SUBMISSION

of the

PUBLIC SERVICE ALLIANCE OF CANADA

IN THE MATTER OF THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD and a dispute affecting the PUBLIC SERVICE ALLIANCE OF CANADA and HIS MAJESTY IN RIGHT OF CANADA AS REPRESENTED BY THE TREASURY BOARD, in relation to the employees of the Employer in the

Border Services Group

To the Federal Public Sector Labour Relations and Employment Board
Public Interest Commission:

Chairperson
William Kaplan

Representative of the interests of the Employees
Joe Herbert

Representative of the interests of the Employer
Jean-Stéphen Piché

April 10 & 22, 2024

Appearances

Morgan Gay, Negotiator

Darren Pacione, Research Officer

PSAC Bargaining Team Members:

Brea Baresinkoff

Michael Fraser

Marjorie Gavel

Adam Laliberté

Jacqueline Monk

Lisa Morgan

Keith Palmer

Shane Paul

Stewart Saunderson

Jordan Smith

TABLE OF CONTENTS

PART 1 - INTRODUCTION 5
The Bargaining Unit 6
Negotiations History 11
PART 2 - OUTSTANDING ISSUES 23
NEW ARTICLE EARLY RETIREMENT FOR FB WORKERS 24
NEW PAID MEAL PERIOD 34
APPENDIX “A” RATES OF PAY AND PAY NOTES 38
RECRUITMENT AND RETENTION: VACANCIES, OVERTIME, AND LABOUR MARKET COMPETITIVENESS 57
ARTICLE 27 SHIFT AND WEEKEND PREMIUMS 71
ARTICLE 24 TECHNOLOGICAL CHANGE 74
NEW ARTICLE/APPENDIX: ALTERNATIVE WORK ARRANGEMENTS 83
ARTICLE 17 DISCIPLINE 88
APPENDIX G MEMORANDUM OF AGREEMENT WITH RESPECT TO ADMINISTRATIVE SUSPENSIONS AND REMOVAL OF SECURITY CLEARANCE PENDING INVESTIGATIONS 90
ARTICLE 20 ~~SEXUAL~~ HARASSMENT AND ABUSE OF AUTHORITY 100
ARTICLES 25 HOURS OF WORK 107
ARTICLE 60 ALLOWANCES 122
NEW APPENDIX: MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT OF EMPLOYEES IN THE BORDER SERVICES (FB) GROUP WORKING AS HEARINGS OFFICERS 138
NEW ARTICLE: FIREARM PRACTICE TIME 140
NEW ARTICLE: FIRING RANGE FEES REIMBURSEMENT 140
ARTICLE 34 VACATION LEAVE WITH PAY 145
ARTICLE 2 INTERPRETATION AND DEFINITIONS 149
ARTICLE 7 NATIONAL JOINT COUNCIL AGREEMENTS 151
ARTICLE 13 EMPLOYEE REPRESENTATIVES 152
ARTICLE 14 LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS 156
ARTICLE 18 GRIEVANCE PROCEDURE 159
ARTICLE 19: NO DISCRIMINATION 161

ARTICLE 28 OVERTIME 162
ARTICLE 30 DESIGNATED PAID HOLIDAYS 168
ARTICLE 32 TRAVELLING TIME 173
ARTICLE 33 LEAVE – GENERAL 176
ARTICLE 36 MEDICAL APPOINTMENT FOR PREGNANT EMPLOYEES 179
ARTICLE 37 INJURY-ON-DUTY LEAVE 181
ARTICLE 39 MATERNITY-RELATED REASSIGNMENT OR LEAVE 185
ARTICLE 42 CAREGIVING LEAVE 190
ARTICLE 43 LEAVE WITH PAY FOR FAMILY-RELATED RESPONSIBILITIES ... 192
ARTICLE 46 BEREAVEMENT LEAVE WITH PAY 196
ARTICLE 52 LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS 199
ARTICLE 58 MEMBERSHIP FEES 202
ARTICLE 59 TOOL-UP/TOOL-DOWN 206
ARTICLE 61 PART-TIME EMPLOYEES 209
ARTICLE 63 PAY ADMINISTRATION 210
NEW ARTICLE: NEW OFFICERS AND RECRUITS 212
NEW ARTICLE: WELLNESS DAY 214
NEW ARTICLE: COMPASSIONATE LEAVE 215
NEW ARTICLE: WORK OF THE BARGAINING UNIT 216
NEW ARTICLE: STUDENT EMPLOYMENT 220
NEW ARTICLE: MEDICAL APPOINTMENTS 227
APPENDIX C WORKFORCE ADJUSTMENT 231
APPENDIX D MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO IMPLEMENTATION OF THE COLLECTIVE AGREEMENT 245
APPENDIX N MEMORANDUM OF AGREEMENT BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO BILL C-20 247
APPENDIX O LETTER OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO WORKPLACE CULTURE 248
~~APPENDIX P MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO ARTICLE 41 LEAVE WITHOUT PAY FOR THE CARE OF FAMILY AND VACATION SCHEDULING~~ 250

MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO THE FIREARM TRAINING PARTICIPANT SELECTION 251

NEW APPENDIX MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO NAME TAGS 256

NEW APPENDIX MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO DIVERSITY AND INCLUSION IN THE WORKPLACE 259

DAY IS A DAY 260

PART 3 - EMPLOYER PROPOSALS 264

ARTICLE 2 INTERPRETATION AND DEFINITIONS 265

ARTICLE 7 NATIONAL JOINT COUNCIL AGREEMENTS 266

ARTICLE 10 INFORMATION 267

ARTICLE 14 LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS 268

ARTICLE 17 DISCIPLINE 269

ARTICLE 18 GRIEVANCE PROCEDURE 270

ARTICLE 19 NO DISCRIMINATION 271

ARTICLE 20 SEXUAL HARASSMENT 272

ARTICLE 24 TECHNOLOGICAL CHANGE 273

ARTICLE 25 HOURS OF WORK AND APPENDIX B – MEMORANDUM OF UNDERSTANDING (…) WITH RESPECT TO THE VARIABLE SHIFT SCHEDULING ARRANGEMENTS 274

APPENDIX B MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO THE VARIABLE SHIFT SCHEDULING ARRANGEMENTS 277

ARTICLE 27 SHIFT AND WEEKEND PREMIUMS 281

ARTICLE 28 OVERTIME 282

ARTICLE 28 – OVERTIME AND APPENDIX L – MEMORANDUM OF UNDERSTANDING (…) PAID MEAL PREMIUM 283

APPENDIX L MEMORANDUM OF AGREEMENT BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO PAID MEAL PREMIUM 284

ARTICLE 28 – OVERTIME AND ARTICLE 30 – DESIGNATED PAID HOLIDAY .. 286

ARTICLE 30 DESIGNATED PAID HOLIDAY 288

VARIOUS ARTICLES EXTRA DUTY WORK PERFORMED FROM A REMOTE LOCATION 290
ARTICLE 33 LEAVE, GENERAL 295
ARTICLE 34 VACATION LEAVE WITH PAY 296
ARTICLE 41 LEAVE WITHOUT PAY FOR THE CARE OF FAMILY 298
ARTICLE 46 BEREAVEMENT LEAVE WITH PAY 299
ARTICLE 55 STATEMENT OF DUTIES 300
ARTICLE 65 DURATION 301
APPENDIX C 302
WORKFORCE ADJUSTMENT 302
APPENDIX D MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO IMPLEMENTATION OF THE COLLECTIVE AGREEMENT 339
APPENDIX J MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA IN RESPECT TO LEAVE FOR UNION BUSINESS: COST RECOVERY 341
APPENDIX O LETTER OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO WORKPLACE CULTURE 343
APPENDIX P MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO ARTICLE 41 LEAVE WITHOUT PAY FOR THE CARE OF FAMILY AND VACATION SCHEDULING 345
NEW APPENDIX MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO A JOINT REVIEW ON EMPLOYMENT EQUITY, DIVERSITY AND INCLUSION TRAINING AND INFORMAL CONFLICT MANAGEMENT SYSTEMS 346
PART 4 - SUMMARY 348

PART 1 - INTRODUCTION

The Bargaining Unit

The Border Services (FB) bargaining unit comprises 9,025 employees. The bargaining certificate was issued by the Public Service Staff Relations Board on February 21st, 2007.

When the FB bargaining unit was created in February 2007[1], the primary criterion applied by the Federal Public Sector Labour Relations and Employment Board in determining inclusion in the bargaining unit was administration and enforcement of the law in the context of both the Customs Act and Excise Act. All employees covered by the FB bargaining certificate work for Canada Border Services Agency (CBSA). The vast majority are peace officers as defined in the Criminal Code of Canada.[2]

To Quote the Canada Gazette, the FB bargaining unit:

includes positions that have, as their primary purpose, responsibility for one or more of the following activities:

1. determining the admissibility of people or goods entering Canada;
2. post-entry verification of people or goods that have entered Canada;
3. arresting, detaining or removing those people who may be in violation of Canada's laws;
4. investigating the illegal entry of people or goods;
5. conducting intelligence activities related to the monitoring, inspection or control of people or goods entering Canada;
6. developing Canada Border Services Agency operational directives to be followed in carrying out the above activities; and
7. the leadership of any of the above activities.[3]

[1] Treasury Board (Canada Border Services Agency) v. Public Service Alliance of Canada, 2007, PSLRB 22 (Exhibit 1)
[2] Criminal Code R.S.C., 1985 c. C-46 s.2. Online: https://laws-lois.justice.gc.ca/eng/acts/c-46/page-1.html#h-115011 (Exhibit 2)
[3] Government Notice (Treasury Board Occupational Group Definition) C. Gaz. 2006. I. 512. (Border Services Group Definition) Online: https://gazette.gc.ca/rp-pr/p1/2006/2006-03-11/pdf/g1-14010.pdf (Exhibit 3).

CBSA is a law enforcement agency, in fact it is the second largest armed law enforcement agency in Canada—only the RCMP is larger.[4] Union members in the FB bargaining unit work in law enforcement. Based on data from the CBSA's 2023 Year in Review, workers in the FB bargaining unit protected Canadians from a myriad of illegal guns and deadly drugs. For example, these workers:

- Effected over 13,255 weapon and firearms seizures, an increase of 75% from 2022, which kept more than 21,923 weapons and 810 firearms off our streets.
- Effected 8,212 illegal drug seizures, and in total seized over 50,800 kg of tobacco, cannabis, narcotics, opioids, and chemicals, representing a 35% increase from 2022.
- In collaboration with local police, the Royal Canadian Mounted Police, port authorities and insurance fraud and theft associations, we intercepted 1,573 stolen vehicles in Canada before they were shipped abroad, compared to 1,348 in 2022.
- Welcomed nearly 73.7 million travellers into Canada so far this year (2023), approximately 46% more than in 2022.
- Collected $32.7 billion in taxes and duties

This work is summed up by CBSA President O'Gorman in December 2023:

> Every single day, the Canada Border Services Agency welcomes travellers and processes goods, supports our immigration system, and stops illegal guns and deadly drugs from entering the country. As we celebrate CBSA's 20th anniversary, I want to thank border services officers and all employees across the country and around the world for their steadfast commitment to keeping our communities safe and our economy strong. [5]

Employees in the FB bargaining unit carry out a vast range of duties associated with the administration and enforcement of the law, including: surveillance; intelligence work; the apprehension of individuals who have entered Canada illegally; the performing of escorted removals of detainees out of Canada and back to their countries of origin; ensuring commercial trade compliance; the conducting of investigations work and intelligence analysis; the development of policy recommendations in the context of the

[4] Overview: President transition 2022: https://www.cbsa-asfc.gc.ca/transparency-transparence/pd-dp/tb-ct/pres/2022/overview-apercu-eng.html

[5] 2023 Year in Review: CBSA welcomed more travellers while protecting Canadians from illegal guns and deadly drugs - Canada.ca and 2023 Year in review: Accomplishments by the numbers (cbsa-asfc.gc.ca)

enforcement and administration of customs, excise and immigration law; performing targeting duties that include the verification of ship and flight manifests in an effort to apprehend individuals that have been identified with criminal and/or terrorist activity; representation with respect to legal proceedings concerning detention reviews, appeals and dispute resolution sessions before the Immigration and Refugee Board; collaboration with other law enforcement, intelligence and security agencies in joint operations. (Exhibit 4)

Border Services Officers (BSO) represent a majority of the workers in the bargaining unit. These employees work at airports, land border and marine ports of entry, and at CBSA's commercial and postal operations. BSO's enforce over 90 acts, regulations, and international agreements on behalf of federal departments, agencies, the provinces and territories. BSO have the power to seize and arrest and are required to undergo regular Control and Defence Tactics (CDT) training as a condition of employment. In 2006 the Government of Canada announced that BSO's working in land border and marine environments would be equipped with firearms. This arming initiative has also come to include Inland Enforcement Officers, Intelligence Officers, and Investigators, all three groups also being required to undergo regular CDT training. As of 2007, no other population of enforcement personnel in Canada enforces as many laws as do FB employees at CBSA.[6]

As is the case with any population working in a law enforcement capacity, the work performed by a significant majority of employees in the bargaining unit requires exposure to danger and, of course, they worked on the frontline of the COVID-19 pandemic. Yet despite the vital role played by FB bargaining unit employees in ensuring that Canada's laws are observed and its borders secure, and as frontline employees that have processed and interacted with hundreds of thousands of individuals at airports and land borders throughout the COVID pandemic, the terms and conditions of employment of employees in the FB bargaining unit are inferior compared to those of other enforcement

[6] Northgate Group Corp, *A View From the Frontlines Officer Safety and The Necessity of Sidearms,* January 2006, p. 17. Available online: https://www.ciu-sdi.ca/wp-content/uploads/2011/02/Northgate.pdf (Exhibit 5)

personnel both within the federal public service (the RCMP in particular), and among the broader armed law enforcement community.

Some of this can be attributed to the fact that many of the duties performed by members of the bargaining unit were introduced as recently as 14 years ago or even sooner, such as CDT and the introduction of firearms. The fact that these workers were part of a much larger bargaining unit (Program and Administrative Services) prior to 2007, a bargaining unit wherein current FB employees represented a small fraction of the represented employees, could also be argued as being at least partially responsible for the lack of parity with other workers in the broader armed law enforcement community.

However, it is imperative the Public Interest Commission understand that the CBSA is an armed law enforcement organization. While the Union will amplify CBSA's comparability to the RCMP and argue for parity with the RCMP with respect to a number of provisions and entitlements, it is also key that the Commission see that indeed CBSA continues to describe itself as a law enforcement agency. In CBSA President O'Gorman's **'Overview: President Transition 2022'** briefing CBSA is described as the second largest law enforcement agency in Canada.[7] Further, in archived corporate documents on audits and evaluation reports, an Audit of Leave published by the CBSA in April 2014, reported in no vague terms that the operational comparability to policing services:

> "The CBSA context is different from most public organizations: it is a geographically dispersed, *armed law enforcement organization* operating 24 hours a day, seven days a week."[8]

Again, in 2016, then CBSA Vice-President Martin Bolduc's testimony before the Standing Senate Committee on National Security and Defence in 2016, he refers to the CBSA as an "*armed law enforcement organization*" responsible for "*ensuring Canada's security*", and a "*valued partner of the RCMP and other law enforcement organizations*."[9]

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[7] Overview: President transition 2022: https://www.cbsa-asfc.gc.ca/transparency-transparence/pd-dp/tb-ct/pres/2022/overview-apercu-eng.html

[8] CBSA, Audit of Leave (Exhibit 6)

[9] Standing Committee on National Security and Defence, March 21, 2016, p. 2: https://sencanada.ca/en/Content/Sen/committee/421/secd/52441-e (Exhibit 7)

Again, more recently, the Internal Audit and Program Evaluation Directorate's September 2017 Evaluation of the CBSA Arming Initiative report (modified last in Feb 2019) pointed to this key finding:

> *With the transition to steady-state completed in March 2017, documents and feedback from interviewees have identified potential opportunities for improvement to the Defensive Tactics Program and to the Agency as an armed law enforcement organization*.[10]

The Union submits that there can be no doubt whatsoever that employees in the FB bargaining unit today perform duties that correspond entirely with those performed by workers employed by other Canadian law enforcement agencies.

On January 16, 2024, the Pacific region welcomed the Minister of Public Safety Canada, the Honourable Dominic LeBlanc, for a tour of the Vancouver International Airport Air Cargo Commercial Operations and Designated Safe Sampling Area (DSSA). The Minister thanked employees for keeping Canadians safe. Following the tour, the Minister expressed his appreciation for the Agency's work, sharing on social media that border services officers "are keeping our communities safe by intercepting contraband such as toxic drugs and firearms before they reach our streets. To all CBSA officers and employees - thank you for everything you do to keep Canadians safe."

The Union also submits that it is in the interests of all parties – the employer, the Union's members, the federal government and indeed all Canadians – for workers in the FB bargaining unit to be afforded the same working conditions as other Canadian law enforcement personnel. It is the employer's failure to recognize and embrace this concept, coupled with the employer's refusal to negotiate solutions to on-going workplace problems, that led the Union to declare impasse and file for conciliation in the fall of 2023.

[10] Evaluation of the CBSA Arming Initiative (Exhibit 8)

Negotiations History

Notice to Bargain was served under section 105 of the *Federal Public Service Labour Relations Act* on February 21st, 2022. The parties met in nine sessions for a total of 24 days of negotiations meetings.

The Union declared impasse when the Employer demonstrated no willingness to either address on-going problems in CBSA workplaces, or to agree to same terms and conditions of employment that are standard for other Canadian law enforcement workers, including those employed elsewhere in the federal public service.

This is only the 5th round of negotiations for this group. The Union's goal in this round has been to negotiate fair and reasonable improvements to working conditions in an effort to address on-going problems in the workplace, and to bring terms and conditions of employment for employees in the FB bargaining unit in line with those of workers engaged in similar employment elsewhere in the Canadian labour market. The Union will demonstrate that most of the changes being proposed are commonplace in the broader law enforcement community. These proposed changes address a well-founded belief within the FB group that bargaining unit working conditions in certain critical areas are well below standards that exist for other unionized workers doing similar work elsewhere in Canada.

In many cases, the solutions offered by the Union reflect what the federal government has already agreed to for other bargaining units found within the Ministry of Public Safety. This double-standard has been a source of considerable frustration among PSAC members at CBSA, namely that the Treasury Board has refused to agree to many of the solutions proposed by the Union that it has agreed to for workers in its employ. In other cases, the solutions offered by the Union reflect terms and conditions of employment that can be found elsewhere within the Canadian public sector.

The main objectives of the Union in this round of negotiations are three-fold:

- First, the Union seeks to address the gap in terms and conditions of employment that exists between the FB group and the broader law enforcement community in Canada.
- Second, improve protections for FB members in the context of CBSA's heavy-handed managerial culture.
- Third, to fix problems that plague CBSA workplaces.

Labour relations are extremely poor between the parties.

Since January of 2013 there have been well over thirty work refusals at CBSA work locations.

There is a virtual mosaic of litigation filed by the PSAC at present against CBSA and Treasury Board concerning the FB bargaining unit, including an appeal before the Occupational Health and Safety Tribunal Canada, health and safety litigation before the federal courts, two complaints filed with the Workplace Safety and Insurance Appeals Tribunal, a Section 133 complaint filed with the PSLRB, two on-going human rights complaints filed with the Canadian Human Rights Commission, a freeze-violation complaint (Section 107) filed with the PSLRB and a case going before the Supreme Court of Canada.

Thousands of grievances have been filed against the Employer by employees or their Union since 2019, with approximately 1,500 at the fourth level. Even after consultation, the union can wait over a year for a reply (the deadline is 20 days) and is currently waiting on over 150 final level responses.

Respect and fear of reprisal form two dominant themes in ongoing workplace audits and surveys. For example, a Fall 2019 Report of the Auditor General of Canada on Respect in the Workplace, which the Union will also elaborate on in rationale relative to its abuse

of authority proposal, is also important to flag this critical issue here in the introduction. Recently, and in the context of committee debate about abuse of authority in the context of a different employer, then-CBSA President Ossowski was asked: “To what extent are you providing the leadership required to ensure that in future, the Office of the Auditor General would be able to cite you as a model to be followed in terms of managing the working environment for your employees?”

Then-CBSA President Ossowski responded:

> “I want to reassure you that all the management cadre in the organization is committed to this. We hold our managers to a higher standard than employees. We're providing the support and training. We're actively monitoring this. As I mentioned, we're going to be doing an audit on ourselves on this matter in the coming year.
>
> We're also looking at other mechanisms. We've got a heat map process, where we're looking to see where the hot spots are so we can dive in quickly. We're looking at using a third-party firm, using artificial intelligence with the Department of Justice to understand where there might be some of those areas that we need to dive into quickly.
>
> This is a full-court press, as far as I'm concerned. We are showing leadership.”[11]

And while the testimony of the President at this Public Accounts Committee must be read in totality (linked in footnote 10), the Union argues that if these are the positions of the then-President of the organization then it is imperative that this is reflected at the bargaining table and the collective agreement.

Despite these commitments on the part of the former CBSA President, these issues persist. Indeed, the last comprehensive Public Service Employee Survey conducted in 2022 continues to paint a persisting bleak picture indeed for the FB group. Many respondents in front-line positions who participated in the survey indicated that:

<u>Harassment:</u>

[11] President of CBSA, John Ossowski on January 28, 2021 at the Public Accounts Committee (Exhibit 9)

- Have you been the victim of harassment on the job in the past 12 months?
    - Yes (Public Service: 11%; CBSA: 20%) – CBSA is nearly double. Higher than 2020 for CSBA (16%).
- From whom did you experience harassment on the job? Individuals with authority over me.
    - Yes (Public Service: 59%; CBSA: 65%) – Higher at CBSA.

Discrimination

- Have you been the victim of discrimination on the job in the past 12 months?
    - Yes (Public Service: 8%; CBSA: 15%) – Nearly double at CBSA.
- From whom did you experience discrimination on the job? Individuals with authority over me.
    - Yes (Public Service: 75%; CBSA: 77%)

Senior Management

- Senior management at CBSA lead by example in ethical behavior
    - Most positive answers total to less than 50%
- I feel I can initiate a formal recourse process (e.g., grievance, complaint, appeal) without fear of reprisal.
    - Most positive or least negative answers (Public Service: 56%; CBSA: 42%).
    - Least positive or most negative answers (Public Service: 25%; CBSA: 40%)
- I have confidence in the senior management of my department or agency.
    - Most positive or least negative answers (Public Service: 64%; CBSA: 40%).
    - Least positive or most negative answers (Public Service: 21%; CBSA: 44%)
- they do not feel they get training needed to do their jobs (only 55% recorded a positive answer; in this public service it's 73%)
- that their workplace is not psychologically healthy (less than 50% recorded a positive answer compared to 68% in the broader public service)
- are unsatisfied with the agency.

(Exhibit 10)

Six years ago, a comparable survey was also conducted by the Office of the Auditor

General of Canada between 6 June and 5 July 2018. In the OAG's Fall 2019 report--Respect in the Workplace—detailed results, which are also cross-referenced in the Harassment and Abuse of Authority section, show that at CBSA more than one third (35%) of surveyed respondents (n = 6090) agreed that:

> "If an employee in my workplace was affected by harassment, discrimination, or violence from another employee or management, the employee would fear reprisal as a result of making a complaint."[12]

Further, at CBSA, more than one half (55%) of surveyed respondents (n = 6090) agreed that "civility and respect are serious of significant concerns" and, at CBSA, that about two thirds (66%) of surveyed respondents (n = 6090) agreed that organizational culture is a serious or significant concern.

In the OAG report, CBSA agreed with, indicated an accounting for the implementation of Bill C-65, and pointed to actions taken as of Fall 2019 relative to the three recommendations of the OAG:

- CBSA should develop and implement comprehensive strategies to address harassment, discrimination, and workplace violence. Each strategy should be based on risks and be supported by action plans with clear accountabilities and performance monitoring for continual improvement;
- CBSA should complete and document the results of their analyses to support decisions when handling harassment, discrimination, and workplace violence complaints; and
- CBSA should always inform employees of informal processes available for resolving complaints of harassment and workplace violence.

In addition, CBSA's Internal Audit and Program Evaluation Directorate recently published its September 2020 Follow-up Audit of Professional Standards. Among the key findings CBSA agreed with concerned the necessity to address "gaps in the design of the CBSA investigation process" and "limited quality control (supervisory review and approval)"

[12] OAG's Fall 2019 report--Respect in the Workplace
https://www.oag-bvg.gc.ca/internet/English/parl_oag_201911_01_e_43530.html#hd2a

relative to management led investigations.[13] The rationale of the Union's discipline proposal further cross-references and addresses the findings of the audit.

Thus, clearly there is widespread unhappiness amongst PSAC membership at CBSA, particularly amongst front-line personnel – a demographic that represents a significant majority of employees in the bargaining unit. This is the broader context within which this round of negotiations has taken place.

Finally, CBSA continues to struggle with vacancy, recruitment, and retention challenges. In fact, the Customs and Immigration Union (CIU) has been very vocal about CBSA understaffing as it emphasizes this point publicly and before a series of Parliamentary committee hearings:

- CIU—January 18, 2024—Border Services in Saint John to shift to weekday, daytime only operations: "CBSA has given up" says union.[14]
- CIU—December 7, 2022—Hire more border officers, solve border delays: PSAC and CIU launch national campaign.[15]
- CIU—October 21, 2022—ArriveCAN: Border officers were never consulted, says CIU National President to House Committee.[16]
- CIU—September 28, 2022—Border Services: CIU National President urges federal government to address 'severe deficit' in personnel.
- CIU—July 22, 2022—Urgent action needed to address border delays: Automation is not the solution.[17]

For example, after CIU President, Mark Weber, testified in June and September 2022 at the House of Commons Standing Committee on International Trade (CIIT), the Committee, in March 2023, published a report entitled "The ArriveCan Digital Tool: Impacts on Certain Canadian Sectors." Recommendation #4 of the Report stated:

> That the Government of Canada enhance safety and security, reduce delays and backlogs, and improve processing times at Canadian ports of entry through considering the **recruitment of additional Canada Border Services Agency**

[13] CBSA. Internal Audit and Program Evaluation Directorate. Follow-up Audit of Professional Standards. September 2020 (last modified Mar 22, 2021): https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2020/ps-np-eng.html (Exhibit 11)
[14] https://www.ciu-sdi.ca/saint-john-cbsa-has-given-up/
[15] https://www.ciu-sdi.ca/solve-border-delays-psac-and-ciu-launch-national-campaign/
[16] https://www.ciu-sdi.ca/ciu-national-president-address-deficit-personnel/
[17] https://www.ciu-sdi.ca/urgent-action-needed-to-address-border-delays-automation-is-not-the-solution/

> **officers** to serve at international bridges, maritime ports, airports and other ports of entry.[18]

In the Government Response, the Department of Public Safety and Emergency Preparedness stated, with respect to Recommendation #4, that the Government agrees with this recommendation. The Department wrote:

> Given the increase in demand for travel in the post-pandemic environment, the CBSA prioritized the recruitment of new BSO recruits to fill gaps caused by attrition, to respond to the increase in demand for service and to address other emerging issues. It also established a comprehensive recruitment program to recruit, train and develop future BSOs, focused on addressing workforce gaps, employment equity groups, bilingual applicants and to promote a diverse and inclusive workforce.
>
> In addition, the CBSA actively hires Student Border Services Officers (SBSOs) to work alongside BSOs during peak periods to meet increased volumes at international airports, postal processing centres, and telephone reporting centres nationally.[19]

Next, on October 20, 2022, at the House of Commons Standing Committee on Government Operations and Estimates (OGGO), CIU President Weber, testified with respect to ArriveCan cost investigations:

> What defies reason the most is that all of this is going on while our border services are facing a severe staffing crisis. To say that there is a deficit of between 2,000 and 3,000 border officers at this very moment is not an exaggeration. By choosing to sink dozens of millions of dollars into ArriveCAN while its border services' workforce is understaffed and overworked, the federal government is simply gambling with Canada's ability to maintain a safe and properly functioning border.[20]

On March 6, 2023, in response to CIU's estimate of a 2,000 to 3,000 frontline personnel deficit at the OGGO Committee, CBSA President O'Gorman disagreed with the estimated staffing shortage figures but stated:

> I think we would respectfully disagree with the number, but we share with our union colleagues and partners a desire to make sure that we are sufficiently staffed across the country. We are currently doing so with a view to the busy summer season.

[18] https://www.ourcommons.ca/Content/Committee/441/CIIT/Reports/RP12286497/ciitrp06/ciitrp06-e.pdf
[19] Response from the Department of Public Safety and Emergency Preparedness to the March 2023 CIIT Report: https://www.ourcommons.ca/content/Committee/441/CIIT/GovResponse/RP12568297/441_CIIT_Rpt06_GR/DepartmentofPublicSafetyandEmergencyPreparedness-e.pdf
[20] https://www.ourcommons.ca/documentviewer/en/44-1/OGGO/meeting-34/evidence

> I would also say that our student BSOs become, to a large extent, our permanent workforce. They are absolutely critical to CBSA.[21]

Speaking to vacancies, CBSA President O'Gorman stated:

> In terms of vacancies, that's an ongoing discussion. There are some legacy frameworks in terms of positions. We're working to clean that up to see where they're needed and where they're no longer needed. We're overlaying post-pandemic travel patterns—

With respect to the 3,000 BSO vacancies, CBSA President O'Gorman stated:

> We have not done an analysis that leads us to feel it's 3,000 vacancies.
>
> We're also looking at post-pandemic commercial patterns. Some ports are back and higher than they were; some are not. We're working to distribute the workforce aligned with the demand and with our service standards.[22]

Next, on June 2, 2023, at the House of Commons Standing Committee on Safety and National Security (SECU), CIU President Weber, testified with respect to Bill C-20:

> We estimate that we need between 2,000 and 3,000 additional officers on the front line. In the time you described, we've added about 2,000 middle managers to the CBSA. It seems to be the only section that is growing.
>
> Our officers are exhausted and under incredible stress. We have summer action plans that have mandatory overtime. The amount of leave we can take is limited. Many officers resort to leave without pay just to get some time off.[23]

In 2018, six years ago, CBSA and the Union were also very concerned about vacancies, staffing shortages, and recruitment and retention issues. Two CBSA documents—CBSA Internal Audit and Program Evaluation Directorate's *Evaluation of the Officer Induction Model* (published October 2018) and *CBSA's 5-Year Human Resources Plan (2018-2023)* (published June 2018)—map out the significant challenges faced by the agency.

Evaluation of the Officer Induction Model (published October 2018)

Evaluators offer a detailed history of the relationship between increasing overtime hours and decreasing numbers of Border Service Officers. Fewer front-line staff equals more worked overtime hours. The internal CBSA evaluation concludes:

[21] Evidence - OGGO (44-1) - No. 54 - House of Commons of Canada (ourcommons.ca) / Témoignages - OGGO (44-1) - no 54 - Chambre des communes du Canada (noscommunes.ca)
[22] https://www.ourcommons.ca/documentviewer/en/44-1/OGGO/meeting-54/evidence
[23] https://www.ourcommons.ca/documentviewer/en/44-1/SECU/meeting-69/evidence

> **The total number of overtime (OT) hours worked by front-line staff could suggest there is a need for additional staff to relieve operational pressures.**

In the same document, according to the Officer Induction Model Evaluation Staff Survey:

- 78% of regional management (Superintendents and Chiefs) feel that the OIM is not meeting operational needs in terms of volume of new BSOs.
- Respondents indicated that staffing shortages are affecting working conditions (e.g., increase in overtime, officer stress and **vacation denials**).
- There is also an impact on operations including longer processing times due to fluctuating volumes and insufficient staff. Furthermore, it is believed among those surveyed that the situation **is only going to deteriorate in the future given the new projects and the high demand for BSOs.** (Exhibit 12)

The Union submits that the same remains true today as multiple regions report the risks of increased reliance on overtime as a vacancy management strategy to meet service standards (e.g., staff turnover, vacation denials, not sustainable, fatigue, burnout, and decreased productivity, morale, and work-life balance).

CBSA's 5-Year Human Resources Plan (2018-2023) (published June 2018)

In an explanation of CBSA's operational need and challenges over the next five year (2018-2023), the Plan stated:

> Similar to other law enforcement agencies, the CBSA's current vacancy rate is high and remain in this state. The number of annual retirees, accommodated officers, **officers that are on leave without pay and internal employee movements create a perpetual state of shortage in the BSO population**. **Therefore, the most pressing challenge is to ensure that we recruit, develop and retain the right people to fill the gaps, as the Agency continues to experience an increase in traveler and commercial volume.** (Exhibit 13).

The Plan summed up the total personnel requirements at 3,440 BSOs and assumed that 1,800 new BSOs over five years would, in part, offset the gap, but concluded a total shortfall of 1,640 Border Services Officers pointing to caucuses of then-current vacancies:

1) current number of BSOs required for zero vacancy
2) agency departures
3) long term accommodations

4) BSOs on Leave without Pay for more than one year
5) project requirements

While no updated versions of these documents are available (although a revaluation of the Officer Induction Model is planned for 2026-27), regional risk profiles (Exhibit 14), Force Generation Review (Exhibit 87), and CIU's House of Commons Standing Committee testimony emphasize that the same personnel challenges, which continue to generate concern and inform key risk management conversation at CBSA, remain salient issues today.

In addition to vacancy, recruitment, and retention challenges, the last four CBSA Departmental Plans explain that for CBSA the increasingly competitive labour market is also a key risk for boarder management with respect to recruitment and retention.

On February 13, 2024, CIU President Weber, Brian Masse, MP (Windsor West) and NDP Industry, Border and Automotive Critic, and Peter Julian, MP (New Westminster-Burnaby) and NDP Public Safety Critic penned a letter to Deputy Prime Minister and Minister of Finance, Chrystia Freeland, and Minister of Public Safety, Dominic LeBlanc with a request to the Government starts increasing funding to CBSA to properly staff and provide the necessary resources to protect our borders and Canadians—that they restore the frontline.

> *We are writing today to highlight the need for increased funding and resources in Budget 2024 to the Canada Border Services Agency (CBSA) to address the urgent need of increasing the number of frontline CBSA officers, ensuring these officers have the proper working tools and facilities to do their jobs, and to request additional facilities for a new CBSA training centre in Windsor, Ontario.*
>
> *The last decade has presented increasing challenges for our border officers. Since the former government significantly cut resources to CBSA, officers on the frontlines now work harder, with less staff, tools and resources, to do their jobs effectively. From increased trafficking of all types to asylum seekers coming in*

record numbers, and now automotive thefts across the country being shipped through the ports, additional supports and resources can no longer wait.

To better protect our communities, the priority of the government should be increased staffing. The Customs Immigration Union (CIU), representing our CBSA officers, estimates that we currently lack as many as 3,000 border officers across the country. This means that border crossings are consistently operating with reduced staff who just do not have the time, means or support to effectively search for illegal firearms, contraband, stolen vehicles and work with asylum seekers.

Moreover, these same officers are being moved around the country to handle critical needs, leaving important gaps in border services elsewhere. Yet at present, hiring rates barely cover normal attrition. Travelers face frustrating delays, and the officers are in a never-ending cycle where current forces are stretched too thin and are completely exhausted. It's time to do better for our officers.

CBSA officers lack the proper tools to do their jobs. For example, for train operations, there are no facilities or equipment and not enough resources to complete rail examinations. At marine facilities, mainly in Ontario, where much of the border falls on waterways, it is next to impossible to keep track of the comings and goings. On the most recent concerns addressed about auto thefts — namely at the Port of Montreal — the on-site space available for officers to perform expected inspections is severely limited, and there are only eight officers to search the containers intended for exports. This is to say nothing of the broken x-ray scanner at the Port, which has resulted in a scanner having to be sent from Windsor, taking away from officers in the Southern Ontario region. This is shameful and unacceptable.

Proper tools are only part of the solution. To use the tools, we need to hire the people and train them. CBSA is currently limited by the number of officers it can train at its College in Rigaud, Quebec. Part of the solution to fixing our border lies

in opening new training facilities. This is where it would make sense for the government to consider opening a training facility for officers in Windsor, Ontario – at the busiest border crossing in the country.

From past discussions we know there have been limited number of Duty Firearm Courses (for both new recruits and recertifications for officers) offered in the past. I understand that requests have been submitted from arming managers in Windsor to CBSA requesting investment in Windsor facilities that highlight the basic needs to set up such a facility. Overall, this training centre – even if established as a pilot project – would at minimum increase the number of CBSA graduates while still facilitating qualifications of officers from all over Ontario.

After decades of cuts to our border services, and with ever-increasing workloads for our officers, it is absolutely vital that the Government starts increasing funding to CBSA to properly staff and provide the necessary resources to protect our borders and Canadians. CBSA officers can no longer wait for additional resources and staff, especially after having worked so diligently in recent pandemic years on the frontlines. Budget 2024 provides an opportunity to deliver on these needs.

Thank you in advance for your time and attention to this important matter. We would be happy to meet to discuss these concerns with you further. **(Exhibit 85)**

The Employer's refusal to address the long-standing workplace issues raised by the Union in negotiations, coupled with its decision to reject the employees' call for parity with the RCMP and other Canadian law enforcement workers has led the PSAC to declare impasse and submit the parties' dispute to this Public Interest Commission.

This is the context within which the parties have been negotiating. Significant, chronic problems at CBSA, problems acknowledged even by the seniormost leadership of the Agency, and a refusal on the part of the employer to address any of these issues in negotiations.

PART 2 - OUTSTANDING ISSUES

NEW ARTICLE
EARLY RETIREMENT FOR FB WORKERS

Amend the pension plan to allow for employees in the FB bargaining unit to retire with 25 years of service without penalty.

RATIONALE

Since the creation of a distinct occupational group definition and bargaining unit for the FBs in 2006, PSAC has waged a sustained campaign to improve pension arrangements for its members in the FB bargaining unit. The union is seeking an early retirement regime consistent with other federal law enforcement officers. This means the ability to retire after the completion of 25 years of pensionable service with no reduction to benefit entitlement; commonly referred to as “25 and out”. There are several reasons for this.

First, like other workers responsible for enforcing and administering the law, employees in the FB bargaining unit face risks that go far beyond what most workers normally encounter in their jobs. Second, given the nature of the work performed by employees in the FB bargaining unit and the crucial importance of that work in terms of ensuring the safety and security of Canadians, it is in the interest of both CBSA and the broader Canadian public that employees in this occupational group have access to early retirement regime in order to avoid risks to public health and safety. Third, a retirement scheme like the one being proposed by PSAC for employees in the FB bargaining unit is standard in the broader law enforcement community. Finally, the costs of providing enhanced early retirement benefits for members of the FB group are relatively limited.

Therefore, the Union submits that members who make the choice to retire early, after 25 years of valuable service, should not be penalized with a significant reduction to their pension entitlement.

Distinct pension reality for enforcement workers under the Department of Public Safety

The Royal Canadian Mounted Police (RCMP), Correctional Service Canada (CSC) and CBSA all fall under the umbrella of Public Safety Canada. Yet the early retirement benefits

for members of the FB group differ significantly from those of the other 2 groups. Correctional Officers under the Public Service Superannuation Act (PSSA) are part of the "Operational Services Group" while RCMP regular members fall under completely separate pension legislation, the Royal Canadian Mounted Police Superannuation Act. As Table 1 below demonstrates, workers at both the RCMP and CSC can retire after 25 years of pensionable service with no actuarial reduction to their benefit entitlement.

This situation has worsened as the age of retirement for new employees who became plan members on or after January 1, 2013 increased from 60 to 65. All other age-related benefit thresholds were also increased by five years. Thus, the difference between the regular PSSA group and the Operational Service group has grown even larger. With these changes, an employee would now have to work longer for the same pension. With the retirement age bumped five years to age 65, 'early retirement' will now be age 60 if the member has worked at least 30 years. In short, any employee who become a plan member on or after 2013 and retires before they turn 65 will face a pension penalty if they don't have at least 30 years of service.

Table 1: Early retirement provisions – Public Safety Canada

Plan & Group	Unreduced retirement	Early Retirement
PSSA (Group 1) Public Service Main Group (Including FB members)	Age 60; or Age 55 with at least 30 years of service.	Age 50 Reduction is 5% per year before unreduced retirement.
PSSA (Group 2) Public Service Main Group (Including FB members)	Age 65; or Age 60 with at least 30 years of service.	Age 55 Reduction is 5% per year before unreduced retirement.
PSSA Operational Service Group (Including Correctional Officers)	Age 60; or 25 years of service.	Reduced 5% per year before unreduced retirement.
RCMP Superannuation act Regular Members	Age 60; or 25 years of service.	Reduced 5% per year before unreduced retirement.

The following tables illustrate 2 different age and service scenarios under both the PSSA Regular and Operational Service Group provisions, assuming that an employee is in Group 1 of the PSSA. It clearly illustrates the benefit of a '25 and out' retirement scheme. It also shows that not all employees who have access to an early retirement scheme will necessarily retire early as a strong incentive to work longer remains. As a result, in many instances there would be no extra cost incurred by the Employer with the introduction of early retirement scheme.

The following tables describe pension entitlement scenarios at the 25-years and 30-years of service marks highlighting the current impact of the reduction for not meeting the years of service rule and the Union's proposal of an unreduced pension entitlement at 25 years of service. In Table 2, under scenario one (I), the employee would be unlikely to retire because the 37.5% (as % of final pay) would likely be insufficient to meet retirement income objective. Under scenario two—the Union's proposal--however, the pension at a retirement age of 55 is significantly higher under the PSO rule than under the regular PSSA rules (50% vs. 37.5%) but an employee may not retire because the pension is still insufficient.

Table 2: Attained Age 55 and 30 years of service

Scenario	**I**	**II**
Group	**Regular Group (Including FB)**	**Operational Service Group (Union proposal)**
Attained Age	55	55
Service	25	25
Reduction	25%	0%
Pension entitlement	**37.5%** =25*2%*(1-25%)	**50%** =25*2%

*The table makes the simplifying assumption that the benefit under the pension plan is determined as 2% of average earning for each year of service. This is approximately true when looking at combined income under the PSSA and the CPP.

In Table 3, under scenario one (I), an employee may very well retire, as the 60% pension could be sufficient to meet a retirement income objective. Under scenario two (II), an employee may retire, but the retirement age, and pension, would be the same as under

the regular PSSA rules. There would be no cost to providing the enhance PSO rules over the regular PSSA rules.

Table 3: Attained Age 60 and 30 years of service

Scenario	**I**	**II**
Group	**Regular Group (Including FB)**	**Operational Service Group (Union proposal)**
Attained Age	60	60
Service	30	30
Reduction	0%	0%
Pension entitlement	**60%**	**60%**

*The table makes the simplifying assumption that the benefit under the pension plan is determined as 2% of average earning for each year of service. This is approximately true when looking at combined income under the PSSA and the CPP.

Dangerous work with demanding physical training regimes

As previously stated, the Union submits that there can be no doubt that employees in the FB bargaining unit today perform duties that are analogous with those performed by workers employed by other Canadian law enforcement agencies.

Employees in the FB bargaining unit carry out a whole range of duties associated with administration and enforcement of the law, from surveillance to intelligence work to escorted removals to joint operations with other agencies to seizures to arrests.

While the nature of the work and the workplace for these employees have always been somewhat different from most other federal employees, the responsibilities, and duties of employees in the FB group have evolved significantly since the beginning of the new millennium.

