Employer proposes a change in the language of this Article to clarify the nature of the call-back. Apparently, confusion has arisen as to whether the call-back is limited to a piece of equipment or for a period of time. The Board recommends the Employer's position that "working on a second piece of equipment during a call-back does not constitute a second call-back shift".

**Article 24.03 – Safety Boots**

21. The Collective Agreement provides a boot allowance of $100/year for employees required to wear safety boots. The Union seeks an increase to $175. The sole comparators provided are those from the Union. They illustrate an average boot/clothing allowance across Atlantic Canada of $241. The Board recommends the adoption of the Union proposal to increase the boot allowance to $175.

**Article 27**

22. The Union proposes that the Employer provide 50 copies of the Collective Agreement upon signing and sufficient copies of the Agreement in booklet form. The Employer advised that the Collective Agreement in English and French is posted online. While the Board is aware that some Union members may not have direct and immediate online access, posting the Collective Agreement online in 2019 provides reasonable employee access to the Agreement. The Board recommends the Employer's proposal.

**Article 29.03 – Tool allowance**

23. The current Agreement provides for a tool allowance of $250 annually. The Atlantic Canada comparators provided by the Union average $435. The Board recommends an increase in the tool allowance from $250 to $350.

**Article 32.06 - 32.07 - Seniority**

24. Seniority is fundamental to Union organization and has been adopted universally. The Board recommends the Union proposal for vacant positions as set out in the Union brief at page 44, in the absence of conflict with the *Civil Service Act*.

**Article 34.04 – Classification Steering Committee**

25. Classification issues are initially addressed by the Joint Management Committee. If there is a lack of consensus the matter is referred to a two-person Joint Steering Committee. However, where the Joint Steering committee members are unable to reach a decision, the matter (of significant importance to both parties) is left in limbo. Obviously, an ultimate dispute resolution mechanism is required. The Board recommends the Union proposal for such a mechanism be adopted. The cost is relatively minimal.

**Article 39.01(b) – Job Security**

26. The current layoff provisions in the expired collective agreement favours long-term employees. It results in a two-tiered bargaining unit which is not only unfair in this context, but can impede the collective bargaining process. The Union's proposal to delete the date contained in the previous collective agreement is recommended by the Board.

**Article 31, 32 and 33 – Winter Maintenance Program**

27. The Winter Maintenance Program was addressed at length before this Board and, particularly, in the deliberations of the Union. The current program seems to have broken down. As a result, it requires the parties, represented by those employees and supervisors working **on the ground**, to clearly understand and respect the views of the other side. Both parties need to commit to mutually develop a program for the 2019-2020, winter season and thereafter.

**Casuals**

28. The Union devoted a substantial part of its presentation on the current status of the casual employee and the need for change. There appears to be inconsistencies in the treatment of

casuals from one department to another. There is a distinction between casuals with less than six continuous months of service and those greater than six months of service which impacts wages. There is a similar distinction between the wages of casuals and regular employees.

29. The Union argues the incontrovertible premise that there should be *equal pay for equal work*. The Employer points out, however, that a change in the casual status quo would have a significant impact on the Employer's bottom line.

30. The treatment of casuals requires a sincere appreciation by the Employer that there should indeed be *equal pay for equal work* and a corresponding appreciation by the Union of the cost of change. Steps must be taken by both parties to standardize the treatment of casuals in this bargaining unit.

31. The foregoing report of this Conciliation Board is respectfully submitted.

Dated at Fredericton, NB, this 24th day of July 2019.

G. L. BLADON
CHAIR

"Rick MacMillan"

I agree, ~~I do not agree~~
Rick MacMillan
Union Nominee

"Ron MacLeod"

~~I agree~~, I do not agree
Ron MacLeod
Employer Nominee

Here is a list of the Employer's team members:

Julie Scovil – Finance and Treasury Board
Kevin Richard – Department of Transportation and Infrastructure
Jeffrey Sharpe – Finance and Treasury Board
Carrie Miles – Finance and Treasury Board
Timothy Houlahan – Department of Energy and Resource Development
Martin MacMullin – Tourism, Heritage and Culture
Reynald Jalbert – Service New Brunswick
Mura Toner – Finance and Treasury Board
Rian Hogan – Finance and Treasury Board

**Union Bargaining Team**

| Name | Title | Address |
| --- | --- | --- |
| Samuel LeBlanc | Negotiator, Provincial Coordinator, CUPE 1190 | 91 Woodside Lane Fredericton, NB E3C 0C5 |
| Gabrielle Ross-Marquette | Research Representative, CUPE National | 91 Woodside Lane Fredericton, NB E3C 0C5 |
| Brent Wiggins | President, CUPE 1190 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Joey Kelly | Secretary-Treasurer, CUPE 1190 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Heather Holland | First Vice-President, CUPE 1190 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Michel Losier | Recording-Secretary, CUPE 1190 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Maurice Gullison | Area Vice-President, CUPE 1190, Sub-Unit8 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Alison Bolstridge | Area Vice-President, CUPE 1190, Sub-Unit 11 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Tony Ogden | Area Vice-President, CUPE 1190, Sub-Unit 7 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |
| Alex Goodine | Area Vice-President, CUPE 1190, Sub-Unit 1 | 97 St Mary's Street, Fredericton, NB BA 2R7 |
| Jean-Guy Richard | Area Vice-President, CUPE 1190, Sub-Unit 3 | 97 St Mary's Street, Fredericton, NB E3A 2R7 |