- In 2000 with the implementation of “Officer Powers” (Exhibit 2), FBs were provided with the authority to enforce other Acts of parliament, including the Criminal Code of Canada. This expanded scope of responsibility was accompanied with new requirements for Use of Force Training (currently referred to as Control and Defensive Tactics), more stringent occupational fitness standards and a requirement for "Skills Maintenance" every three years.

- In 2003, the CBSA was created as a stand-alone entity mirroring the enhanced focus on border security and law enforcement in the United States and several

Commonwealth countries. This transition provided CBSA with a more defined law enforcement mandate and placed the operations of CBSA within Public Safety and Emergency Preparedness Canada, along with the Royal Canadian Mounted Police and the Correctional Service of Canada (Exhibit 15).

- In 2007, CBSA commenced implementation of the "Arming Initiative" which, in conjunction with the "Doubling-Up Initiative", acknowledged the dangers inherent in the performance of FB's duties. These initiatives were also undertaken in recognition of the law enforcement functions of FB's. Firearm certification and regular recertification are now occupational requirements of the position of a Border Services Officer.

- Employees in the FB bargaining unit enforce over 90 acts, regulations and international agreements on behalf of federal departments, agencies, the provinces and territories, many provincial laws, as well as international agreements and conventions. In fact, no other population of enforcement personnel in Canada enforces as many laws as do FB employees at CBSA (Exhibit 5).

- The federal government and the Public Service Labour Relation Board (PSLRB) have already acknowledged that this evolution in enforcement duties over time by creating a distinct occupational group definition (Exhibit 3) and bargaining unit (Exhibit 16) for FB's. In creating the occupational group and the FB bargaining unit both the Canadian Government and the Board have clearly delineated and recognized the enforcement nature of the work performed by bargaining unit employees.

As is the case with any population working in an enforcement capacity, the work performed by a significant majority of employees in the bargaining unit requires regular exposure to danger, stress and injury. Employees in the FB bargaining unit are also faced with the physically taxing challenges of Control and Defensive Tactics Skills Maintenance every three years, and annual firearm recertification. This reality of constant physical and psychological threat wears the body and mind prematurely, and in turn, makes the job more difficult to perform over time.

A shortened career path is the interest of CBSA

As a result of these changes in the nature of the work, there have been an increased number of requests for accommodation, and it is likely that those cases will continue to increase over time. A shortened career path could avoid costly and wasteful legal

proceedings and recurring union-management wrangling at the local, regional and national levels.

It should also be noted that employees in the FB bargaining unit are acutely aware of the fact that they are the only enforcement employees working under the Ministry of Public Safety and Emergency Preparedness Canada that do not have access to a “25 and out” plan, and that plans that are indeed superior to the plan currently in effect for workers at the RCMP and Corrections Canada are the norm elsewhere in the broader law enforcement community. This in turn can and does have a negative impact on employee morale.

The Union therefore submits that it is in the interest of CBSA for the early retirement regime that is already in effect for other federal enforcement workers be applied to employees in the FB bargaining unit.

Acting in the public interest

A shortened career path for employees in the FB bargaining unit is not only in the interest of the CBSA, but it is also in the interest of the federal government and the Canadian public. The premise behind the establishment of the “Public Safety Occupation” category or the specific provisions for the operational services groups under the PSSA has always been the maintenance of public safety.

These special rules are intended to assist employers who, out of concern for public safety, wish to encourage or require employees in these occupations to retire earlier than employees in other occupations. Given the nature of the work performed by employees in the FB bargaining unit and its crucial importance in terms of ensuring Canadian safety and security, it is in the public interest for employees in this occupational group to have access to the same retirement regime as other public safety workers in order to avoid risks to public health and safety. It is well established that advancement in age bears some correlation to deteriorating health (particularly the ability to meet the physical

demands of the job in public safety occupations), and therefore an increased risk to the public.

The current retirement system has the net effect of encouraging employees to stay on and work longer than would be the case with employees performing similar duties with other enforcement agencies. Doing so may increase the risk to employee health and may have a detrimental effect on public safety given the physical and mental demands of the job.

Not breaking new ground

By changing the pension arrangements for Correctional Officers, Treasury Board and CSC have already proven that the PSSA pension arrangements could be modified, refuting TB's argument that it cannot negotiate pension improvements.

In fact, several federal public service pension plans have been tailored to meet the needs of the employees covered, including the PSSA. Those plans include the:

- Air Traffic Controller (PSSA)
- Correctional Officer (PSSA)
- Royal Canadian Mounted Police Superannuation Act
- Canadian Forces Superannuation Act
- Members of Parliament Retiring Allowances Act
- Judges Act

Within the broader "enforcement" community, an early retirement scheme like the one proposed by PSAC is the norm. Most Canadian Police Organizations, including the RCMP, provide the option of a shortened career path to their employees.

Table 4 below, summarizing the different plan features we find within the major Canadian law enforcement agencies, clearly demonstrates that pensions for members of the FB group lag other major Canadian law enforcement agencies. As background and understanding that this table is nearly ten years old, the Union has no knowledge major changes for these groups. Some of the main findings:

1) All have a Defined Benefit (DB) plan where the payout is based on the best final average years of service (BFAS).

2) Most of these group plans define the best final average years of service (BFAS) by the best 5 consecutive years. OPP, SQ and Halifax use a more generous definition based on the best 3 years.

3) Most of these group plans have a normal retirement benefit formula of 2% of BFAS with integration to CPP. Montréal and Vancouver use a more generous formula and provide 2.5% of BFAS and 2.33% of BFAS respectively. SQ and Halifax use a more generous formula since they don't have a reduction formula for the integration with CPP.

4) Having moved to a 50%-50% contributions split, the employees of FB group now contribute at a similar or higher level than most other groups.

5) All of these groups have better early retirement provisions than members of the FB group.

Table 4: Summary of Plan Features – Major Canadian Law Enforcement Agencies*

Plan Feature	Border Service (FB)	RCMP Regular Member	Correctional Services (CX) Operational Service	OPP	SQ	Edmonton	Halifax	Montréal	Toronto	Vancouver
Type of Plan	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average	DB / Best Final average
Eligible Employees (excluding part-time ees)	All employees	All employees	All employees	All employees	All employees	All employees	All employees	All employees	All employees	All employees
Normal retierment age	Age 60 or 35 yrs of pensionable service	Age 60 or 35 yrs of pensionable service	Age 60 or 35 yrs of pensionable service	Age 65	Age 65	Age 55	Age 60	Age 65	Age 60	Age 60
Earliest age for unreduced pension	Age 60 + 2 years service or Age 55 + 30 years of service	25 years service or age 60 + 2 years service	25 years service or age 60 + 2 years service	Age 50 + 30 years of credited service or Age+ credited service = 90 years or Age 60 + 20 years of credited service	25 years service or age + service=75	25 years service or age 55 + 5 years service	Age + Service=75	30 years of service	Age 50 + 30 years service or age + service=85	Age + Service=80
Normal retirement benefit formula	2% of BFAS with integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with no integration to CPP	2% of BFAS with integration to CPP	2% of BFAS with no integration to CPP	2.5% of BFAS Integrated including reduction formula when less than 30 yrs of service	2% of BFAS with integration to CPP	2.33% of BFAS with integration to CPP
Definition of best final average salary (BFAS)	Highest average salary for 5 consecutive years	Highest average salary for 5 consecutive years	Highest average salary for 5 consecutive years	Effective January 2012: Highest 3-yr average salary	Average of best 3 years earnings	Highest avaerage salary for 5 consecutive years	Highest avaerage salary for 3 consecutive years	Average of best consecutive 1095 days of earnings	Highest avaerage salary for 5 consecutive years	Highest avaerage salary for 5 years
Employee contributions	6.2 up to YMPE, 8.6 in excess of YMPE	5.8% up to YMPE, 8.4% in excess of YMPE	6.2 up to YMPE, 8.6 in excess of YMPE	9.2% up to YMPE, 12.3% in excess of YMPE	6.2% up to YMPE, 8% in excess of YMPE	13.45%	10.71%	6.2% up to YMPE, 8% in excess of YMPE	8.9% up to YMPE; 14.1% in excess of YMPE	9.74% up to YMPE; 11.24% in excess of YMPE
Early retirement reduction formula	5% per year prior to unreduced retirement requierments	5% for each full year of service less than 25	5% for each full year of service less than 25	5% per year prior to age 65	3% per year prior to unreduced retirement requierments	3% per year prior to unreduced retirement requieremens	0.5% per month from expected unreduced retirement date assuming continued employment	Actuarial equivalence	5% per year times the lesser of:(60 minus age) or 85 factor minus current factor (age+ service) or 30 minus years of service	Age 50 with 2 years services: 3% times lesser of (55 minus age) or 80 minus (age+service)

*Data source: RCMP total compensation report December 2011. This table has been simplified from the original table contain in the report. For a more detailed analysis and comparison, see the full report at 44 to 51 (Exhibit 17).

Retirement Age

One factor to be cognizant of with such a proposal is the retirement age assumption. Allowing an employee to retire earlier does not mean that an employee will retire early. In fact, under our proposal employees can still significantly benefit from the additional service accrued after having reached the eligibility to retire early. With the Union's proposal, the pension at retirement after 25 years of service is significantly higher than under the regular PSSA (50% vs 37.5%) because of the lack of penalty, keeping in mind that an employee may choose not to retire because that employee's pension is still insufficient.

The Union would also point out that the plan is in surplus, by a significant amount.[24]

[24] Report on the Public Service Pension Plan for the Fiscal Year Ended March 31, 2022 - Canada.ca

Conclusion

To conclude, employees in the FB bargaining unit work in law enforcement. All are responsible for administering and enforcing the law, and a significant majority are required to meet considerable physical standards as part of their terms and conditions of employment. In short, for a significant majority risk and danger are part of the job.

Given the nature of the work and its crucial importance in terms of ensuring Canadian safety and security, it is in the interest of CBSA, the federal government and the broader Canadian public that employees in this occupational group have access to early retirement regime in order to avoid risks to public health and safety. Within the "enforcement" community, an early retirement scheme like the one proposed by PSAC is the norm rather than the exception, and what is being proposed by the PSAC is consistent with what is already being applied to federal employees working under the same department and ministry.

NEW
PAID MEAL PERIOD

PSAC PROPOSAL

Paid Meal Period

Remove Appendix L and replace with the introduction of a thirty (30) minute paid meal break for every eight hours (i.e. employees paid for 40 hours but continue to work 37.5 hours per week and 7.5 per day on average, as per Article 25) for all employees.

RATIONALE

The Union is proposing in this round of negotiations that employees continue to work a 37.5-hour work week, but that employees be paid for a 40-hour work week. In effect, employees would receive a paid meal period of .5 hours per day.

With respect to replicating a commonplace norm—a paid meal period is the standard for law enforcement agencies in Canada. Every major law enforcement agency in Canada has agreed to a paid meal period for its employees. Within the federal public service, employees of both the RCMP and Correctional Service Canada are provided a paid half-hour meal period. Both the RCMP and Corrections Canada fall under the same department and same ministry as CBSA—the Department of Public Safety and Emergency Preparedness. For example:

- From the RCMP Regular Members (RM group) collective agreement:

> **Meal breaks**
> **21.23** The Employer will provide a full-time (F/T) Member with:
> a. One (1) paid thirty (30) minute meal break as part of a scheduled eight (8) hour work shift; or
> b. One (1) paid forty (40) minute meal break as part of a scheduled ten (10) hour work shift; or
> c. One (1) paid forty-five (45) minute meal break as part of a scheduled twelve (12) hour work shift.[25]

[25] RCMP Regular Members (below the rank of inspector) and Reservists (RM)- Canada.ca / Membres réguliers (sous le grade d'inspecteur) et les réservistes de la GRC (RM)- Canada.ca

- From the Correction Services (CX group) collective agreement:

> **21.07** Except as may be required in a penitentiary emergency, the Employer shall:
>
> a. grant a correctional officer a paid thirty (30) minute period, away from his work post, to have a meal break within the reserve, for every complete eight (8) hour period,[26]

As recently as 2019 the FPSLREB issued an award for Protection Officers working for the Parliamentary Protective Service stating that "the Board awards that for each day worked, Protection Officers are entitled to a paid half hour at lunch, the other half hour being unpaid and the payment being at the straight time rate." (**2019 FPSLREB 104)**

The Union respectfully requests that the Commission recommend the paid meal period for the FB group—such a recommendation simply replicates a commonplace norm within the Department of Public Safety.

In addition to the RCMP, Correctional Services, and the Officers of the Parliamentary Protective Services, the following table represents a sample of what is contained in the collective agreements of major Canadian law enforcement agencies:

Organizations	Paid Meal Period
RCMP	30-minute paid meal period
Correctional Services	30-minute paid meal period
Royal NFLD Constabulary	60-minute paid meal period/90 minutes for 12hr shift
Saint John, NB	90-minutes on 12hr shift
Ottawa Metro	60-minutes paid meal period
Ontario Provincial Police	45-minute paid meal period
Sûreté du Québec	60-minute paid meal period
City of Edmonton	30-minute paid meal period
Halifax Metro	60-minute paid meal period
City of Montréal	30-minute paid meal period
Metro Toronto	60-minute paid meal period
Peel Region	60-minute paid meal period
Calgary Metro	30-minute paid meal period

[26] Correctional Services (CX)- Canada.ca / Services correctionnels (CX)- Canada.ca

Saskatoon	45-minute paid meal period for 12hr shift, 40-minute paid meal period for 10hr shift.
Vancouver Metro	60-minute paid meal period
City of Winnipeg	30-minute paid meal period
Charlottetown Police	45-minute paid meal for 10 to 12hr shift, 30 minutes on 8hr

(Exhibit 18)

Section 175 of the Public Service Labour Relations Act speaks of:

> (*b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the public interest commission considers relevant;*

A paid meal period is an example of a term and condition of employment that is universal in Canadian law enforcement. The Union submits that if compensation and terms of conditions of employment for FB workers are to be comparable to employees in similar occupations in Canada, a paid meal period is critical. The Act also speaks of:

> *(c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service.*

Again, as indicated earlier, workers at both the RCMP and Correctional Service of Canada are afforded a paid meal period. Employees at CBSA are the only employees within the core public administration that work for a major law enforcement agency that do not have access to a paid meal period. In light of these facts, the Union submits that its proposal is not only in the interests of fairness for employees in the bargaining unit, but also entirely consistent with what is called for under the Act.

There is a double-standard in terms of working conditions for federal government employees responsible for law enforcement, in the sense that the employer has agreed to both a paid meal period and clear scheduling parameters for workers at Corrections Canada and the RCMP, yet it has refused to date to agree to the same for workers at CBSA. The Union's proposals represent a proverbial "win-win" for the parties. And with respect to the Union's proposal for a paid meal period, such a provision would ensure

that terms and conditions of employment are comparable with employees employed in similar occupations within the broader Canadian labour market. A paid meal period is literally ubiquitous in Canada for officers employed in law enforcement. It would indeed be trite to say that the FB group is an outlier in this regard.

Furthermore, in addition to the broader law enforcement community, the Union would also point out that union members at Canada Post also access a paid meal period. There are hundreds of Border Services officers working exclusively at CBSA's postal operations across Canada. In all of these cases these employees work in buildings adjacent to or, in some cases such as at the Mississauga plant, in the *same building* as unionized postal workers. The Union submits that if Canada Post can agree to provide over 40,000 of its employees a paid meal period, then surely CBSA can do the same for law enforcement personnel working in postal facilities.

Lastly, the Union made a similar proposal in the previous round of negotiations and in that round the Public Interest Commission included a reference to a paid meal period in its recommendation. (Exhibit 19-21, PSLRB 590-02-10, 590-02-21, and 590-02-42347). The Union submits that the landscape has not changed. While a number of issues were resolved in the previous round of negotiations, this matter remains outstanding.

Indeed, the fact that the Employer agreed in the last round of negotiations to a Paid Meal Premium of $5000.00 a year for uniformed employees represents a clear acknowledgement on the part of the Employer of the need for such compensation. While the language negotiated in the last round represents progress, the Union submits that now is the time for full parity with the law enforcement community – both inside and outside the federal public administration.

In light of this and the other arguments put forward in this brief, the Union respectfully requests that its proposals for a paid meal period be incorporated into the Commission's recommendation.

APPENDIX "A"
RATES OF PAY AND PAY NOTES

UNION PROPOSALS

I. Competitive General Economic Increases

The Union proposes the following economic increases to all rates of pay for all FB group members:

- Effective June 21, 2022, after the application of the market adjustment and paid meal period: 3.5%
- Effective June 21, 2022: 1.25% wage adjustment

- Effective June 21, 2023: 3.0%
- Effective June 21, 2023: 0.5% pay line adjustment.

- Effective June 21, 2024: 2.0%
- Effective June 21, 2024: 0.25% wage adjustment

One-time allowance Related to the Performance of Regular Duties:

- The Employer will provide a one-time lump-sum payment of two thousand five hundred dollars ($2,500) to incumbents of positions within the FB group on the date of signing of the collective agreement.
- This one-time allowance will be paid to incumbents of positions within the FB group for the performance of regular duties and responsibilities associated with their position.
- Payment will be issued according to implementation timelines as per Appendix D - Memorandum of Understanding with Respect to Implementation of the Collective Agreement.

II. Duration of agreement

The Union proposes the following duration period:

Article 65: duration

65.01 This agreement shall expire on June 20, 2025.

III. Market Adjustment & Paid Meal Period

Recognizing the current and ongoing recruitment and retention challenges at the CBSA and to ensure comparability and competitiveness with terms and conditions of

employment in similar law enforcement occupations across Canada, the Union proposes the following to close the wage gap with the RCMP.

The Wage Gap with the RCMP: Comparing FB-3 and the RM-Cst. Salary

RM-Cst. Wage Rate (April 1, 2021):	$102,418
FB-3 Wage Rate (June 21, 2021):	$89,068
Wage Gap Differential:	14.989%

1) To close this wage gap, the Union proposes that a market adjustment be applied in addition to the paid meal period (see Union's proposal on page 34)

    a. The paid meal period, the value of which is the equivalent of a 6.667% increase to the base rate, will apply to all employees in the bargaining unit, effective June 21, 2022, prior to the application of the market adjustment and general economic increase.

2) After the application of the paid meal period and prior to the application of the general economic increase, a market adjustment to all levels of the FB salary grids of 7.801% to close the remainder of the wage gap with the 2021 RCMP wage rate. For clarity, the market adjustment is effective June 21, 2022.

EMPLOYER PROPOSAL

The Employer has made no proposal with respect to general economic increases, or market, wage, or payline adjustments.

ARTICLE 65

DURATION

65.01 This agreement shall expire on **June 20, 2026.**

RATIONALE

Public service compensation serves to attract, retain, motivate and renew the workforce required to deliver results to Canadians. Before we begin to review the various reasons supporting the reasonableness of the Union wage proposal it is important to re-state the factors to be taken into account by the Public Interest Commission (PIC) in rendering its recommendation. Those factors can be found in section 175 of the FPSLRA:

> 175. In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, in addition to any other factors that it considers relevant:
>
> (a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
>
> (b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the public interest commission considers relevant;
>
> (c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;
>
> (d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and
>
> (e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.[27]

The present section sets out to demonstrate how the Union's position is consistent with those factors. We will also demonstrate how the employer proposal is inadequate considering Section 175 factors.

[27] Section 175 of the Federal Public Service Labour Relations Act: https://laws-lois.justice.gc.ca/eng/acts/p-33.3/page-13.html

For the Union, the principle that wages should be determined in relation to relevant labour markets is imperative. The central priority of this round of bargaining for the FB group is parity with the RCMP—the RM group.

This means that with respect to *wages, pension entitlements, vacation leave with pay, paid meal*, and many other improved and new entitlements proposed by the Union, the Union asserts that the RCMP is a logical comparator and is internally relevant to analyses of the Core Public Administration (CPA). Importantly, within the CPA, and aside from the RCMP (RM group), although CBSA employees (FB group) share the same employer (Treasury Board), CBSA employees and those of other departments within the CPA have fundamental differences that must be acknowledged, particularly within the context of compensation.

In addition to the RCMP, in the broader public sector, the closest comparators are provincial, regional, and larger municipal police services across Canada. There can be no doubt that employees in the FB bargaining unit today perform duties that are analogous with workers in other law enforcement organizations. Employees in the bargaining unit carry out a range of duties associated with administration and enforcement of the law, from surveillance, to investigation, to intelligence work, to escorted removals, to seizures and arrests, to joint operations with other enforcement agencies. Border Services Officers, who represent most of the employees in the bargaining unit, enforce over 90 acts, regulations, and international agreements on behalf of federal departments, agencies, the provinces and territories and a significant majority carrying firearms (Exhibit 5).

To recruit, retain, and motivate the best workforce for the job, CBSA must be able to offer a competitive and relevant compensation package to its employees. Given the historical negotiation framework for members of this group and given the various conditions that have led to fiscal restraint measures over the recent past, both the total compensation and base salary for members of the FB group are less competitive than the RCMP and the broader law enforcement community in Canada. Not only are employees finding their

basic compensation packages substandard, but they also find that this is the case with their pension entitlement, particularly the option for early retirement. Moreover, allowances intended to offset certain hardships associated with the job are insufficient and union members who committed their life working for the CBSA feel that their long-term engagement is not valued. Increases to the dog handlers' allowance, replication of pension entitlements that include early retirement (i.e., a norm in the law enforcement community), the introduction of an escorted removals premium, and replication of plain clothes, fitness and wellness, and dry-cleaning allowances, as well as the proposal for firing range fees reimbursement reflect this reality.

These significant disparities in pay, pension, and allowances between members of the FB bargaining unit and the broader law enforcement community across Canada serve to aggravate and exacerbate employee burnout, increasing regional vacancies, excessive reliance on overtime, and the recruitment and retention challenges faced by the CBSA.

As the pool of possible new members shrinks and the competition between law enforcement organizations in Canada for qualified and performing applicants rises, successful organizations must offer rates of pay comparable to their competitors in the labour market.

The Union's wage proposal is based upon three broad principles:

1. fairness with respect to persons in similar positions in the other Canadian Law enforcement organizations;
2. fairness and relativity within the core public administration; and
3. fairness within the context of current trends.

In what follows, the five factors of Section 175 of the *FPSLRA* are considered in detail to illuminate these principles.

(e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

A. The (In)ability to Pay Argument

Arbitral jurisprudence speaks clearly and consistently to the need to look past the financial status of public sector employers when considering ability to pay. The precedence and rationale behind rejecting ability to pay arguments will be referred to and discussed throughout this sub-section.

As it is often the case in public sector bargaining, the employer may cite the current economic climate, the state of the Canadian economy, and the fiscal situation of the Government of Canada to justify their position. Again, the Union submits that this type of (in)ability-to-pay concern must be approached with caution. Although there is evidence that the Government's budget deficit expanded due to pandemic-related economic stimulus, it remains in a remarkably strong and stable position, particularly when compared to its G7 counterparts.

The Federal Government through the Treasury Board is the Employer and therefore the "ultimate funder". The PSAC is unable to take part in funding talks between the agency and the Federal government, and therefore rejects any potential argument that the Employer's financial mandate should be determined by the constraints imposed by the federal government on the agency. Doing so would in effect result in the Employer unilaterally determining wage rates in collective bargaining.

The issue of lack of ability to pay because of bureaucratic mechanisms was addressed by Arbitrator Arthurs in his *Re Building Service Employees Local 204 and Welland County General Hospital* [1965] 16 L.A.C. 1 at 8, 1965 CLB 691 award:

> *If, on the other hand, the Commission refuses to assist the hospital in meeting the costs of an arbitral award, the process of arbitration becomes a sham. The level of wages would then be in fact determined by the Commission in approving the hospital's budget. Since the Union is not privy to budget discussions between the hospital and the Commission, it would then be in the unenviable position of being unable to make representations regarding wage levels to the very body whose decision is effective - the Commission.* (Exhibit 22)

Arbitrator Arthurs reasoned that an award that solely reflects an Employer's financial mandate as determined by another level of governance would, in effect, result in the "ultimate funder" determining the wage rates in collective bargaining. It would also logically flow that if an arbitrator were to consider ability to pay in this circumstance, it would evaluate the federal governments' ability to pay rather than the CBSA**.**

As it is often the case in public sector bargaining, the employer may make claims that the current economic climate, the state of Canadian economy and the Government of Canada's fiscal situation supports its position. Again, the Union submits that this type of (in)ability-to-pay argument must be approached with caution. Moreover, as we will be discussed in the following section, the Canadian economy is in a state of recovery and is projected to grow amidst economic indicators of strength and resilience.

In *The Participating Hospitals and CUPE/OCHU & SEIU (Bill 124 Reopener) 2023*[28] Arbitrator Kaplan clearly outlined that an employer's argument on their ability to pay should not be regarded by arbitrators, as allowing the Province to determine the results of an award would contradict the independence of the arbitral process which is to replicate free bargaining:

> *The Participating Hospitals argued that there was no guarantee that any awarded increases will be funded and urged us to keep that in mind in fashioning our award. We decline this invitation in that allowing the Province to determine the results of our award through its funding allocations would fetter the independence of this process, which is to replicate free collective bargaining and arrive at an award that achieves this result.*

Arbitrator Swan outlines that arbitrators give virtually no weight to "ability to pay" arguments and clarifies that the use of comparators rather than Public Sector financial data is not rooted in a cavalier attitude towards Union wage demands. Rather Swan states that the arbitrator's role is to evaluate whether wages are equitable rather than evaluation of the political processes from which budgets are invariably developed:

[28] 2023 CanLII 50888 (ON LA) | Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener) | CanLII

> *Public sector arbitrators have never paid much attention to arguments based upon "the ability to pay" of the public purse, not because they do not think that the public purse needs to be protected from excessive wage demands, but because the other factors which fashion the outcome of an arbitration are so much more influential and so much more trustworthy than the national constraints of "ability to pay". The extraneous influences which may be applied to the resources available to the individual hospital bound by the present arbitration are such that, either by manipulation or by sheer happenstance, those forces could render meaningless the entire negotiation and basis for the outcome of collective bargaining. The decision as to whether a specific service should be offered in the public sector or not is an essentially political one, as is the provision of resources to pay for that service. Arbitrators have no part in that political process, but have a fundamentally different role to play, that of ensuring that the terms and conditions of employment in the public service are just and equitable*[29]*.*

The concept of 'ability-to-pay' has been rejected as an overriding criterion in public sector disputes by most arbitrators. The reason as to why it has been roundly rejected as a persuasive criterion by interest Boards of Arbitrations has been summarized as follows:

(1) "Ability to pay" is a factor entirely within the government's own control.
(2) Government cannot escape its obligation to pay normative wage increases to public sector employees by limiting the funds made available to public institutions.
(3) Entrenchment of "ability to pay" as a criterion deprives arbitrators of their independence, and in so doing discredits the arbitration process.
(4) Public sector employees should not be required to subsidize public services through substandard wages.
(5) Public sector employees should not be penalized because they have been deprived of the right to strike.
(6) Government ought not to be allowed to escape its responsibility for making political decisions by hiding behind a purported inability to pay.
(7) Arbitrators are not in a position to measure a public sector employer's "ability to pay"[30]*.*

In light of these concerns, numerous interest arbitrators have consistently recognized that to give effect to government fiscal policy would be equivalent to accepting an ability to pay argument and thus abdicating their independence:

[29] Kenneth P. Swan, Re: Kingston General Hospital and OPSEU, Unreported, June 12, 1979. **(Exhibit 23)**
[30] Jeffrey Sack, Q.C., "Ability to pay in the Public Sector: A Critical Appraisal", *Labour Arbitration Yearbook*, 1991, vol. 2, 277 to 279.

> *The parties know that ability to pay has been rejected by interest arbitrators for at least decades. Chief Justice Winkler, in his award cited the following passage from an award by Arbitrator Shime in Re McMaster University.*
>
> *"...there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions."*[31]

Any framing of the current economic climate, the state of Canadian economy, and the fiscal situation of the Government of Canada that conveniently attempts to imply the need for insufficient economic increases due to the need for budgetary restraint should (at best) be given limited weight, particularly when the government has it within its power to determine its own ability to pay by setting its budget. Again, the Union submits that this type of (in)ability-to-pay concern must be approached with caution.

B. The state of the Canadian economy and the Government of Canada's fiscal circumstances

Canada's post-pandemic recovery is robust, with key indicators surpassing pre-pandemic levels, including impressive employment rates and sustained wage growth (see **Table 5)**.

Table 5 – Summary: The Canadian Economy and Canada's fiscal circumstances

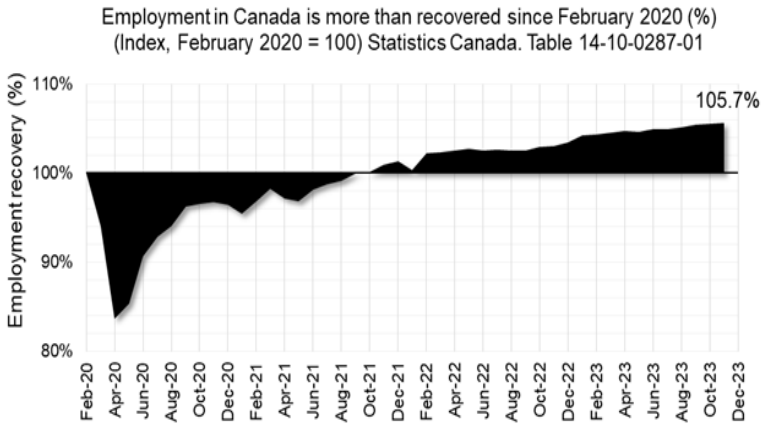
Indicator	Status/Value
GDP Growth	• Canada experienced a robust economic recovery, with a 6.7% GDP growth in Q4 2021, the second highest in the G7. • Subsequent growth recorded 3.8% in 2022 and 2.6% in Q1 2023. • A modest contraction occurred in Q2 2023.
Employment	• Employment rates surpassed pre-pandemic levels by over a million, showcasing a strong labor market. • Job recovery in Canada outpaced its G7 peers during the economic resurgence.
Unemployment Rate	• Despite economic challenges, Canada's unemployment rate has remained historically low, maintaining at or below pre-pandemic levels for 21 consecutive months. • Forecasts suggest a potential increase to 6.5% in Q2 of the next year, influenced by a more gradual hiring pace.
Inflation	• Inflation has been a challenge, with a notable increase in housing costs and consumer prices.

[31] *University of Toronto Faculty Association v. University of Toronto*, Interest Arbitration, Ontario, Martin Teplitsly, Sole Arbitrator October 5, 2010. (Exhibit 24).

	• The Bank of Canada raised its benchmark interest rate to 5% in July 2023 to address elevated inflation, contributing to a temporary economic slowdown.
Government Fiscal Management	• The government implemented a robust economic plan, achieving the fastest post-pandemic rate of fiscal consolidation in the G7. • Canada maintains the lowest deficit- and net debt-to-GDP ratios, with a net debt lower than any other G7 nation before the pandemic. • This commitment supports Canada's AAA credit rating.
Credit Ratings	• Canada's strong credit position, affirmed by major credit rating agencies: S&P (AAA Stable), Moody's (Aaa Stable), Fitch (AA+ Stable), and DBRS (AAA Stable).
Foreign Direct Investment	• Canada received the third-highest foreign direct investment globally in the first half of 2023, indicating global confidence and attractiveness to investors.
Challenges	• Challenges include escalating housing costs, persistent consumer price increases, and a temporary economic slowdown due to interest rate increases. • Bank of Canada's January 2024 Monetary Policy Report states that CPI inflation is expected to remain close to 3% over the first half of 2024. • Elevated shelter price inflation and food price inflation are contributing to keep the level of inflation high.

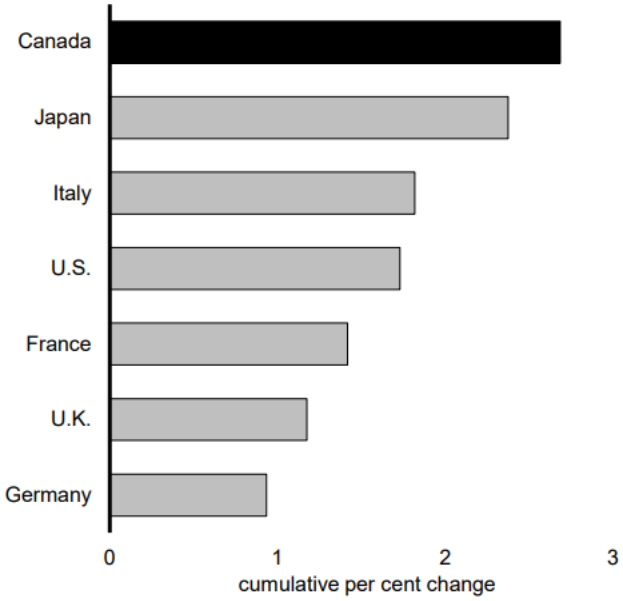
Maple Momentum: Canada's Economic Relief and Fiscal Fortitude

The Fall Economic Statement 2023 (FES 2023) paints a picture of Canada's strong recovery post-pandemic, showcasing the nation's resilience. Key indicators reveal a significant economic comeback, with employment rising to 105.7% of pre-pandemic levels[32] and sustained wage growth consistently outpacing inflation for consecutive months. As highlighted below, projections from the International Monetary Fund (IMF) cited in the FES 2023 position Canada as a leader in economic growth within the G7, despite a globally tempered economic outlook (see **FES 2023 Chart 9**).



[32] Statistics Canada. Table 14-10-0287-01 DOI: https://doi.org/10.25318/1410028701-eng Release date: 2023-12-01

Chart 9
Real GDP Growth in G7 Economies, 2022Q1 to 2023Q2



Source: Haver Analytics.

Challenges, however, persist for many Canadians, including escalating housing costs and persistent consumer price increases, creating pressures for households. In response to elevated inflation, central banks globally, including Canada's, implemented coordinated interest rate increases. The Bank of Canada notably raised its benchmark interest rate to 5% in July 2023, a rate it continues to maintain. While these measures have contributed to some temporary economic slowdown, the Bank of Canada's January 2024 Monetary Policy Report states that CPI inflation is expected to remain close to 3% over the first half of 2024.[33] This highlights the delicate balance between managing inflationary pressures and fostering economic growth in the current economic context.

In this dynamic environment, the government has achieved a notable feat in responsible fiscal management. In FES 2023, the Deputy Prime Minister and Minister of Finance, Chrystia Freeland, highlights that Canada boasts the fastest rate of fiscal consolidation in the G7 since the depths of the pandemic.[34] Canada maintains the lowest deficit- and net debt-to-GDP ratios, with net debt as a share of the economy lower than any other G7 nation before the pandemic. This firm commitment to fiscal responsibility serves as the bedrock of Canada's AAA credit rating, enabling continued investments in the well-being of Canadians and the nation's economic prosperity in the years ahead.

[33] Monetary Policy Report - January 2024 (bankofcanada.ca) / Rapport sur la politique monétaire - Janvier 2024 (banqueducanada.ca)
[34] Fall Economic Statement 2023 (FES 2023), p. 13. FES-EEA-2023-en.pdf (canada.ca).

In 2022, the Federal Government assured residents of Canada that: "*The significant investments the federal government made have worked . . . And the Canadian economy's recovery has been swift and strong."* [35]

Canada's economy exhibited a robust rebound, reaching pre-pandemic levels by Q4 2021 with an impressive 6.7% GDP growth—the second highest in the G7. The momentum continued into the recovery phase, recording significant growth of 3.8% in 2022 and 2.6% in the first quarter of 2023.[36] Despite challenges posed by heightened inflation and rising interest rates, the Canadian economy consistently displayed resilience, surpassing G7 growth throughout 2022 and the initial quarter of 2023 (see **FES 2023 Chart 9**). However, in the second quarter, a modest contraction occurred, influenced partly by transient factors such as an intense wildfire season and reduced demand for housing and major purchases due to increased interest rates.

Navigating the Canadian Economic Horizon: average private sector forecasts

Since 1994, the Department of Finance has relied on the average of private sector forecasts obtained through a survey of economists for economic and fiscal planning. This method ensures that the government's economic and fiscal forecasts are objective, transparent, and independent. The September 2023 private sector survey, cited in FES 2023, is a crucial starting point for planning. However, uncertainties are present due to challenges related to volatile oil prices and the impact of higher long-term interest rates. In this dynamic landscape, the Department of Finance utilizes upside and downside scenarios to facilitate planning, accounting for potential variations in growth rates compared to survey expectations and addressing uncertainties (

[35] Budget 2022 https://budget.gc.ca/2022/report-rapport/overview-apercu-en.html
[36] FES 2023, p. 6. FES-EEA-2023-en.pdf (canada.ca)

Table)[37].

[37] FES 2023, p. 7 & 71. FES-EEA-2023-en.pdf (canada.ca)

Table 6 FES 2023 Upside and Downside Economic Scenarios

Scenario	Key Factors	GDP Impact
Upside Scenario	• Improved global outlook and robust global demand (China avoids deflation and resilient U.S. labour market contribute to stronger growth) • Faster easing of inflation and earlier interest rate cuts • Resilient labour market • Strong household finances • Extended oil production cuts and higher oil prices ($10 per barrel above the survey in 2024)	• Economic growth in 2024 • Nominal GDP is $28B above survey average per year
Downside Scenario	• Persistent inflation (resilient domestic and global demand) • Higher interest rates (elevated inflation expectations, and frequent price increases by businesses) • Persistent inflation in the U.S. • Slower global growth • Lower commodity prices (especially crude oil)	• Real GDP contracts by 1.7% • Nominal GDP is $33B below survey average per year

In the September 2023 survey, private sector economists[38], along with insights from the Bank of Canada's October 2023 and January 2024 Monetary Policy Report,[39] predict that Canada will avoid a recession, notwithstanding adjustments to their 2023 forecasts (see **Table 7** for average private sector forecasts).

Canada's current economic state reflects a resilient labor market in a moderating economy. Layoffs are minimal and the unemployment rate has stayed consistently below pre-pandemic levels. In the FES 2023, it is noted that elevated interest rates temper growth momentum, leading to a narrowing of the nominal GDP in FES 2023 relative to Budget 2023. Nevertheless, the anticipated nominal GDP is expected to maintain an average annual increase of approximately $17 billion over 2026 and 2027 compared to the projections set in Budget 2023. The International Monetary Fund (IMF)'s projection that Canada's economic growth will be the most robust among the G7 economies

[38] As per the FES 2023, the 12 private sector economists involved in the economic forecast were: BMO Capital Markets; Caisse de dépôt et placement du Québec; CIBC World Markets; The Conference Board of Canada; Desjardins; Industrial Alliance Insurance and Financial Services Inc.; Laurentian Bank Securities; National Bank Financial Markets; Royal Bank of Canada; Scotiabank; TD Bank Financial Group; and, The University of Toronto (Policy and Economic Analysis Program).

[39] Bank of Canada Monetary Policy Report - October 2023 (bankofcanada.ca) / Rapport sur la politique monétaire - Octobre 2023 (banqueducanada.ca); Monetary Policy Report - January 2024 (bankofcanada.ca) / Rapport sur la politique monétaire - Janvier 2024 (banqueducanada.ca)

underlines their confidence in Canada's economic growth plan amid a sluggish global economic outlook (please refer to **Table 7** and **Figure 1 ABCD**)[40].

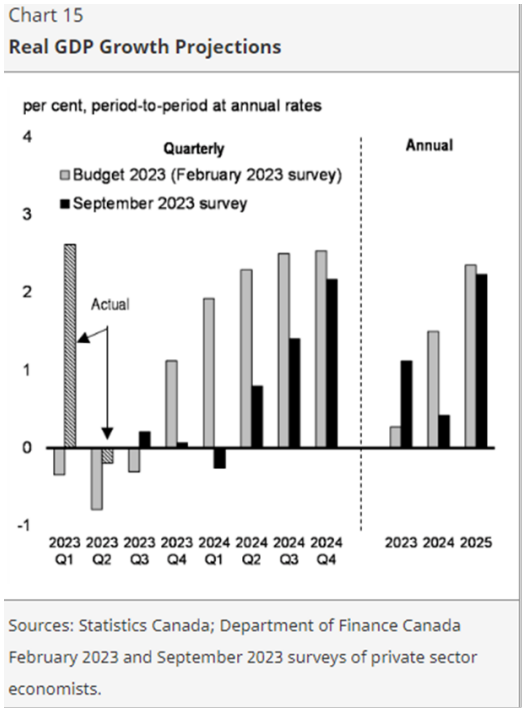
Table 7 Average Private Sector Forecasts: Real GDP growth, CPI, and Unemployment Rate projections as per FES 2023 Table A1.1. Values are percentages (%)

	2023	**2024**	**2025**	**2026**	**2027**	**2028**	***2023-27***
Real GDP growth							
Budget 2023	0.3	1.5	2.3	2.2	1.9	---	*1.7*
FES 2023	1.1	0.4	2.2	2.4	2.2	2	*1.7*
Inflation (CPI)							
Budget 2023	3.5	2.1	2.1	2.1	2.1	---	*2.4*
FES 2023	3.8	2.5	2.1	2.1	2.1	2.1	*2.5*
Unemployment rate							
Budget 2023	5.8	6.2	6	5.7	5.7	---	*5.9*
FES 2023	5.4	6.4	6.2	5.9	5.8	5.7	*5.9*

[40] A-D: Fall Economic Statement 2023 (FES 2023) https://www.budget.canada.ca/fes-eea/2023/report-rapport/toc-tdm-en.html:

A. Real GDP growth projections to 2025. FES 2023 Chart 15
B. IMF real GDP growth projections for the G7 economies. As per FES 2023 Chart 1
C. Private Sector upside and downside scenarios for nominal GDP levels. As per FES 2023 Chart 18
D. Projected unemployment rates to 2024. FES 2023 Chart 16

A



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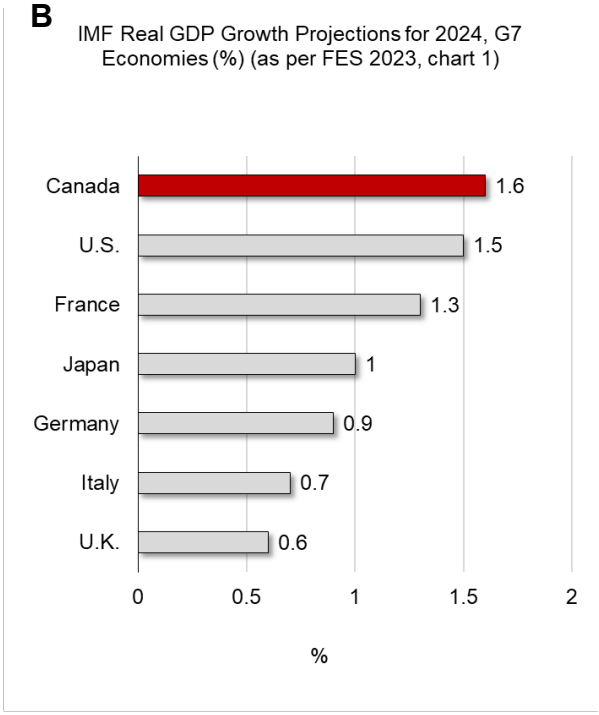

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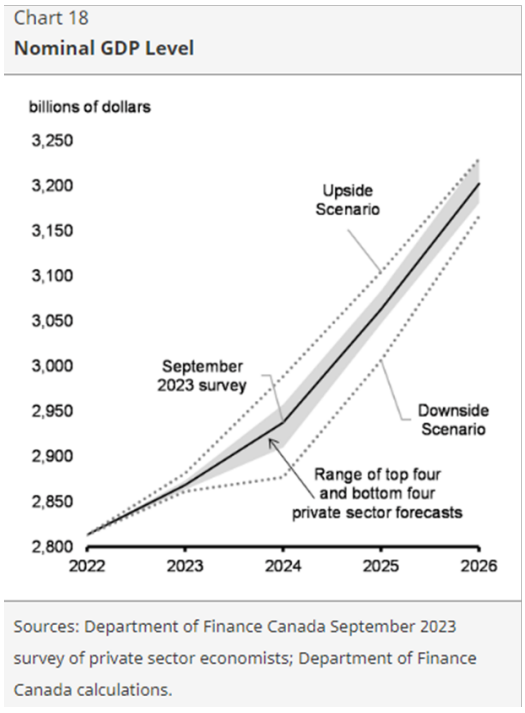


D

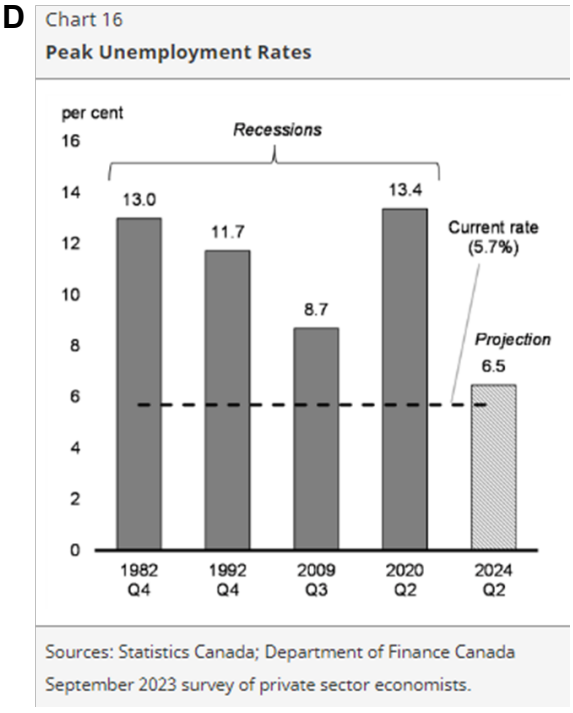


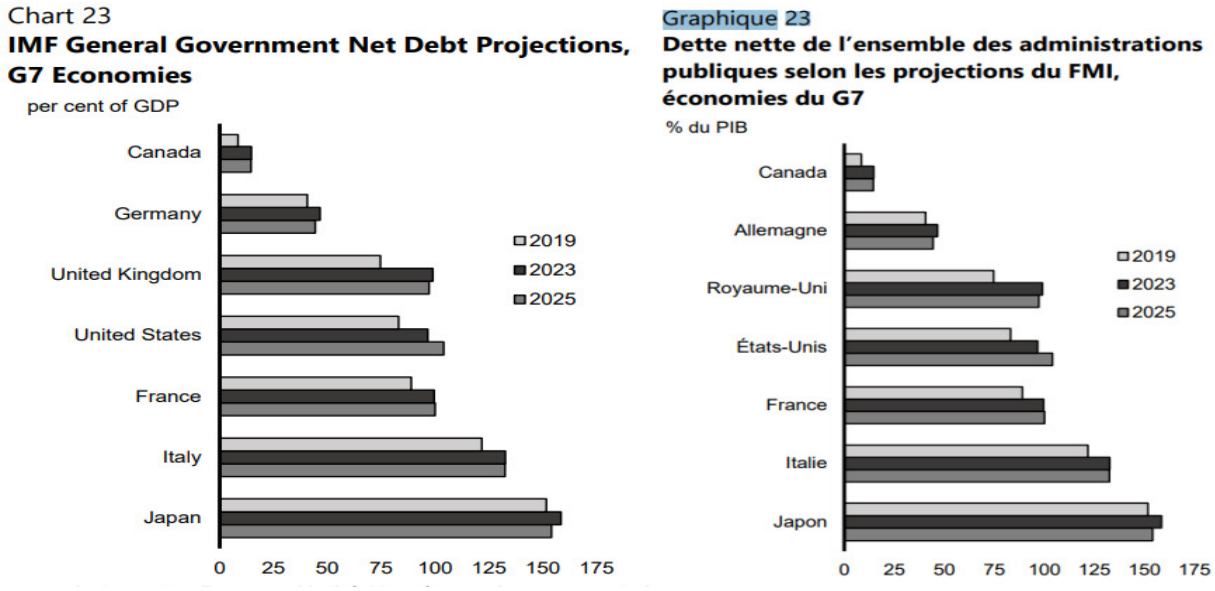
Figure 1 Projected GDP growth in Canada (A) and the G7 (B), nominal GDP levels (C), and unemployment rates (D).

Remaining fiscally resilient and responsible and managing the federal debt load

The COVID-19 pandemic caused an unprecedented crisis with significant impacts on health and the economy. To address this, Canada took extraordinary measures and made substantial financial commitments, resulting in noteworthy short-term deficits. According to FES 2023:

> *Years of responsible fiscal stewardship have left Canada in an enviable fiscal position relative to our global peers. In the aftermath of the pandemic, the government's responsible economic plan has enabled proactive investments to support Canadians, while also making critical investments in Canada's long-term prosperity.*[41]

Canada has a lower net debt-to-GDP ratio than any other G7 nation, and this trend is expected to continue, according to the IMF (see **Chart 23 of FES 2023)**.[42] While increase expenses including higher employee compensation and interest charges contribute to



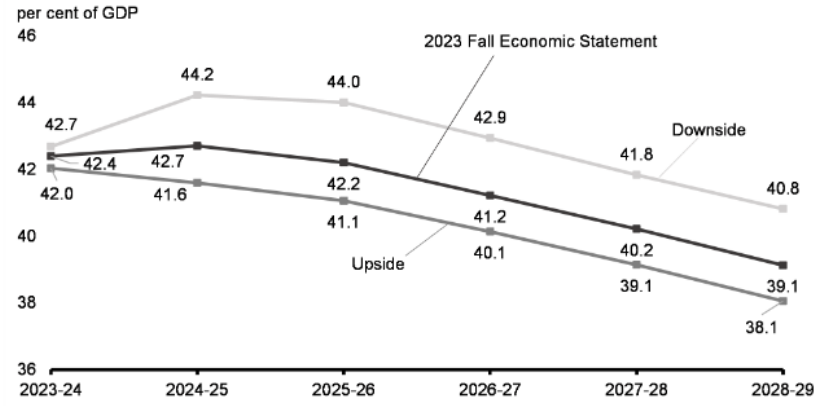
increasing government expenses, net-debt-to-GDP continues a downward path. By the close of the third quarter of 2023, the Federal government net debt decreased significantly by 7.1% (year-over-year) resulting in a net debt-to-GDP ratio of 17.5% by the end of Q3 2023. Excluding social security funds, whose financial assets are earmarked for the

[41] Fall Economic Statement 2023 (FES 2023), p. 10. Source: https://www.budget.canada.ca/fes-eea/2023/report-rapport/toc-tdm-en.html
[42] FES 2023, p. 14. FES-EEA-2023-en.pdf (canada.ca)

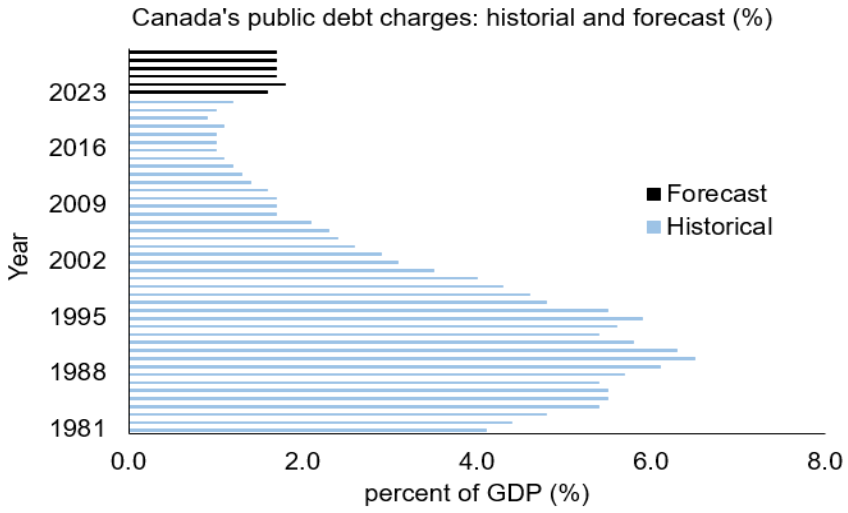
payment of future benefits, the net debt-to-GDP ratio was 41.8%, showing a notable decrease compared with 45.0% in the previous year.[43]

Chart 19

Federal Debt-to-GDP Ratio Under Economic Scenarios



Sources: Department of Finance Canada September 2023 survey of private sector economists; Department of Finance Canada calculations.



The government is committed to a fiscal anchor—reducing federal debt as a share of the economy over the medium term. This commitment is crucial for fiscal sustainability and upholding Canada's AAA credit rating, ensuring both investor confidence and low borrowing costs.[44] To this end, the FES 2023 projects a decline in the federal debt-to-GDP ratio from 2024-25 onward, reaching 39.1% in 2028-29,[45] with public debt charges remaining historically low[46] (**Chart 19 & 21 of FES 2023**).

[43] The Daily. Government finance statistics, third quarter 2023. Released 2024-01-09. https://www150.statcan.gc.ca/n1/daily-quotidien/240109/dq240109d-eng.htm

[44] Canada maintains its creditworthiness and stable outlook as all four major rating agencies have reaffirmed Canada's strong credit. **Reference File: 2D Major Credit Rating Agencies**

[45] Fall Economic Statement 2023 (FES 2023)

[46] The Daily. Government finance statistics, second quarter 2023. Released 2023-09-25. https://www150.statcan.gc.ca/n1/daily-quotidien/230925/dq230925b-eng.htm. (Sourced via Statistics Canada Tables 10-10-0015-01 and 36-10-0104-01).

Canada's allocation of recovery spending is consistent with the approaches adopted by most peer countries. While Canada's federal debt has risen beyond recent norms, it does not hinder the provision of fair wages and economic increases for federal public service workers.

RECRUITMENT AND RETENTION: VACANCIES, OVERTIME, AND LABOUR MARKET COMPETITIVENESS

- **175(a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;**

A review of four (4) recent CBSA Departmental Plans show that for CBSA the increasingly competitive labour market is a key risk for border management with respect to recruitment and retention. Indeed, recruitment and retention is a recurrent (2020-2024) risk factor identified in its Departmental Plans:

- **CBSA 2020-21 Departmental Plan** (p. 13):
  - Attracting and retaining a specialized workforce is critical to many of the Agency's border management activities. There is a limited pool of qualified candidates for emerging functions, compounded by fierce competition from other government departments and private sector firms to attract and retain these candidates.[47]
- **CBSA 2021-22 Departmental Plan** (p. 12)
  - The CBSA will continue to strengthen its workforce through its Human Resources (HR) Strategy as well as its Force Generation Program, which consolidates the recruitment, training and development of BSOs and BSO trainees.[48]
- **CBSA 2022-23 Departmental Plan** (p. 19)
  - The shift in the economic landscape brought about by COVID-19, including the augmentation of e-commerce and the increased competition for workers in many industry sectors, is likely to remain for the foreseeable future. In light of this new reality, the Agency is working to ensure organizational adaptability, including efforts to identify skillset gaps, strengthen developmental programs, and ensure robust mechanisms for the recruitment and retention of specialized talent.[49]
  - Planned (2026-27) evaluation of the 'Force Generation' program (price tag: $40 million)[50], which was last audited in 2018-19: 'Evaluation of the Officer Induction Model'[51]
- **CBSA 2023-24 Departmental Plan** (p. 12, 15-16)
  - CBSA will continue to enhance officer recruitment, training and development as part of ongoing efforts to strengthen its workforce.

[47] CBSA 2020-21 Departmental Plan (p. 13): report-rapport-eng.pdf (cbsa-asfc.gc.ca)
[48] CBSA 2021-22 Departmental Plan (p. 12) report-rapport-eng.pdf (cbsa-asfc.gc.ca)
[49] CBSA 2022-23 Departmental Plan (p. 19) report-rapport-eng.pdf (cbsa-asfc.gc.ca)
[50] Departmental Plan 2022-2023 - Planned Evaluation Coverage Over the Next Five Fiscal Years (2022) (cbsa-asfc.gc.ca)
[51] 2018-19 Evaluation of the Officer Induction Model: PS38-102-2018-eng.pdf (publications.gc.ca)

- Additionally, the COVID-19 pandemic has shifted the economic landscape for the foreseeable future. For example, trade patterns are shifting significantly due to increased protectionism, which may impact the allocation of resources at ports of entry, while recruitment efforts may be impacted by increased competitiveness in the labour market.[52]

Considering that, for CBSA, an increasingly competitive labour market is a key risk for border management with respect to recruitment and retention, the Union rejects the assertation made by the Treasury Board at the FB bargaining table.

On 27 September 2023, Treasury Board stated at the bargaining table that "there are no recruitment and retention issues at CBSA."

Not only is recruitment and retention top of mind year after year in CBSA Departmental Plans, internal CBSA documents also show that, in contrast to Treasury Board's assertion, six regions are identifying recruitment and retention related issues and their impacts on FB bargaining unit members.

Risk Profile by Region	Recruitment and Retention	Risk Impact
Southern Ontario Region	Risk Name: *Human Resources Capacity* • The Region may be unable to recruit and retain sufficient employees to deliver core mandated responsibilities, meet service standards in frontline operations, and to adequately resource IEOD and CPIMD while maintaining sufficient frontline positions	• Increased employee burnout, impact on employee retention (increase attrition, early retirement) • Increased reliance on overtime to meet service demands. • Increased officer fatigue, burnout, and staff turnover.
Prairie Region	Risk Name: *Resource Pressures – Employee Attrition* • One out of every five border services officer (BSO) positions (20.69%) is currently vacant in the Prairie Region, for a total of 150 vacant BSO positions.	• Unless the Region receives a significant increase in Officer Induction Development Program recruits, critically-low staffing levels will drop further and CBSA services will suffer as a result. • Excessive use of overtime may lead to employee

[52] CBSA 2023-24 Departmental Plan (p. 12, 15-16): report-rapport-eng.pdf (cbsa-asfc.gc.ca)

		burnout and turnover, making a bad staffing situation worse. • The 2022 Public Service Employee Survey results show that almost three-quarters of PRA employees feel the quality of their work suffers at lease sometimes because of working with fewer resources.
Atlantic Region	Risk Name: *Resourcing & Management Oversight* • The vacancy rates affect all CBSA streams including inland units, and will continue to increase due to the high percentage of Border Services Officers (BSOs) available for retirement in the upcoming years (roughly 100 Border Services Officer shortfall due to vacancies and/or lack of availability). • The Region's vacancies and difficulty maintaining staffing levels (including Bilingual employees), impacts the Region's ability to facilitate services to travellers, enforce regulations when necessary and meet Official Language obligations.	• Overtime as a vacancy management strategy and to meet increased service demand is not sustainable and impacts productivity, morale, work life balance, and leads to burnout. • Inability to support new requests for services would lead to stakeholder dissatisfaction and potentially being portrayed as impeding local economic growth.
Pacific Region	Risk Name: *Recruitment and Retention* • The Region may be unable to recruit and retain sufficient human resources to facilitate services to all business line streams (Traveller, Commercial, Trade, I&E) and enforce regulations when necessary. • The vacancy rates affect all CBSA streams and will continue to increase due to the high percentage of staff available for retirement in the upcoming years (projected 38 retirements across Region in next three fiscal years (FY)). This is compounded by offers to staff for opportunities from outside the Region and outside the Agency	• Decreased operational capacity to support the delivery of the Agency mandate and service standards. • Continued reliance on overtime which is not sustainable
Northern Ontario Region	Risk Name: *Recruitment and Retention* • The vacancy rates affect all CBSA streams including inland units and will continue to increase due to the high percentage of BSOs available for retirement in the upcoming years.	• Increased service demands and expectations from stakeholders adding pressure to already units whose capacity is already strained.

	• Increased service demands and expectations from stakeholders adding pressure to already units whose capacity is already strained.	• Decreased employee morale, productivity, and health • Increased employee departures (deployment/retirement) • Rigaud cannot keep up with the current demand
Quebec Region	• The high vacancy rate affects all CBSA modes, including inland offices, trade operations and internal services, and will continue to do so in the future. inland offices, trade operations and internal services, and will continue to increase due to the high rate of BSOs eligible to retire in the next few years. • Rising service demands and partner expectations amplify the pressure on short-staffed offices. • According to the Work profile, 23.1% of FB positions are unfilled. Vacancy rate by branch: Commercial and Trade: 12.8%; Intelligence and Enforcement: 22%; Travellers: 30.1%. • Dependence on the Public Service Commission to hire student agents.	

(Exhibit 14)

The Union submits that available frontline personnel vacancies, recruitment, and retention are, in fact, significant issues at CBSA. In contrast to Treasury Board's nonsensical assertion that they are not, indeed CBSA views them as a key border management risk. These staff shortages and vacancies – *by CBSA's own assertion* - have fostered an agency-wide reliance on overtime and surge capacity (i.e., employees coming from other POEs, E&I employees) as a vacancy management strategy to meet service standards. If there were no recruitment, retention, or vacancy issues, such a strategy would not exist. The fact it does and further exacerbates staff turnover, vacation denials, fatigue, burnout, and decreased productivity, morale, and work-life balance demonstrates that it is not sustainable.

RCMP Comparability and Canadian Law Enforcement Organizations

- **175(b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the public interest commission considers relevant;**

- **175(d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and**

From the beginning of negotiations, the Union's wage proposal has been grounded on the premise of parity with the RCMP and the broader law enforcement community—that sector norms be replicated (e.g., paid meal period, early retirement, plain clothes allowances, and others that compose the allowances proposal). As previously stated, the compensation principle that wages should be determined in relation to relevant labour markets is imperative. The recognition of the distinction between the work performed by most members of the FB group and other public service groups is critical.

- In the core public administration, the closest comparator for the FB group is the RM group (the RCMP) and to a lesser extent Correction Officers at CSC.
- Outside the core public administration in the broader public sector, the most compelling comparators for members of the FB group are other law enforcement agencies—the provincial, regional, and larger municipal police services across Canada.

In terms of comparison, the position of 1st Class Constable police officer - employed at law enforcement agencies across Canada - represents the most appropriate similar occupation comparator given the nature of the work performed by employees in the FB bargaining unit and given that Border Services Officers constitute a majority of employees in the bargaining unit.

In fact, when tasked to analyze comparators for 'compensation during training for its recruits', CBSA's Internal Audit and Program Evaluation Directorate's *Evaluation of the Officer Induction Model* further substantiates the Union's submission that large armed law enforcement agencies including the RCMP, are the main comparators for the FB bargaining unit. In this analysis, CBSA Employer is concerned with. The evaluators completed a compensation comparison with respect to pay during training between the CBSA, the RCMP, the OPP, and Ottawa Police Service (i.e., federal, provincial, and municipal law enforcement organization comparators) and state:

> Other organizations, some of which are competing with the CBSA for applicants, are providing higher compensation/stipend during training. For instance, the RCMP is paying four times the allowance, while other organizations are paying a full salary during training. (Exhibit 12)

Not only are law enforcement agencies viewed by CBSA as the organizations with which the CBSA competes with for qualified applicants—in addition—federal, provincial, and municipal law enforcement organizations including the RCMP, OPP, and the Ottawa Police Service are used as clear and appropriate internal (RCMP) and external (OPP & OPS) comparators for assessing external and internal relativity and compensation comparability analyses.

In the past, arbitrators have recognized the uniqueness of public safety occupation:

> *"I accept the uniqueness of policing. It is not an occupation or profession comparable to other public sector employees. Both the nature of the work and the nature of the public responsibilities are different. This has to do with their duties and powers and, as captured in past arbitral awards and academic literature, the necessity at some point to lay their 'life on the line'".*[53]

The Union submits that the discrepancy in wages and in working conditions that currently exists between employees in the FB bargaining unit and workers employed in law enforcement are inconsistent with the principles contained in the Section 175(b) of the FPSLRA. As examined in the Hours of Work rationale, a paid meal period is the norm in the national policing sector. It exists in every collective agreement covering workers

[53] Arbitrator Stan Lanyon, Q.C.in Vancouver Police Board v. Vancouver Police Union,1997B.C.C.A.A.A.No.62.

employed with every major law enforcement agency in Canada. The pension plan for workers in the FB bargaining unit lags significantly behind other major law enforcement organizations in Canada. Wages are no different in this regard, in that FB employees are significantly behind appropriate comparators when it comes to base salary comparison.

The Wage Gap with the RCMP: Comparing FB-3 and the RM-Cst. Salary

In terms of base annual salary and using the FB-03 salary job rate as the key benchmark, employees in the FB group, in 2021 (the last year of an FB group wage increase), are $13,350 behind its RM group comparator salary *prior* to the introduction of a forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours.

RM-Cst. Wage Rate (April 1, 2021):	$102,418
FB-3 Wage Rate (June 21, 2021):	$89,068
Wage Gap Differential:	14.989%

As proposed above:

3) To close this wage gap, the Union proposes that the meal allowance (Appendix L) be replaced with a paid 40-hour work week (i.e. employees paid for 40 hours but continue to work 37.5 hours per week and 7.5 per day on average, as per Article 25) for all employees.

    a. The paid meal for all, which is the equivalent of a **6.667%** increase to the base rate, will apply to all employees in the bargaining unit, effective June 21, 2022, prior to the application of the market adjustment and general economic increase.

4) In addition, after the application of the paid meal period and prior to the application of the general economic increase, a market adjustment to all levels of the FB salary grids of **7.801%** to close the remainder of the wage gap with the 2021 RCMP wage rate. For clarity, the market adjustment is effective June 21, 2022.

As additional context to the RCMP analysis, an internally relative comparator as the RM group is a part of the core public administration, the Union also emphasizes the expanding wage gap with the broader law enforcement community across the country. **Table 8** shows annual salaries of First-Class Constable (with an effective date of 2021) from law enforcement organizations from every province as well as all police services with more

than 1000 officers. A comparison of the 2021 median shows a 17.5% gap with the 2021 FB-3 annual salary—an even greater gap than the proposed closure of the wage gap with the RCMP.

Table 8: Canadian 1st Class Constable Salaries Comparison[54,55] (Exhibit 82)

Jurisdiction	Province	Number of Officers (2021)	1st Class Cst. Salary (Effective Date of 2021)
Saskatoon	SK	530	$107,515
Winnipeg	MB	1355	$109,610
York Reg.	ON	1692	$105,535
Toronto	ON	4972	$105,505
Calgary	AB	2220	$104,439
Edmonton	AB	1858	$106,262
Vancouver	BC	1348	$102,732
OPP	ON	5576	$104,661
Peel Reg.	ON	2190	$105,535
Ottawa	ON	2096	$105,015
Halifax Reg.	NS	390	$106,465
Saint John	NB	150	$99,504
RCMP	National	18832	$102,418
Royal NFLD Constabulary	NL	404	$93,840
Charlottetown	PE	74	$82,460
Montréal	QC	4523	$86,998
Sûreté du Québec	QC	5799	$84,366
TOTAL		54009	
		Median	**$104,661**
		Current FB-03 Salary:	$89,068

[54] All police department with more than 1000 officers are listed in this survey.
[55] The largest police departments in each province are listed in this survey.

The Union submits that its market adjustment, paid meal period, and wage proposal are entirely reasonable given the current discrepancy between the annual salary of Border Service Officers and its comparators. The combined proposals that replicate compensatory norms of the national policing community, including the paid meal period, closes the wage gap with that community for the FB group. Indeed, given the CBSA's on-going recruitment and retention issues, the Union submits that what the Union is proposing is in the interests of the CBSA and the Government of Canada.

As Arbitrator Dupont wrote, substandard wages over a period of time does indeed become a subsidy, and a subsidy these workers should no longer have to pay:

> The weight to be attributed to allegations of inability to pay should differ from a situation where the employees, while negotiating are already vested with basic wages that are fair and reasonable as being comparable to wages paid by other employers for like work and services in the same sector, and employees, who while bargaining are vested with a wage level substantially below the norm. If the abnormal situation were to continue as it exists in this case it would indeed amount to subsidy by the employees by maintaining substandard wages and working conditions. The substantial disparity between the existing wages and those of the comparators alluded to earlier, including William Hay Centre, renders existing salaries substandard. Under those conditions the employer's alleged inability to pay even if established as I find it is, ought to merit much reduced weight.[56]

A significant majority of FB group members continue to experience a significant gap in terms of their wages versus their counterparts elsewhere in the broader Canadian labour market. There is a substantial disparity between existing wages, pension entitlement and such benefits as a paid meal period compared to those of the comparators alluded to earlier. It is a problem that requires a prompt remedy if the federal government is to deliver on its mandate to Canadians, and if the fundamental principles called for under Section 175 of the FPSLRA are to be respected.

[56] W. Dupont, Ottawa Carleton Regional Residential Treatment Centre The Roberts/Smart Centre and CUPE 2376, 1998. (Exhibit 81)

Fairness and Internal Relativity within the Core Public Administration

- **175(c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;**

In the recent round of PSAC bargaining that concluded on May 1st, 2023, settlements that included law enforcement employees represented by the PSAC, including enforcement and wildlife officers and their supervisors, park wardens, fisheries officers, and parole officers and supervisors, all exceeded for these occupational groups, to varying degrees, the negotiated general economic increases of 4.75% in 2022, 3.50% in 2023, and 2.25% in 2024. For example, a list of additional adjustments or allowances for law enforcement communities represented by PSAC over this cycle of negotiations include:

- **Parole officer and parole officer supervisors/managers (PA Group).** An increase from $2,000 to $3000 of the annual allowance for incumbents of Welfare Programmes (WP) Group positions at the WP-04 level working as a Parole Officer and WP-05 level working as a Parole Officer Supervisor or Parole Officer Manager at Correctional Services Canada (CSC).
    - *An increase on top of the new allowance from the previous round.*

- **Fishery Officer (PA Group).** An increase from $3,534 to $6,500 of the annual allowance for incumbents of PM Group positions at the PM-05 and PM-06 levels for the performance of their duties as Fishery Officers.[57]
    - *An increase on top of the new allowance from the previous round.*

- **Fishery Officers (TC Group).** Fishery Officers at the GT-02, GT03, GT-04 and GT-05 levels will receive an increase to their existing annual allowance from $3,534 to $6,500.
    - *An increase on top of the increase of this allowance from the previous round.*

- **Enforcement and Wildlife Officers (TC Group).** Enforcement and Wildlife Officers at Environment Canada who are fully designated with peace officer powers at levels GT-02, GT-03, GT-04 and GT-05 will receive an increase to their existing annual allowance from $3,534 to $6,500.[58]
    - *An increase on top of the increase of this allowance from the previous round.*

[57] PA Group (Parole officer and parole officer supervisors/managers & Fishery Officer) Available online: https://workerscantwait.ca/wp-content/uploads/2023/05/2023-05-01-Ratification-Kit-PA-Group-1.pdf
[58] TC Group (Fishery Officers & Enforcement and Wildlife Officers). Available online:: https://psacunion.ca/sites/psac/files/attachments/pdfs/2023-05-01-tc-group-ratification-kit.pdf

- **Park Wardens.** Enforcement Officers at the GT-04 and GT-05 levels will receive an increase to their existing annual allowance from $3,534 to $6,500.[59]
    - *An increase on top of the increase of this allowance from the previous round.*

The Union submits that what is to be replicated is that when it comes to bargaining for law enforcement and public safety occupational groups in the core public administration, these groups, including the FB group and the RCMP, exceed those of the non-law enforcement non-public safety groups in the core public administration due to highly competitive labour markets for specialized skills and external comparability and the operational needs to recruit and retain workers.

Again, a critical point in this round of bargaining is the fact that the Employer has agreed to additional increases for the law enforcement community represented by the PSAC (see the occupational group listed above). For these groups, over and above the negotiated economic increases, additional remuneration was agreed to by the Treasury Board.

To add further emphasis relative to additional remuneration above and beyond negotiated economic increase, the April 2020 CRA Public Interest Commission report addressed internal disparities between PSAC and PIPSC members at the CRA with market adjustments in addition to the argued settlement pattern for the years of 2016 and 2017:

> [22] The commission majority believes that a settlement for the PSAC group is unlikely unless the CRA receives a revised mandate from Treasury Board that would include addressing the 2.5% adjustment given to the PIPSC group within the CRA, whether the adjustment is granted retroactive to 2016 or phased in over time. This adjustment would be in addition to the 1.25% for each of 2016-17 and 2017-18 years that is normative in the federal public sector for those two years. We accept that the two bargaining units within CRA have traditionally matched each other's economic settlements; failure to do so in this round could create a serious internal inequity (PSLRB 590-34-39682).

Further to this, in a December 2018 FPSLREB arbitral award for PSAC and CSIS, chairperson Slotnick similarly recognized and awarded employees represented by PSAC

[59] Parks Group (Park Wardens). Available online: https://psacunion.ca/sites/psac/files/attachments/pdfs/2023-06-30_-_ratification_kit_-_parks_canada.pdf

a market adjustment of 1.75% in the third year of the agreement (not a lump sum) that exceeded the Employer argued settlement pattern (PSLRB 585-20-68).

Again, in a January 2013 TC Group Public Interest Commission report it was recognized that:

> [20] The Commission also observes that other negotiated settlements, arbitration awards and the recommendations of other Public Interest Commissions also included additional monetary items […] In addition, the parties agreed that a variety of specific, targeted adjustments were made in a number of bargaining units. The Commission has concluded that these adjustments form part of what we refer to as "the pattern."[60]

What's more is that beyond the law enforcement community in the core public administration targeted adjustments above and beyond negotiated economic increases are commonplace.

Core Public Administration	2021	2022	2023	2024	2025
RM Group (NPF)	1.75% + 1.50% = 3.28%	1.75% + 2.27% = 4.06%	Bargaining next round begins		
PO Group (CUPE)	1.5%	1.5%	3.5% + 1.25% + October 5, 2023: (Restructure - extra step (4%) to replace annual service pay)[61]	3.5%	2.25%
IT Group (PIPSC)	Dec. 22, 2021: Additional 1.5% Pay Line Adjustment (all); and Additional Pay Line Adjustment (parity) for the IT-05 level of 1.0% for a total of 2.50%, to be applied to every step.[62]	4.75%	3.5%	2.25%	Bargaining next round begins

[60] FPSLREB 2013 TC PIC Report: https://decisions.fpslreb-crtespf.gc.ca/fpslreb-crtespf/d/en/item/360434/index.do
[61] Law Enforcement Support and Police Operations Support (LES-PO)- Canada.ca
[62] IT Group Tentative Agreement - Summary of changes.pdf - Google Drive

SV Group (PSAC)	1.5%	4.75%	3% + wage adjustment: minimum of 0.5% (or 3% for GL-MAM, GL-COI, GL-VHE, GL-MDO, and HP; 4% for SC; and 6% for FR groups)	2.25%	Bargaining next round begins
NPF Groups (PSAC) – Currently on Strike, but six (6) NFP PIC reports, for 2022-24, recommended:	This is a PIC Report Recommendation	3.5% + 2.5% = 6%	3% + 1.75% = 4.75%	2% + 1% = 3%	

In summary, the Employer's proposal wage proposal does not address the foundational premise of the FB group wage proposal: parity with the RCMP and consideration of the broader law enforcement community across Canada.

All proposals made by the Union during the course of negotiations, proposals that would take steps to align working conditions and compensation for employees in the FB bargaining unit with the RCMP—a clear internal comparator—and those of other Canadian law enforcement workers have been flatly rejected by the Employer. This Employer refuses to take external public sector comparability (FPSLRA, Sec. 175(b)) or internal comparability with the law enforcement communities represented by the PSAC (FPSLRA, Sec. 175(c)) under consideration.

The weight of the Public Sector in the Canadian Economy

A report published in August 2022 by *l'Institut de recherche et d'informations socioéconomiques* (IRIS) indicate that investing in the public sector is beneficial, as it has a greater economic impact on GDP and jobs than investments in other industries. IRIS suggests that "*increased income from public sector job creation and wage indexing makes this anti-inflation strategy better for households than hiking the central bank's*

policy rate"[63]. Furthermore, according to the IRIS report it is vital that we see public sector expenditures as potent investments in our economy and society, rather than as a money pit or net loss for taxpayers:

> *Public sector jobs can be a safety net during times of inflationary crisis. The public sector provides jobs that maintain a strong middle class, making it a key player in keeping the economy healthy. In times of high inflation, cost of living increases rapidly and workers' purchasing power can be easily undermined.*[64]

Resources spent on public sector employees not only help provide the public with essential services but become income for workers whose spending contributes to the economic development of numerous regions and communities. Wages that public sector employees spend make their way throughout the productive economy instead of being squirrelled away as private company profits.[65]

Public-sector jobs contribute to a social context which favors growth by creating stability hubs throughout economic cycles, and by mixing up industries and economic growth, while maintaining a strong middle-class and reducing gender-based and race inequities in the workforce.

[63] Pierre-Antoine HARVEY and Guillaume HÉBERT, "With inflation on the rise, the Bank of Canada has two choices," Note, Institut de recherche et d'informations socioéconomiques (IRIS), August 11, 2022
[64] Idem.
[65] Idem.

ARTICLE 27
SHIFT AND WEEKEND PREMIUMS

Amend as follows:

~~**Excluded provisions**~~

~~*This Article does not apply to employees on day work, covered by clauses 25.06 to 25.12 inclusive.*~~

27.01 Shift Premium (**This clause does not apply to employees on day work, covered by clauses 25.06 to 25.12 inclusive**).

An employee working shifts, will receive a shift premium of ~~two dollars ($2.00) per hours~~ **14.3% of the employee's basic hourly rate of pay** for all hours worked, including overtime hours, between 4:00 p.m. and 8:00 a.m. The shift premium will not be paid for hours worked between 8:00 a.m. and 4:00 p.m.

27.02 Weekend Premium

(a) An employee working ~~shifts~~ during a weekend will receive an additional premium of ~~two dollars ($2.00) per hour~~ **14.3% of the employee's basic hourly rate** for all hours worked, including overtime hours, on Saturday and/or Sunday.

(b) Where Saturday and Sunday are not recognized as the weekend at a mission abroad, the Employer may substitute two (2) other contiguous days to conform to local practice.

RATIONALE

Most employees in the FB bargaining unit work shifts, consequently, shift and weekend premiums are not an inconsequential compensation for workers in this bargaining unit. These workers have not seen an increase in shift premium since June 2002—over twenty-one years. While wages have been adjusted over the same period, shift and weekend premiums have remained unchanged.

With respect to internal relativity, the Treasury Board pay shift and weekend premiums as a percentage of salary for three bargaining unit in the core administration including Ship Repair (East), Ship Repair (West), and Ship Repair (All Chargehand and Production Supervisor Employees Located on the East Coast). Also, note that last year, the Canada Revenue Agency shift and weekend premium increased to $2.50.[66]

In addition, federal public sector employers have agreed to a considerable increase in shift premium for other groups of workers it employs. For example, the PSAC bargaining unit for Detection Specialists at Parliamentary Protective Services, Operational workers and both editors and senior editors at the House of Commons, workers at the Senate of Canada and at the Museum of Science and Technology Corporation have all seen their shift and weekend premiums increase. Some of these increases were achieved via FPSLREB arbitral awards. (Exhibit 25). Indeed, the two of the recent-most interest arbitration awards issued by the FPSLREB provided an increase in weekend premium to $2.40 an hour (2019 FPSLREB 104). In both of these cases the union members affected worked for the Parliamentary Protective Service, Parliament Hill's Service responsible for law enforcement at the House of Commons and the Senate.

When taking into account the significant changes that have been made to the work that shift-working employees do in the FB bargaining unit, changes that have warranted significant wage increases since 2007, and given the time that has elapsed since the last increase, the Union submits that its proposal is entirely reasonable. What's more the Treasury Board has agreed to a considerable increase in shift premium for another group of workers in its employ. The Union submits the same should be done for shift workers in the FB group. As wages and inflation increase, the relativity between the value of the shift/weekend premium and the hourly rates of pay also needs to be maintained through an upward adjustment to the premium. Otherwise the premium pay associated with shift work would not properly compensate employees for the hardship and inconvenience represented by this kind of work.

[66] rat-kit-cra-english-UGH (psacunion.ca) / RAT-final-cra-fr-ugh (syndicatafpc.ca)

The removal of shift under 27.02 a) is being proposed to ensure that day workers are provided the same benefit as shift workers, in that shift workers receive weekend premium on overtime hours worked on a weekend. The Union submits that such a premium should also be applied to a day worker who is required to work a weekend.

The Union submits that there is no cogent reason given these facts as to why workers in the FB group should not see an increase in shift and weekend premiums, particularly given the precedent that has been set by both the Treasury Board and the FPSLREB. Consequently, the Union respectfully requests that its proposal be included in the panel's recommendation.

ARTICLE 24
TECHNOLOGICAL CHANGE

24.01 ~~The parties have agreed that, in cases where, as a result of technological change, the services of an employee are no longer required beyond a specified date because of lack of work or the discontinuance of a function, Appendix C, Workforce Adjustment, will apply. In all other cases, the following clauses will apply~~.

The parties agree that no employee shall suffer job loss as a result of technological change, nor shall any bargaining unit positions be eliminated as a result of technological change.

24.02 In this Article, "technological change" means:

(a) the introduction by the Employer of equipment ~~or~~ material, **systems or software** of a different nature than that previously utilized;

and

(b) a change in the Employer's operation directly related to the introduction of that equipment, ~~or~~ material, **systems or software.**

24.03 Where technological change is to be implemented, the Employer will seek ways and means of minimizing adverse effects on employees which might result from such changes.

24.04 The Employer agrees to provide as much advance notice as is practicable but, except in cases of emergency, not less than ~~one hundred and eighty (180)~~ **three hundred and sixty (360)** days' written notice to the Alliance of the introduction or implementation of technological change when it will result in significant changes in the employment status or working conditions of the employees.

24.05 The written notice provided for in clause 24.04 will provide the following information:

(a) the nature and degree of the technological change;
(b) the date or dates on which the Employer proposes to effect the technological change;
(c) the location or locations involved;

(d) the approximate number and type of employees likely to be affected by the technological change;
(e) the effect that the technological change is likely to have on the terms and conditions of employment of the employees affected.
(f) **the business case and all other documentation that demonstrates the need for the technological change and the complete formal and documented risk assessment that was undertaken as the change pertains to the employees directly impacted, all employees who may be impacted and to the citizens of Canada if applicable, and any mitigation options that have been considered.**

24.06 As soon as reasonably practicable after notice is given under clause 24.04, the Employer shall consult meaningfully with the Alliance, **at a mutually agreed upon time,** concerning the rationale for the change and the topics referred to in clause 24.05 on each group of employees, including training.

24.07 The parties agree that technological change shall not be implemented where such implementation may potentially put national security at risk.

24.08 When, as a result of technological change, ~~the Employer determines that~~ an employee requires new skills or knowledge in order to perform the duties of the employee's substantive position, the Employer will ~~make every reasonable effort to~~ provide the necessary training during the employee's working hours without loss of pay and at no cost to the employee.

RATIONALE

The 2021 Federal Budget introduced "modernizing border travel and trade" and "transforming the border experience through contactless and automated interactions" on a significant scale:

> "Budget 2021 proposes to provide $656.1 million over five years, beginning in 2021-22, and $123.8 million ongoing, to the Canada Border Services Agency (CBSA) to modernize our borders. Funding will transform the border experience for travelers through touchless and automated interactions, enhance CBSA's ability to detect contraband, and help protect the integrity of our border infrastructure. Funding will also support three Canadian preclearance pilots in the United Sates that would enable customs and immigration inspections to be completed before goods and travelers enter Canada."[67]

[67] Federal Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience, p. 144 & 493 (Exhibit 26)

PSAC-CIU was quick to react. For years, PSAC-CIU have been vocal about the potential security pitfalls of border processes being centred around technology as opposed to workers and officers. Talks of further automation raise security and labour concerns that cannot be ignored. Technology can support officers on the ground but cannot replace them. If the government is serious about border security, it must ensure proper workforce investments to match technological initiatives.[68]

On June 22, 2023, Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28th, 2023, received royal assent.[69] The Act changed the *Customs Act* and the changes are not innocuous. These changes represent a dramatic departure to border security practices that have been in place for over 100 years. Now, individuals entering Canada can effectively 'self declare', or scan in like one purchasing items at a grocery store. These changes put Canadians at serious risk. Individuals engaged in illicit activities across the border do not 'self-declare'. It is for this very reason that CBSA employes thousands of trained professionals on our borders to detect individuals engaged in such activities.

Division 24 of Bill C-47 amends the *Customs Act*[70] to modernize how the Canada Border Services Agency (CBSA) interacts with and processes travellers arriving in Canada. These amendments lay the legal foundation for some of CBSA's modernization initiatives that are intended to improve efficiency, **including through touchless and automated self-service processing options.**[71]

Clause 476 amends section 11 of the *Customs Act* to allow a traveller arriving in Canada to present themselves to the CBSA **by means of telecommunication** if that method is available at that customs office. **The bill does not define "means of telecommunication," but this could include mobile applications, kiosks, and**

[68] Border automation concerns PSAC-SDI: https://www.ciu-sdi.ca/fr/2021/04/psac-ciu-raise-border-automation-concerns-with-government/
[69] https://www.parl.ca/documentviewer/en/44-1/bill/C-47/royal-assent
[70] *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.). / *Loi sur les douanes*, L.R.C. 1985, ch. 1 (2e supp.).
[71] Legislative Summary of Bill C-47: An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023 / Résumé législatif du projet de loi C-47 : Loi portant exécution de certaines dispositions du budget déposé au Parlement le 28 mars 2023

telephone, amongst others. Travellers will also continue to be able to present themselves in person to a CBSA officer. If only one of those options is available (i.e., at an unstaffed border crossing), travellers will be required to use that option. A CBSA officer may require a traveller to present themselves in person regardless of the traveller's preference or intention to use a means of telecommunication. This includes travellers who would normally be exempt by regulation from in person presentation requirements, such as NEXUS card holders.[72] Travellers using a means of telecommunication may need to have their photograph taken when presenting themselves, and in certain circumstances may be required to provide certain information before arriving in Canada.[73]

The Union has raised objections repeatedly about the changes being made by CBSA with respect to traveler modernization initiatives, chronic vacancies, and the understaffing of ports of entry. With respect to technological change there are two major objections. The first is related to concerns about safety and security. The second is related to employment security. The proposals being made by the Union with respect to Article 24 are intended to rectify on-going problems concerning technological change in CBSA workplaces.

With respect to safety and security, Border Services Officers undergo considerable training prior to being put on strength. In addition to being trained in control defence tactics and firearm usage, BSOs are trained in observation and detection. Body language, tone of voice, many different behavioural and other factors are taken into account when determining whether or not to admit an individual into Canada, or whether or not a Canadian national should be subject additional scrutiny upon entry into Canada.
Technological change has been a matter of significant discord between the parties, beginning, in part, with CBSA's introduction of Automated Border Clearance Self-Serve Kiosks, known generally within the bargaining unit as "ABC machines".[74] Increasingly,

[72] Canada Border Services Agency, *NEXUS program* / Agence des services frontaliers du Canada, *Programme NEXUS*.
[73] Legislative Summary of Bill C-47: An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023 / Résumé législatif du projet de loi C-47 : Loi portant exécution de certaines dispositions du budget déposé au Parlement le 28 mars 2023
[74] ABC machines were first introduced in 2012, beginning Pierre Elliott Trudeau Airport in Montreal and Vancouver International Airport. ABC machines were first introduced at Pearson International Airport in Toronto in 2013. They have since been introduced at Macdonald-Cartier Airport in Ottawa and Edmonton International Airport. ABC machines provide travelers with ability to confirm their identity and complete an on-screen declaration. Beginning this year these

where such machines are in use, many if not all travelers are encouraged to use the machines. While the Union is proposing to strengthen the contract's technological change language in several ways, the Employer, in the midst of a very significant proposed technological shift (see below), has proposed to weaken the language with a steep reduction of the current notice period from 180 to 30 days—a concession not agreed to in the recent cycle of PSAC bargaining.

While the 2023 budget implementation bill was tabled on March 28th, 2023, it was subject to much debate. On May 8, 2023, at the Senate Standing Committee for National Security, Defence and Veteran Affair (SECD), CIU President Weber spoke to the proposed changes to the *Customs Act* in Bill C-47. Weber testified:

> We look at subclause 11(1) of the Customs Act and some of the proposed changes there, it talks about having to report to "(a) an officer in person." The words "in person" have been added. But the biggest change is to 11(1)(b), where it talks about travellers having to report to the agency by "means of telecommunication that is specified by the Minister for use at that customs office." Reading it, it would **seem that the intent of this bill is to allow travellers to not only present themselves by means of telecommunication, such as the ArriveCAN app, the internet or phone, but also looks as though this information need not be reviewed by an officer or even by a person**.[75]
>
> […]
>
> The concerns that I'll be speaking about today **are the concerns that come from our membership, which are largely around security and understaffing**. As many of you know, the **CBSA is quite badly understaffed**. We estimate that we would need another 2,000 to 2,500 officers to make the operation run properly.
>
> **We're seeing this kind of technology in many ways being proposed as a way to replace officers, and we hear comparisons such as to an ATM or an automated kiosk. We understand that an automated kiosk might work at a grocery store, but the grocery stores do not have prohibited weapons, synthetic opioids, child pornography, the kinds of things we're there to intercede.**
> […]

now include Primary Inspection Kiosks, which provide for travelers to scan their own travel document, have their photo taken and answer questions to complete their declaration. Once the process is complete the machine produces a receipt and the receipt is given to a Border Services Officer. The only travelers who do not have access to the use of such machines are unaccompanied minors and travelers who do not have machine-readable travel documents.

[75] Standing Senate Committee on National Security, Defence and Veterans Affairs (44th Parliament, 1st Session) (sencanada.ca) / Comité sénatorial permanent de la sécurité nationale, défense et anciens combattants (44e législature, 1re session) (sencanada.ca)

> The current situation for the CBSA is not a lack of interest in the job. It's really a lack of facilities to train enough recruits to get those staffing levels up. Currently, we have one college in Rigaud, Quebec, which trains all of our recruits. If that college is operating at maximum capacity, that's under 600 recruits a year, which isn't covering attrition.
>
> **It's a matter of opening a second college, increasing the capacity of Rigaud, or finding some way to get those numbers to go up. They never increase even if we are operating at maximum.**
>
> **The situation right now is that we are so short-staffed that regions are hesitant to release people to be trainers at Rigaud to train new people to get those numbers up, to give you an idea of how short we are staff-wise.**
>
> **It is a critical situation. We're looking at a summer action plan for us where leave will be limited, where we'll be looking at things like mandatory overtime again.**
>
> The CBSA has gone out and is asking retired officers to come back to work on 90-day contracts. It is an all hands on deck, desperate situation for us to get enough people to work on the border right now.[76]

The Union is prosing that 24.01 be replaced with lanague ensuring that bargaining unit positions will not be eliminated because of technological change.

The Union as previously stated is on record as opposing a number of the changes being implemented, or on some cases, the means via which they are being implemented. For instance, with respect to ABC machines, the Union has indicated that their introduction could be acceptable in certain circumstances, provided that the CBSA maintain roving teams of BSO's to monitor travellers as they enter the country. Here is an example where technological change could be implemented, while at the same time ensuring that the important work done by BSO's in looking for 'indicators' would continue.

With respect to 24.01, there is precedent for what the Union is proposing. The collective agreement covering over 50,000 Canada Post employees states not only that employees' jobs will be protected, but that in fact any dispute between the parties related to the actual technological change itself is subject to arbitration. (Exhibit 27)

[76] Standing Senate Committee on National Security, Defence and Veterans Affairs (44th Parliament, 1st Session) (sencanada.ca) / Comité sénatorial permanent de la sécurité nationale, défense et anciens combattants (44e législature, 1re session) (sencanada.ca)

Members of the FB bargaining unit do extremely important work. They are the first line of defence on Canada's borders. The Union submits that the replacing of officers with machines or using them to fill staffing gaps is not consistent with CBSA's mandate as it relates to public safety. What the Union is proposing is in the interest of the employees, the employer and quite frankly all Canadians. The language being proposed by the Union would ensure that the implementation of technological change could not be done in such a way as to reduce the number of law enforcement professionals working on Canada's borders and inland ports of entry.

The recent ArriveCAN fiasco is yet another example of where the government and CBSA have initiated technological change in an effort to cut costs and bypass the critical work done by officers at ports of entry, and initiative which in the opinion of the Union and its membership puts the Canadian public at risk.

According to Government of Canada, CBSA launched ArriveCAN on April 29th, 2020 with the stated purpose of using it as a communication and screening tool to ensure travellers arriving in Canada complied with pandemic border measures.[77]

By 2023, a CBSA video about ArriveCAN: Advance CBSA Declaration explains that CBSA is finding ways to deliver a better, faster and more modern experience for travellers, while keeping Canada safe:

> "We know you have a busy life and want tools that can help get you where you need to go quickly and safely."

However, The **Auditor General of Canada's February 2024 report regarding the procurement process around the ArriveCAN application** is as scathing as it is unsurprising for anyone familiar with management at the Canada Border Services Agency. Auditor-General Karen Hogan's report into federal spending on the ArriveCAN application found a "glaring disregard for basic management."[78]

[77] The ArriveCAN app is about to become optional. Will anyone use it? | CBC News
[78] Report 1—ArriveCAN (oag-bvg.gc.ca)

The Union filed an unfair labour practice complaint on the expanded use of the ArriveCAN Application **(Exhibit 86).**

Our members, who do the work on our borders, and their union have raised concerns about this initiative. As our members know, this disregard for proper managerial procedures is deeply embedded within the Agency, often with little consequence for the managers. Be it in terms of the profound lack of accountability found at all management levels, of the tendency to retaliate against employees for speaking up, or of the poorly run, arbitrary internal investigative and disciplinary processes — CBSA management's track record speaks for itself. While keen on punishing its lower-level employees at the slightest allegation, the Agency is known to turn a blind eye to far more serious breaches within management.[79]

The Union proposal at Article 24.04 adjusts the written notice timeframe to better reflect the time it takes to plan for, implement and adapt the workplace environment, and adapt workers to the changed work environment. The current 180 days is insufficient to respond to significant changes in the employment status or working conditions of affected employees.

Finally, the Union proposes additional disclosure in Article 24.05 (f) that would provide it with the business case for the technological change and all documented risk assessments. PSAC sought this kind of documentation early in the process which created the then new and ultimately disastrous Phoenix pay system, but the information was denied by the Treasury Board at the time. When the business case was finally released publicly two years after Phoenix went live, it became clear that the business case failed to account for real risks to pay specialists or their clients, public service workers and members. None of the risks identified in the formative documents identified the overwork and stress that has been experienced by pay specialists because of system failures and lack of capacity. The idea that employees might not get paid accurately, or get paid at all, was not contemplated. The Union is seeking to expand the language in Article 24.05 so

[79] "A glaring disregard for basic management practices" — Auditor General on ArriveCAN (ciu-sdi.ca)

that it may effectively and fulsomely advocate on behalf of its members and meet its legal duties. An open and honest disclosure of the plans and an opportunity for the Union to help assess risks and problems could have led to much different decisions that may have alleviated or even avoided the Phoenix pay disaster.

The Union's proposal for 24.07 would provide the Union and its members the opportunity to challenge decisions made by CBSA that the employees believe could put national security at risk. Article 1 of the parties' current agreement states that the parties are committed to the well being and increased efficiency of the public service. Given the work that members of the FB bargaining unit perform as law enforcement professionals, what the Union is proposing for 24.07 with respect to national security is equally important – to the employees and presumably the CBSA. The Union's membership working at Canada's ports of entry know full well the importance of ensuring trained officers are on hand when travelers and goods enter the country.

The Union also understands that the driving force behind the technological changes being proposed at Canada's POE's are not driven by the need to ensure Canada's safety, but rather to cut costs, reduce staffing levels and cater to Canadian and American manufacturers who rely on just in time production and whose sole interest is to maximize profits.

Over the last several years technological change has become a matter of considerable discord between the Union and the CBSA. It has become a key priority for the Union given recent events. The current language places excessive and unnecessary restrictions on the Union and provides for protections that are inferior to what has been negotiated elsewhere in the federal public sector. In light of these facts, the Union respectfully requests that its proposals for Article 24 be included in the Commission's recommendation.

NEW ARTICLE/APPENDIX:
ALTERNATIVE WORK ARRANGEMENTS

For the purpose of this article a telework agreement is defined as per the Directive on Telework effective April 1, 2020.

XX.01 Employees shall be informed that participation in telework is voluntary and that they are not required to telework.

XX.02 An employee may request to enter into a new telework agreement or request a review that could result in an adjustment of an existing telework agreement. A request for a new telework agreement or the review of an existing telework agreement will be considered on a case-by-case basis and a decision shall be provided within twenty-eight (28) calendar days of the request. Approval shall not be unreasonably denied.

XX.03 If the Employer denies a request for a new telework agreement or for a review of an existing telework agreement, then the Employer shall provide the reasons in writing.

XX.04 Employees with a telework agreement may elect to terminate the agreement with reasonable notice to the Employer. The Employer will concede to such termination no later than twenty-eight (28) calendar days following receipt of such notice.

XX.05 Telework agreements will only be terminated at the request of the employee, or for just cause by the Employer. All terminations for just cause shall include the written reasons and be immediately communicated to the union.

XX.06 An employee has the right to grieve a denied request for a telework agreement or for a review of an existing telework agreement and when the Employer has terminated a telework agreement.

XX.07 Notwithstanding the above, nothing restricts an employee's right to request to work remotely on a temporary or as-needed basis without establishing a formal telework agreement. Such requests shall not be unreasonably denied.

XX.08 **Provision of Equipment and Supplies**

a. Departments and Agencies shall provide all employees in a telework agreement with all equipment and software required for the telework location to comply with the *Canada labour Code,* Part II*.* This would include, but is not limited to:
   i. computer(s), monitor(s), and any other peripheral equipment that is required to carry out the employee's work;
   ii. any software required to do their work or to communicate with other workers;
   iii. ergonomic workstation furniture and equipment required to ensure an ergonomic and safe workspace. An assessment, by a qualified ergonomic specialist, shall be conducted upon request by an employee. Any recommendations from the assessment, approved by the Employer, shall be implemented without delay.

b. An employee shall be paid an allowance of one hundred dollars ($100.00) for each calendar month, during which an employee teleworks for at least seventy-five (75) hours.

XX.09 Unless otherwise specified in this Article, all terms and conditions of a telework agreement shall be consistent with the provisions of the Collective Agreement.

XX.10 **Notice to the Union**

a. On a quarterly basis, the Employer shall provide to the Union, a list of all employees with telework agreements. The list shall include the employees name, position, classification, Employer work unit and location, actual remote work location, including the physical address, and contact information for each employee as well as whether or not each entry is a continuing, new, or revised telework agreement.

RATIONALE

Almost three years ago, Canada entered a pandemic shutdown that altered the work arrangements of hundreds of thousands of workers. It is impossible to argue that telework is not a key factor in the working conditions of our members and considerations to its application ought to appear in collective agreements.

The union is not seeking to negotiate every detail of telework agreements but to acknowledge that while the implementation of these agreements can be guided by a

directive, clear parameters should still be set forth in the collective agreement. It is the only way that fairness and transparency can be achieved.

In its proposal the union recognizes that there are situations where telework is not easily feasible and for this reason we believe that a request for a telework agreement shall be considered on a case-by-case basis. However, where it is operationally feasible, the union submits that it should not be unreasonably denied to employees. The Union also propose new language around timelines and the provisions of equipment and supplies.

The benefits of telework are well documented and the Government of Canada has already recognized many of these benefits:

- Reduce stress, achieve work–life balance and meet performance expectations.
- Ensure an inclusive public service and a safe and healthy work environment; and
- Contributes to reducing emissions from transportation, traffic congestion and air pollution, in accordance with the Greening Government Strategy.

The goals to which telework, and hybrid work are said to hope to achieve are important and impact every aspect of governmental operations.

Currently the employer's own guidance document says that approval for an employee to telework may depend on several factors, such as operational and administrative requirements, team dynamics, well-being, and mental health, and the proposed telework location. These approval criteria are entirely subjective, meaning once again that managers at all levels have carte blanche to do what they want. No appeal mechanisms are mentioned in the directive or guidance documents. As set out in the Directive on Telework, approved telework agreements must be reviewed at least annually and may be terminated by either party with reasonable notice. Given the constant churn of managers in the public service if, for example, a new manager comes to alternate decisions, and employees are impacted negatively they would not have access to any recourse.

There is a long history of telework being a matter of dispute between the parties for this group. The Union raised the issue well before the pandemic.

Telework became common in non-uniformed work environments at Canada Customs and Revenue Agency (CCRA – the predecessor to CBSA) soon after the initial Telework policy was introduced in 2000, particularly in Trade Compliance and at CBSA headquarters in Ottawa. Indeed, in some regions the practice had existed before the introduction of the policy. For Trade Compliance employees working in such highly urbanized areas as Toronto and Montreal, it came to be recognized by management and employees as being eminently practical, as employees working in Trade Compliance regularly perform their duties off site and the CBSA Trade Compliance offices in both cities are found in the downtown core, rendering them difficult to access at certain times of the day. For example, in Toronto it became the norm for employees to visit sites and perform verifications in Mississauga, Scarborough or the northwest Toronto and then return to their place of residence to complete the associated paperwork and documentation, rather than spend up to 2 hours in traffic simply to go to and from the office at One Front St. In fact, CBSA in the GTA in 2000 and 2001 actively promoted telework when recruiting to fill Trade Compliance positions. In 2004 there were well over 150 employees on telework in the GTA alone, with another 117 officers having expressed interest.

In the late 2010's CBSA began unilaterally revoking the Telework Policy in certain regions. It began in Toronto and later spread to Quebec and Alberta. At the outset of this round of negotiations in 2018, there were to the Union's knowledge no permanent, on-going telework arrangements in place for Trade Compliance officers anywhere outside of British Columbia, with the exception of employees requiring medical accommodation.

In the 2009 round of bargaining the Union raised the issue of telework from the outset, and while consensus was never reached on the application of the policy during negotiations, the parties agreed to strike a joint committee to discuss the application of the Telework Policy with CBSA's Trade Compliance Division. That joint committee met

often in the years immediately following. A number of conference calls of the committee representatives were also held. While there was considerable discussion, CBSA held to its position that telework arrangements are to be granted on a case-by-case basis, at management's discretion.

In the last round of negotiations, the employer was clear that it could not address telework in the FB collective agreement at the time as telework had become a public service-wide issue, and consequently it would be addressed in the coming round of negotiations once all of the PSAC-Treasury Board collective agreements had expired.

Over this cycle of negotiations, a settlement was reached with Treasury Board for the four other PSAC tables. Part of the settlement included a letter setting out a framework for dealing with telework issues, the creation of joint committees and a separate grievance process.

As of the writing of this brief, no joint committees have been established as the Treasury Board has been stalling and obfuscating. The delay has reached the point where the Union is looking into legal options. What's more, experience has shown that the CBSA does not even follow the Treasury Board policy as it exists today.

It is for these reasons that telework language in the parties' collective agreement, providing employees and their Union with recourse, is vital for the Union in this round of negotiations. This is the round of negotiations in which the matter needs to be addressed.

In light of these facts, the Union therefore respectfully requests that the Commission include the Union's proposals in its recommendations.

ARTICLE 17
DISCIPLINE

NEW

17.01 No disciplinary measure in the form of a notice of discipline, suspension or discharge or any other form shall be imposed on any employee without:

a) just, reasonable and sufficient cause;

and

b) without his/her receiving beforehand or at the same time a written notice showing the grounds on which a disciplinary measure is imposed.

17.01 2

~~When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary, administrative or investigative hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting. Where practicable, the employee shall receive a minimum of two (2) days' notice of such a meeting.~~

In any arbitration relating to a disciplinary measure, the burden of proof shall be confined to the grounds mentioned in the notice referred to in 17.01 above.

17.02 3

When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary, administrative or investigative hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting **so that said representative may participate in good faith to the discussion and contribute to the clarification of the situation.**

~~Where practicable, t~~**T**he employee **and his/her Alliance representative** shall receive a minimum of two (2) days' notice of such a meeting.

17.03 4 The Employer shall notify the local representative of the Alliance as soon as possible that such suspension**,** ~~or~~ termination **or investigative or administrative meeting** has occurred.

17.04 5 The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document from the file of an employee the content of which

the employee was not aware of at the time of filing or within a reasonable period thereafter.

17.0~~5~~6 Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after ~~two (2)~~ **one (1)** year~~s~~ ~~have~~ **has** elapsed since the **date on which the incident which gave rise to the** disciplinary action ~~was taken~~ **took place**, provided that no further disciplinary action has been recorded during this period.

NEW

17.07 In the case of suspension and termination, the burden of proof of just cause shall rest with the Employer. Evidence shall be limited to the grounds stated in the written notice consistent with 17.01.

17.xx a) The Employer agrees that every effort shall be made to ensure that any disciplinary investigation, administrative investigation or any other form of investigation subject to this article shall be carried out in as timely a fashion as possible.

b) In no case shall any investigation, conclusion of investigation, delivery of findings and administration of discipline or removal of tools and/or security clearance subject to this Article exceed thirty (30) calendar days.

c) No discipline, removal of tools or removal of security clearance shall be administered to an employee should the Employer fail to adhere to b) above.

17.xx Electronic surveillance

At no time may electronic surveillance systems be used to evaluate employee performance or to gather evidence in support of disciplinary measures, unless such disciplinary measures result from a criminal act.

APPENDIX G
MEMORANDUM OF AGREEMENT WITH RESPECT TO ADMINISTRATIVE SUSPENSIONS AND REMOVAL OF SECURITY CLEARANCE PENDING INVESTIGATIONS

All investigatory and administrative suspensions shall be with pay. No employee shall suffer suspension of pay unless the employee is subject to disciplinary measures which are being imposed consistent with Article 17.

~~Stoppage of pay and allowances will only be invoked in extreme circumstances when it would be inappropriate to pay an employee.~~

~~Each case will be dealt with on its own merits and will be considered when the employee is:~~

1. ~~in jail awaiting trial, or~~
2. ~~clearly involved in the commission of an offence that contravenes a federal act or the Code of Conduct, and significantly affects the proper performance of his/her duties. If the employee's involvement is not clear during the investigation, the decision shall be deferred pending completion of the preliminary hearing or trial in order to assess the testimony under oath.~~

~~However, an employee subject to 1. or 2. above will be placed on administrative leave with pay until the employer appoints an investigator and the investigation has begun in the above-referenced matters.~~

~~Thereafter, the employee will be administratively suspended without pay, subject to regular reassessment by the Employer.~~

~~The Employer agrees to use its best effort to prioritize the above-referenced investigations by case severity.~~

~~The timeliness of administrative suspensions will be a standing item on the National Labour Management Committee with the aim of ensuring continuous improvement.~~

~~The parties recognize the importance of the timely undertaking of processes outlined in this Appendix.~~

RATIONALE

Ensuring that PSAC members are afforded enhanced protections in context of CBSA managerial disciplinary practices is a critical priority for the Union in this round of negotiations.

During the last round of negotiations some improvements were made to the parties' agreement on this issue, but major problems remain and need addressing. Management at CBSA is perceived by PSAC membership as heavy-handed and authoritarian, with employees often being threatened with investigation for frivolous and/or vexatious reasons. Indeed, since 2013, the Union has filed over four hundred grievances related to reprimand, suspension, or discipline. To provide perspective, this means that over 4% of the bargaining unit has grieved a disciplinary matter since 2013. This figure of course only covers matters where the employee elected to grieve. There has also been a marked increase in terminations since 2019, with over a dozen in the last year alone.

It is further notable that the last comprehensive Public Service Employee Survey conducted in 2022 continues to paint a persisting bleak picture indeed for the FB group. Many respondents in front-line positions who participated in the survey indicated that:

Harassment:

- Have you been the victim of harassment on the job in the past 12 months?
    - Yes (Public Service: 11%; CBSA: 20%) – CBSA is nearly double. Higher than 2020 for CSBA (16%).
- From whom did you experience harassment on the job? Individuals with authority over me.
    - Yes (Public Service: 59%; CBSA: 65%) – Higher at CBSA.

Discrimination

- Have you been the victim of discrimination on the job in the past 12 months?
    - Yes (Public Service: 8%; CBSA: 15%) – Nearly double at CBSA.
- From whom did you experience discrimination on the job? Individuals with authority over me.

- Yes (Public Service: 75%; CBSA: 77%)

Senior Management

- Senior management at CBSA lead by example in ethical behavior
  - Most positive answers total to less than 50%
- I feel I can initiate a formal recourse process (e.g., grievance, complaint, appeal) without fear of reprisal.
  - Most positive or least negative answers (Public Service: 56%; CBSA: 42%).
  - Least positive or most negative answers (Public Service: 25%; CBSA: 40%)
- I have confidence in the senior management of my department or agency.
  - Most positive or least negative answers (Public Service: 64%; CBSA: 40%).
  - Least positive or most negative answers (Public Service: 21%; CBSA: 44%)
- they do not feel they get training needed to do their jobs (only 55% recorded a positive answer; in this public service it's 73%)
- that their workplace is not psychologically healthy (less than 50% recorded a positive answer compared to 68% in the broader public service)
- are unsatisfied with the agency.

(Exhibit 10)

The Union as a result is proposing modifications to Article 17 and Appendix to ensure that employees in this bargaining unit are afforded basic protections in the context of discipline at CBSA.

A serious matter of contention that has arisen over the last two rounds of bargaining - and continues to fester today - is that of the administering of Professional Standards Investigations (or PSI's) by the CBSA.

The Professional Standards Investigation (PSI) process was first implemented in 2007, roughly the same time that the firearms initiative was launched at CBSA. The supposed purpose behind the PSI process is to conduct an investigation as to whether or not an employee has engaged in misconduct. The current Policy on the Report, Review and Professional Standards Investigation of Alleged or Suspected Employee Misconduct was

introduced in 2015, replacing the initial policy implemented in 2007 The stated purpose of the policy is:

> *… to provide a structured approach to the reporting, fact-finding, review and Professional Standards investigation of an allegation or suspicion of misconduct by an employee of the Canada Border Services Agency (CBSA).*
>
> *The objective of this Policy is to ensure that any allegation or suspicion of employee misconduct is promptly reported to and reviewed by local CBSA management and, when appropriate, investigated by the Professional Standards Investigations Section of the Personnel Security and Professional Standards Division of the CBSA, and that any required corrective measures are promptly taken.* (Exhibit 28)

PSIs – or the threat of being subject of a PSI – is standard in CBSA workplaces. PSIs are recognized by the employees and the Union as being effectively a disciplinary process in the sense that it is an investigation to determine if there has been wrong-doing, and as the policy clearly states in section '9. Consequence of Misconduct': "A respondent found to have committed misconduct will be subject to disciplinary measures…" (Exhibit 28) Furthermore, the CBSA policy states that its standards applies to employees whether they are on or off duty.

PSIs have been a matter of contention for two main reasons. First, because the CBSA in the past took the position that they are administrative in nature, and not necessarily disciplinary, and therefore CBSA's position is that employees subject to PSIs are not entitled to having Union representation in PSI meetings. Instead employees may have an 'observer' who has no role in such meetings other than to observe.

The first issue – that such meetings are purely 'administrative' in nature – got resolved in the 2018 round of negotiations as the parties agreed to ad 'administrative' meetings to the list of meetings to which an employee has the right to Union representation.

However, despite the change agreed to by the parties in the previous round, the 'observer' issue remains, in that there remain a great many workplaces where CBSA management has continued during the life of the agreement to assert that PSI meetings are to be

treated differently from discipline-related meetings. It is for this reason that the Union has proposed the changes it has for 17.02 and 17.03. To make crystal clear in the parties' agreement that Union representatives are not mere 'observers', but have a role to play in such meetings.

In addition to matters related to PSIs, the Union is making a proposal to address long-standing problems with respect to investigatory suspensions.

During the 2018 round of negotiations the parties agreed on the inclusion of Appendix H. The intent behind this language was to address the long-standing issue of unpaid investigatory suspensions at CBSA, as the employer's practice had been to place employees on investigatory suspension without pay for as long as the employer deems appropriate.

It stands to reason that an investigation is conducted in order to determine whether or not discipline is warranted. Thus, in essence the practice had led to the employer imposing economic punishment on an employee by placing said employee on investigatory suspension without pay when there is no proof to demonstrate that discipline is warranted (hence the investigation).

The Union took the position in the last two rounds that this was patently unfair and inconsistent with fundamental principles of progressive discipline. What's more, there had been instances where employees had been placed on investigatory suspension without pay for lengthy periods of time – months or years in some cases – without having been found guilty of any offense. This problem had been highly prevalent at CBSA. To provide but one example, over the course of twelve months at one location alone (Trudeau Airport in Montreal) 5 separate employees had filed grievances over the financial hardship caused by the employer's placing them on investigatory suspension without pay for lengthy periods of time (Exhibit 29). The employer continues to ignore the provisions of Appendix G and immediately places our members on suspension without

pay pending investigation. We have received dozens of grievances on this issue since the last round of bargaining and have filed a policy grievance on the matter.
To employ a term used by Adjudicator Perrault in a decision related to this matter at CBSA, such investigatory suspensions amount to a “punitive” measure. (Exhibit 30)

Despite the Union having raised the issue repeatedly and the agreed-upon language, the issue remains unresolved as the employer uses one sentence as a loop-hole to continue its practices, as it cites reference to the ‘code of conduct’ in the language to continue to put employees on unpaid investigatory suspension. The employer takes the position that it alone interprets violations of the code of conduct, rendering in effect the protections negotiated by the Union meaningless.

To address this problem, the Union is proposing that workers in the FB bargaining unit be afforded the same protections concerning investigatory suspension as those in place for other federal law enforcement workers both within the federal public service and among the broader law enforcement community.

With respect to the public service, Appendix G of the Treasury Board collective agreement covering workers in the CX bargaining unit states that:

> *When an employee is to be removed from his regular duties due to an incident involving an offender, the employee may be assigned other duties with pay or removed from his normal work site with pay pending the outcome of the disciplinary investigation provided he fully co-operate with the conduct of the investigation by attending interviews and hearings without undue delay. A refusal to attend interviews and hearings without undue delay shall result in the interruption of remuneration as long as the investigation has not been completed.* (Exhibit 31)

Language of this nature is also present within the broader law enforcement community. For example, the collective agreement covering officers employed by the Sureté du Québec states:

> *Le membre poursuivi en discipline ou déontologie pour une faute susceptible de compromettre l'exercice des devoirs de ses fonctions*

> *peut être relevé de ses fonctions avec plein traitement ou assigné temporairement à d'autres fonctions.* (Exhibit 31)

In the case of Ontario, Section 89 of the Ontario Police Service Act states that an officer may only be suspended without pay if the officer has been convicted of an offense. (Exhibit 32) With respect to the *Police Act of British Columbia* and the *Police Act of Nova Scotia* and the *Saskatchewan Police*, a police office under investigatory suspension must receive pay and benefits for a minimum of the first 30 days. (Exhibit 32)

The modifying of the parties' collective agreement as per the Union's proposal for Appendix G would not only bring protections afforded workers in the FB bargaining unit into line with those that are standard in the broader law enforcement community, but it would finally resolve an on-going problem and source of considerable discord between the parties.

The same is true with respect to the removal of tools and security clearance as again the employer is engaging in a practice that amounts to employees being punished without having been found to have committed any offense. Neither are considered 'disciplinary' by the CBSA, hence the Union's inclusion of 'administrative' under our Appendix G proposal.

Under the CBSA Standard Operating Procedure for the removal of an employee's defensive tools, CBSA management must:

> Ensure that firearm(s) and all other defensive equipment are removed from an officer, employee or recruit when any of the following non-administrative reasons exist:
>
> a. Criminal charge or conviction for any offence involving violence or threat of violence;
>
> b. Threats or actual violent behaviour towards others or threats to do harm to themselves;
>
> c. Alcohol or substance abuse;

d. The discovery of a medical condition6 (physical condition or serious psychiatric condition or serious emotional instability), whether medicated or not which may negatively influence the ability of the individual to possess, wear, or use defensive equipment; or
e. The officer is under investigation for a matter involving the use of excessive force or assault (e.g. striking a compliant individual); or

f. In the opinion of the Agency, it is not in the best interests of the Agency that an officer continues to carry or possess an Agency firearm or defensive equipment.

What has proven particularly problematic is (f), as it states that tools can be removed effectively for whatever reason should management choose to do so.

The net outcome of the removal of defensive tools and security clearance is that an employee is removed from the workplace. In some cases, where there is no accommodation readily available, the employer has placed employees on leave without pay, often for a lengthy period of time.

These issues have led to a number of grievances **(Exhibit 88)**

The Union submits that the removal of defensive tools and security clearance, particularly when leave without pay is applied, is effectively tantamount to discipline. It is a form of economic punishment. Employees in some cases are being punished (taken off work without pay) without having been found guilty of any offence.

To address is this on-going problem, the Union is proposing a simple solution: that ‘administrative’ along with disciplinary be included in Appendix G, thus ensuring that the removal of tools and suspending security clearance be treated as no different from any other investigatory or disciplinary process. The Union is also proposing that investigations be carried out with undue delay.

Given the current problems, the Union believes this language is necessary to protect its membership at CBSA.

With respect to the administering of discipline and the PSI process, the Union again is proposing language that would afford workers in the FB bargaining unit protections that are common in the law enforcement community – namely that discipline shall only be administered for just cause, that the burden of proof rests with the employer, and that Union members may have Union representation for meeting with management such as PSI undertakings.

Concerning the Union's proposals with respect to just cause and burden of proof, given the on-going problems regarding the administering of discipline in CBSA workplaces, the Union is simply looking to ensure that basic fundamentals of due process be included in the collective agreement. The principle of just cause in the case of discipline is entrenched in the labour-relations world to such an extent that the statutory requirement can be found in the Canada Labour Code, as well as a number of provincial statutes, including British Columbia, Manitoba and Nova Scotia. It is a fundamental principle upon which a great deal arbitral jurisprudence is founded in Canada within the unionized context.

As for burden on proof, to quote Mitchnick and Etherington's *Labour Arbitration in Canada* (2006), "…it is universally accepted that the employer bears the burden of proving just cause for discipline on a balance of probabilities", and that "(t)hese basic principles concerning burden of proof are set out in the oft-cited decision of *Canadian Broadcasting Corp, and Ass'n of Radio & Television Employees* (1968), 19 L.A.C. 295 (Christie)."

In past negotiations the employer has pointed out that such principles are well established in jurisprudence and therefore it is unnecessary to add them to the collective agreement. The Union submits that, given the on-going problems in CBSA workplaces across the country with respect to discipline, it is important that the protections afforded employees be enshrined in the collective agreement, so that all managers and employees can be aware of their rights.

Lastly, with respect to surveillance, a significant majority of employees in the FB bargaining unit work in an environment where surveillance cameras and other forms of equipment are common. This includes Border Services Officers who work in postal operations, in most cases in the same buildings as Canada Post workers. Consequently, the Union is proposing that protections contained in the Canada Post collective agreement covering workers in Canada Post postal plants be included in the collective agreement for the FB group. (Exhibit 33)

Summary

The problems associated with discipline at CBSA are well documented. The Public Service Employee Survey conducted in 2021 clearly demonstrates that there are employee concerns with management's heavy-handedness. Fear of reprisal remains a problematically dominant theme for the FB group. When asked, in 2021, if a member feels they can initiate a formal recourse process without fear of reprisal the negative answer rate remains alarming (CBSA: 40% compared to the broader public service at 25%). Similarly, among those experiencing harassment, 65% indicated they experienced harassment from an 'individual with authority over me' (Exhibit 10). The Union also submits that the sheer number of grievances filed by union members in the context of discipline demonstrate that there is a problem.

What the Union is proposing with respect to Article 17 and Appendix G is straight forward – that those basic protections that are commonplace in the law enforcement community be introduced into the parties' agreement for the FB group. Active Union representation in meetings with management. Paid investigatory suspension, without loopholes. Discipline only for just cause. Not only are these commonplaces, but they have in fact in most cases already been agreed to by the Treasury Board for other workers in its employ.

In light of these facts, and in light of the mandate set out for the panel under legislation, the Union respectfully requests that its proposal be incorporated into the Commission's recommendation.

ARTICLE 20
~~SEXUAL~~ HARASSMENT AND ABUSE OF AUTHORITY

PSAC PROPOSAL

Amend as follows:

Change title to: HARASSMENT AND ABUSE OF AUTHORITY

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from **violence, harassment,** sexual harassment **and abuse of authority**, and agree that **violence, harassment,** sexual harassment **and abuse of authority** will both be prevented and will not be tolerated in the workplace.

NEW 20.02

Definitions:

a) Harassment, violence or bullying includes any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause distress, harm, offence, humiliation, or other physical or psychological injury, or illness to an employee, their dignity or their reputation, including any vexatious action, conduct, comment or display, in any form. Harassment can be expressed on the basis of many factors including but not limited to race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, political belief, political association or political and/or union activity, marital status, family status, source of income, physical and/or psychological disability, physical size or weight, age, nationality, ancestry or place of origin;

b) Abuse of authority occurs when an individual or group of individuals uses the power and authority inherent in their position or occupation, and/or influence to threaten, endanger an employee's job, potentially undermine the employee ability to perform that job, threaten the economic livelihood of that employee or in any way interfere with or influence the career reputation or dignity of the employee. It may include intimidation, removal of resources, unfair or abusive control of resources and/or information, removal of meaningful valued work and/or making an individual redundant, threats, loss of dignity, blackmail or coercion.

NEW 20.03 Employees who experience harassment or violence may submit a grievance to seek remedy and/or exercise their rights to report an occurrence as per Part II of the *Canada Labour Code* (CLC) process, and/or file a complaint with the Canadian Human Rights Commission.

Grievance Process

20.02~~4~~ **With respect to a grievance filed in relation to this Article;**

a. Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.
b. If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

20.03~~5~~ By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with **violence, harassment, or** sexual harassment. The selection of the mediator will be by mutual agreement.

Regulatory Process

NEW 20.06 In addition to an employee's right to file a grievance and/or a Human Rights complaint, employees may submit a Notice of Occurrence, as per the section 15 (1) of the Work Place Harassment and Violence Prevention Regulations.

NEW 20.07 Once a designated representative receives a Notice of an Occurrence as per Part II of the *Canada Labour Code* (CLC), then they shall immediately confer with the principal party and their union representative to determine whether or not the incident(s) and/or pattern of behaviour meets the definition of an occurrence as required by subsection 23(2) of the Regulations. If it is determined that the incident(s) and/or pattern of behaviour meets the definition, then the designated recipient shall immediately undertake the negotiated resolution process.

NEW 20.08 If the matter is not resolved during the negotiated resolution process, both the principal party and the responding party may agree to participate in the conciliation process.

NEW 20.09 Whether or not another resolution process is underway, or whether or not all parties have made a reasonable effort to resolve the occurrence, a principal party that believes the incident meets the definition of an occurrence or does not consider the occurrence resolved, may request an investigation be undertaken forthwith. Once such a request is received the designated representative shall immediately complete and submit the notice of investigation

Investigations, General provisions

NEW 20.10 Selection of Investigator

The factors considered for the selection of an investigator shall include the candidates' impartiality, that they possess the necessary training and experience,

and from the viewpoint of the principal party, their fit with the candidates' lived experience, background, and possible membership in an equity-seeking group.
NEW 20.11 The statement of work for the investigator shall include a commitment to meet all willing witnesses provided by the parties and an expected completion date.

NEW 20.12 An Investigation will be discontinued if the parties reach resolution via another method.

20.13 (*former 20.04*) ~~Upon request by the complainant(s) and/or respondent(s),~~ **The Employer shall provide a grievor, a principal party** and/or **responding party**, **with** an official copy of the investigation report ~~shall be provided to them by the Employer~~, subject to the *Access to Information Act* and *Privacy Act*. **Any recommendations to eliminate or minimize the risk of similar occurrences contained in a report shall be considered by the appropriate Joint Health and Safety Committee after which the committee will advise the Employer of those that they recommend for implementation. The Employer shall provide written rationale to the committee for any recommended recommendations that they do not accept for implementation.**

NEW Training

NEW 20.14 a) The Employer shall provide mandatory qualified instructor led, facilitated and interactive training to all employees regarding harassment, sexual harassment, and violence in the workplace which includes an intersectional approach. Such training shall include information about relevant policies, processes, the applicable legislation, regulations and available complaint mechanisms. Time spent in training shall be considered as time worked.

RATIONALE

The concept of harassment as solely a sexual issue has been outdated for many years. With the passage of Bill C-65, *An Act to amend the Canada Labour Code (harassment and violence) the Parliamentary Employment and Staff Relations Act and the Budget Implementation Bill 2017*, it is well past time to update the language in the Collective Agreement to reflect the new legislation.

Bill C-65 has three main pillars. It requires the Employer to prevent incidents of harassment and violence; to respond effectively to those incidents when they do occur; and to support affected employees.

The amendments to Part II of the Canada Labour Code apply to all employers and workers in the federally regulated private sector as well as in the public service and Parliament.

It sets out specific duties of employers, including Treasury Board, requiring them to take prescribed measures to prevent and protect, not only against workplace violence but also against workplace harassment. Employers are now also required to respond to occurrences of workplace harassment and violence, and to offer support to affected employees (amended section 125(1) (z.16)).42).

In addition, the Employer must investigate, record and report, not only all accidents, occupational illnesses and other hazardous occurrences known to them, but now also occurrences of harassment and violence, in accordance with the regulations (amended section 125(1)(c)).

Employers are additionally required to ensure that all employees are trained in the prevention of workplace harassment and violence and to inform them of their rights and obligations in this regard (new section 125(1) (z.161)). Employers themselves must also undergo training in the prevention of workplace harassment and violence (new section 125(1) (z.162)).

Finally, the Employer must also ensure that the person designated to receive complaints related to workplace harassment and violence has the requisite knowledge, training and experience (new section 125(1) (z.163)).

The Collective Agreement is the guide to which employees turn to understand their rights in the workplace and their terms and conditions of work. It is also the guide that managers use to understand their responsibilities toward employees in the workplace. The Union submits that an obvious way to comply with the new requirement to inform employees of their rights and obligations with respect to harassment and violence is to plainly lay out these obligations in the Collective Agreement so that they are clear, unequivocal, and

accessible to everyone in the workplace. Moreover, the Union believes that to not amend Article 20 of the Collective Agreement to reflect these changes to the Canada Labour Code, which considerably broaden the definition of harassment beyond what currently exists in the Article, could result in confusion with respect to behaviours that are not acceptable in the workplace.

In addition to this important legislative alignment, further context of the CBSA workplace climate is necessary. A Fall 2019 Report of the Auditor General of Canada on Respect in the Workplace detailed results of a survey conducted by the Office of the Auditor General of Canada between 6 June and 5 July 2018. At CBSA more than one third (35%) of surveyed respondents (n = 6090) agreed that:

> "If an employee in my workplace was affected by harassment, discrimination, or violence from another employee or management, the employee would fear reprisal as a result of making a complaint."

Further, at CBSA, more than one half (55%) of surveyed respondents (n = 6090) agreed that "civility and respect are serious of significant concerns" and, at CBSA, that about two thirds (66%) of surveyed respondents (n = 6090) agreed that organizational culture is a serious or significant concern.

In the OAG report, CBSA agreed with, indicated an accounting for the implementation of Bill C-65, and pointed to actions taken as of Fall 2019 relative to the three recommendations of the OAG:

- CBSA should develop and implement comprehensive strategies to address harassment, discrimination, and workplace violence. Each strategy should be based on risks and be supported by action plans with clear accountabilities and performance monitoring for continual improvement;
- CBSA should complete and document the results of their analyses to support decisions when handling harassment, discrimination, and workplace violence complaints; and
- CBSA should always inform employees of informal processes available for resolving complaints of harassment and workplace violence.[80]

These actions, however, without reflection in the collective agreement, are insufficient.

[80] OAG's Fall 2019 report--Respect in the Workplace
https://www.oag-bvg.gc.ca/internet/English/parl_oag_201911_01_e_43530.html#hd2a

It is further notable that the last comprehensive Public Service Employee Survey conducted in 2022 continues to paint a bleak picture indeed for the FB group. Many respondents in front-line positions who participated in the survey indicated that:

Harassment:

- Have you been the victim of harassment on the job in the past 12 months?
    - Yes (Public Service: 11%; CBSA: 20%) – CBSA is nearly double. Higher than 2020 for CSBA (16%).
- From whom did you experience harassment on the job? Individuals with authority over me.
    - Yes (Public Service: 59%; CBSA: 65%) – Higher at CBSA.

Discrimination

- Have you been the victim of discrimination on the job in the past 12 months?
    - Yes (Public Service: 8%; CBSA: 15%) – Nearly double at CBSA.
- From whom did you experience discrimination on the job? Individuals with authority over me.
    - Yes (Public Service: 75%; CBSA: 77%)

Senior Management

- Senior management at CBSA lead by example in ethical behavior
    - Most positive answers total to less than 50%
- I feel I can initiate a formal recourse process (e.g., grievance, complaint, appeal) without fear of reprisal.
    - Most positive or least negative answers (Public Service: 56%; CBSA: 42%).
    - Least positive or most negative answers (Public Service: 25%; CBSA: 40%)
- I have confidence in the senior management of my department or agency.
    - Most positive or least negative answers (Public Service: 64%; CBSA: 40%).
    - Least positive or most negative answers (Public Service: 21%; CBSA: 44%)
- they do not feel they get training needed to do their jobs (only 55% recorded a positive answer; in this public service it's 73%)
- that their workplace is not psychologically healthy (less than 50% recorded a positive answer compared to 68% in the broader public service)
- are unsatisfied with the agency. (Exhibit 10)

The Union therefore respectfully requests that the Commission add the proposed amendments to this Article to its recommendations.

ARTICLES 25
HOURS OF WORK

PSAC Proposal

Remove current 25.09 and add the following (with consequential renumbering):

Day work
25.06 Except as provided for in clauses 25.**30**, 25.10 and 25.11:

a. the normal workweek shall be thirty-seven decimal five (37.5) hours from Monday to Friday inclusive; and
b. the normal workday shall be seven decimal five (7.5) consecutive hours, exclusive of a lunch period, between the hours of 7 am and 6 pm.

25.30 Variable hours

a. Notwithstanding the provisions of clause 25.06 **in the case of day work and both 25.13 and 25.18 in the case of shift work** , upon request of an employee and with the concurrence of the Employer, where operational requirements permit an employee may complete the weekly hours of employment in a period of other than five (5) full days, provided that, over a period of fourteen (14), twenty-one (21) or twenty-eight (28) calendar days, the employee works an average of thirty-seven decimal five (37.5) hours per week, and such request shall not be unreasonably denied.
b. In every fourteen (14), twenty-one (21) or twenty-eight (28) day period, the employee shall be granted days of rest on such days as are not scheduled as a normal workday for the employee.
c. Employees covered by this clause shall be subject to the variable hours of work provisions established in clauses 25.25 to 25.28.

PSAC Proposal

25.12

(a) An employee on day work whose hours of work are changed ~~to extend before or beyond the stipulated hours of 7 a.m. and 6 p.m., as provided in paragraph 25.06(b),~~ and who has not received at least seven (7) days' notice in advance of the starting time of such change shall be paid for the first (1st) day or shift worked subsequent to such change at the rate of time and one-half (1 1/2) for the first seven decimal five (7.5) hours and double (2) time thereafter. Subsequent days or shifts worked on the revised hours shall be paid for at straight-time rate, subject to Article 28, Overtime.

(b) **Late-Hour Premium**
An employee who is not a shift worker and who completes his workday in accordance with the provisions of paragraph 25.11(b) shall receive a late-hour premium of seven dollars ($7) per hour for each hour worked before 7 a.m. and after 6 p.m. ~~The late-hour premium shall not apply to overtime hours.~~

Shift Work

**

25.13 When, because of operational requirements, hours of work are scheduled for employees on a rotating or irregular basis, or on a non-rotating basis where the employer requires employees to work hours later than 6 p.m. and/or earlier than 7 a.m., they shall be scheduled so that employees, over a period of not more than fifty-six (56) calendar days:

(a) on a weekly basis, work an average of thirty-seven decimal five (37.5) hours and an average of five (5) days;

(b) work seven decimal five (7.5) consecutive hours per day, exclusive of a one-half (1/2) hour meal period;

(c) obtain an average of two (2) days of rest per week;

(d) obtain at least two (2) consecutive days of rest at any one time except when days of rest are separated by a designated paid holiday which is not worked; ~~the consecutive days of rest may be in separate calendar weeks.~~

25.14 The Employer will make every reasonable effort:

(a) not to schedule the commencement of a shift within sixteen (16) hours of the completion of the employee's previous shift;

and

(b) to avoid excessive fluctuation in hours of work.

25.15 The staffing, preparation, posting and administration of shift schedules is the responsibility of the Employer.

25.16 The Employer shall set up a master shift schedule for a fifty-six (56) day period, posted fifteen (15) days in advance, which will cover the normal requirements of the work area.

**

25.17 Shift Schedule - Reopener

(a) If the Employer reopens a shift schedule due to operational requirements, or a line becomes vacant, the Employer will determine the qualifications required prior to canvassing all employees covered by this specific schedule.

Should more than one employee meeting the qualifications required select the same line on the schedule, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to allocate the line.

(b) In populating a newly established schedule, as developed by the Employer, the Employer will canvass all employees covered by the specific schedule for volunteers to populate the schedule.

Should more than one employee meet the qualifications required select the same line on the schedule, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to allocate the line.

(c) Subject to paragraph (a) above, by mutual consent the parties may agree to conduct a re-population of schedules at any point over the life of the schedule.

For greater clarity, when a vacant line is selected, that line will continue to follow the pre-established pattern, according to the existing schedule.

25.18 Shift Schedule – Vacant Lines

(a) In the event a line on a schedule becomes vacant, the line shall then be offered to employees working in the same worksite. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(b) Should no employee meeting the criteria in (a) above select the vacant line, the line shall then be offered to employees working in the same district as the vacant line. Should more than one employee meeting

the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(c) Should no employee meeting the criteria in (a) and (b) above select the vacant line, the line shall then be offered to employees working in the same region as the vacant line. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(d) Should no employee meeting the criteria in (a), (b) and (c) above select the vacant line, the line shall then be offered to all other employees in the bargaining unit. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(e) The Employer shall post all vacant lines subject to (b), (c) and (d) above nationally on its internal electronic system (Atlas) in a location accessible and visible to all employees.

25.19 Except as provided for in clauses 25.23 and 25.24, the standard shift schedule is:

(a) 12 midnight to 8 a.m., 8 a.m. to 4 p.m., and 4 p.m. to 12 midnight

or, alternatively,

(b) 11 p.m. to 7 a.m., 7 a.m. to 3 p.m., and 3 p.m. to 11 p.m.

25.20 A specified meal period shall be scheduled as close to the midpoint of the shift as possible. It is also recognized that the meal period may be staggered for employees on continuous operations. However, the Employer will make every effort to arrange meal periods at times convenient to the employees.

25.21

(a) Where an employee's scheduled shift does not commence and end on the same day, such shift shall be considered for all purposes to have been entirely worked:

(i) on the day it commenced, where half (1/2) or more of the hours worked fall on that day;
or
(ii) on the day it terminates, where more than half (1/2) of the hours worked fall on that day.

(b) Accordingly, the first (1st) day of rest will be considered to start immediately after midnight of the calendar day on which the employee worked or is deemed to have worked his or her last scheduled shift, and the second (2nd) day of rest will start immediately after midnight of the employee's first (1st) day of rest, or immediately after midnight of an intervening designated paid holiday if days of rest are separated thereby.

25.22

(a) An employee who is required to change his or her scheduled shift without receiving at least seven (7) days' notice in advance of the starting time of such change in his or her scheduled shift shall be paid for the first (1st) shift worked on the revised schedule at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight-time rate, subject to Article 28, Overtime.

(b) Every reasonable effort will be made by the Employer to ensure that the employee returns to his or her original shift schedule and returns to his or her originally scheduled days of rest for the duration of the master shift schedule without penalty to the Employer.

25.23 Provided sufficient advance notice is given, the Employer **shall** ~~may~~:

(a) authorize employees to exchange shifts if there is no increase in cost to the Employer;
and
(b) notwithstanding the provisions of paragraph 25.13(d), authorize employees to exchange shifts for days of rest if there is no increase in cost to the Employer.

~~**25.23**~~

~~(a) Where shifts other than those provided in clause 25.18 are in existence when this Agreement is signed, the Employer, on request, will consult with the Alliance on such hours of work and, in such consultation, will establish that such shifts are required to meet the needs of the public and/or the efficient operation of the service.~~

~~(b) Where shifts are to be changed so that they are different from those specified in clause 25.18, the Employer, except in cases of emergency, will consult in advance with the Alliance on such hours of work and, in such consultation, will establish that such hours are required to meet the needs of the public and/or the efficient operation of the service.~~

~~(c) Within five (5) days of notification of consultation served by either party, the parties shall notify one another in writing of the representative authorized to act on their behalf for consultation purposes. Consultation will be held at the local level for fact-finding and implementation purposes.~~

25.24 Variable Shift Schedule Arrangements

(a) Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.23 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.18. Such consultation will include all aspects of arrangements of shift schedules.

(b) Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.

(c) Both parties will endeavour to meet the preferences of the employees in regard to such arrangements.

(d) It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.

(e) Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.25 to 25.28 inclusive.

Terms and Conditions Governing the Administration of Variable Hours of Work

25.25 The terms and conditions governing the administration of variable hours of work implemented pursuant to clauses 25.09, 25.10 and 25.24 are specified in clauses 25.25 to 25.28 inclusive. This Agreement is modified by these provisions to the extent specified herein.

25.26 Notwithstanding anything to the contrary contained in this Agreement, the implementation of any variation in hours shall not result in any additional overtime

work or additional payment by reason only of such variation, nor shall it be deemed to prohibit the right of the Employer to schedule any hours of work permitted by the terms of this Agreement.

25.27

(a) The scheduled hours of work of any day as set forth in a variable schedule specified in clause 25.25 may exceed or be less than seven decimal five (7.5) hours; starting and finishing times, meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer; and the daily hours of work shall be consecutive.

(b) Such schedules shall provide for an average of thirty-seven decimal five (37.5) hours of work per week over the life of the schedule.

**

(i) Unless otherwise mutually agreed upon, the maximum life of a shift schedule shall be six (6) months.

(ii) The maximum life of other types of schedule shall be twenty-eight (28) days except when the normal weekly and daily hours of work are varied by the Employer to allow for summer and winter hours in accordance with clause 25.10, in which case the life of a schedule shall be one (1) year.

(b) Whenever an employee changes his or her variable hours or no longer works variable hours, all appropriate adjustments will be made.

25.28 Specific Application of this Agreement

For greater certainty, the following provisions of this Agreement shall be administered as provided herein:

a. **Interpretation and definitions (clause 2.01)**
"Daily rate of pay" shall not apply.

b. **Minimum number of hours between shifts**
Paragraph 25.14(a), relating to the minimum period between the termination and commencement of the employee's next shift, shall not apply.

c. **Exchange of shifts (clause 25.22)**
On exchange of shifts between employees, the Employer shall pay as if no exchange had occurred.

d. **Overtime (clauses 28.04 and 28.05)**
Overtime shall be compensated for all work performed in excess of an employee's scheduled hours of work on regular working days or on days of rest at **double (2)** time ~~and three-quarters (1 3/4).~~

e. **Designated paid holidays (clause 30.07)**

i. ~~A designated paid holiday shall account for seven decimal five (7.5) hours~~.
ii. When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i), at ~~time and one-half (1 1/2) up to his or her regular scheduled hours worked and~~ at double (2) time for all hours worked in excess of his or her regular scheduled hours.

f. **Travel**
Overtime compensation referred to in clause 32.06 shall only be applicable on a workday for hours in excess of the employee's daily scheduled hours of work.

g. **Acting pay**
The qualifying period for acting pay as specified in paragraph 62.07(a) shall be converted to hours.

h. **Leave**

~~i. Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day~~.
~~ii~~ When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

25.29

An employee required by the Employer to work overtime consistent with Article 28 shall receive a minimum of twelve (12) hours rest prior to returning to duty. Any pre-scheduled hours that fall within said twelve (12) hour rest period shall be considered hours worked.

RATIONALE

A significant majority of workers in the FB bargaining unit are shift workers, and shift scheduling matters have been and continue to be the source of both employee frustration and on-going friction between the parties at every level. Much of this can be attributed to the fact that prior to 2007 workers currently in the FB bargaining unit represented a relatively small minority within a much larger bargaining unit (PA) where day workers

dominated. As a result, matters related to shift scheduling often went unresolved prior to the 2007 round. In the previous four rounds of bargaining some improvements were made, particularly with the inclusion of Appendix B into the collective agreement and the expansion of seniority rights to all shift workers in the bargaining unit. However, despite the changes made in the previous round, serious problems in the workplace remain. Furthermore, serious issues have arisen over the life of the current agreement for day workers as well. The Union's proposals for Article 25 are geared towards rectifying all of these problems, for shift and day working employees alike, while at the same time introducing rights – such as a paid meal period and firearm practice time – that are standard in the law enforcement community.

Shift Work

With respect to shift work the Union is making proposals to address problems related to the scheduling of shift workers in non-VSSA environments and the filing of vacant lines.

With respect to non-VSSA workplaces, Article 25 of the current agreement provides the Employer with considerable discretion concerning how schedules are built and to whom hours are assigned. While Article 25.18 states that standard shift schedules shall be 12 a.m.–8 a.m. 8 a.m.–4 p.m., 4 p.m.–12 a.m., or alternatively 11 p.m.–7 a.m., 7 a.m-3 p.m., the contract provides alternate clauses (Articles 25.13, 25.22 and 25.23) with respect to scheduling in recognition of the fact that the shifts provided for under 25.18 are often not operationally feasible at CBSA.

Article 25.24 provides for Variable Shift Scheduling Arrangements (VSSA), which are shift scheduling arrangements that deviate from the 25.18 framework and are negotiated at the local level between the parties. The vast majority of shift workers covered by the FB collective agreement are subject to VSSA's, and as of 2023 there are over one hundred VSSA's in effect across Canada. Appendix B of the parties' agreement lays out the process by which VSSA's are negotiated and implemented. Appendix B and 25.17 also define the seniority-based process via which employees are placed on schedules governed by VSSA's.

Article 25.13 states that shift working employees are to be scheduled over a period of not more than 56 days, so that “on a weekly basis work an average of 37.5 hours and an average of 5 days”, while 25.23 provides the Employer with the prerogative to implement schedules that deviate from 25.17 provided that management consults with the Union and establishes that such hours are “required to meet the needs of the public and/or the efficient operation of the service.”

These clauses have been interpreted by the Employer on one more than one occasion as providing management with the prerogative to build virtually whatever schedule it sees fit in the absence of a negotiated VSSA. At the bargaining table in the past the Union cited two specific examples of non-VSSA schedules implemented by CBSA management to highlight the problems that this causes, one being a schedule from St John’s Airport in Newfoundland, another from John G. Diefenbaker Airport in Saskatoon. The St. John’s example provided by the Union demonstrated that there were situations where certain employees were required to work schedules with 3 different start times in a given week, ranging from 8 am to 4 pm. In the case of the schedule provided with respect to Saskatoon, there are 14 different start times, and in some cases employees were required to work a different start time every day, ranging from 8 am to 8 pm, with shifts running anywhere from 4 hours in length to 7.5 hours in length. (Exhibit 34) These aforementioned schedules were not negotiated and agreed to by the Union. They were unilaterally imposed on employees by management.

The unilateral implementation of these sorts of schedules, or the threat of their implementation during VSSA talks, has led to considerable turmoil in a number of workplaces across the country. The impact of the introduction of one such schedule on local labour relations is well documented in an arbitral award issued in 2009 in response to a grievance filed by the PSAC with respect to the Employer’s interpretation of 25.22 at Lester B. Pearson airport in Toronto (PSLRB 569-02-34). There have also been problems due to the imposing of schedules on workers in Lansdowne, Ontario.

Language that provides the Employer the prerogative to create schedules that deviate from what is established in the collective agreement, and to do so without Union consent, is unusual in a unionized environment. For example, Treasury Board employees in the CX bargaining unit work in a 24/7 law enforcement environment, yet unlike employees in the FB unit, the length of shifts are clearly defined in the collective agreement, and schedules are determined by joint scheduling committees.(Exhibit 35) The model contained in the CX collective agreement is analogous to what the Union is seeking in this round of bargaining for the FB group.

The same is also true for other groups that work in operational settings where scheduling needs bear some resemblance to those of CBSA. For example, while bridge authority and Canadian Air Transport Security Authority (CATSA) workers do not perform the same duties or have the same responsibilities as FB workers, their hours of work are generally predicated upon operational needs that are dictated by traffic volumes. Set shift lengths and set hours per week are the standard for collective agreements covering shift-working bridge authority and CATSA workers (Exhibit 36).

What the Union is proposing is that the same concept be applied to shift workers in the FB bargaining unit that are not covered by a VSSA. Under the Union's proposal for 25.13, shift working employees would be scheduled 5 consecutive days a week, with two consecutive days off, as is standard in most unionized (and non-union) work environments. Should that not be operationally feasible, the Employer would enter into VSSA talks with the Union at the local level to devise schedules consistent with the process outlines in Appendix B of the parties' agreement.

As previously noted, there are well over 100 VSSA's in effect across Canada, from Halifax to Victoria, in every operational setting, from small 3-officer land border ports of entry to airports to maritime settings. Thus, it is clear that the parties are capable of negotiating mutually agreeable schedules. The Union's proposal would ensure that, in the absence of a VSSA, there would be clear parameters around shift length and scheduling. This in turn would preclude the Employer from imposing shift schedules that are severely

disruptive to the workplace and to employees lives, and would ensure that problems that have arisen in a number of workplaces related to the Employer's imposing of unreasonable schedules not happen again. It would also bring working conditions in line with what is standard for shift workers working in operational environments that are subject to similar scheduling pressures.

Also on the issue of shift work, there are workplaces at CBSA where employees regularly work straight days, except for 4 times a year when an employee will have to work a weekend. Because of this reality, these employees are shift workers but in reality regularly work day work hours. In these environments Union representatives have approached management to discuss the introduction of variable hours arrangements as the regular day hours render such arrangements operationally feasible. CBSA has refused to entertain such discussions because variable hours do not apply to shift workers under the parties' agreement. What the Union is proposing is a modification so that, where it is operationally feasible, such arrangements could also be granted in shift working environments.

Years of Service

The other factor that is common in collective agreements covering shift workers in environments that are subject to similar operational pressures is that of years of service recognition for the purposes of scheduling. Years if service recognition in the context of scheduling, as constituted in its proposals for Article 25, represents a key issue for the Union for this round of bargaining.

The Union is proposing that years of service be applied more broadly in that it would be applied beyond those working under a particular schedule or VSSA. Under the Union's proposed 25.22, a vacant line would be offered first to employees covered by the schedule where the vacancy occurs. This is consistent with what is applied under the current agreement. However, in the event that there are no volunteers working under the schedule where the vacancy has occurred, the employer would then offer the line to workers in the same workplace, followed by workers in the same district, followed by

workers in the same region. At each level the shift would be assigned to the most senior, qualified employee that expresses interest. The Union is proposing this system as a means to ensure that there are fair and transparent systems in place for when employees are moved from one schedule to another. At present, movement of employees from one schedule to another is entirely at the employer's discretion, which has led to a number of problems.

To provide but one example, on a number of occasions in the past the Employer indicated to employees at the CBSA facility in Coutts, Alberta that it required employees to temporarily work shifts at its facility in Chief Mountain, Alberta. A number of employees in each instance came forward expressing an interest in working the shifts at Chief Mountain, and on several occasions these employees have been told that the shifts are to be assigned to new hires. Similar situations have arisen time and time again. There have been instances where qualified employees that are seasonal with years of service in New Brunswick are passed over for available shifts in a given work location while new hires are brought in to do the work. The same is also true in the Halifax area, where employees have in the past been regularly moved between four different locations – some locations having at least 30 kms distance between them - with no recognition of years of service, and with no solicitation of volunteers having taken place. There have been instances where workers at the Winnipeg Airport have expressed an interest in taking an available shift at the Winnipeg Commercial office – a 5-minute drive from the airport - only to have the shift assigned to a new hire. What the Union is proposing would ensure that there is transparency and fairness with respect to how schedules are populated and would ensure that employees are afforded opportunities that are not available now.

The Union is not suggesting that the number of staff required to work in a given location or at given times be governed by the parties' collective agreement. Nor is the Union proposing language governing how the work gets done by CBSA employees. What is being proposed is a mere expansion of what is currently being done now with respect to the assigning of shifts. Expanding seniority recognition to all shift working employees for the purposes of moving from one work location to another would solve on-going problems

in a number of workplaces across the country. Indeed, introducing a fair, objective, and transparent process to this fundamental aspect of working conditions is, in the Union's opinion, entirely in the interests of both parties.

Rest Between Shifts

There are occasions when employees are required to work mandatory overtime. Examples of this include when employees escort detainees back to their country of origin (often referred to as international escorts), or when an arrest or seizure is made. In each of these cases there are situations where the nature of the work is such that an employee cannot end their shift as scheduled. For example, if a large seizure is made it can take several hours to conduct the investigation and process both paperwork and the individuals involved. It is not uncommon for an employee to make a seizure or an arrest towards the end of his/her shift and then be required to work many hours of overtime as a result.

The Union's proposal under 25.29 would ensure that employees that must work mandatory overtime would get the rest necessary between shifts and suffer no loss in compensation as a result. In light of the provisions provided for under 25.14(a), the parties have already recognized that protections are necessary to ensure that employees get rest between shifts. The Union's proposal would ensure that, regardless of the circumstances, the Employer must make every effort to ensure that employees get a minimum of eight hours rest, and that no employee suffers economic consequences for taking the time necessary to rest before the next shift. Given the nature of the duties performed by employees in the bargaining unit, the Union submits that a protection of this nature is doubly important and is in the interests not only of the employee, but also those of the Employer and the broader Canadian public.

Day Work

With respect to day workers, the Union is proposing to modify 25.12 so that day workers might have the same protections with respect to changes in assigned work hours as those

afforded shift workers under the parties' current agreement. The Union submits that there is no reason as to why a double-standard should exist in the parties' collective agreement, providing for shift workers to receive at least seven days-notice of a change in working hours or otherwise receive additional compensation, yet that same benefit does not apply to day workers.

Summary

Scheduling continues to be the source of considerable discussion (and tension) between the parties. This discussion has taken place at the local, regional and national levels. Broadly speaking, the reason for these on-going discussions and tensions is that the employer has far too much discretion in terms of scheduling and hours of work assignment. Article 25.15 states that the "staffing, preparation, posting and administration of shift schedules is the responsibility of the Employer". This is not in dispute. The collective agreement also states that schedules subject to VSSA's must be "consistent with operational requirements as determined by the Employer". This too is not in dispute. What is lacking are clear parameters around what happens in the absence of a VSSA, and what happens when hours of work are assigned to certain VSSA workers and non-VSSA workers. What is also required is that employees' seniority rights be limited to the schedule that the employee works under, as this limitation does not make sense considering the CBSA operational environment.

In light of this and the other arguments put forward in this brief, the Union respectfully requests that its proposals for Article 25 be incorporated into the Commission's recommendation.

ARTICLE 60
ALLOWANCES

Plain Clothes Allowance

60.03 Employees required to provide and wear ordinary clothing as part of their duties, shall be reimbursed by the Employer for expenses incurred in the purchase of such clothing, to a maximum of one-thousand, two hundred and fifty dollars ($1,250) per annum, upon presentation of the necessary receipts. If an employee performs such duties for less than a calendar year, but for a period or periods totaling one calendar month (30 days) or more in that year, the employee shall be entitled to reimbursement of a proportionate part of the expenses in the same ratio that the employee's time so spent bears to that calendar year.

60.04 Each employee entitled to the expenses under Section 60.03 shall submit a claim once annually in January for the preceding year to be reimbursed not later than the month of February, next following.

RATIONALE

There are employees in the FB bargaining unit that are required to wear regular (plain) clothes as part of their duties. At present these employees are required to purchase these clothes out of their own pocket. This practice is highly unusual in the context of Canadian law enforcement, in that every major law enforcement agency in Canada provides an allowance to employees required to work in plain clothes as part of their duties.

For example, Intelligence Officers and Investigators often undertake field operations that require surveillance (Exhibit 37). CBSA has also recently begun to train Inland Enforcement Officers to undertake surveillance activities. Surveillance work often requires that employees wear particular plain clothes, clothes that have to be purchased in order for surveillance activities to be conducted effectively. In short, these employees are sometimes required to ‘blend in’ to certain settings in order to apprehend suspects or to observe potential illegal activity. Furthermore, it is common for these employees to be required to purchase loose clothing in order to accommodate the equipment that an Officer is required to wear such as a safety vest and a firearm, equipment that sometimes

must be concealed and therefore worn underneath their clothes. These clothes are obviously not the type of clothing these employees would purchase for civilian use.

Intelligence Officers and Investigators are also required to provide expert testimony before courts of law or administrative tribunals. Intelligence Officers are required to wear a suit for those occasions where they are asked to testify. Unlike other major law enforcement agencies in Canada these employees are required to pay out of pocket for those suits without any specific compensation or allowances.

The following table (**Table 9**) provides example of Plain Clothes Allowance in other major law enforcement agencies in Canada. Of note, recent police service settlements including the SQ, Edmonton, City of Montreal, Metro Toronto, Peel, Charlottetown, and Winnipeg (indexed to CPI) increased this allowance.

Table 9: Plain Clothes Allowance

Organizations	Plain Clothes Allowance
Corrections Canada (CX)	$600 per year
Royal NFLD Constabulary	$1200 per year with receipts
Saint John, NB	$1500 per year with receipts –Includes dry cleaning fees or $5.77/day
Ottawa Metro	$1025 per year
Ontario Provincial Police	$1250 per year with receipt – Includes dry cleaning fees
Sûreté du Québec	$7.30 per day working in plain clothes at the department's request
City of Edmonton	$1285 per year
Halifax Metro	$1600 per year
City of Montréal	2.5% of sergeant-detective salary with receipts ($2414 based on the salary effective Dec 31, 2021.
Metro Toronto	$1225 per year with receipts –Can carry over unused balance into next year

Peel Region	$1350 per year with receipts
Calgary Metro	$1000 per year
Saskatoon	$1050 per year
Vancouver Metro	$1070 per year or $4.05 per day
City of Winnipeg	$1157.03 per year subject to changes in CPI
Charlottetown Police	$1350 per year

(Exhibit 38)

With respect to external comparators, the Union's proposal for plain clothes allowance is taken verbatim from the collective agreement currently in effect for officers working at the Ontario Provincial Police. (Exhibit 39)

In addition to external comparators, a plain clothes allowance has also been established within the federal public administration, in that House of Commons Constables also have access to such an allowance. (Exhibit 40). Other examples with respect to employers providing either clothing or allowances for the purchase of clothing required for employees to perform their duties include the Senate, Canada Post, and the National Arts Centre (Exhibit 41).

In January 2021, results of an Access to Information Act request disclosed (between 2017-2020) expense and/or reimbursement claims filed by, or on the behalf of, managers and supervisors at the Canadian Border Services Agency for non-uniform expenses related to clothing and apparel showed an array of expenses reimbursements for uniform or apparel expenses for employees (excluding Border Service Officers). In the Prairies region, for example, thousands of dollars have been reimbursed to management positions (superintendents, chiefs, assistant directors, and directors). (Exhibit 42).

The Union submits that it is both unreasonable and unfair for "plain clothes" officers to be required to purchase clothing that is necessary for them to effectively perform their duties. Every other major law enforcement agency in Canada has recognized this fact and as a consequence a plain clothes allowance is standard in the industry. CBSA provides

uniformed officers with uniforms. It should also provide non-uniformed officers with remuneration so that they too can have the clothes that they need to perform their duties.

Furthermore, the aforementioned ATIP disclosure also demonstrates that there is a double standard at CBSA, in that such items are being paid for by the employer now for managerial and supervisory staff at CBSA.

Given that a precedent has already been set at CBSA with uniformed officers being provided the necessary clothing, given that a plain clothes allowance is standard for workers performing the same duties elsewhere in the Canadian labour market, and given that there is already significant precedent elsewhere in the federal public sector, the Union respectfully requests that the Commission include its proposal in its recommendation.

Dry Cleaning Allowance

60.05 The Employer shall reimburse up to a maximum of three hundred and fifty dollars ($350.00) per calendar year for expenses associated with the cleaning of clothing required for the performance of their duties, upon presentation of the necessary receipts.

RATIONALE

Most employees in the FB bargaining unit are required to wear a uniform when on duty. There are costs associated with the cleaning of these uniforms, as dry cleaning is necessary, and the CBSA does not cover costs associated with the dry cleaning of uniforms.

What the Union is proposing is that the language contained in the collective agreement between the Ontario Provincial Police Association and the Province of Ontario be included in the parties' collective agreement for the FB group (Exhibit 43). Like OPP officers, Border Services Officers are required to wear uniforms when on duty. Like OPP officers, Border Services Officers must dry clean their uniforms. The Union submits that if one of the largest law enforcement agencies in Canada provides its officers with reimbursement for the dry cleaning of its uniforms, there is no reason employees should be obligated to absorb such costs out of their own pocket.

The dollar amount is consistent with what the Union is proposing for plain-clothed officers, which is also consistent with the practice for the Ontario Provincial Police. Furthermore, the Union notes that the City of Edmonton provides its officers with a dry-cleaning allowance, as do the cities of Toronto, Montreal, Vancouver, and Winnipeg.

Given that such reimbursement is standard for employees engaged in similar occupations in the broader public sector, the Union respectfully requests that its proposals be included in the Commission's recommendation.

Escorted Removals Premium

60.06 When an employee is assigned to escort a person from Canada, the employee shall be paid a seven-dollar ($7) premium for each hour worked on the assignment, provided that the assignment requires that the employee work more than 7.5 contiguous hours. For the purposes of this clause, 'on assignment' includes time spent escorting a person from Canada and return time to the employee's headquarters area.

RATIONALE

Commensurate with the enforcement of the *Immigration and Refugee Protection Act*, the Canada Border Services Agency (CBSA) may remove from Canada any person who has been issued a removal order for violating the Act. Removal orders are issued when violation of the Act is confirmed. Depending on the type of removal order required, the order is issued either by a CBSA officer or by the Immigration and Refugee Board of Canada.

Individuals who are removed from Canada are removed because they have been deemed as posing a threat to the security of Canada. This may include individuals that have broken the law; demonstrated involvement in organized crime or crimes against humanity; failed as refugee claimants; or be otherwise inadmissible to Canada (due to such reasons as expired visas, misrepresentation of identity including marriages of convenience and fraudulent documents).

CBSA will assign an escort if there is concern that the person in question will not obey the removal order or if an escort is required to facilitate the removal. If there are any health concerns, a medical officer may assist the CBSA in escorting the person out of the country.

Bargaining unit employees – namely Inland Enforcement Officers – carry out detentions and removals. In some cases, a medical officer may assist them.

The performance of these duties can require that employees work extremely long hours, consecutively. To provide an example, an employee may be required to escort an individual from Vancouver, British Columbia to Johannesburg, South Africa. This trip would require that an employee work more than 24 hours. Yet Inland Enforcement personnel are not shift workers as they are regularly scheduled in conformity with 25.06 of the collective agreement. Nor do such employees access late hour premium as they do not meet the criteria set out in 25.12 (b). In short, there is no additional compensation provided to employees performing an escorted removal, except for overtime.

These assignments can be grueling. They require that employees work extremely long hours, and in some cases, employees must be away from Canada for a considerable amount of time – several days in some instances (Exhibit 83). There are situations where these employees are required to travel to parts of the world that are unstable, and in all of these cases the employees are unarmed when escorting what are in some cases dangerous criminals as they cannot bring tools or weapons on airplanes.

The Union submits that employees performing these duties should be provided additional remuneration and is proposing that employees performing international escorts be paid a premium of $7.00 an hour for the duration of the assignment. A premium of $7.00 an hour is consistent with what the parties have agreed to for other day workers that are required to work hours beyond 6 pm but no later than 9 pm. If a premium of $7.00 an hour can be paid to day workers required to work between 6 and 9 pm, surely the same premium can be applied to workers who are required to work in some cases 24 hours or more past 6 pm. It is remuneration that is entirely fair and reasonable considering the conditions surrounding the performance of international escorts.

Considering this, the Union respectfully requests that its proposal be included in the Commission’s recommendation.

Fitness/Wellness Allowance

60.07 The Employer shall provide all employees with a monthly allowance of $50 for the maintaining of a membership at a gym or fitness facility, except where the Employer provides an adequate fitness facility free of charge on site.

RATIONALE

As law enforcement personnel, most employees in the FB bargaining unit are required to meet certain physical standards as part of their employment (Exhibit 44). This is true of Border Services Officers, Inland Enforcement Officers, and Intelligence Officers. When first evaluated for the job upon application new recruits are submitted to rigorous physical testing, and every three years after initial date of hire employees are required to undergo Control Defence Tactics training evaluation, wherein employees must successfully demonstrate an ability to perform all use of force procedures consistent with their position.

In addition to the rigorous physical standards applied to front-line staff at CBSA, these same employees are required to undergo firearm recertification on an annual basis. The CBSA's position is that successful completion of Control Defence Tactics training and firearm certification are necessary for employees to perform their duties, and those who are unsuccessful are subject to accommodation.

In recognition of the importance of maintaining physical standards, CBSA has in several its offices provided access to fitness equipment on site. Some examples of these include ports in Coutts, Alberta and Osoyoos, British Columbia. CBSA has also negotiated a discount rate with Good Life fitness centres. Thus, clearly the employer has acknowledged that regular fitness training is needed to meet the standards set by the agency for its front-line employees. However, what the agency has in place amounts effectively to half-measures and inconsistency in application of access to fitness training opportunities across Canada.

As previously stated, some ports have fitness facilities, and some do not. Thus, an employee working in the port of Osoyoos has access to fitness equipment while an employee working at the Windsor Tunnel does not.

With respect to membership at Good Life fitness centres, employees must still pay out of pocket despite the group rate, and Good Life does not operate in every location where CBSA ports can be found. What the Union is proposing is simple: That there be a consistency across the board in terms of access to fitness training across the country for all employees, and that the employer either make fitness training equipment available to employees, or that an allowance be provided for membership in a fitness training centre.

The Union notes that such an arrangement is common in cadet recruiting and benefit entitlements in the law enforcement community. For example, the metro police forces in Edmonton, Ottawa, Toronto, Saskatoon, Calgary, Winnipeg, York Regional, Vancouver, and Peel Regional all provide on-site fitness training facilities to officers. In the case of the RCMP fitness facilities are made available at several locations, while in the case of the Ontario Provincial Police, a $90.00 a year allowance is provided on top of the provision of on-site fitness training equipment at several locations. Thus, what the Union is seeking here is commonplace in law enforcement.

Police Service	**Health and Wellness Benefits**
Ottawa	Access to health and fitness facilities[81]
Calgary	Wellness Account: $400; gyms in the headquarter buildings as well as work facilities in all the district offices.[82]
Toronto	On-site fitness facilities (noted in Board policies appended in collective agreement).[83]
Saskatoon	On-site fitness facilities[84]

[81] https://www.ottawapolice.ca/en/careers-and-opportunities/sworn-salary-and-benefits.aspx
[82] https://www.calgary.ca/cps/working-for-calgary-police/civilian-careers/before-you-apply-to-the-calgary-police-service.html
[83] http://www.torontopolice.on.ca/careers/uni_benefits.php
[84] https://saskatoonpolice.ca/recruiting/salary/

Winnipeg	Employee Wellness Program, including access to gym facilities[85]
York Regional	Employees working at York Regional Police's head office can stay in shape with free access to a 24/7 onsite fitness facility.[86]
Edmonton	Work-out facilities – various locations throughout the city (depending on location facilities include gymnasium, weight room, racquetball court and running track).[87]
Peel Regional	These include wellness protection for you and your family, fitness facilities, and a variety of programs. Benefits begin six months after starting employment[88]
OPP	On-site fitness training equipment at several locations.
Vancouver	Access to gym facilities[89]
RNC	Complete RNC headquarters development (p. 26): Additionally, the building will house a new gym and wellness center.[90]
RCMP	As of 2012 (in the RCMP Annual Compensation Report), the RCMP indicated that yes, its officers had access to an on-site recreation or fitness facility, but that it was not universal.[91]
Montreal	As of 2012 in the RCMP Annual Compensation Report), yes, but only at four precincts.
Halifax	As of 2012 (in the RCMP Annual Compensation Report), yes there was access to recreation or fitness facilities.

(Exhibit 45)

The CBSA has put stringent standards in place for its front-line employees with respect to physical fitness standards. The agency has acknowledged the need for employees to engage in activities on a regular basis in order to ensure that these standards can be met – either via offering group rate at Good Life fitness centres, on-site fitness equipment in other cases, and in the past paid firearm practice time. Thus, what the Union is proposing

[85] https://www.winnipeg.ca/police/policerecruiting/benefits.stm
[86] https://www.blueline.ca/york-regional-police-one-of-canadas-top-employers-for-young-people-for-2020/
[87] https://www.edmontonpolice.ca/JoinEPS/WorkingAsACivilian/BenefitsofEPS
[88] https://www.peelpolice.ca/en/work-with-us/become-an-officer.aspx?_mid_=8781
[89] https://joinvpd.ca/special-municipal-constable/
[90] https://www.rnc.gov.nl.ca/wp-content/uploads/2017/03/RNC-Activities-Report-2014-2015-FINAL-WEB.pdf
[91] 2012 RCMP Annual Compensation Report, p.98. (Exhibit 46)

in these areas is clearly not inconsistent with the priorities of the agency. What is absent is consistent and fair application, and protection in the parties' agreement ensuring that these practices are expanded upon and made accessible. Lastly, this proposal is not precedent setting as making resources available for fitness training is commonplace in collective agreements and benefit entitlements covering law enforcement personnel.

Considering these facts, the Union respectfully requests that the Commission include its proposals concerning these matters in its recommendation.

Field Coaching Allowance

60.0X Employees who provide field coaching to employees are eligible to receive an allowance of three decimal five per cent (3.5%) of their current rate of pay for the period of time during which they are assigned such duties.

60.0X Field Coaching Allowance is not included in base salary for the purpose of calculating annual increases.

60.0X The Field Coaching Allowance is not used for the purposes of establishing a rate of pay on promotion, demotion, or transfer.

60.0X The Field Coaching Allowance is not used for computing the payout of annual leave credits, overtime, maternity or parental benefits, or other allowances.

60.0X Entitlement is limited to one (1) Field Coaching Allowance for any given period.

RATIONALE

The Union has proposed a new field coach allowance. This allowance is modelled on the RCMP's (RM Group) Field Trainer Allowance (internal to the core public administration). Border Services Officers are often being asked to take on the duties of a Field Coach (e.g., coaching and mentoring, but not assessing) as Instructors (FB-4) will not regularly be at a port of entry to coach trainees.

There is a demonstrated need for such an allowance as the field coach takes on additional risks:

1) Coaching and mentoring is job shadowing without structured feedback as the Field Coach is not acting as an instructor, but they are liable for trainees' mistakes.
2) This happens at all levels when employees move to new positions within the agency due to a lack of a formal trainee program. For example, even for a new investigator or intelligence officer, there's still a level of field coaching that would be required.

With respect to external relativity, the broader law enforcement agencies' collective agreements include 'coach officer' premiums or time off in lieu benefits:

Police Service	**Coach Officer Premium or Benefit**
RCMP	3.5% of current rate of pay[92]
York Regional	6% of current rate of pay
Ontario Provincial	2% of current rate of pay
Toronto	4% of current rate of pay
Saint John	Time of in lieu model
Royal Newfoundland Constabulary	Time of in lieu model
Calgary	$2/hour
Ottawa	$50/day

(Exhibit 84)

The Union submits that there is no cogent reason as to why other law enforcement personnel – including others working in the federal sector – should receive compensation for such work and our members do not. It is unfair. The Union therefore requests that the Commission include this proposal in its recommendations.

[92] RCMP Regular Members (below the rank of inspector) and Reservists (RM)- Canada.ca

Dog handlers' allowance

60.02 When an employee is required to handle a trained detector dog during a shift, and in recognition of the duties associated with control, care and maintenance of the detector dog at all times, the employee shall be paid an allowance of **two** ~~one~~ ($**2**~~1~~) dollar**s** per on-duty hour.

RATIONALE

The Detector Dog Service (DDS) of the Canada Border Services Agency (CBSA) was established in 1978 to assist with front-line inspections. CBSA currently has 72 detector dog teams located across Canada, serving both traveler and commercial operations. Specialized dogs are trained in the detection of narcotics, firearms, currency, and agriculture products. The Detector Dog Service plays a key role in the detection of prohibited or regulated goods entering the country and in assisting the CBSA to fulfil its border protection mandate.

Detector dog teams receive intensive training at the CBSA's Learning Centre in Rigaud, Quebec. During the 10-week basic training, dog handlers learn how to care for, maintain and train their dogs. After the initial training course, the dog handler must maintain a training schedule to keep the dog working at a peak efficiency level.
Dog handlers may be required to be on call 24 hours a day and must be willing to travel to other locations on short notice. They must also be dedicated to their dogs, while both on- and off- duty. Indeed, handlers are assigned a specific dog.

What's more, dog handlers are regular Border Services Officers. They must also be dedicated to their dogs, while on-duty and, on occasion, when off- duty as well. Indeed, handlers are assigned a specific dog, and there are situations where the off-duty dog at lives at the handler's home. Although most of the costs associated with the care of the dog are assume by CBSA, the dog handlers receive insufficient compensation for the fact that they must take care of the dog 24/7.

The following table (**Table 10**) provides example of Dog Handler Allowances in other major law enforcement agencies in Canada.

Table 10: Dog Handler Allowances

Organizations	Dog Handler Allowance
Corrections Canada (CX)	($4.00) for each period in which the employee handles the dog for a minimum of one (1) hour for each four (4) hours period of a shift. [43.01]
Ottawa Metro	$1000 per year
Sûreté du Québec	As of 1 April 2021: $233 per month for dog master + 50% of the monthly allowance for the 2nd dog
Metro Toronto	$75 per month
Saskatoon	1100$ per year
Vancouver Metro	Dog Handler: 4% of 1st Class Monthly rate
City of Winnipeg	$600 per year
York Regional Police	6-12 service in the unit – 2% of 1st Class Constable Salary; 12+ months service in the unit – 6.75% of first-class salary.
Calgary Police	$650 per year
Ontario Provincial Police	A First-Class Constable, Sergeant or Staff Sergeant who is assigned to one of the following units, branches, or positions as of January 1, 2012 shall be entitled to an annual premium at the rate of two percent (2%) of their base rate effective January 1, 2012 and upon completion of twelve (12) months in the position, an annual premium at the rate of four percent (4%) of their base rate effective January 1, 2013:
Peel Regional Police	Operational members of the Tactical and Rescue Unit and Canine Unit shall be entitled to receive a speciality premium of five percent (5%) of the First-Class Constable salary for the period of their assignment to the Unit.

(Exhibit 47)

Introduced in the last round of bargaining, the allowance does not reflect the norms of the law enforcement community. As a result, the Union is proposing a modest increase of one additional dollar per on-duty hour.

Dog handlers are passionate about the work they perform, and they take great pride in the role that they play at CBSA. They receive special training and have responsibilities that go beyond standard BSO duties. They should be fairly compensated for the work they do and the vital service they provide Canadians. Allowances for dog handlers are common in the broader law enforcement community in Canada. Treasury Board has already agreed to it for other workers in its employ. It is for these reasons that the Union respectfully requests that its proposal for a dog handler's allowance be included in the Commission's recommendation.

NEW APPENDIX:
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT OF EMPLOYEES IN THE BORDER SERVICES (FB) GROUP WORKING AS HEARINGS OFFICERS

Union proposes a new $3,000 annual pensionable allowance for Hearings Officers.

RATIONALE

CBSA is seeking to recruit trained, qualified, and licensed lawyers as hearing officers. Adding 'membership in good standing in a Law Society of one of the Provinces or Territories of Canada' to *some* hearing officer job postings is a clear indication of recruitment and retention needs (Exhibit 48 and 48A). To this point, a December 2018 evaluation of the CBSA Hearing Program completed by the Internal Audit and Program Evaluation Directorate found that:

> amongst these internal stakeholders, there was a lack of clarity surrounding the nuanced functions of the Hearings Program, the extensive demands on Hearings Program staff, and job performance requirements. For example, in the GTA region, a loss of corporate memory due to employee turnover and a lack of immigration experience at the manager level may have had an impact on the understanding of the Hearings Program and the unique job requirements of employees.[93]

In addition to turnover, the Union is also aware of hearings officers have been asked in the past to serve as articling principles for articling students, this can only be done by licensed lawyers and in these instances CBSA still refused to pay for membership fees.

The Union is proposing a new allowance annual of $3,000 for Hearing Officers as a measure to fortify ongoing recruitment and retention efforts and ameliorate current concerns. Without such an allowance, the problem will only get worse. It only stands to reason that additional compensation be provided.

[93] Evaluation of the CBSA Hearings Program (Dec. 2018), p. 24. PS38-101-2018-eng.pdf (publications.gc.ca) & Évaluation du Programme des audiences de l'ASFC (Déc. 2018), p. 27. PS38-101-2018-fra.pdf (publications.gc.ca)

In the 2023-2024 Pacific Risk Profile (Updated July 2023), Recruitment and Retention is identified as a risk in the region—the region may be unable to recruit and retain sufficient human resources. With respect to 'risk drivers' the regional profile states:

- Recruiting for Trade, Programs, and IEOD (Intelligence Analyst, Hearings Officer, Hearings Advisor, and Community Liaison Officer) is largely dependent on the armed FB-03 cadre as the feeder group for officer ranks deployments/assignments/promotions and need to be supported by the POEs. The updated FB contract also provides no financial incentive to take on a FB-04 role.
- Increased complexity of files in the Hearings stream makes the position less desirable than other FB-05 positions within the Agency, which is compounded by the lack of a meal allowance (Exhibit 14).

CBSA is concerned about recruitment and retention with respect to the Hearing Officer position—if one region views this as a risk others may too or may in the near term. The Union requests that the Commission include this proposal in its recommendations.

NEW ARTICLE:
FIREARM PRACTICE TIME

xx.01 An employee that is required to carry a firearm shall be scheduled at least two (2) shifts per year for duty firearm practice. Such shifts shall be scheduled consistent with the employee's regular hours of work.

xx.02 Any fees associated with firearm practice time consistent with xx.01 above shall be the responsibility of the Employer.

xx.03 Any travel associated with a) above shall be subject to the National Joint Council Travel Directive.

NEW ARTICLE:
FIRING RANGE FEES REIMBURSEMENT

Upon receipt, the Employer shall reimburse employees for all fees associated with access to firing ranges and storage of firearms.

RATIONALE

In the case of both these Union proposals, the Union is seeking changes that reflect both provisions that are standard for law enforcement officers across Canada, and skills maintenance that is essential to the employment of a vast majority of members of the FB bargaining unit.

As law enforcement personnel, a majority of employees in the FB bargaining unit are required to undergo firearm recertification on an annual basis. This is true of Border Services Officers, Inland Enforcement Officers, Investigations Officers, and Intelligence Officers.

The CBSA's position is that successful completion of firearm certification is necessary for employees to perform their duties.

The agency up until 2013 provided employees with two paid sessions per calendar year for firearm practice. The reason provided by the agency at the time was financial constraints due to cutbacks under the Harper Government. Because the paid firearm practice time was not covered by the parties' collective agreement, the Union was unable to grieve the change. What the Union is proposing is to both reinstate and enshrine in the collective agreement the paid firearm practice time that was previously agency policy, as the current practices and policies see employees *on their own time*, and *at their own expense*, undergoing activities required to maintain standards set by CBSA.

At present off-duty firearm practice is an activity that permits armed officers to practice shooting on their own. As a condition of employment, Border Services Officers, Inland Enforcement, Investigations and Intelligence Officers are expected to recertify firearm proficiency on an annual basis. In short, there is an expectation at CBSA that officers be proficient with a firearm and demonstrate this proficiency on a regular basis.

Despite this expectation on the part of the Employer, current protocols related to off-duty firearm practice hold that officers will not be reimbursed for any fees, membership costs, or any other expenses associated with off-duty firearm practice. The Agency will provide officers with CBSA silhouette targets and up to 1000 rounds of training ammunition, which will be available to each officer annually in 200 round allotments per practice session. In many instances, to even engage in off-duty firearm practice, course must also be taken on your own time, usually a half to full day. As well, the ranges are often located a considerable distance from work locations where employees must pick-up their own practice ammunition and supplies. As the current policy states, officers will not be compensated for any time spent during off-duty firearm practice activities (e.g. travel, range fees, etc.). The Union's proposal, however, views firing range fee reimbursement as a matter of fairness within and between regions (Exhibit 49). It is also a simple matter of fairness that the Employer provide time and reimbursement for costs associated for maintaining proficiency in what is an operational requirement.

Presently, only a CBSA-approved range facility may be used by officers wishing to conduct off-duty firearm practice, as specified in section 2.3.23(a) of the CBSA Standard Operating Procedures on Defensive Tactics Training. These facilities can be located by referring to the CBSA Approved Range List.

An analysis of range fees identified on the CBSA Approved Range List shows:

- 132 approved firing ranges
- 3 ranges (2 in the Atlantic; 1 in the Prairies regions) in which fees are determined via undisclosed MOU
- 7.6% charge no range fee
- At least one range states CBSA shoot free, but charges others range fees.
- Annual range membership fees (excluding all other fees): These fees vary between region, and not all ranges report fees (i.e., must contact them, no fee, or MOU). The most expensive average annual range membership fee is found in the Great Toronto Area at $262[94]; descending in order from there includes Northern Ontario: $182; Southern Ontario: $171; Quebec $139; Atlantic: $99; Pacific: $85; Prairies: $81.
- In addition to annual range membership fees, many ranges require various additional fees including initiation, handgun and holster safety course, and membership to a sport shooting organization.
- Daily rates: While pricing models vary widely, daily rate may also be charged on top of annual range membership fees with many ranges charging an Agency daily rate. The average daily rate listed was approximately $271. (Exhibit 50)

With such variance in cost both within and between region (including firearm bans in some regions), where an employee lives should not be the determinant of how much an employee pays to engage in off-duty firearm practice—a program developed to provide officers with additional opportunities to prepare for their annual firearms re-certification.

[94] Rounding to whole dollar figures.

With respect to firearm practice time, the following law enforcement organizations, including two of the largest regional police service (aside from CBSA and the RCMP) offer clear examples in their respective collective agreements:

Ontario Provincial Police:

5.05 – Shift Premium

(b) Shift premium shall be paid only to employees working on a rotating shift or fixed off-shift basis and shall not apply to regular day workers who are required to work overtime. Also, fixed off-shift in-service training employees will receive the shift premium while participating in block/firearms training.

Sûreté de Québec:

5.11 Session régulière de maniement des armes

a) Une session régulière de maniement des armes de plus d'une journée constitue une activité de formation et de développement.

b) Une session régulière de maniement des armes d'une durée de moins d'une (1) journée ne constitue pas une activité de formation et de développement.

Ottawa Police Service:

12.2 – Hours of Work

Block Training:

- Block training will take place on the members regularly scheduled days of work as per Attachment #2
- There shall be three (3) training days per member, per year of a duration of ten hours and forty-five (10:45) each, scheduled on Monday, Tuesday, and the following Wednesday of the rotation
- The day scheduled for the Use of Force Requalification will be scheduled by the employer through the Professional Development Centre
- Meal breaks for Training Days are of a duration of one (I) hour. (Exhibit 51)

The Union submits that the status quo is patently unfair on the issue of firearm practice time. Employees are undergoing these activities on their own time and largely at their own expense, and yet the CBSA has made the proficient handling of a firearm a

necessary skill for performing the duties of jobs in which a significant majority of the bargaining unit are employed.

In light of these facts, the Union respectfully requests that the Commission include its firing range fee reimbursement and firearm practice time proposals in its recommendations.

ARTICLE 34
VACATION LEAVE WITH PAY

Amend as follows:

34.02 For each calendar month in which an employee has earned at least seventy-five (75) hours' pay, the employee shall earn vacation leave credits at the rate of:

(a) ~~nine decimal three seven five (9.375) hours~~ **1 (¼) days** until the month in which the anniversary of the employee's ~~eighth (8th)~~ **fifth (5th)** year of service occurs;

(b) ~~twelve decimal five (12.5) hours~~ **1 (2/3)** days commencing with the month in which the employee's ~~eighth (8th)~~ **fifth (5th)** anniversary of service occurs;

~~(c) thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;~~

~~(d) fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;~~

(c) ~~(e) fifteen decimal six two five (15.625)~~ ~~hours~~ **2 (1/12) days** commencing with the month in which the employee's ~~eighteenth (18th)~~ **tenth (10th)** anniversary of service occurs;

~~(f) sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;~~

(d) ~~(g) eighteen decimal seven five (18.75) hours~~ **2 (1/2) days** commencing with the month in which the employee's ~~twenty-eighth (28th)~~ **twenty-third (23rd)** anniversary of service occurs.

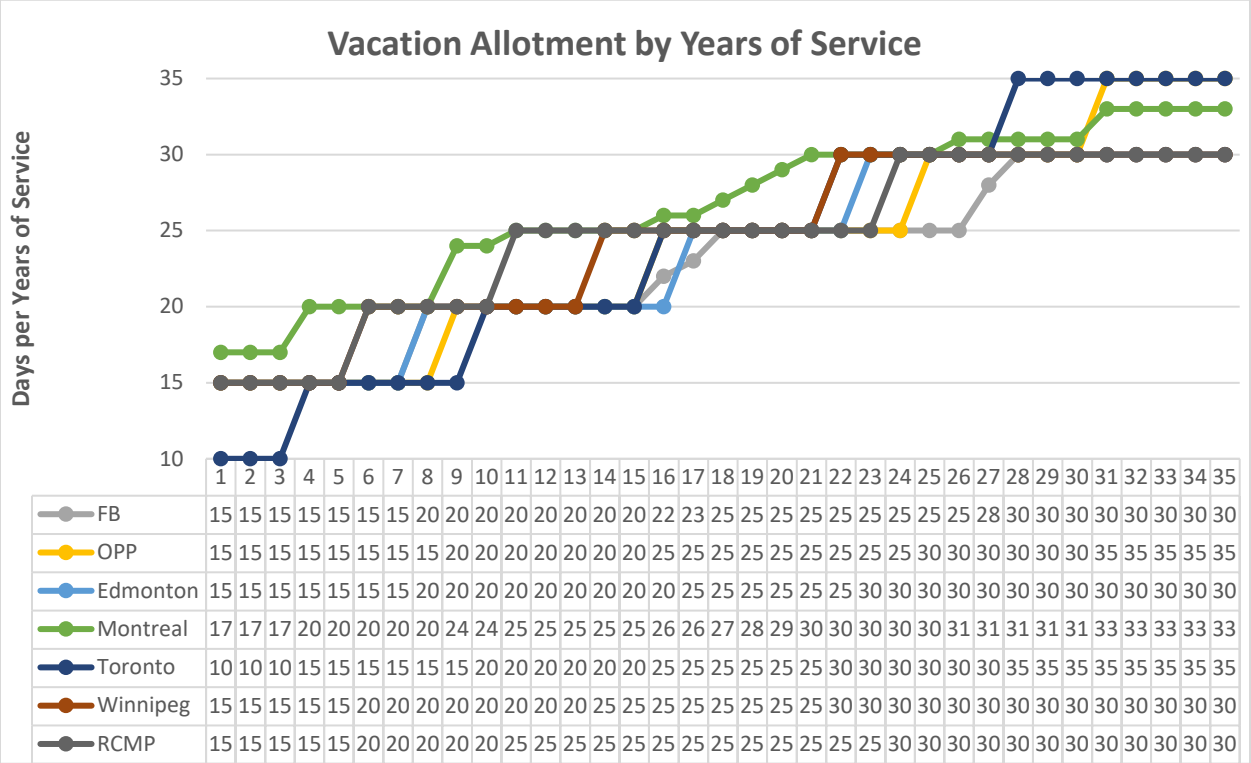
(e) 2 (2/3) days commencing with the month in which the employee's thirtieth (30th) anniversary of service occurs;

(f) 2 (11/12) days commencing with the month in which the employee's thirty-fifth (35th) anniversary of service occurs.

RATIONALE

There are two key elements to the Union's proposals for Article 34. First, the Union is proposing to bring annual leave entitlements in line with those that are currently afforded workers at the Royal Canadian Mounted Police. As the chart below illustrates, the vacation leave entitlement for employees in the FB bargaining unit is inferior in comparison to those employed elsewhere in the broader law enforcement community.

Table 11: Vacation Allotment by Years of Service



	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
FB	15	15	15	15	15	15	15	20	20	20	20	20	20	20	20	22	23	25	25	25	25	25	25	25	25	25	28	30	30	30	30	30	30	30	30
OPP	15	15	15	15	15	15	15	15	20	20	20	20	20	20	20	25	25	25	25	25	25	25	25	25	30	30	30	30	30	30	35	35	35	35	35
Edmonton	15	15	15	15	15	15	15	20	20	20	20	20	20	20	20	20	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30	30
Montreal	17	17	17	20	20	20	20	20	24	24	25	25	25	25	25	26	26	27	28	29	30	30	30	30	30	31	31	31	31	31	33	33	33	33	33
Toronto	10	10	10	15	15	15	15	15	15	20	20	20	20	20	20	25	25	25	25	25	25	30	30	30	30	30	30	35	35	35	35	35	35	35	35
Winnipeg	15	15	15	15	15	20	20	20	20	20	20	20	20	25	25	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30	30	30
RCMP	15	15	15	15	15	20	20	20	20	20	25	25	25	25	25	25	25	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30

Data source: Law Enforcement Collective Agreements. (Exhibit 52)

As the above table (Table 11) illustrates, the overall current vacation entitlement for the FB Group falls below other law enforcement personnel elsewhere in the broader public service.[95] The PSAC proposal seeks to close that gap by matching the annual leave accrual system currently in place for Regular Members of the RCMP.

[95] Sureté du Québec and Halifax Regional Municipality were both excluded from the table since their Vacation Allotment is on a Shift basis rather than on a day basis. 9hrs Shift for SQ and 12hrs shift for Halifax.

Table 12: RCMP Vacation Leave Relative to CBSA Vacation Leave

Years	Is the current entitlement equal or below RCMP?[96]	Net Days—current	Net Days—proposed
1-5	Equal	0	0
6-7	Below by five days	10	0
8-10	Equal	0	0
11-15	Below by five days	25	0
16	Below by 3 days	3	0
17	Below by 2 days	2	0
18-23	Equal	0	0
24-26	Below by 5 days	15	0
27	Below by 2 days	2	0
28	Equal	0	0
Total:		**57**	**0**

As indicated in the table above **(Table 12)**, a current employee of the FB bargaining unit would receive 11.4 weeks less (57 days less) of vacation leave over the course of his or her career compared to a regular employee of the RCMP. Again, the Union points out that employees working for the RCMP work under the same department and ministry as do employees in the FB bargaining unit.

As is the case with respect to employees at the RCMP, a significant majority of employees in the FB bargaining unit work shifts. As was indicated when speaking to shift work in the context of the Union's proposals for Article 25, the effects of shift work on the health of employees is well documented. Also as previously stated, the duties performed by a significant majority of workers in the bargaining unit require regular exposure to danger. The Union submits that these factors must be taken into account when considering annual leave quantum. Undoubtedly the government took this into account when instituting its vacation leave policy for workers at the RCMP. The Union is asking that the same be applied to employees in the FB bargaining unit. Both the RCMP and the CBSA fall under the Public Safety Portfolio—and with respect to internal relativity, as the first and second largest law enforcement groups in the country, the RM group is the clearest and closest comparator for the FB group, especially now as they are unionized like the FB group.

[96] RCMP – Salary & Benefits: https://www.rcmp-grc.gc.ca/en/salary-and-benefits

In addition to the broader law enforcement community, the Union would also point out that union members at Canada Post also access a far superior vacation leave allotment compared to the current provisions for employees in the FB group. The difference in this example amounts of 70 days (14 weeks) when totaled over a career. (Exhibit 53)

Table 13: Canada Post Vacation Leave Relative to CBSA Vacation Leave

Years	Is the current entitlement equal or below Canada Post?	Net Days—current
1-7	Equal (3-weeks)	0
8-14	Equal (4-weeks)	0
15	Below by 5 days	5
16	Below by 3 days	3
17	Below by 2 days	2
18-21	Equal (5-weeks)	0
22-26	Below by 5 days	25
27	Below by 2 days	2
28	Equal (6-weeks)	0
29-35	Below by 5 days	35
Total:		**70**

There are hundreds of Border Services officers working exclusively at CBSA's postal operations across Canada. In all of these cases these employees work in buildings adjacent to or, in some cases such as at the Mississauga plant, in the *same building* as unionized postal workers. The Union submits that if Canada Post can agree to such vacation leave provisions, then surely CBSA can do the same for law enforcement personnel working in postal facilities. The Union submits that it's proposals at the 30-year and 35-year marks in years of service are modest relative to the Canada Post's vacation leave, and other major law enforcement organizations for that matter like the OPP and Toronto, as our proposal does not equal the Canada Post entitlement until 35-years of service.

In light of this fact, and in light of the fact that the federal government is already affording the same vacation leave allotment to other law enforcement personnel in its employ, indeed working under the same minister in the same department, the Union respectfully requests that the Commission include the Union's proposals for Article 34 in its recommendation.

ARTICLE 2
INTERPRETATION AND DEFINITIONS

"family" (famille) except where otherwise specified in this agreement, means father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, step-brother, stepsister, spouse (including common-law partner resident with the employee), child (including child of common-law partner), **stillborn or miscarried child or fetus (including stillborn or miscarried child or fetus of the common-law partner),** stepchild, foster child or ward of the employee, grandchild, father-in-law, mother-in-law, daughter-in-law, son-in-law, **sister-in-law, brother-in-law, aunt, uncle, niece, nephew,** the employee's grandparents and relative permanently residing in the employee's household or with whom the employee permanently resides**, any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee, and a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.**

RATIONALE

The Union's proposal in Article 2, to amend the definition of family to include common familial relations and non-familial relations not included in the definition, is meant to not only create a definition of family that is better reflective of the diverse ways in which individuals assign importance to various familial relationships, but also give the collective agreement greater internal consistency.

The current collective recognizes several relationships formed through their spouse or common-law partner (son and daughter-in-law, and mother and father-in-law), as well as relationships from the employee's extended family (grandparents). It is the Union's position that the exclusion of similar types of familial relationships, including brother and sister-in-law, aunt and uncle, and grandparents of the employee's spouse or common-law partner) is arbitrary, and should be corrected.

The current exclusion of brother and sister-in-law, grandparents of the employee's spouse, and aunt and uncle of the employee from the definition of Family in Article 2 has a tangible effect on employees, as it denies them access to certain rights that are available for similar familial relationships. For example, this arbitrary exclusion limits

access to leaves such as bereavement leave without loss of pay to one day for the employee's brother or sister-in-law, as opposed to the seven days granted to mourn the loss of a son-in-law, daughter-in-law, father-in-law or mother-in-law**.** In the case of aunts, uncles, or grandparents of the employee's spouse, the exclusion from bereavement and other leaves is total**.**

Finally, the Union's proposal to add "a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee" to the definition of Family in Article 2 is meant to ensure greater internal consistency in the collective agreement, as this relationship is currently recognized in Articles 41, 43, and 46. The Union is proposing to further harmonize the definition of Family in the collective agreement by recognizing this relationship in Article 2.

ARTICLE 7
NATIONAL JOINT COUNCIL AGREEMENTS

RESERVE (Bilingual Bonus)

7.XX With the exception of those employees who are subject to the Bilingual Bonus, no employee shall be required by the Employer to provide language interpretation or translation services for the Employer.

RATIONALE

The Union proposes simply to replicate what the parties agreed to for the four other Treasury Board bargaining units.

The NJC Bilingual Bonus applies to Border Services in the same fashion that it does other groups.

National Joint Council's Bilingual Bonus Directive (to form a part of the Memorandum of Settlement):

> In regard to the National Joint Council's Bilingual Bonus Directive:
>
> 1. The Employer commits to not propose the elimination or the reduction of the existing bilingualism bonus set forth in the current National Joint Council (NJC) Bilingual Bonus Directive during the life of this collective agreement.
> 2. The Employer further commits to recommending the inclusion of the NJC Bilingualism Bonus Directive in the 2023-2024 cyclical review.

ARTICLE 13
EMPLOYEE REPRESENTATIVES

13.01 The Employer acknowledges the right of the Alliance to appoint or otherwise select employees as representatives.

~~**13.02** The Alliance and the Employer shall endeavour in consultation to determine the jurisdiction of each representative, having regard to the plan of organization, the number and distribution of employees at the workplace and the administrative structure implied by the grievance procedure. Where the parties are unable to agree in consultation, any dispute shall be resolved by the grievance/adjudication procedure.~~

13.0~~3~~2 The Alliance shall notify the Employer in writing of the names and jurisdictions of its representatives ~~identified pursuant to clause 13.02.~~

13.0~~4~~ ~~3~~

(a) A representative shall ~~obtain the~~ **be granted** permission of his or her immediate supervisor before leaving his or her work to investigate employee complaints ~~of an urgent nature~~, to meet with local management for the purpose of dealing with grievances and to attend meetings called by management. ~~Such permission shall not be unreasonably withheld~~. Where practicable, the representative shall report back to his or her supervisor before resuming his or her normal duties.

(b) Where practicable, when management requests the presence of an Alliance representative at a meeting, such request will be communicated to the employee's supervisor.

(c) An employee shall not suffer any loss of pay when permitted to leave his or her work under paragraph (a).

13.0~~5~~4 The Alliance shall have the opportunity to have an employee representative introduced to new employees as part of the Employer's formal orientation programs~~, where they exist~~.

13.xx The Employer shall grant leave with pay to an employee acting on behalf of the Alliance for the purposes of preparation for:

i) Grievances

and

ii) any meeting or undertaking in which an employee may be provided Alliance representation under this Article, Article 17 or Article 18.

RATIONALE

The Union's proposals for Article 13 are designed to address problems in a number of areas: employer interference in terms of determining the jurisdiction of union representatives, stewards being provided time to investigate complaints and to resolve problems in the workplace, and ensuring consistency in terms of new employee orientation.

The Union's proposal concerning steward jurisdiction is designed to ensure that the current language in Article 13 cannot be interpreted by CBSA management as providing the employer the prerogative to contravene the statutory rights of employees or the bargaining agent under the *Act*. Subsection 5 of the *Act* clearly sets out an employee's rights with respect to Union activities:

> *5 Every employee is free to join the employee organization of his or her choice and to participate in its lawful activities.*

The prohibitions on management in this regard are clear under subsection 186(1) of the *Act* and reflect the right of a bargaining agent to administer the Union and to fully represent employees without interference from management:

> **186** (1) No employer, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an officer as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act* or who occupies a position held by such an officer, shall
>
> **(a)** participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or
>
> **(b)** discriminate against an employee organization.

The Union maintains that, to the extent that there exist practices within the CBSA that purport to limit that right of representation, or the participation of employees in the Union's lawful activities, the Union is compelled to seek declaratory contract language. The Union's proposal not only re-affirms the important principle of participation in the lawful activities of their union, it signals to all employees in the bargaining unit - in a meaningful and concrete way - that the Employer will respect that participation.

Accordingly, the Union is proposing that this language be inserted into the collective agreement to ensure that all parties to it have a clear understanding as to legal protections afforded the Union with respect to communication with its membership.

The law is clear that the employer does not have the prerogative or the right to "interfere administration of an employee organization or the representation of employees by such an organization." Decisions related to the jurisdiction of shop stewards and other Union representatives are decisions that are directly related to the administration of the Union in the workplace. Thus the language currently found in the parties' collective agreement is inconsistent with protections afforded the Union under the law, and consequently the Union asks that it be removed.

With respect to the modifications being proposed for the current 13.03, there have been issues with respect to Union representatives in the workplace being released from their duties to address issues. Again, the Union is proposing contract language that would ensure that the employer not be in a position to interfere with a Union representative's ability to carry out his or her duties in the workplace.

The new clause being proposed is intended to address a loophole in the collective agreement. Article 14 of the parties' collective agreement provides for employees to be granted leave with pay for the purposes of a grievance meeting with the employer. Article 18.07 of the parties' agreement recognizes that informal discussion geared towards the resolving of issues - without resorting to the formal grievance procedure – is both valuable and encouraged. It is commonly recognized that the purpose of any grievance procedure

is to not only provide recourse for employees, but also to provide a mechanism within which problems might be resolved via dialogue. Article 1.02 speaks to a commitment on the part of both parties to establish an effective working relationship.

For Union representatives in the workplace to properly work towards successful resolution of problems either via informal discussion or via formal grievance procedure, time is required to meet with affected employees and managers. There have been occasions where employees in the bargaining unit have been forced to take other paid leave, or leave without pay, to undertake activities associated with 18.07 and preparation for grievance meetings. The Union submits that this is inconsistent with the commitments made by the parties in both Article 1.02 and 18.07. What the Union is proposing is that employees acting as Alliance representatives not suffer a loss in pay for engaging in activities that are sanctioned, if not promoted, by the parties' collective agreement.

The Union submits that it is in the interests of both parties for employees acting as Alliance representatives to be afforded leave with pay when such employees are working to resolve problems in the workplace. Thus, the Union respectfully requests that its proposal be included in the Board's award.

ARTICLE 14
LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS

Meetings During the Grievance Process

14.07 Where an employee representative wishes to discuss a grievance with an employee who has asked or is obliged to be represented by the Alliance in relation to the presentation of his or her grievance, the Employer will, where operational requirements permit, give them reasonable leave with pay for this purpose ~~when the discussion takes place in their headquarters area and reasonable leave without pay when it takes place outside their headquarters area.~~

14.08 Subject to operational requirements,

(a) when the Employer originates a meeting with a grievor ~~in his headquarters area~~, he or she will be granted leave with pay and "on duty" status ~~when the meeting is held outside the grievor's headquarters area~~;

(b) when a grievor seeks to meet with the Employer, he or she will be granted leave with pay ~~when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area~~;

(c) when an employee representative attends a meeting referred to in this clause, he or she will be granted leave with pay ~~when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area~~.

14.14 Leave **without pay** granted to an employee under **this** Article, **with the exception of article 14.15,** ~~14.02, 14.09, 14.10, 14.12 and 14.13~~ will be with pay **and** the Alliance will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by the joint agreement in Appendix J.

14.15 Branch Presidents

The Employer will grant leave with pay to employees who exercise the authority of Branch President, or National CIU Representative other than

the National President, on behalf of the Alliance so that such employees may undertake the duties associated with their office.

14.16 When an Employee is hired into an Alliance staff position and provides a minimum of two (2) weeks' notice, the Employer shall grant a leave of absence without pay and without loss of service for the duration of such leave for up to one (1) year. During this time period, the employee may, upon two (2) weeks' written notice, be returned to the position held immediately prior to the commencement of the leave.

14.17 When operational requirements permit, the Employer will grant leave without pay to employees for any other union business validated by the Alliance with an event letter.

RATIONALE

The Union's proposals for Article 14 are geared towards fixing problems in the workplace and ensuring that employees acting as PSAC representatives have the time that they need to carry out their responsibilities.

For both 14.07 and 14.08, the Union is proposing to remove the qualifier of "within their headquarters area" with respect to union representatives accessing leave with pay for grievance-related matters. Often employees work within certain regions, which do not correspond with a headquarters area – indeed, to the best of the Union's knowledge, 'headquarters area' has never been defined. Thus, the current language provides the employer the prerogative to deny employees and union representatives leave with pay for matters covered under Article 14 based on subjective and ill-defined factors.

Furthermore, it is common for discussion related to grievances and complaints to be discussed via telephone, as both the CBSA and PSAC/CIU have representatives at the regional level, and given the nature of CBSA operations and the number of ports of entry across Canada, there are a great many instances where face to face meetings are impossible. As a result, the current language effectively discriminates against those

PSAC representatives responsible for large geographic regions versus those working in areas where union membership is densely populated.

The proposed changes in Article 14.14 are simply to recognize that, with the exception of articles 14.15, there should be one system for all forms of union leave, whereby the leave for employees is with pay and the PSAC will be invoiced by the Employer for the cost of the leave.

With respect to the Union's proposal concerning Branch Presidents, what the Union is attempting to achieve is a return to a long-standing practice that was unilaterally revoked by the CBSA during a previous round of negotiations. This revocation was the subject of a freeze complaint filed by the PSAC in 2012. In its 2013 decision concerning this matter, the Board found that the employer's unilateral revocation of paid union leave for 5 CIU National Vice-Presidents and 11 CIU Branch Presidents was a violation of the Public Service Labour Relations Act. (Exhibit 55)

The elimination of this long-standing practice has been extremely disruptive in the workplace and to labour-management relations at CBSA. Given that similar arrangements continue to exist in other departments, the Union would submit that these changes represent yet another example of anti-union animus at CBSA. If the CBSA were to honour its commitment to improve labour relations and morale at the Agency, a key element would need to be the reintroduction of this long-standing practice.

The proposals being made for Article 14 are intended to address on-going problems, and to reinstate a long-standing practice that was unilaterally (and illegally) revoked in the past. Given that what the Union is proposing for Branch Presidents was in effect for an extremely long time – in the case of the Montreal branch over 25 years – and given the geographic and operational realities at CBSA as they relate to grievance handling, the Union submits that its proposals and entirely reasonable and asks that they be included in the panel's recommendations.

ARTICLE 18
GRIEVANCE PROCEDURE

18.11 There shall be no more than a maximum of ~~four (4)~~ **three (3)** levels in the grievance procedure. These levels shall be as follows:

a. Level 1: first level of management;
b. Level 2 in departments or agencies where such levels are established (intermediate level(s));
c. Final level: chief executive or deputy head or an authorized representative.

~~Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.~~

No employer representative may hear the same grievance at more than one level in the grievance procedure.

18.23 Where it appears **to the grievor and, where applicable, the Alliance,** that the nature of the grievance is such that a decision cannot be given below a particular level of authority, any or all the levels except the final level may be eliminated by ~~agreement of the Employer and~~ the grievor, and, where applicable, the Alliance.

RATIONALE

The Union's understanding is that the parties have an agreement in principle on Article 18.11.

With respect to 18.23, As previously stated, there are a tremendous number of grievances currently outstanding between the Union and the employer. The Union's proposal is intended to expedite the process and to respond to a change that has taken place with respect to how decisions are made concerning grievances on the employer side.

The primary purpose behind the grievance procedure is to provide the parties the opportunities to discuss differences and find resolution, and there is more than one step

in the process to provide union and management representatives at different levels the opportunity to meet and resolve the disagreement.

Over the past several years a trend has developed at CBSA, where decision-making with respect to grievances and union-management matters have been increasingly centralized in Ottawa with CBSA Labour Relations. As a result, Union representatives at the local and regional levels are often told by management representatives that “their hands are tied” with respect to being able to resolve grievances, and that “Ottawa says no”.

The Union submits that if local and regional management are not going to be given the ability or authority to troubleshoot and resolve problems with their respective union counterparts, there is no need for there to be as many steps as currently exist in the process. Indeed, there is little need for there to be more than two steps – the first and the last – when CBSA Labour Relations in Ottawa is going to retain control of the process.

What has been particularly frustrating for the Union and the employees is the fact that management often insists on adhering to every step despite the fact that management has not been given the authority to resolve the grievance at each step.

The steps contained in the current grievance process are predicated upon the idea that management at different levels of the employer’s organization will have the ability and authority to resolve problems. If that is not the case, there is no need for the steps to be adhered to. To meet when one of the parties is unable to resolve the issue is a waste of time and resources for both the Union and the employer.

In light of these facts, the Union respectfully requests that the panel include the Union’s proposals for Article 18 in its recommendation.

ARTICLE 19:
NO DISCRIMINATION

The Union's understanding is that the parties have an agreement in principle on Article 19.

ARTICLE 28
OVERTIME

Excluded provisions

28.01 Compensation under this article shall not be paid for overtime worked by an employee at courses, training sessions, conferences and seminars unless the employee is required to attend by the Employer.

28.02 General

a. An employee is entitled to overtime compensation under clauses 28.04 and 28.05 for each completed period of fifteen (15) minutes of overtime worked by him or her when:

   i. the overtime work is authorized in advance by the Employer or is in accordance with standard operating instructions; and
   ii. the employee does not control the duration of the overtime work.

b. Employees shall record starting and finishing times of overtime work in a form determined by the Employer.

c. For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked.

d. Payments provided under the overtime, designated paid holidays and standby provisions of this agreement shall not be pyramided, that is, an employee shall not be compensated more than once for the same service.

e. **It is understood that overtime shall be worked by employees on a voluntary basis only**.

28.04 Overtime Compensation on a workday

Subject to paragraph 28.02(a):

(a) an employee who ~~is required to~~ work**s** overtime on his or her scheduled workday is entitled to compensation at ~~time and one-half (1 1/2) for the first~~

~~seven decimal five (7.5) consecutive hours of overtime worked and~~ double (2) time for all overtime hours worked ~~in excess of seven decimal five (7.5) consecutive hours of overtime in any contiguous period~~;

(b) if an employee is given ~~instructions~~ **notice** during the employee's work day to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid ~~a~~ minimum of ~~two (2) hours' pay at straight-time~~ **three (3) hours' pay at the applicable overtime rate of pay,** or for actual overtime worked, whichever is the greater;

(c) an employee who is called back to work after the employee has completed his or her work for the day and has left his or her place of work, and returns to work shall be paid the greater of:

(i) compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back to a maximum of eight (8) hours' **overtime** compensation in an eight (8) hour period; such maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision;
or

(ii) compensation at the applicable overtime rate for actual overtime worked, provided that the period worked by the employee is not contiguous to the employee's normal hours of work;

(d) the minimum payment referred to in subparagraph (c)(i), does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clauses 6**1**~~0~~.05 or 6**1**~~0~~.06.

28.05 Overtime Compensation on a day of rest

Subject to paragraph 28.02(a):

(a) an employee who ~~is required to~~ work**s** on ~~a first (1st)~~ day of rest is entitled to compensation ~~at time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours~~ and double (2) time **for all hours worked** ~~thereafter~~;

~~(b) an employee who is required to work on a second (2nd) or subsequent day of rest is entitled to compensation at double (2) time (second or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest);~~

(**b**~~c~~) when an employee **who** ~~is required to report for~~ work**s** ~~and reports~~ on a day of rest, the employee shall be paid the greater of:

(i) compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting to a maximum of eight (8) hours' **overtime** compensation in an eight (8) hour period,

or

(ii) compensation at the applicable overtime rate;

(**c**~~d~~) the minimum payment referred to in subparagraph (c)(i), does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 6**1**~~0~~.05;

28.06 Compensation payment or leave with pay

a. Overtime shall be compensated with a payment, except that, upon request of an employee ~~and with the approval of the Employer,~~ overtime may be compensated in equivalent leave with pay.

b. The Employer shall ~~endeavour to~~ pay overtime compensation by the sixth (6th) week after which the employee submits the request for payment.

c. The Employer shall grant compensatory leave at times convenient to both the employee and the Employer.

d. Compensatory leave with pay earned in a fiscal year and outstanding on September 30 of the following fiscal year, will be paid at the employee's rate of pay, as calculated from the classification prescribed in the certificate of appointment on March 31 of the previous fiscal year.

28.07 Meals

a. An employee who works three (3) or more hours of overtime immediately before or immediately following the employee's scheduled hours of work shall be reimbursed his or her expenses for one meal in the amount **equivalent to the lunch rate outlined in Appendix C of the National Joint Council's Travel Directive** ~~of twelve dollars ($12) except where free meals are provided~~.

b. When an employee works overtime continuously extending four (4) hours or more beyond the period provided in paragraph (a), the employee shall be reimbursed for one additional meal in the amount **equivalent to the lunch rate outlined in Appendix C of the National Joint Council's Travel Directive** ~~of twelve dollars ($12)~~ for each additional four (4) hour period of overtime worked thereafter ~~except where free meals are provided~~.

c. Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.

d. Meal allowances under this clause shall not apply to an employee who is in travel status, which entitles the employee to claim expenses for lodging and/or meals.

RATIONALE

The Union's new proposal at **28.02(e)** is a response to staffing shortages and extensive vacancies. More frontline personnel are required. The agency-wide reliance on overtime as a vacancy management strategy to meet service standards is not sustainable. If there were no recruitment, retention, or vacancy issues, such a strategy would not exist. The fact it does and further exacerbates staff turnover, vacation denials, fatigue, burnout, and decreased productivity, morale, and work-life balance demonstrates that it is not sustainable.

Next, the Union proposes that all overtime be compensated at the rate of double time. Overtime, a form of non-basic pay, was regularly missing or miscalculated by the Phoenix pay system. The proposals at **28.04(a), 28.05(a) and the strikeout of the old 28.05(b)** seek to simplify and streamline the input of overtime pay. Currently, overtime can be earned at variety of rates: 1.5 times the base rate, 1.75 times the base rate, and double time in specific situations. The union's proposal simplifies the input of overtime to a single rate. Further this proposal recognizes that any overtime is a disruption of the work/life balance. For non-shift workers, Sunday is currently paid at double time and any extra time worked is equally as important as your second day of rest.

With respect to changes at the new **28.05(b)**, the Union is proposing that compensation for employees who work on a day of rest or who are required to return to work be analogous to what is paid to employees in a call-back situation. Whether or not an employee 'reports' is immaterial, as it is for the work that employees are compensated, and indeed there are employees that perform duties that can be performed from their place of residence. Consequently, the Union's proposal ensures that if an employee is required to work on his or her day of rest, or is required to return to work, then he or she shall be compensated appropriately.

The changes proposed for **28.04(c)(i)** and the **new 28.05(b)(i)** would resolve on-going issues with respect to compensation when employees are required to return to work. At present, the Union and the employer do not agree on the compensation to be provided when an employee reports. The employer has taken the position that such compensation is to be paid at straight-time, with an eight-hour cap, irrespective of the number of call-backs – this despite the fact that the clause refers to 'overtime rate'. Indeed, grievances have been filed in numerous locations over this issue (Exhibit 78). What's interesting is that this was resolved in the Montreal region. The Union's proposal would ensure clarity in the collective agreement, and that employees get paid appropriately.

Next, with respect to the changes at proposed at **28.06**, understanding that sometimes overtime is necessary, the Union submits that the Employer should not hold the discretion over how an employee is compensated for their overtime work. The employees should be able to decide how they want to be compensated.

Finally, for **28.07**, the Union is proposing changes that would bring the current amount in line with the rates in the NJC travel directive. Twelve dollars is nowhere near enough to pay for a meal. This proposal ties the allowance to the National Joint Council's lunch meal rate. As a party to the NJC's Travel Directive, the Employer reviews and co-develops the NJC Directive with bargaining agents, including the PSAC. The NJC and its committees review the rates on a regular basis. The Union argues the reasonableness and internal relevance of tying the overtime meal allowance to the NJC

lunch meal rate due to the fact the Employer recognizes these rates as being reflective of the cost of meals, including the cost of a lunch meal, elsewhere in the federal public service. The Union urges the Chair to include this proposal in its recommendations.

ARTICLE 30
DESIGNATED PAID HOLIDAYS

30.01 Subject to clause 30.02, the following days shall be designated paid holidays for employees:

(a) New Year's Day;

(b) Good Friday;

(c) Easter Monday;

(d) the day fixed by proclamation of the Governor in Council for celebration of the Sovereign's birthday;

(e) National Indigenous Peoples Day;

(f) ~~(e)~~ Canada Day;

(g) ~~(f)~~ Labour Day;

(h) ~~(g)~~ National Day for Truth and Reconciliation

(i) ~~(h)~~ the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

(j) ~~(i)~~ Remembrance Day;

(k) ~~(j)~~ Christmas Day;

(l) ~~(k)~~ Boxing Day;

(m) ~~(l)~~ **two (2)** ~~one~~ additional day**s** in each year that, ~~in the opinion of the Employer~~, ~~is~~ **are** recognized to be a provincial or civic holiday in the area in which the employee is employed or, in any area where, ~~in the opinion of the Employer~~, no such additional ~~day is~~ **days are** recognized as a provincial or civic holiday, the **third Monday of February and the** first (1st) Monday in August;

(n) ~~(m)~~ one additional day when proclaimed by an Act of Parliament as a national holiday.

30.07

(a) When an employee works on a holiday, he or she shall be paid ~~time and one-half (1 1/2)~~ **double (2) time** for all hours worked ~~up to seven decimal five (7.5) hours and double (2) time thereafter~~, in addition to the pay that the employee would have been granted had he or she not worked on the holiday;

or

(b) upon request ~~and with the approval of the Employer~~, the employee may be granted:

~~(i) a day of leave with pay (straight-time rate of pay) at a later date in lieu of the holiday;~~

and

(~~i~~i) pay at **double (2) time** ~~one and one-half (1-1/2) times~~ the straight-time rate of pay for all hours worked ~~up to seven decimal five (7.5) hours;~~ **or the equivalent in leave.**

(ii) Should an employee elect to take the hours in leave consistent with (ii) above, the Employer shall grant such leave at times convenient to both the employee and the Employer. The employee may elect to cash out said leave at any time.

~~and~~

~~(iii) pay at two (2) times the straight-time rate of pay for all hours worked by him or her on the holiday in excess of seven decimal five (7.5) hours.~~

(c) Notwithstanding paragraphs (a) and (b), when an employee works on a holiday contiguous to a day of rest on which he or she also worked and received overtime in accordance with paragraph 28.05(b), he or she shall be paid, in addition to the pay that he or she would have been granted had he or she not worked on the holiday, two (2) times his or her hourly rate of pay for all time worked.

(d) Subject to operational requirements and adequate advance notice, the Employer shall grant lieu days at such times as the employee may request.

(i) When, in a fiscal year, an employee has not been granted all of his or her lieu days as requested by him or her, at the employee's request, such lieu days shall be carried over for one (1) year.

(ii) In the absence of such request, unused lieu days shall be paid off at the employee's straight-time rate of pay in effect when the lieu day was earned.

30.09 Scheduling of ~~shift-working~~ employees on a designated holiday

a) Should there be more employees scheduled to work a designated paid holiday than is needed, the Employer shall canvass employees scheduled to work the holiday to determine if there are volunteers who wish to have the day off. In the

event that there are excessive volunteers, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to select which employees shall be granted the day off.

b) Should there be insufficient or no volunteers after the Employer has canvassed consistent with a) above, the employees with the least amount of service ~~as defined in subparagraph 34.03(a)(i)~~ shall be given the day off.

c) Notwithstanding paragraphs (a) and (b) the Employer shall ensure that there is a sufficient number of qualified employees scheduled to work the designated holiday.

d) Should the Employer require employees to work the holiday after it has given employees the day off, the Employer shall first offer the ~~shift(s)~~ **hours** to be worked to qualified employees that were initially scheduled to work the holiday and were subsequently given the day off consistent with b) and c) above, before offering the hours consistent with Article 28: overtime.

For greater certainty, scheduled shifts will continue to follow the pre-established pattern, according to the existing schedule, as a result of the application of this clause.

RATIONALE

With respect to Article 30, the Union is proposing additional designated paid holidays. The Union proposes to include an additional statutory holiday on June 21 of each year, National Indigenous Peoples Day at 30.01(e). June 21 is culturally significant as the summer solstice, and it is the day on which many Indigenous peoples and communities traditionally celebrate their heritage.

The Union considers the recognition of this day as a designated paid holiday in the Collective Agreement not only as an opportunity for the Employer to actively embrace the reconciliation process, but also to allow employees, institutions and communities to celebrate and honor the indigenous population and commemorate their shared history and culture.

The rationale behind the Union’s proposal for Family Day is that most employees in the bargaining unit work in provinces where a designated paid Family Day holiday exists, but to which they are not currently entitled. Family Day, celebrated on the 3rd Monday of February, is a statutory holiday in five provinces: Alberta, British Colombia, New

Brunswick, Ontario, and Saskatchewan. The third Monday in February is also a designated paid holiday in three other provinces: Prince Edward Island (Islander Day), Manitoba (Louis Riel Day) and Nova Scotia (Heritage Day); and, in one territory, Yukon (Heritage Day), while in Quebec January 2nd is a holiday for provincial and municipal workers. The practical impact on members of the bargaining unit is that schools, day cares and other services are not open that day forcing employees to scramble to make childcare arrangements, or in many cases are forced to take a day of leave. The Union's proposal would not only ensure that employees in the FB bargaining unit have access to a holiday that is already provided to millions of other Canadian workers, but at the same not require employees to take a day of annual leave on that same day due to their family responsibilities.

Law enforcement organizations surveyed in this brief in AB, BC, NB, ON, and SK have codified Family Day into their respective collective agreements. Similarly recognized is the designated paid holiday in February in MB, NS, and PEI. In addition to recognizing the 3rd Monday in February, Ontario-based Indigenous Police Services represented by the PSAC including, Nishnawbe-Aski Police Services (e.g., National Indigenous Day), Treaty Three Police Services, and the Anishinabek Police Service recognize a culturally significant designated paid holiday in June (Exhibit 56).

Next, with respect to all overtime should be double time and cash out related proposals, please see the rationale for Article 28 – Overtime.

With respect to 30.09, there are members of the bargaining unit who fall under the Day Work category but are required to work on Designated Paid Holidays. This is especially true for employees working in Inland Enforcement, Investigations and Intelligence. As is the case with shift working employees, who works on a holiday and who doesn't, who is put on standby for holidays and who isn't, all have been controversial in CBSA workplaces. Where there are day workers, CBSA has taken the position that 30.09 does not apply. The Union is therefore proposing to rectify this problem.

Considering these facts, the Union respectfully requests that its proposals for Article 30 be included in the panel's recommendation.

ARTICLE 32
TRAVELLING TIME

32.08 Travel-Status Leave

a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for ~~forty (40)~~ **twenty (20)** nights during a fiscal year shall be granted ~~seven decimal five (7.5) hours of time~~ **one day** off with pay. The employee shall be credited ~~seven decimal five (7.5) hours~~ of additional ~~time~~ **day off with pay** for each additional twenty (20) nights that the employee is away from his or her permanent residence, to a maximum of ~~eighty (80)~~ **one hundred (100)** additional nights.

b) The maximum number of days off earned under this clause shall not exceed ~~five (5)~~ **six (6)** days in a fiscal year and shall accumulate as compensatory leave with pay.

c) This leave with pay is deemed to be compensatory leave and is subject to paragraphs 28.06(c) and (d).

d) The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer.

32.xx When an employee is unable to:

i) leave their workplace due to circumstances beyond their control or

ii) return to their place of residence while on work-related travel,

such employee shall be paid for all time spent at the workplace in the case of i) and all time spent on captive time and travelling to his or her place of residence in the case of ii).

RATIONALE

It is common for employees in the FB bargaining unit to be required by the employer to travel. The vast majority of front-line employees are required to travel a significant period of time for their tri-annual control defence tactics recertification. Employees also usually have to travel for firearm recertification.

Undoubtedly the population within the bargaining unit that spends the most time in travel status are Inland Enforcement Officers, staff who as part of their duties are required to perform escorted removals of detainees out of Canada and back to their countries of origin.

Like FB bargaining unit employees, PSAC members in the Technical Services bargaining unit spend a great deal of time in travel status. These include primarily TI's working for Measurement Canada. Yet while workers in the TC group are members of the same union, working for the same employer, and are required to travel just as is the case for workers in the FB group, the two bargaining units are provided different benefits with respect to travel leave benefits, in that TC's are superior.

In negotiations, the employer provided no cogent rationale as to why such a double standard should exist. The Union's proposal to rectify the disparity is simple: simply apply the same travel leave standards in effect for PSAC members in the FB group that are currently in effect for PSAC members in the TC group. (Exhibit 57)

Concerning the Union's proposal for 32.xx(i), there have been instances where members of the bargaining unit working at isolated ports have been unable to leave their port due to inclement weather, or other factors such as road closures. This has been especially true in ports located on the Prairies and in the Interior of British Columbia. Where this has happened, the employer has refused to compensate employees who were unable to leave their place of work. What the Union is proposing is that if an employee is unable to leave work at the end of his or her shift for reasons beyond their control, then said employee will be compensated for that time.

Similarly, for the Union's proposal at 32.xx(ii), there are workers in the 3I community who encounter captive time scenarios while travelling. For example, there have been issues where members have had to spend two days in the airport during an escorted removal process; had visa issues; passports held for 3 days—these are members who cannot return to their residence while on work related travel for reasons beyond their control.

The Union submits that this is a matter of fairness, as these situations are beyond the employee's control and the employee is at work because he or she is required to be there to perform duties on behalf of the employer.

The Union's proposals for Article 32 are both fair and reasonable, and in the case of 32.08, represents an exact replication of what the employer has already agreed to for other workers in its employ. In light of these facts, the Union respectfully requests that its proposals be included in the Commission's recommendations.

ARTICLE 33
LEAVE – GENERAL

33.01

~~(a) When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.~~

~~(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

(a~~c~~) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

(b~~d~~) Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a "day" will mean a calendar day.

33.02 Except as otherwise specified in this Agreement:

(a) where leave without pay for a period in excess of three (3) months is granted to an employee for reasons other than illness, **military leave or leave for care of the family,** the total period of leave granted shall be deducted from "continuous employment" for the purpose of calculating severance pay and from "service" for the purpose of calculating vacation leave;

(b) time spent on such leave which is for a period of more than three (3) months shall not be counted for pay increment purposes.

33.xx An employee may, at their discretion in the amount and at the time of their choosing, transfer any portion of their sick leave, or annual leave or compensatory time to another employee.

<u>PSAC Counter Proposal to Employer Proposals at Article 33.03 [May 24, 2023]</u>

33.03 All employees shall be provided continuous access to the balance of their leave credits.

RATIONALE

For rationale for the proposed 'day-is-a-day'-related modifications in 33.01 see page 259.

With respect to the Union's proposal for **33.02**, it would ensure that employees that are required to take leave for military service or to care for their families do not suffer a break in continuous employment. The nature of the work at CBSA is such that there are a considerable number of reservists in the bargaining unit. Article 32 of the current agreement states that employees who take leave without pay in excess of 3 months shall have the total period of leave granted deducted from continuous employment, except when such leave is taken for reasons related to illness. There have been situations in the past when reservists in the bargaining unit have been called up for military duty and dispatched overseas for periods of a year or more, and as a result have had this period of time deducted from their continuous service. The Union submits that employees who are called up by the federal government to perform duties and serve the Crown elsewhere outside of the core public service should not suffer a loss in continuous service a result. The Union's proposal would ensure that does not happen. The same is true with respect to leave for care of family which, like Maternity and Parental Leaves, is a leave that is provided for and protected under federal legislation. Employees do not suffer a break in continuous employment when on maternity or parental leave. The Union submits that the same should apply for Military and Care of Family leaves.

Next, for the new proposal at 33.xx, the Union is proposing a leave credit transfer mechanism for employees to transfer leave to one another. For example, a worker with an illness who has drawn down on all available leave banks but does not have enough to bridge to potential long term disability option may ask colleague to 'donate' listed leave on compassionate grounds. The proposed mechanism would allow for such a process.

Finally, with respect to the counter proposal at 33.03, the Union understands that workers have access under the current system—this proposal reflects the status quo. The Union is proposing this to ensure that members, for example, on secondment, have access to all their leave banks as CBSA has a different HR management system than other

Departments. This proposal seeks to create no additional administrative burden on the employer.

The Union requests that the Commission include these proposals in its recommendations.

ARTICLE 36
MEDICAL APPOINTMENT FOR PREGNANT EMPLOYEES

Amend as follows:

Change title to "Medical Appointments for pregnancy or persons with chronic medical conditions"

36.01 Up to ~~three decimal seven five (3.75) hours~~ **a half a day** of **required** ~~reasonable~~ time off with pay will be granted to ~~pregnant~~ employees, for the purpose of attending ~~routine~~ medical appointments **related to ~~the~~ pregnancy or their chronic medical conditions, or to accompany a partner for such appointments.**

~~**36.02** Where a series of continuing appointments is necessary for the treatment of a particular condition relating to the pregnancy, absences shall be charged to sick leave.~~

RATIONALE

In addition to the proposed 'day-is-a-day'-related modifications in 36.01 (see rationale on page 259), the Union also proposes to expand the scope of the leave entitlement: 1) from pregnancy to also include chronic medical conditions (see the change in the article title); and 2) from the employee's medical appointment to also include that the employee may use this leave to accompany their partner to such appointments. In circumstances where it is not the employee who must attend an appointment related to pregnancy or a chronic medical condition but their partner, the employee should be able to take time and participate in those appointments too.

With respect to the strike out of 36.02, the Union argues that 36.02 effectively negates 36.01 for those who have recurring issues that require additional medical visits for treatment will be docked sick leave for such visits. The Union submits that the language contained in 36.01 should apply to all pregnant employees and those with chronic

medication conditions, and not effectively exclude those employees who require additional treatment. The Union submits that the distinction created by the current language is patently unfair.

In light of these facts, the Union respectfully requests that its proposal for maternity-reassignment and Article 36 be included in the Commission's recommendation.

ARTICLE 37
INJURY-ON-DUTY LEAVE

37.01 An employee shall be granted injury-on-duty leave with pay for such period as ~~may be reasonably determined by the Employer~~ **certified by a Workers' Compensation authority** when a claim has been made pursuant to the *Government Employees Compensation Act* and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:

(a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct,

or

(b) an industrial illness or a disease arising out of and in the course of the employee's employment,

if the employee agrees to remit to the Receiver General for Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease, provided, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium.

RATIONALE

The parties' current collective agreement states that employees will be granted injury-on-duty leave with pay "for such reasonable period as may be determined by the Employer" when a claim has been approved by the appropriate workers' compensation board. What this language suggests is that, irrespective of the period of time that the workers' compensation board has determined a worker needs leave to recuperate from a work related injury; it is at the Employer's discretion as to how much leave an employee is to be granted. The Union is proposing to amend the language so that an employee that is hurt at work is granted leave for the period of time that the workers' compensation board deems appropriate.

Under the current language, although the provincial/territorial workers' compensation board decides on the period of recovery, the Employer can unilaterally decide to end the benefits provided by injury-on-duty leave. In other words, the employee is switched to 'direct WCB payments' and receives the benefits provided by the provincial/territorial workers' compensation regime. The result is that an employee goes from receiving 100 percent of his/her wage while on injury-on-duty-leave to receiving anywhere from 75 percent to 90 percent of net income, depending on the province or territory.[97]

The current language is both unfair and unreasonable, causing hardship for the members, for a variety of reasons:

1. Employees are treated differently since practices can vary dramatically with regard to injury-on-duty leave decisions in different workplaces, regions or province. There is no single, consistent standard of what is a 'reasonable period' for injury-on-duty leave.

2. The Employer's decision to move an employee to direct WCB payments cannot be challenged or appealed, no matter how unreasonable the decision may appear to be.

3. The Employer's decision can be influenced by the relationship with the individual involved in the accident. It is because of Employer abuses and other problems stemming from unfettered employer discretion in the context of workplace injury that workers' compensation boards were created to begin with.

4. The nature of the accident or illness can also be a factor in the Employer's decision to move members to direct WCB payments. Members suffering from a repetitive strain injury are often removed from injury-on-duty leave and placed on direct benefits fairly quickly.

5. The practices in place for managing the agency's budget are often a problem. Regular wages that are paid under the current injury-on-duty leave provisions are usually drawn from the agency budget. Direct workers' compensation payments are usually drawn from a central budget within Human Resources.

This can put pressure on the agency to switch the injured employee as quickly as possible to direct WCB payments in order to free up the salary money and replace the injured

[97] The exception is Yukon Territory, where the benefit is based on 75% of gross earnings.

member with another 'fit' worker. When trying to accommodate an injured member with modified duties or a gradual return to work program, this type of situation often becomes a barrier.

6. There is a financial hardship to the member. Not only is s/he living on a reduced salary while on direct WCB payments, but upon his/her return to work, s/he is responsible for repaying the Employer for their portions of Superannuation, Public Service Health Care Plan, Supplemental Death Benefit, and Disability Insurance.

If employees are off for periods of ten days or more, they also lose out on the accumulation of sick and annual leave credits. And periods of leave without pay are not counted for pay revision, pay increases, increment dates, and continuous employment purposes, thereby creating long-term cost implications for the member.

The proposed amendment would ensure that the period of time called for by a legally sanctioned neutral third party for an employee to heal from workplace injury shall be adhered to.

The problems described above have been present for quite some time, and this round of bargaining is not the first time the Union has attempted to rectify them. It is significant that after having presented its case to a Conciliation Board with the TC Group in 2004, the Board agreed with the Union that the Employer's discretion over the period of injury-on-duty leave should be removed from the collective agreement. The Board recommended that the first part of clause 41.01 of the TC collective agreement read:

> *41.01 An employee shall be granted injury-on-duty leave with pay for the period of time that a Workers Compensation authority has certified that the employee is unable to work …*

Federally, PSAC has negotiated language ensuring full pay and benefits to all injured or ill workers for the complete period approved by the provincial or territorial workers' compensation board. Similarly, the PSAC has recently negotiated language in a number of collective agreements with other federal employers such as the House of Commons,

the Senate of Canada, the Library of Parliament, Parliamentary Protective, International Development Research Centre and others that does not give the Employer discretion to determine the term of injury-on-duty leave, but instead links it to the Worker's Compensation Authority claim decision. (Exhibit 58)

Lastly, the nature of the work done by Union members in the FB bargaining unit is work where injury is more apt to be an issue. In short, these employees work in an enforcement capacity, are required to undergo regular fitness and recertification training, with the potential for dealing with dangerous and violent individuals forming part of the job descriptions covering the vast majority of employees.

In light of these factors, the Union respectfully requests that the Commission include its proposals for Article 37 in its recommendation.

ARTICLE 39
MATERNITY-RELATED REASSIGNMENT OR LEAVE

39.02 An employee's request under clause 39.01 **shall be granted immediately and** must be accompanied or followed as soon as possible by a medical certificate indicating the expected duration of the potential risk and the activities or conditions to be avoided in order to eliminate the risk. ~~Depending on the particular circumstances of the request, the Employer may obtain an independent medical opinion.~~

39.05 Where the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the employee in writing and shall grant leave of absence with~~out~~ pay to the employee for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than twenty-four (24) weeks after the birth.

NEW

39.07 Upon request of a nursing or pumping employee, they shall be granted reasonable leave with pay to nurse, pump or express during working hours. Moreover, the employer shall provide a reasonable private space to do so. For greater clarity, this space shall not be a public or private washroom.

RATIONALE

The Union is making four proposals with respect to pregnant and/or nursing employees.

First, the Union is proposing two changes to Article 39.02. Adding the language 'shall be granted immediately and' addresses the need for more expeditious responses to members who submit a medical certificate seeking an accommodation from potential risk and the activities or conditions to be avoided to eliminate the risk. Members who submit a medical certificate seeking accommodation will be accommodated immediately without further delays including but not limited to the Employer obtaining an independent medical opinion.

Second, the Union is proposing modifications to Article 39.05. The current FB collective agreement requires the Employer to, where possible, modify the job duties of or reassign pregnant and nursing workers if they cannot safely perform their regular work. However, the article only provides for leave *without* pay if a reassignment is "not reasonably practicable". Many workers in Canada are covered by laws or collective agreements which provide pregnant and nursing employees leave with pay if no reassignment is possible. Federal public service workers deserve no less.

The Union believes it is possible in most cases for the Employer to find safe alternative work for members of the FB bargaining unit and that no employee should be forced to leave without pay when requiring an accommodation of this nature.

Indeed, a provision to place an employee on leave with pay if the Employer cannot find alternative work would have the effect of encouraging the Employer to find alternative duties that can be safely performed by the pregnant or nursing worker.

Maternity-related paid leave for pregnant or nursing workers was first negotiated by the PSAC for members of the former Table 4 – Correctional Officers (CX) in November 2000:

> ***45.07*** *Notwithstanding 45.05, for an officer working in an institution where she is in direct and regular contact with offenders, if the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the officer in writing and shall grant leave of absence* ***with*** *pay to the officer for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than at the time the officer proceeds on Maternity Leave Without Pay or the termination date of the pregnancy, whichever comes first.*

This language was necessary for Correctional Officers, as there had been unfortunate incidents in the past that had resulted in children being stillborn or born with permanent disabilities due to airborne infections caught while working in the institutions.

While reassignment was possible for some employees in what is now the CX bargaining unit, the Employer realized that for those workers who could not be reassigned (as job modification for Correctional Officers is not really an option) leave with pay was the only viable alternative. The minimal cost to the Employer would be offset by the lives it would save. The Union submits that, given the enforcement nature of the work done by the vast majority of employees in the FB bargaining unit, the same conditions exist here.

This is no less important to the FB bargaining unit. Most FB employees' workplaces can pose risks to the pregnant worker, the fetus, or to the breast milk of a nursing mother. In their day-to-day work, most FB employees are exposed to elevated levels of danger, stress and injury and work under constant physical and psychological threat. While it is true that reassignment can, in many cases, be a viable option, it is not always possible.

The concept of having paid leave when a worker cannot be accommodated via job modification or reassignment exists in only one provincial jurisdiction: Québec's *For a Safe Maternity Program,* which grew out of protections contained in the *Act Respecting Occupational Health and Safety* and the *Act Respecting Industrial Accidents and Occupational Diseases.*

However, a provision in section 132.5 of the *Canada Labour Code, Part II, Occupational Health and Safety,* also provides for leave with pay for the period the employee has informed the employer that she requires a job modification or reassignment and the employer is seeking to make this accommodation. Section 132.5 states:

> *The employee, whether or not she has been reassigned to another job, is deemed to continue to hold the job that she held at the time she ceased to perform her job functions and shall continue to receive the wages and benefits that are attached to that job for the period during which she does not perform the job*.

Aware of the Québec and federal provisions, and building upon our achievements at the former Table 4, Maternity-Related Reassignment or Leave has been incorporated into

many PSAC collective agreements. The Union is seeking to extend this provision to any member who cannot have her job made safe or be reassigned.

There are a number of reasons for this:

- The duty to accommodate pregnant or nursing workers should not result in them having to shoulder the financial burden of taking leave without pay if their job cannot be made safe, or if they cannot be reassigned. It is the Employer's duty to provide a safe work environment, as established through health and safety and human rights/no harassment jurisprudence. It would stand to reason, therefore, that if this safe work environment cannot be provided by the Employer, then the Employer should pay for the employee's period of leave.
- If the Employer takes the time and makes a genuine attempt to modify the job of a pregnant or nursing member, and/or makes a genuine attempt at reassigning the member to a safe job, then the actual costs of sending members on leave with pay should be minimal. It is in the Employer's best interests to follow the steps outlined in the collective agreement, and try to accommodate the employee, as the result will be fewer members being sent on leave with pay.
- It could be only a matter of time before a grievance or human rights complaint is filed on the issue of being on leave without pay, claiming it to be discrimination based on sex. There is also the possibility of a member pursuing legal action if her child is born with problems due to being exposed to a toxin/danger during pregnancy.

The employer could avoid these problems by granting leave <u>with</u> pay in 39.05.

Finally, the Union is proposing a new article at 39.07. It is seeking to introduce language that: 1) grants reasonable leave with pay to nurse, pump or express during working hours; and 2) that the Employer shall provide a reasonable private space to do so. Members of the FB group who need to nurse, pump, or express milk during work hours have been told by management to just use the bathroom. This is not acceptable.

It is the Union's position that this demand is not only based on well-established health benefits for children as well as mothers but is also on the recommendation of countless Canadian and international labour, health and human rights organizations. It is also congruent with newly-enacted federal legislation providing unlimited breastfeeding breaks as minimum standards. Failing to include such provisions in the Collective Agreement at this juncture would effectively leave members of the FB group with inferior guaranteed work accommodations than those provided to ununionized workers who operate under the Canada Labour Code. It would also risk discrimination against public service workers on the basis of gender and family status.

The Union respectfully requests that the Commission grant this Union proposal in its recommendations.

ARTICLE 42
CAREGIVING LEAVE

42.01 An employee who provides the Employer with proof that he or she is in receipt of or awaiting Employment Insurance (EI) ~~benefits for~~ compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults shall be granted leave without pay while in receipt of or awaiting these benefits.

42.02 The leave without pay described in 42.01 shall not exceed twenty-six (26) weeks for compassionate care benefits, thirty-five (35) weeks for family caregiver benefits for children and fifteen (15) weeks for family caregiver benefits for adults, in addition to any applicable waiting period.

42.03 When notified, an employee who was awaiting benefits must provide the Employer with proof that the request for Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults has been accepted.

~~42.04 When an employee is notified that their request for Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults has been denied, clause 42.01 above ceases to apply.~~

42.04 Where an employee is subject to a waiting period before receiving Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults, they shall receive an allowance of ninety-three per cent (93%) of her weekly rate of pay.

42.05 For each week the employee receives Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults, they shall receive the difference between ninety-three per cent (93%) of their weekly rate and the applicable Employment Insurance (EI) benefit.

42.0~~5~~**6** Leave granted under this clause shall count for the calculation of “continuous employment” for the purpose of calculating severance pay and “service” for the purpose of calculating vacation leave. Time spent on such leave shall count for pay increment purposes.

RATIONALE

In Articles 42.04 and 42.05, the Union proposes an allowance for the difference between EI benefits and 93 percent of the employee’s weekly rate of pay. This supplementary allowance would cover a maximum period of eight weeks when including the waiting period. Providing care or support to a loved one who is experiencing a terminal illness,

life-threatening injury or approaching end of life can be a very difficult experience. Having the proper support from your employer can make a tremendous difference in easing those difficulties. Even if a worker is eligible to receive EI benefits, caring for a gravely ill family member can jeopardize an individual's or a family's financial stability. Having to choose between a living wage and caring for their family member may act as a deterrent to the employee accessing such leave, especially for a family or household consisting of a single-income earner.

The federal Supplemental Unemployment Benefit (SUB) Program was introduced in 1956 with the goal of subsidizing employees with Employment Insurance (EI) benefits while they are temporarily on a leave without pay. With EI replacing only 55 percent of previous earnings, a SUB payment helps to further reduce the net loss of earnings. A 93 percent income replacement rate of combined EI benefits and top-up payments is assumed to equal the usual full salary, due to tax and other advantages. Employers are meant to gain from this program since employees are enticed to return to the same employer, which helps retain experienced employees and reduces the need for retraining or new hiring. Indeed, the Union would submit that our proposal for a supplementary allowance is not only beneficial to our members but would also help the Employer with the retention of employees. The Union submits that an employer supplementary allowance for compassionate care and caregiver leave acts as a strong incentive for all employees, to not only return to the workforce after a difficult period, but also stay with the same employer.

The Union's proposal for a supplementary allowance is also predicated upon what has already been established elsewhere within the federal public administration. In a recent settlement, the PSAC and the National Battlefields Commission, a federal agency under the Financial Administration Act, have agreed on an even more extensive supplementary allowance of 26 weeks for employees who are granted a leave without pay for compassionate care and caregiver leave (**Exhibit 59**).

For all the reasons above, the Union respectfully requests that the Commission include the Union's proposals for Article 42 in its recommendation.

ARTICLE 43
LEAVE WITH PAY FOR FAMILY-RELATED RESPONSIBILITIES

For the purpose of this clause, "family" is defined per Article 2

~~**43.01** For the purpose of this article, family is defined as spouse (or common-law partner resident with the employee), children (including foster children, step-children or children of the spouse or common-law partner, ward of the employee), grandchild, parents (including step-parents or foster parents), father-in-law, mother-in-law, son-in-law, daughter-in-law, brother, sister, step-brother, step-sister, grandparents of the employee, any relative permanently residing in the employee's household or with whom the employee permanently resides or any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee, and a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.~~

43.01~~2~~ The total leave with pay which may be granted under this article shall not exceed ~~thirty-seven decimal five (37.5) hours~~ **ten (10) days** in a fiscal year. **Such leave may be taken as single days or as a fraction of a day.**

43.02~~3~~ Subject to clause 43.0**1**~~2~~, the Employer shall grant the employee leave with pay under the following circumstances:

a. to take a family member for ~~medical or dental~~ appointments **of a professional nature, including but not limited to medical, dental, legal and financial appointments or appointments with school authorities or adoption agencies**, ~~or for appointments with school authorities or adoption agencies,~~ if the supervisor was notified of the appointment as far in advance as possible;
b. to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;
c. to provide for the immediate and temporary care of an ~~elderly~~ member of the employee's family;
d. for needs directly related to the birth or the adoption of the employee's child;
e. to attend school functions, if the supervisor was notified of the functions as far in advance as possible;
f. to provide for the employee's child in the case of ~~an unforeseeable~~ closure of the school or daycare facility;
g. ~~seven decimal five (7.5) hours out of the thirty-seven decimal five (37.5) hours stipulated in clause 43.02 above may be used~~ to attend an

appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.

h. **to visit a terminally ill family member**

43.034 Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under paragraph 43.03(b) above, on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date. **Employees shall not be required to provide a medical certificate for an employee's family member.**

RATIONALE

With respect to the strikeout at 43.01, please see the rationale for the expanded definition of family in Article 2 rationale (page 148).

The Union is also seeking to increase the amount of family-related responsibility leave available to employees to 10 days annually from 37.5 hours and introduce the flexibility to take whole days or fractions of days.

The pressure on workers to care for family while juggling full-time jobs and other personal responsibilities has increased in recent years and the current quantum is insufficient to meet the needs of employees. Bargaining demands from our membership consistently identify improvements to family related responsibility leave provisions as a high priority. Moreover, employees at the Canada Revenue Agency and CSIS, also PSAC members, have 6 or more days per year of paid family-relative responsibility leave available to them. This is one day more per year, or 20 percent more hours of leave than are available to PSAC members in the FB group. (Exhibit 60) We respectfully ask the Commission to recommend an increase in the amount of family-related leave available to FB members, to bring the quantum in line with FB former co-workers at the CRA (the FB and CRA group both formed the same bargaining unit under CRA for many years).

Next, at the new 43.02(c), the Union is looking to allow employees to use this clause to provide the immediate and temporary care of any family member, not necessarily an elderly one. This may be in the case of a child with a disability or family member who requires extra care. The Union expects this to be used infrequently, but for those who must make such arrangements for a family member, this leave would be a substantial benefit.

Next, at the new 43.02(f), the Union proposes to lift the work “unforeseen” from the provision which allows members to use this leave during the closure of a school or daycare. Whether this is due to a scheduled closure or not, parents, especially single parents are often scrambling to find childcare when a daycare or school is closed. Labour disputes in these institutions are good examples of a closure which is not unforeseen, but where parents may not have options regarding where to send their children for the period of closure.

Next, with respect to the proposed strikethrough at the new 43.02(g), this one-day limit is arbitrary and has a negative and disproportionate impact on employees addressing personal legal, financial, or other professional matters. The Union believes that there is no justification for Treasury Board to provide family related responsibility leave provisions to employees in the core public administration that are inferior to those enjoyed by employees of the CRA. We respectfully request that the Commission recommend our proposal.

Next, at the new 43.02(h), the Union is seeking to include “to visit with a terminally ill family member” in the list of circumstances under which the Employer shall grant the employee leave with pay. Employees should not be denied the opportunity to spend final moments with a terminally ill family member. The article currently allows for family-related leave in circumstances involving care only. The Union is seeking explicit language that provides for visitation of a terminally ill relative so that this specific situation is not left open to differing interpretations of regarding the provision of care.

Finally, at the new 43.03, the Union is proposing that employees shall not be required to provide a medical certificate for an employee's family member. This is an additional administration burden on health care systems, in general, and, specifically, on the individual supporting or assisting a family member.

The Union therefore respectfully requests that the proposals be incorporated into the Commission's recommendation.

ARTICLE 46
BEREAVEMENT LEAVE WITH PAY

46.01 For the purpose of this article, "family" is defined as per Article 2 ~~and in addition~~:

~~a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee. An employee shall be entitled to bereavement leave with pay under 46.02(a) only once during the employee's total period of employment in the public service.~~

46.02

a. When a member of the employee's family dies, an employee shall be entitled to a bereavement period of seven (7) consecutive calendar days. Such bereavement period, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. During such period, the employee shall be paid for those days which are not regularly scheduled days of rest for the employee. In addition, the employee may be granted up to **five (5)** ~~three (3)~~ days' leave with pay for the purpose of travel related to the death.
b. At the request of the employee, such bereavement leave with pay may be taken in a single period or may be taken in two (2) periods.
c. When requested to be taken in two (2) periods:
    i. The first period must include the day of the memorial commemorating the deceased or must begin within two (2) days following the death, and
    ii. The second period must be taken no later than twelve (12) months from the date of death for the purpose of attending a ceremony.
    iii. The employee may be granted no more than **five (5)** ~~three (3)~~ days' leave with pay, in total, for the purposes of travel for these two (2) periods.

46.03 An employee is entitled to one (1) day's bereavement leave with pay for a purpose related to the death of ~~brother-in-law or sister-in-law~~ and grandparent of spouse.

NEW

46.04 An employee shall be entitled to bereavement leave under 46.02 when they, the person with whom they intend to have a child, or their surrogate suffer from a miscarriage. For the purpose of this article, "miscarriage" means a termination of pregnancy before the 20th week.

NEW

46.05 An employee is entitled to bereavement leave with pay in the event of the death of a person in respect of whom the employee is, at the time of the death, on leave under 42.01. Such bereavement leave, as determined by the employee, may be taken during the period that begins on the day on which the death occurs and ends six weeks after the day on which the memorial commemorating the deceased person occurs. At the request of the employee, such bereavement leave with pay may be taken in a single period of fourteen (14) consecutive calendar days or may be taken in two (2) periods to a maximum of ten (10) working days.

46.04**6** If, during a period of paid leave, an employee is bereaved in circumstances under which he or she would have been eligible for bereavement leave with pay under clauses 46.02 and 46.03, the employee shall be granted bereavement leave with pay and his or her paid leave credits shall be restored to the extent of any concurrent bereavement leave with pay granted.

46.0~~5~~**7** It is recognized by the parties that circumstances which call for leave in respect of bereavement are based on individual circumstances. On request, the deputy head of a department may, after considering the particular circumstances involved, grant leave with pay for a period greater than and/or in a manner different than that provided for in clauses 46.02 and 46.03.

RATIONALE

With respect to bereavement leave with pay, in 46.01 and 46.03, the Union is proposing changes that would bring the relationships that bereavement leaves apply to in line with the definition of family in Article 2, as discussed above.

In addition, the Union is also proposing an increase in the number of days that an employee may have for the purposes of travelling for bereavement leave. The current number of days is 3, and we are proposing to increase it to five to ensure that everyone's needs in this regard are met.

Next, the Union is proposing two new clauses at 46.04 to grant employees' access to bereavement leave in the event that they, or the person with whom the employee was having a child, experience a miscarriage. The Union is proposing this, in large part,

because of the great loss that a miscarriage can represent to individuals expecting to have a child (**Exhibit 54**). There have been situations where employees have been denied bereavement leave in the context of stillbirth. As a result, the Union is proposing that bereavement leave of five days be granted to employees in this situation.

Finally, at 49.05, the Union is proposing bereavement leave with pay be available for individuals for whom the employee is on leave under Article 42.01, which is caregiving leave, and that the leave have more options for flexibility, given the particularities of it being someone for whom the employee was on caregiving leave for. The act of caring for a loved one is generally accepted as an indication of the closeness of that individual to the caregiver, and the Union feels that this should be respected and acknowledged through the bereavement leave article.

ARTICLE 52
LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS

52.02 Personal leave

Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, ~~fifteen (15) hours of~~ **two (2) days of** leave with pay for reasons of a personal nature. This leave can be taken in ~~periods of seven decimal five (7.5) hours or three decimal seven five (3.75) hours~~ **single days, or as half days. In the case of half days, the total leave shall not exceed the equivalent of two days.**

The leave will be scheduled at times convenient to both the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leaves at such times as the employee may request.

52.xx Leave with Income Averaging

a) The Employer's Leave with Income Averaging Directive, as constituted on November 30st, 2018, shall form part of this Agreement.

b) The Employer shall not unreasonably deny requests for Leave with Income Averaging.

c) When excessive requests have been made for Leave with Income Averaging, years of service shall be the determining factor for the granting of such leave.

52.XX Leave with Pay for First Responder Duties

Upon request of the employee, the Employer shall grant leave with pay for the performance of volunteer first responder duties.

RATIONALE

The Union's proposals at 52.02 are related to similar day-is-a-day proposals (see rationale on page 259). With respect to the two new proposals, the first on leave with income averaging seeks to achieve parity with other collective agreements in the federal public service, while the second seeks a new leave related to first responder duties.

With respect to Leave with Income Averaging (LWIA), the Union's proposal is designed to achieve effectively three objectives. First, LWIA is a directive that has been in place in the federal public service for over two decades. However, it is a directive and therefore subject to change without the PSAC's explicit consent. Second, access to the leave provided under the directive is at management's discretion, which has often meant that the leave is either denied at CBSA without explanation or is not granted in a fair or reasonable manner when there are more requests for the leave than can be accommodated.

The Union's proposal for LWIA addresses all of these issues in that it would make the directive part of the collective agreement, while at the same time ensure that access to the leave is not unreasonably denied, and that years of service be applied in the event that there are more requests than are operationally feasible.

The employer has provided no cogent rationale as to why the Union's proposal is somehow unworkable. It is after all based on the employer's own directive, and provides the employer the prerogative to deny requests for LWIA based on reasonable grounds.

Lastly with respect to Article 52, the Union is proposing to bring the quantum for Personal Leave in line with what the Union has negotiated with other FPSLRA employers – namely Canada Revenue Agency (CRA) and the Canadian Security and Intelligence Service (CSIS). In the case of CRA, the Union reminds the panel that for a considerable period of time employees in the FB bargaining unit were in the same bargaining unit as employees at the CRA, when both worked for the Canada Customs and Revenue Agency (CCRA). Since that time the CRA has agreed to 2 personal leave days for its employees,

recognizing the need for further opportunities for employees to access work-life-balance. CSIS – another federal institution for safeguarding the safety and security of Canadian- has also negotiated such a provision with the PSAC. (Exhibit 61) As pointed out earlier in this brief, work-life balance is a critical issue for the Union in this round of negotiations. The Union's proposals concerning LWIA and Personal Leave are integral to the Union addressing these objectives.

With respect to a new leave with pay for first responder duties, the nature of the CBSA bargaining unit is one that many members serve as volunteer first responders such as firefighters and paramedics across the country. As many members of the FB group both work and live in remote and isolated locations, they are already doing this vital work on their own time, the Union proposes a new leave so that employees may continue to act as first responders in communities where they live and work.

In light of these facts, the Union respectfully requests that its proposals for Articles 33 and 52 be included in the Commission's recommendations.

ARTICLE 58
MEMBERSHIP FEES

58.01 The Employer shall reimburse a Member of the bargaining unit for the payment of membership or registration fees to an organization or governing body when the payment of such fees is related to the continuation of the performance of the duties of the Member's position.

RATIONALE

The Union is seeking to change the threshold of eligibility for membership fees reimbursement from 'a requirement for' to 'is related to' the continuation of the performance of duties. As the second largest law enforcement agency in Canada, the CBSA seeks to recruit and retain qualified professionals including lawyers and accountants.

For example, in trade compliance, CBSA is hiring more and more accountants; for hearing officers, there have been job postings in which 'membership in good standing in a Law Society of one of the Provinces or Territories of Canada' is listed as an asset qualification. CBSA is seeking qualified lawyers to fill vacant positions but is not interested in reimbursing their law society fees—the very asset qualification of competitive candidates. The Employer suggested on March 21, 2023, that there CBSA may have lawyers but that they are not necessarily called to the bar. This comment, however, distracts from the fact that CBSA does not pay for any membership fees but is seeking professionals with such qualifications.

A review of the 31 Core Public Administration collective agreements shows that 22, including the FB group, have membership fees-related articles. While some resemble the current FB group language, there are many variations. For example (see Table 14), the Union emphasizes the SH, RE, and AV groups for which membership or registration fees to an organization or governing body is <u>not a requirement for the continuation of the performance of the duties of an employee's position.</u>

Importantly, the language of the article does not say essential, instead it says for the continuation of the performance of the duties. If I'm a hearing officer, and I have a law license, then CBSA must pay the membership fees. Further, and as noted in the new Hearing Officer Allowance proposal, the Union is aware of Hearing Officers that have been asked in the past to serve as articling principles for articling students, this can only be done by licensed lawyers and in these instances CBSA still refused to pay for membership fees.

To competitively recruit and retain hearing officers Hiring these professionals and avoiding such payment based on the current language with no doubt exacerbates current and lead to more recruitment and retention challenges.

The Union requests that this proposal be included in the Commission's recommendations

Table 14: Membership Fees-related Articles in the CPA

CPA Group	Article Language
SP Group	**Article 21: registration fees** **21.01** The Employer shall reimburse an employee for payment of membership or registration fees to an organization or governing body where membership is a requirement for the continuation of the performance of the duties of the employee's position. **21.02** When the payment of membership or registration fees to an organization or governing body is <u>not a requirement for the continuation of the performance of the duties of an employee's position</u>: The Employer may reimburse some costs related to an employee's membership fee to a professional or scientific association that is linked to an employee's area of expertise when the Employer is satisfied that the costs incurred by the Employer for expenses on approved career and professional development activities for the employee are lower than what would otherwise be incurred as a result of that membership. Where documentation is provided and the Employer is satisfied that the difference between non-membership and membership fees associated with the professional or scientific association could have realized financial savings for the Employer, the employee may be reimbursed either: a. the yearly cost of the membership, or

	the savings that would have been realized resulting from the employee's membership, whichever is less, but not exceeding one thousand five hundred dollars ($1,500).[98]
RE Group	**Article 22: registration fees** **22.01** The Employer shall reimburse an employee for payment of membership or registration fees to an organization or governing body where membership is a requirement for the continuation of the performance of the duties of the employee's position. **22.02** When the payment of membership or registration fees to an organization or governing body is not a requirement for the continuation of the performance of the duties of an employee's position: The Employer may reimburse some costs related to an employee's membership fee to a professional or scientific association that is linked to an employee's area of expertise when the Employer is satisfied that the costs incurred by the Employer for expenses on approved career and professional development activities for the employee are lower than what would otherwise be incurred as a result of that membership. Where documentation is provided and the Employer is satisfied that the difference between non-membership and membership fees associated with the professional or scientific association could have realized financial savings for the Employer, the employee may be reimbursed either: b. the yearly cost of the membership, or the savings that would have been realized resulting from the employee's membership, whichever is less, but not exceeding one thousand five hundred dollars ($1,500).[99]
AV Group	****Article 21: registration fees** **21.01** The Employer shall reimburse an employee for the employee's payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of the employee's position. **Clauses 21.02, 21.03 and 21.04 apply to employees classified as AU and CO in the Audit, Commerce and Purchasing Group.** **21.02** The Employer shall reimburse an employee his annual membership fees paid to the Chartered Professional Accountants (CPA) when the payment of such fees is a requirement for the continuation of the performance of the duties of his position. **21.03** Except as provided under clause 21.05 below, the reimbursement of annual membership fees relates to the payment of an annual fee

[98] Applied Science & Patent Examination (SP)- Canada.ca / Sciences appliquées et examen des brevets (SP)- Canada.ca
[99] Research (RE)- Canada.ca / Recherche (RE)- Canada.ca

	which is a mandatory requirement of the CPA to maintain a professional designation and membership in good standing. **21.04** When the payment of such fees is not a requirement for the continuation of the performance of the duties of an employee's position, but eligibility for a professional accounting designation by the CPA is a qualification specified in the Qualification Standards for the Auditing or Commerce group, the Employer shall reimburse the employee for his annual membership fees paid to one of the associations referred to in clause 21.02 to a maximum of one thousand dollars ($1,000). **21.05** Portions of fees or charges of an administrative nature such as the following are not subject to reimbursement under this article: service charges for the payment of fees on an instalment or post-dated basis; late payment charges or penalties; initiation fees; reinstatement fees required to maintain a membership in good standing; or payments of arrears for readmission to an accounting association. **21.06** Upon receipt of proof of payment, the reimbursement will commence with fees that become due and are paid following that date. Reimbursement covered by this article does not include arrears of previous years' dues. **21.07** When the payment of membership or registration fees to an organization or governing body is not a requirement for the continuation of the performance of the duties of an employee's position: The Employer will reimburse some costs related to an employee's membership fee to a professional body or association that is linked to an employee's area of expertise and when the Employer is satisfied that the costs incurred by the Employer for expenses on relevant career and professional development activities for the employee are lower than what would otherwise be incurred as a result of that membership. Where documentation is provided and the Employer is satisfied that the difference between non-membership and membership fees associated with the professional body or association could have realized financial savings for the Employer, the employee will be reimbursed either: a. the yearly cost of the membership; or the savings that would have been realized resulting from the employee's membership, whichever is less, but not exceeding one thousand dollars ($1,000).[100]

[100] Audit, Commerce and Purchasing (AV)- Canada.ca / Vérification, commerce et achat (AV)- Canada.ca

ARTICLE 59
TOOL-UP/TOOL-DOWN

Replace current language with:

59.01 a) All tooled officers shall be provided a minimum of fifteen (15) minutes at the beginning and fifteen (15) minutes at the end of each shift for tooling up and tooling down. Time spent tooling up and tooling down shall form part of an employee's shift. Such time shall also include maintenance of tools.

c) In addition to a) above, where there is a need due to the nature of the work, wash-up time up will be permitted before the end of the working day.

RATIONALE

The Union's proposals for Article 59 are designed to ensure that employees are not required to spend time engaging in activities associated with their employment without receiving compensation for said time.

With respect to a), a significant majority of employees in the bargaining unit are required to don 'tools' for the performance of their duties. For example, a Border Services Officer working at a land port of entry is required to don duty belt, boots, baton, vest, firearm (loaded with two extra magazines), handcuffs and OC spray at all times when on duty. Also, it is CBSA policy that every officer secure and store his or her firearm on site at the end of the employee's shift. At present, the CBSA's expectation is that the time spent 'tooling up' – meaning donning all of the tools and equipment required for when an officer is on duty – and 'tooling down' – meaning time spent removing tolls and equipment at the end of shift - is on the employee's time.

The Union submits that this is unfair. If an employee is required to put on these items and have them ready for the performance of their duties – including items such as firearms that by employer policy cannot leave the port – and then remove and store them at the end of their shift, then such time should be compensated as time worked. Given that the employer has taken the position that this is not the case under the parties' current

agreement, then the Union's position is that it should be made clear in the new agreement that it is indeed time that forms part of an employee's regular shift. To suggest otherwise – as the employer currently does – is to suggest that employees are required to perform certain duties for the employer without getting compensated. This should be rectified in this round of negotiations.

For b) the Union is again proposing to modify language in the parties' agreement that currently provides employer discretion in an area where all too often the CBSA is neither fair nor reasonable in the application of that discretion.

The duties performed by front-line officers in this bargaining unit are such that wash-up time is often warranted. Border Services Officers are often required to search cars, trucks, commercial vehicles, containers and, in the case of Border Services Officers working in Marine, everything from ballast tanks to cargo holds and everything in between of ships offshore. To put it bluntly, such activity requires wash up time when completed.

The problem that has arisen is that the employer has on many occasions denied wash up time, even when the Union and employee have demonstrated that it is warranted. What permits the employer to do so is the language in the current agreement which states that "(w)here the Employer determines that, due to the nature of the work….". To rectify this problem, the Union is proposing to modify the language so that there is recourse when an employee or the Union feel that there is a need for wash up time and management does not grant the time necessary for an employee to get washed up. What happens now is that that there have been occasions where an employee washes up on his or her own time when management does not grant adequate time. This would no longer happen under the Union's proposal.

There is some precedent for employees being compensated for time spent on such tasks including in the Parliamentary Protective Service collective agreement covering Constables on Parliament Hill:

1. It is recognized that employees of the Union are required to get into uniform, retrieve equipment including firearms and attend their duty post prior to the commencement of their shift. It is further recognized that employees of the Union are required to return from their duty post, remove and securely store their firearm, equipment and uniform after their shift has been completed.

2. In order to compensate for time spent to fulfill the requirements as described in paragraph 1, the Employer agrees that all employees shall be paid a monthly premium of three hundred dollars ($300) for each calendar month for which the employee receives pay for at least seventy (70) hours.

Constables are law enforcement personnel working in the Federal Public Administration.

In short, the Union's proposals for Article 59 would ensure that employees are compensated for time spent engaged in activities that stem from duties they are required to perform as part of their employment. It is a basic, fundamental principle in the labour relations world and in employment law generally that an employee should be compensated for time worked. The Union's proposals are entirely consistent with this principle. In light of this fact, and in light of the current problems outlined here, the Union respectfully requests that the Commission include its proposals for Article 59 in its recommendations.

ARTICLE 61
PART-TIME EMPLOYEES

Consequential changes as needed.

ARTICLE 63
PAY ADMINISTRATION

63.07

a. When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least ~~three (3)~~ **one (1)** ~~consecutive working~~ day~~s~~ or shift~~s~~, the employee shall be paid acting pay calculated from the date on which **they** commenced to act as if **they** had been appointed to that higher classification level for the period in which **they** act~~s~~.

b. When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period.

63.XX

a. An employee who is required to act at a higher level shall receive an increment at the higher level after having reached fifty-two (52) weeks of cumulative service at the same level.

b. For the purpose of defining when employee will be entitled to go to the next salary increment of the acting position, "cumulative" means all periods of acting at the same level.

RATIONALE

The Union is looking to rectify two problems with its proposals for Article 63.

First, the issue of compensation when an employee acts. The Union's proposal for 63.07 is simple: When an employee performs the duties of a higher classification for a day or longer, the employee will be compensated for that work. Given chronic staffing shortages at CBSA, employees often assume acting duties. The language as currently constituted provides that an employee can perform the work of a higher classification for two days, two and a half days, and not be compensated for it. The Union submits this is patently unfair. There is no cogent reason as to why the employer should be able to get work performed by the Union's membership done on the cheap. The Union would also point out that the three-day threshold does not exist in a number of other PSAC agreements,

including those with the House of Commons, the Senate, Canada Post, and others. (Exhibit 62)

The second issue is that of a loophole in the current agreement, in that it is not clearly set out under the current contract that employees' time spent in acting assignments count towards an increment in that position. There are employees who act for a considerable amount of time in many cases, and consequently the Union is proposing language that would make sure that all time spent in an acting position counts towards an increment in that position. The proposal here is virtually identical to what the PSAC negotiated with the Canada Revenue Agency in 2016 (and located in the pay notes of the current contract), the CRA being an employer where acting assignments are widespread. (Exhibit 63) As was previously referenced in this brief, employees in the Border Services group and employees in the PSAC bargaining unit at CRA were once in the same bargaining unit working for the same employer. Thus, the Union sees no reason as to why this arrangement should be in place for PSAC members working at CRA and not for those working at CBSA.

Given that what the Union is proposing for Article 63 is consistent with what has been negotiated with elsewhere in the federal public administration, the Union respectfully requests that its proposals for Article 63 be included in the Commission's recommendation.

NEW ARTICLE:
NEW OFFICERS AND RECRUITS

Upon completion of new recruit training at Rigaud College, employees will be placed at the appropriate step on the FB 03 scale once assigned to a CBSA port or office.

Any employee who participates in the Officer Induction Trainee Program shall be provided leave with pay for the duration of the employee's participation in the program. Such leave shall include travel to and from the location where the training is undertaken.

RATIONALE

With respect to the Union's proposal concerning employee placement on the pay scale upon completion of training at Rigaud College, the Union is looking to resolve a problem that has been on-going since 2013. In June of that year the CBSA announced that Border Services Officer (BSO) graduates from Rigaud College would be working in a new BSO FB2 position for their first year on the job. Up until that time all BSO's were placed at FB 3 on the wage scale upon graduation. The Union was not consulted on this change and immediately expressed its opposition, given past practice and the fact that all BSO's are responsible for performing the same functions. The Union submitted then – as it does now – that the creation of this new BSO FB2 position was a direct result of cost-cutting efforts on the part of the CBSA stemming from cutbacks made under the Harper government.

Since 2015, grievances have been filed by PSAC members at CBSA related to the creation of the BSO FB 2 position, most of which being either classification of acting pay grievances (Exhibit 79). Matter of FB-02 classification is currently proceeding before the Board. What's indeed remarkable about the number of grievances that have been filed is the fact that virtually all of the grievances have been filed by employees who are probationary. The grievances almost without exception stem from the fact that BSO's working as FB 2s are doing the same work as an FB 3 (Exhibit 80)

The employer has taken the position that employees working as BSO's in the FB 2 position are in fact 'trainees' and not assigned the same duties as BSO's working as FB 3's. The Union submits that this argument is nonsense, and that the sheer number of grievances filed speaks to this fact. These workers are armed officers working as BSO's at CBSA ports of entry. They should be compensated accordingly.

These workers are being underpaid. The employer has implemented this change without the Union's consent and is in violation of its obligations under the parties' collective agreement at CBSA work locations across the country. The Union's proposal would return compensation practices at CBSA for new BSO's to what they were for seven years prior to the unilateral change made by the employer and would ensure that these employees are paid appropriately.

With respect to the second part of this proposal, that members of the bargaining unit who participates in the Officer Induction Training Program be provided with leave with pay as well as travel expenses, the Union was pleased to hear the Employer highlight, on Feb. 1, 2023, that at the local level there is a discussion about members entering Rigaud paid. Such a development, considering the significant staffing challenges faced by CBSA, may indeed increase the completion rate for recruits attending Rigaud as the target completion rate for OITP is 70%; with recent waves reaching a completion rate of 84%. The Agency needs officers, and to this end providing mechanism for promoting from within is arguably the most sensible means to beef up the Agency's staff compliment.

To this end, the Union respectfully requests that the Commission include these proposals in its recommendations.

NEW ARTICLE:
WELLNESS DAY

XX.01 An employee shall be provided a day of paid leave per fiscal year for reasons of a personal nature.

XX.02 Approval will be subject to operational requirements, as determined by the Employer, and with advance notice of at least five (5) working days.

XX.03 The leave will be scheduled at a time that is convenient to both the Member and the Employer. However, the Employer will make every reasonable effort to grant the leave requested.

RATIONALE

CBSA is the second largest law enforcement agency in Canada—second only to the RCMP. Included in the new collective agreement between Treasury Board and the RCMP (RM group) is the wellness day article. For the Union and its membership parity with the newly-unionized RCMP RF group is a top priority with respect to its law enforcement-related provisions, which, in many cases, also reflect the broader law enforcement community. The Union has also been clear with the Employer that with respect to internal relativity in the Core Public Administration, the RCMP it a direct comparator with respect to many of its proposals including competitive compensation, vacation leave with pay, and pension entitlements. Law enforcement personnel who work in the same department within the Core Public Administration. Our members deserve the same.

The Union request that this proposal be included in the Commission’s recommendation.

NEW ARTICLE:
COMPASSIONATE LEAVE

Leave to visit a critically ill family member

XX.01 For the purpose of this article, "family" is defined as per Article 2.

XX.02 The Employer shall grant up to ten (10) days of leave with pay (inclusive of travel time) to visit a person in the Member's family who is certified as being critically ill by a medical practitioner.

XX.03 This type of leave will be granted on only one (1) occasion for each occurrence.

Leave to travel for treatment

XX.04 The Employer shall grant up to five (5) days of leave with pay per fiscal year when an employee at a location that lacks medical/dental specialist services is required to travel to some distant point for treatment for the employee or the employee's family.

XX.05 This type of leave is granted to allow travelling time to and from the distant point and a reasonable period to arrange for the services.

RATIONALE

CBSA is the second largest law enforcement agency in Canada—second to the RCMP. Included in the new collective agreement between Treasury Board and the RCMP (RM group) is the compassionate leave article. For the Union and its membership parity with the newly-unionized RCMP RF group is a top priority with respect to its law enforcement-related provisions, which, in many cases, also reflect the broader law enforcement community.. The Union has also been clear with the Employer that with respect to internal relativity in the Core Public Administration, the RCMP it a direct comparator with respect to many of its proposal including competitive compensation, vacation leave with pay, and pension entitlements. Again, the Union submits that there is no cogent reason as to why members of the FB group should not be entitled to the same rights and benefits as those afforded other law enforcement personnel working in the Core Public Administration.

The Union requests that this proposal be included in the Commission's recommendation.

NEW ARTICLE:
WORK OF THE BARGAINING UNIT

NEW

XX.01 Only members of the bargaining unit shall perform work of the bargaining unit, except by explicit mutual agreement in writing between the Union and the Employer.

XX.02 The employer shall bring all currently sub-contracted bargaining unit work back into the bargaining unit. The parties shall meet within ninety (90) days of ratification to ensure full compliance with this Article.

RATIONALE

The Union's proposed language introduces a 'pause button' on any ongoing and new contracting out initiatives that the Employer may be contemplating. This was echoed in the Union's submission to 2024 Pre-Budget Consultations in the public service recommendations to reject efforts to contract out new public service work[101] Securing protections and a framework for discussion within the Collective Agreement respects the continued valuable contributions of public service workers.

With respect to section 175(c) of the FPSLRA—the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service—Treasury Board *has* negotiated variations of contracting out and work of the bargaining unit language in 20 of 31 (64.5%) core public administration collective agreements.

To provide the most recent example of lanague agreed to by Treasury Board, the collective agreement between the Treasury Board and PIPSC for the IT Group states:

Article 30: contracting out

[101] PublicServiceAllianceOfCanada-e.pdf (ourcommons.ca) / PublicServiceAllianceOfCanada-10791474-f.pdf (ourcommons.ca)

> **30.01** The Employer shall make a reasonable effort to use existing employees or hire new indeterminate or term employees as needed before contracting out work described in the Bargaining Certificate and the Group Definition. However, to meet operational requirements, public service managers may choose to contract professional services in certain circumstances instead of making an appointment pursuant to the *Public Service Employment Act*.

As previously stated earlier in this brief, members of the FB bargaining unit perform duties that are vital to the safety and security of Canadians. Officers in this bargaining unit are trained professionals who undergo rigorous recertification processes both with respect to control and defence tactics training and the handling of duty firearms. The government on a great many occasions – and the CBSA – have repeatedly acknowledged this fact.

Despite this fact, CBSA has engaged in practices that undermine this important work by contracting out duties that have traditionally been done by members of the FB group, Inland Enforcement officers in particular. A review of the key activities, effort, and responsibility sections of the Inland Enforcement Officer work descriptions repeatedly describes and details detention, restraint, and escort duties and requirements. Similarly, Border Services Officers work description details responsibilities including detention or arrest, imposing conditions on individuals for entry, removal, and refusal (Exhibits 64 & 65). The importance of reviewing the work descriptions here is to make clear to the Commission that it is FB bargaining unit work that is being contracted out.

Taking a snapshot view of CBSA's increasingly expansive contracting out portfolio contracts awarded in 2019 to G4S Secure Solutions (Canada) Ltd and renewed as recently as March 2022 detailed in the CanadaBuys tender opportunities and procurement data show CBSA as the end user of Commercial Security Guard and Related Service and Public Safety and Control. These contracts are valued in the millions.[102] For example, in an Ontario contract valued over fifteen million dollars, a 2018

[102] G4S Secure Solutions (Canada) Ltd. Security Guard Services-CBSA – GTA. Solicitation number 47419-199331/A. Source : Security Guard Services-CBSA - GTA - Tender Notice | CanadaBuys

Request for Proposal for a contract awarded in 2019 and renewed as recently as March 2022 describes in nature of requirements of the work CBSA contracted out:

> 1.2.1 The Canada Border Services Agency (CBSA) requires guard services to provide the following in the Greater Toronto (GTA) Area Region:
>
> a. Maintain custody and control of all clients and their luggage and personal effects (for example, money, jewellery), and keep clients safe and secure through regular observation, monitoring, engagement, and intervention, when and where necessary;
>
> b. Transport clients and their luggage and personal effects to and from various locations within the region and across Canada; and,
>
> c. Confirm the departure from Canada of clients subject to a removal order or who have withdrawn an application to enter Canada and are issued an allowed to leave document under the IRPA. This includes clients who are under a detention order, clients who are released into the community and present themselves independently for removal, as well as clients held within the airport awaiting their flight to their country of origin. **(Exhibit 66)**

These practices on the part of the employer have very real repercussions.

For example, in 2014 an individual committed suicide while being held in the immigration detention centre at Vancouver International Airport (Exhibit 67). The event took place while the individual was under the supervision of contracted out workers employed by the Genesis Security Agency. The Union asserted then, and has been asserting ever since, that this tragedy could have been avoided should the CBSA have had trained officers on-hand supervising the individual in question. The Union submits that it is only a matter of time before other such events occur should the employer not halt its practice of contracting out this work.

Indeed, the Findings of the Coroner's Inquest stemming from the incident at Vancouver International Airport were unambiguous:

> *Pursuant to Section 38 of the Coroners Act, the following recommendations are forwarded to the Chief Coroner of the Province of British Columbia for distribution to the appropriate agency:*
> JURY RECOMMENDATIONS:

To: Canada Border Services Agency (CBSA)

1. Create a dedicated Holding Centre for immigration detainees:
    - Centre should be staffed by CBSA employees.(Exhibit 68)

Again, the Union submits that this is work that should be handled by bargaining unit personnel. The Union's proposal concerning contracting out would ensure this.

The language proposed by the Union supports the protection of the integrity of the public service. A strong public service also helps strengthen the economy. A new study suggests that hiring more federal public sector workers would benefit the Canadian economy and support a strong, diverse middle class.[103] The Union values that and asserts that the contract language being sought supports such goals. Public service workers are dedicated to their workplace and to the work that they do in support of the public. They are equipped with intimate institutional knowledge of the work environment, valuable to both the smooth operation of existing programs and to the successful cultivation of new ideas. Securing contract agreement language that recognizes and respects that is next in nurturing our continued ranking as the best public service in the world.

Also, with respect to bargaining unit work, CBSA is increasingly employing a practice of hiring casuals – retirees and others – to come back and work for CBSA on 90-day contracts. The fundamental problem with this practice is that these individuals are not 'employees' under the Act and therefore are not technically covered by the collective agreement nor paying dues. This practice is a short-term, band-aid aid solution to the problem of short staffing at CBSA worksites. The Union submits that people doing bargaining unit work should be paying dues and need to be covered by the parties' collective agreement. Such protections are standard in the unionized world.

Considering these facts, the Union respectfully requests that its proposal for the inclusion of a new article on Contracting Out be included in the Commission's award.

[103] IRIS, The Public Services: an important driver of Canada's Economy, Sept 2019 https://cdn.iris-recherche.qc.ca/uploads/publication/file/Public_Service_WEB.pdf

NEW ARTICLE:
STUDENT EMPLOYMENT

XX.01 Both the Alliance and the Employer recognize the importance and value in providing students with opportunities to gain work experience and skills through programs provided by the federal government.

XX.02 **"**Students" for the purposes of this Article means students hired under legitimate student programs. Those not hired under legitimate student programs shall be bargaining unit members.

XX. 03 "Legitimate" student programs consists of either the Federal Student Work Experience Program, the Research Affiliate Program or the Post-Secondary Co-operative Education and Internment program.

XX.04 Students shall not be used to either displace bargaining unit employees or to avoid filling bargaining unit positions.

XX.05 Overtime work shall be offered on an equitable basis to employees (bargaining unit members) consistent with Article 28 Overtime.

XX.06 The Employer shall ensure that students receive adequate training and supervision, and shall ensure that students are not exposed to dangerous or unsafe working conditions and are covered under the Canada Labour Code part II.

XX.07 The parties shall meet within ninety (90) days of ratification to discuss and agree upon the terms and conditions under which those students assigned bargaining unit work might carry out their assigned duties. Such terms and conditions shall include wage rates.

RATIONALE

On March 6, 2023, in response to CIU's estimate of a 2,000 to 3,000 frontline personnel deficit at the OGGO Committee, CBSA President O'Gorman disagreed with the estimated staffing shortage figures but stated:

> I think we would respectfully disagree with the number, but we share with our union colleagues and partners a desire to make sure that we are sufficiently staffed

> across the country. We are currently doing so with a view to the busy summer season.
>
> I would also say that our student BSOs become, to a large extent, our permanent workforce. They are absolutely critical to CBSA.[104]

Next, in March 2023 the House of Commons Standing Committee on International Trade (CIIT) published a report entitled "The ArriveCan Digital Tool: Impacts on Certain Canadian Sectors." The Customs and Immigration Union (CIU) testified in June and September 2022). Recommendation #4 of the Report stated:

> That the Government of Canada enhance safety and security, reduce delays and backlogs, and improve processing times at Canadian ports of entry through considering the **recruitment of additional Canada Border Services Agency officers** to serve at international bridges, maritime ports, airports and other ports of entry.[105]

In the Government Response, the Department of Public Safety and Emergency Preparedness stated, with respect to Recommendation #4, that the Government agrees with this recommendation. The Department wrote:

> Given the increase in demand for travel in the post-pandemic environment, the CBSA prioritized the recruitment of new BSO recruits to fill gaps caused by attrition, to respond to the increase in demand for service and to address other emerging issues. It also established a comprehensive recruitment program to recruit, train and develop future BSOs, focused on addressing workforce gaps, employment equity groups, bilingual applicants and to promote a diverse and inclusive workforce.
>
> In addition, the CBSA actively hires Student Border Services Officers (SBSOs)[106] to work alongside BSOs during peak periods to meet increased volumes at international airports, postal processing centres, and telephone reporting centres nationally.[107]

[104] Evidence - OGGO (44-1) - No. 54 - House of Commons of Canada (ourcommons.ca) / Témoignages - OGGO (44-1) - no 54 - Chambre des communes du Canada (noscommunes.ca)
[105] https://www.ourcommons.ca/Content/Committee/441/CIIT/Reports/RP12286497/ciitrp06/ciitrp06-e.pdf
[106] Student border services officer (cbsa-asfc.gc.ca) / Agent étudiant des services frontaliers (cbsa-asfc.gc.ca)
[107] Response from the Department of Public Safety and Emergency Preparedness to the March 2023 CIIT Report: https://www.ourcommons.ca/content/Committee/441/CIIT/GovResponse/RP12568297/441_CIIT_Rpt06_GR/DepartmentofPublicSafetyandEmergencyPreparedness-e.pdf;

Thus, within the last year alone the CBSA has made it clear that students are to be a "permanent workforce" and that students are to be used to "work alongside BSO's during peak periods" to help manage workload.

Students do not receive the training that Officers do. They do not have the equipment or defensive tools that officers do. The Union submits that BSOs should do BSOs work. Not students. Not casuals.

What's more, what is being characterized by CBSA above is entirely inconsistent with the mandate of the federal Student Work Experience Program (FSWEP) as defined in the Directive on Student Employment, which states that:

> 3.3 The specific expected result of this directive is that organizations provide employment opportunities for Canadian students that:
>
> 3.3.1 Enrich their academic programs;
>
> 3.3.2 Enable them to develop their skills and enhance their employability; and
>
> 3.3.3 Offer insights into potential future career options within the federal public service.[108]

What's more, under the Directive, CBSA managers responsible for:

> 4.1.8 Developing a structured learning plan that sets out the learning goals for the student during their assignment; and
>
> 4.1.9 Assessing the student's progress during their assignment.[109]

[108] **Directive on Student Employment.** This directive takes effect on April 1, 2021. Directive on Student Employment- Canada.ca / **Directive sur l'embauche des étudiants.** La présente directive entre en vigueur le 1er avril 2021. Directive sur l'embauche des étudiants- Canada.ca.

[109] **Directive on Student Employment.** This directive takes effect on April 1, 2021. Directive on Student Employment- Canada.ca / **Directive sur l'embauche des étudiants.** La présente directive entre en vigueur le 1er avril 2021. Directive sur l'embauche des étudiants- Canada.ca.

Thus, under government policies students are not to be used as permanent, cheap labour to replace or fill BSO positions. And yet, according to CBSA, that is exactly what students are being used for.

At the bargaining table during negotiations the Union pointed out that there are instances where students regularly work alone (e.g., sitting in Primary Inspection booths, screening passengers under the *Quarantine Act*). The Union submits that there are breaches of privacy and security. Students are not trained to the extent BSOs are trained but they are told they are replacing BSOs. It is unacceptable.

This is not a workforce supplementing practice that at other law enforcement agencies pursue. For example, when the Union has raised concerns about student use at the local level, CBSA management regularly threatens that "if we don't have students no one will get leave approved". The Union submits that when an officer goes on leave they are not backfilled with a student. It is practice that is reckless, not consistent with the government's Directive and frankly puts the safety of Canadians at risk.

Student employment has been an on-going source of tension between the parties since the bargaining unit was created in 2007. In negotiations for a first FB collective agreement the Union raised the issue of student employment, with the matter ultimately being resolved when the CBSA committed in writing that it was scaling back student use and phasing students out at land ports-of-entry. However, students continue to be employed in airport operations, and issues in these workplaces have not gone away.

The Union is not opposed to the employer providing employment opportunities for students. Indeed, many current members of the Union got their start as student workers. The problems lie in the fact that students are used effectively as a cheap labour force rather than the purposes provided for under the FSWEP program. (Exhibit 69)

Students at airports and cruise ship operations are often required to perform the complete range of job functions assigned to BSO's, this despite the fact that students do not receive

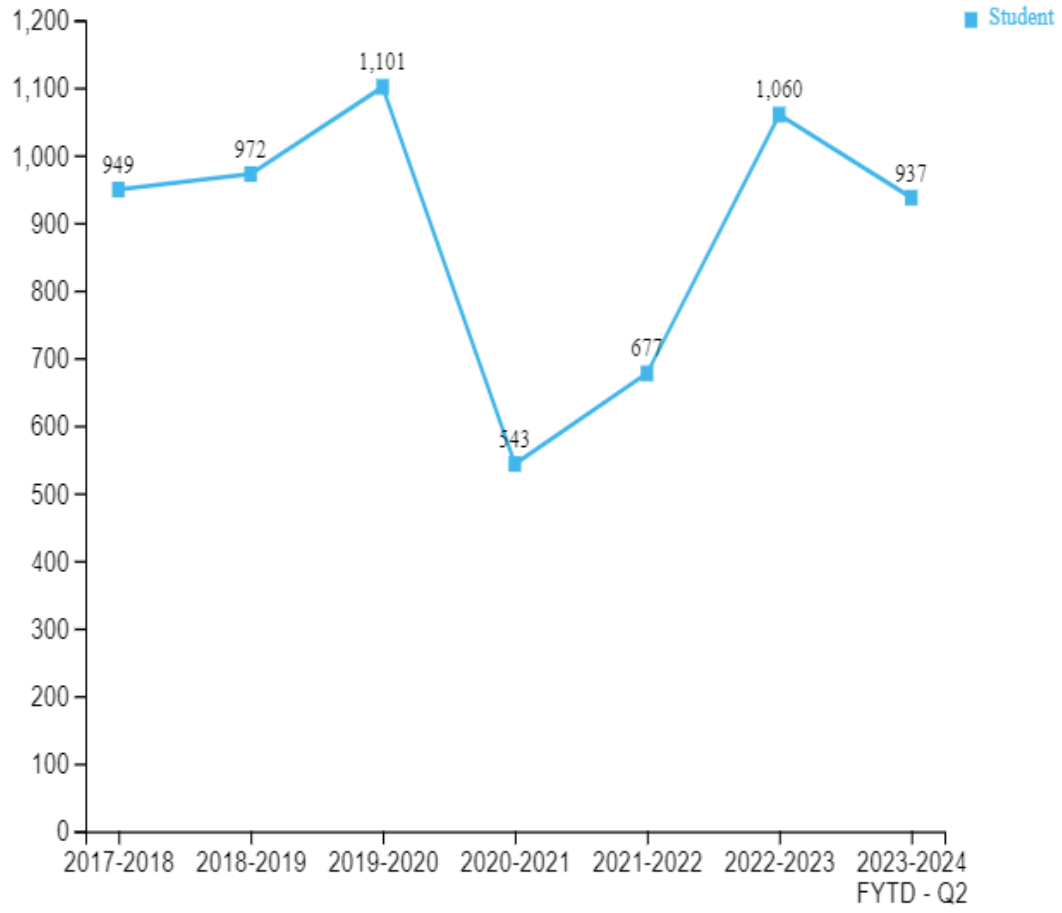
anywhere near the training provided to regular BSO's. BSO's as law enforcement professionals receive months of training prior to being assigned to a port, and are required to maintain certain physical standards. None of this is the case with students. The result is not only that students are undermining bargaining unit work, but also putting public safety – and the Union would submit in some cases their own safety – at risk.

Student use has also served to create certain problems in CBSA workplaces in that work and overtime opportunities have been denied Union members and instead assigned to students, leading to grievances in a number of locations (Exhibit 70). With almost 300 grievances coming out of British Columbia alone. What's more, the Union filed two Unfair Labour Practice complaints in the summer of 2020 when CBSA attempted to replace bargaining unit employees with students at the Mississauga and Vancouver postal plants. While the Mississauga matter was ultimately resolved, the Vancouver complaint is slated to go before the Board. (Exhibit 71)

Also, of note is the fact that student employment has risen at CBSA every year since the recent-most collective agreement was negotiated. According to Public Service Commission's Staffing Dashboard, inflow of students at CBSA for fiscal year 2022-2023 was 1060, near double two years ago and near matching pre-pandemic high. The Union submits that this trend is not only not in the interest of the Union and its membership, but also not in the interest of the Canadian public.

Inflows for Canada Border Services Agency, count

Source: Public Service Commission's Staffing Dashboard. Image captured on 2024-02-15



The CBSA is a law enforcement agency, and a significant majority of the staff represented in the FB bargaining unit are trained law enforcement professionals. To attempt to supplant bargaining unit positions with students is irresponsible.

The Union's proposals concerning student use are designed to address these problems. With respect to xx.01, the Union is reaffirming that it and the employer recognize the importance of and support student programs, in conjunction with the goals set out under the FSWEP program, while xx.02 and xx.03 clearly define 'student' and 'legitimate' student programs.

The Union's proposal for xx.04 again is consistent with the concerns raised by the Union with respect to protecting bargaining unit work and ensuring that positions staffed with fully trained law enforcement professionals are not replaced with student positions.

The proposal for xx.05 is intended to clarify rights already afforded employees under Article 26 Overtime – namely that overtime is to be offered to employees first, before any overtime opportunities are offered to students. The Union's proposal for xx.06 is intended to ensure that students receive adequate training and supervision, and that students are to be subject to protections under the Canada Labour Code.

Lastly, with respect to xx.07, the Union is proposing that the assigning of bargaining unit work to students shall be subject to Union consultation and consent. Given the rapid growth of student use, coupled with grievances filed in a number of locations concerning how students are being used, the Union submits that protections are needed in the collective agreement - for both the employees and for students.

Student employment is growing at CBSA, just as the agency implemented cuts. Grievances have been filed over how students are being employed. Students are common at CBSA non-land border ports of entry. The Union submits that an issue of this significance should be addressed in the parties' collective agreement. The Union also submits that its proposals are not only in the interests of its members, but also in the interests of students and the Canadian public at large.

In light of these facts, the Union respectfully requests that its proposals concerning students be included in the Commission's recommendation.

NEW ARTICLE:
MEDICAL APPOINTMENTS

Medical or Dental Appointments

XX.01 Employees shall be granted leave with pay to attend medical or dental appointments.

Medical Certificate

XX.02 In all cases, a medical certificate provided by a legally qualified medical practitioner shall be considered as meeting the requirements of paragraph 35.02(a).

XX.03 When an employee is asked to provide a medical certificate by the Employer, the employee shall be reimbursed by the Employer for all costs associated with obtaining the certificate. Employees required to provide a medical certificate shall also be granted leave with pay for all time associated with the obtaining of said certificate.

RATIONALE

The language being proposed for Article 35 is intended to address two issues – that of access to leave for medical appointments and the providing of medical certificates.

With respect to the former, at present access to medical appointments is governed by a Treasury Board directive and not the collective agreement. The Directive on Leave and Special Working Arrangements states the following:

> 2.2.3 Time off for personal medical and dental appointments
>
> In the core public administration, it is the practice for the employer to grant paid time off, for up to half a day, for persons to attend their own personal medical and dental appointments without charge to their leave credits in cases of routine, periodic check-

> ups. When a series of continuing medical or dental appointments are necessary for treatment of a particular condition, persons with the delegated authority ensure that absences are to be charged to the person's sick leave credits.

The problem here is two-fold. First, because it is an employer directive and not in the collective agreement, it is potentially subject to modification without the Union's explicit consent. Unlike a number of other directives, the directive in question is not covered by the NJC directives and therefore is not explicitly protected under the collective agreement.

Second, the policy only applies for 'routine, periodic check ups'. Thus an employee who is gravely ill and needs on-going treatment cannot avail themselves of the leave.

There is precedent for what the Union is seeking, in that the language being proposed is modeled on what the PSAC has negotiated for its members working on Parliament Hill. Indeed, the following language was awarded in interest arbitration in 2014 Detection Specialists at the House of Commons and has been replicated since across parliament Hill:

> An employee shall be granted three (3) hours per visit with pay to attend medical or dental appointments. Any hours spent at the medical or dental appointments beyond the three (3) hours may, at the employer's discretion, be deducted from the employee's sick leave. (2013 PSLRB 36).

This language remains in effect today, unchanged.

With respect to medical certificated, the language contained in Article 35 of the parties' current collective agreement provides the Employer with excessive and unnecessary flexibility. For example, as a result of the language in the current 35.02 (a), certain CBSA managers have taken the position that a medical certificate from a legally-qualified medical practitioner is insufficient proof of employee illness, and that instead employees must visit the proverbial 'company doctor' (Health Canada) to get a second opinion.

Treasury Board has agreed to language that would protect against Employer abuses in this regard. For example, the Treasury Board agreement covering Corrections Canada workers states:

> *A statement signed by the employee stating that because of illness or injury he or she was unable to perform his or her duties, shall, when delivered to the Employer, be considered as meeting the requirements of paragraph 31.02(a). However, the Employer may ask for a medical certificate from an employee, when the Employer has observed a pattern in the sick leave usage.* (Exhibit 72)

Protections against excessive employer discretion can also be found in Treasury Board Occupation Health Evaluation Standard, where Health Canada is required to act based on analyses conducted by an employee's private physician, should the employee so choose. (Exhibit 73) Hence the Union's proposal reflects what is already Employer policy. Surely if an employee's private physician is sufficient for determining if an employee meets accommodation criteria under Treasury Board's occupational health standards, a certificate from an employee's private sufficient should more than suffice for meeting the requirements of CBSA management.

The reimbursement for medical certificates proposal reflects the need to ensure equitable treatment in terms of absorbing the extra costs associated with obtaining medical certificates. When medical certificates are requested by the Employer, the practice is to have the employee pay for the certificate. Thus, the employee pays a financial penalty for being sick. The new clause being proposed by the union would therefore ensure that employees who are to produce a certificate would not pay a penalty for being ill or for being chosen to produce verification. The language would also provide a disincentive for arbitrary requests for sick leave certificates for short absences. If an employee is sick with the flu for a day or two, the Union submits that it makes no sense to force them to tax an already overloaded health care system by presenting themselves to a medical practitioner for a note.

Similar language is contained in a number of PSAC collective agreements with federal employers, including the House of Commons, the Senate of Canada, Parliamentary Protective Service, International Development Research Centre, Statistical Survey Operations, the Canadian Museum of History, the Canadian Museum for Human Rights, and others. Paid medical certificates languages has been awarded in interest arbitration on more than one occasion by the FPSLREB (FPSLREB 485-HC-45). The reimbursement of medical certificate is also a frequent practice in the law enforcement community.

Conceptually-speaking, the Union's proposal with respect to the requiring a medical certificate reflects what has already been agreed to by the Employer for other federal workers employed with a law enforcement agency, as well as Treasury Board policy in the context of occupational health standards. With respect to reimbursement for medical certificates, the Union's proposal reflects what already exists elsewhere in the core public administration, and what has been awarded by the PSLRB a mere two years ago. In terms of access to medical and dental appointments, what the Union is proposing has already been awarded by the Board for other groups and would serve to protect policies that are in effect today.

In light of these facts, the Union respectfully requests that the Commission include its proposals for a Medical Appointment article in its recommendation.

APPENDIX C
WORKFORCE ADJUSTMENT

PSAC PROPOSAL

General

Application
This appendix applies to all employees. Unless explicitly specified, the provisions contained in Parts I to VI do not apply to alternative delivery initiatives.

Collective agreement
With the exception of those provisions for which the Public Service Commission (PSC) is responsible, this appendix is part of this agreement.

Notwithstanding the job security article, in the event of conflict between the present workforce adjustment appendix and that article, the present workforce adjustment appendix will take precedence.

Objectives

It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment. To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the core public administration. Those employees for whom the deputy head cannot provide the guarantee will have access to transitional employment arrangements (as per Parts VI and VII), **with a view to enabling their retirement or alternate employment opportunities outside of the public service**.

Definitions

Affected employee (employé-e touché)
Is an indeterminate employee who has been informed in writing that his or her services may no longer be required because of a workforce adjustment situation **or an employee affected by a relocation.**

Guarantee of a reasonable job offer (garantie d'une offre d'emploi raisonnable)
Is a guarantee of an offer of indeterminate employment within the core public administration provided by the deputy head to an indeterminate employee who is affected by workforce adjustment. Deputy heads will be expected to provide a guarantee of a

reasonable job offer to those affected employees for whom they know or can predict that employment will be available in the core public administration. Surplus employees in receipt of this guarantee will not have access to the options available in Part VI of this appendix, **except in cases where remote working is not available, and relocation would place undue hardship on the employee and the employee's family as a result of a relocation to a location that the employee is unable to relocate to.**

Reasonable job offer (offre d'emploi raisonnable)
Is an offer of indeterminate employment within the core public administration, normally at an equivalent level, but which could include lower levels. Surplus employees must be both trainable, **willing to work remotely** and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters as defined in the *Travel Directive*. In alternative delivery situations, a reasonable offer is one that meets the criteria set out under type 1 and type 2 in Part VII of this appendix.

A reasonable job offer is also an offer from a FAA Schedule V Employer, providing that:

a. The appointment is at a rate of pay and an attainable salary maximum not less than the employee's current salary and attainable maximum that would be in effect on the date of offer.
b. It is a seamless transfer of all employee benefits including a recognition of years of service for the definition of continuous employment and accrual of benefits, including the transfer of sick leave credits, severance pay and accumulated vacation leave credits.

Relocation (réinstallation)
Is the authorized geographic move of a surplus employee or laid-off person from one place of duty to another place of duty located beyond ~~what, according to local custom, is a normal commuting distance.~~ **40km from the employee's current place of duty.**

Relocation of work unit (réinstallation d'une unité de travail)
Is the authorized move of a work unit of any size to a place of duty located beyond ~~what, according to local custom, is normal commuting distance~~ **beyond 40 km** from the former work location and from the employee's current residence.

Remote Working Arrangement
Is an arrangement where the employee works remotely and which must be instituted in situations where the employee agrees to work remotely and where remote work can lead to a guaranteed reasonable job offer or provide alternate work without requiring relocation.

Workforce adjustment (réaménagement des effectifs)
Is a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function or a relocation in which the employee does not wish to participate or an alternative delivery initiative.

Monitoring
Departments or organizations shall retain central information on all cases occurring under this appendix, including the reasons for the action; the number, occupational groups and levels of employees concerned; the dates of notice given; the number of employees who the department finds employment with other departments, **the number of employees whose jobs are retained as a result of remote working opportunities, the number of employees who are relocated,** the number of employees placed without retraining; the number of employees retrained (including number of salary months used in such training); the levels of positions to which employees are appointed and the cost of any salary protection; and the number, types and amounts of lump-sums paid to employees.

This information will be used by the Treasury Board Secretariat to carry out annual audits. **The results of those audits will be shared with the PSAC no later than two months after they have been completed.**

Enquiries
Enquiries about this appendix should be referred to the Alliance or to the responsible officers in departmental or organizational headquarters.

Responsible officers in departmental or organizational headquarters may, in turn, direct questions regarding the application of this appendix to the Senior Director, Excluded Groups and Administrative Policies, Labour Relations and Compensation Operations, Treasury Board Secretariat.

Enquiries by employees pertaining to entitlements to a priority in appointment or to their status in relation to the priority appointment process should be directed to their departmental or organizational human resource advisors or to the ~~Priority Advisor of the PSC~~ responsible for their case.

Part I: roles and responsibilities

1.1 Departments or organizations

1.1.1 Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as public service employees.

1.1.2 Departments or organizations shall carry out effective human resource planning to minimize the impact of workforce adjustment situations on indeterminate employees, on the department or organization, and on the public service. **Departments or Organizations shall share the results of that planning with the Union once notification of a workforce adjustment situation has been given.**

1.1.3 Departments or organizations shall establish joint workforce adjustment committees~~, where appropriate~~, to advise and consult on the workforce adjustment situations within the department or organization. Terms of reference of such committees shall include a process for addressing alternation requests from other departments and organizations.

1.1.4 Departments or organizations shall, as the home department or organization, cooperate with the PSC and appointing departments or organizations in joint efforts to redeploy departmental or organizational surplus employees and laid-off persons. **Departments or organizations will share the details and results of their cooperative efforts with other departments and organizations in writing with each affected employee.**

1.1.5 Departments or organizations shall establish systems to facilitate redeployment or retraining of their affected employees, surplus employees, and laid-off persons. **The details of such systems shall be shared with the Union once notification of a workforce adjustment has been given.**

1.1.10 Departments or organizations shall send written notice to the PSC of an employee's surplus status, and shall send to the PSC such details, forms, resumés, and other material as the PSC may from time to time prescribe as necessary for it to discharge its function. **Departments and organizations shall notify the employee when this written notice has been sent.**

1.1.12 The home department or organization shall provide the PSC with a **written** statement that it would be prepared to appoint the surplus employee to a suitable position in the department or organization commensurate with his or her qualifications if such a position were available. **The home department will provide a copy of that written statement to the bargaining agent that represents the employee.**

1.1.14 Deputy heads shall apply this appendix so as to keep actual involuntary lay-offs to a minimum, and a lay-off shall normally occur only when an individual has refused a reasonable job offer, is not mobile, **is not able to work remotely** or cannot be retrained within two (2) years, or is laid-off at his or her own request.

1.1.18 Home departments or organizations shall relocate surplus employees and laid-off individuals, if necessary, **and when other alternate work arrangements are not possible**.

1.1.19 Relocation of surplus employees or laid-off persons shall be undertaken when the individuals indicate that they are willing to relocate and relocation will enable their redeployment or reappointment, provided that:

a. there are no available priority persons, or priority persons with a higher priority, qualified and interested in the position being filled;
or

b. there are no available local surplus employees or laid-off persons who are interested and who could qualify with retraining.

NEW XX (renumber current 1.1.19 ongoing)

a) **In the event that remote working opportunities are not possible, the employer shall make every reasonable effort to provide an employee with a reasonable job offer within a forty (40) kilometre radius of his or her work location.**

b) **In the event that reasonable job offers can be made within a forty (40) kilometre radius to some but not all surplus employees in a given work location, such reasonable job offers shall be made in order of seniority.**

c) **In the event that a reasonable job offer cannot be made within forty (40) kilometres, every reasonable effort shall be made to provide the employee with a reasonable job offer in the province or territory of his or her work location, prior to making an effort to provide the employee with a reasonable job offer in the public service.**

d) **In the event that reasonable job offers can be provided to some but not all surplus employees in a given province or territory, such reasonable job offers shall be made in order of seniority.**

e) **An employee who chooses not to accept a reasonable job offer which requires relocation to a work location which is more than forty (40) kilometres from his or her work location shall have access to the options contained in section 6.4 of this Appendix.**

1.1.26 Departments or organizations shall inform the PSC, **and the PSAC** in a timely fashion, and in a method directed by the PSC **and the PSAC**, of the results of all referrals made to them under this appendix.

1.1.30 Departments or organizations acting as appointing departments or organizations shall cooperate with the PSC and other departments or organizations in accepting, to the extent possible, affected, surplus and laid-off persons from other departments or organizations for appointment or retraining. **Departments or organizations acting as appointing departments or organizations shall notify the PSC, the home department or organization and the PSAC of instances where appointments are possible, where appointments are made and where they are not made and the reasons why those employees were not appointed.**

1.1.34 Departments or organizations shall inform and counsel affected and surplus employees as early and as completely as possible and, in addition, shall assign a counsellor to each **affected,** opting and surplus employee and laid-off person, to work

with him or her throughout the process. Such counselling is to include explanations and assistance concerning:

a. the workforce adjustment situation and its effect on that individual;
b. the workforce adjustment Appendix;
c. the PSC's Priority Information Management System and how it works from the employee's perspective;
d. preparation of a curriculum vitae or resumé;
e. the employee's rights and obligations;
f. the employee's current situation (for example, pay, benefits such as severance pay and superannuation, classification, language rights, years of service);
g. alternatives that might be available to the employee (the alternation process, **remote work,** appointment, relocation, retraining, lower-level employment, term employment, retirement including the possibility of waiver of penalty if entitled to an annual allowance, transition support measure, education allowance, pay in lieu of unfulfilled surplus period, resignation, accelerated lay-off);
h. the likelihood that the employee will be successfully appointed;
i. the meaning of a guarantee of a reasonable job offer, a twelve (12) month surplus priority period in which to secure a reasonable job offer, a transition support measure and an education allowance;
j. advise employees to seek out proposed alternations and submit requests for approval as soon as possible after being informed they will not be receiving a guarantee of a reasonable job offer;
x. advise employees of opportunities to access remote work either in combination with an alternation or otherwise and to seek out these opportunities and submit requests for approval as soon as possible after being informed they will not be receiving a guarantee of a reasonable job offer;
k. the Human Resources Centres and their services (including a recommendation that the employee register with the nearest office as soon as possible);
l. preparation for interviews with prospective employers;
m. feedback when an employee is not offered a position for which he or she was referred;
n. repeat counselling as long as the individual is entitled to a staffing priority and has not been appointed;
o. advising the employee that refusal of a reasonable job offer will jeopardize both chances for retraining and overall employment continuity; and
p. advising employees of the right to be represented by the Alliance in the application of this appendix.

1.2 Treasury Board Secretariat

1.2.1 It is the responsibility of the Treasury Board Secretariat to:

a. investigate and seek to resolve situations referred by the PSC, **the PSAC** or other parties, **and communicate the results of the investigation and resolution strategy to them;**
b. consider departmental or organizational requests for retraining resources; and

c. ensure that departments or organizations are provided to the extent possible with information on occupations for which there are skill shortages.

1.4 Employees

1.4.1 Employees have the right to be represented by the Alliance in the application of this appendix.

1.4.2 Employees who are directly affected by workforce adjustment situations and who receive a guarantee of a reasonable job offer or opt, or are deemed to have opted, for Option (a) of Part VI of this appendix are responsible for:

a. actively seeking alternative employment in cooperation with their departments or organizations and the PSC, unless they have advised the department or organization and the PSC, in writing, that they are not available for appointment;
b. seeking information about their entitlements and obligations;
c. providing timely information (including curricula vitae or resumés) to the home department or organization and to the PSC to assist them in their appointment activities;
d. ensuring that they can be easily contacted by the PSC and appointing departments or organizations, and attending appointments related to referrals;
e. seriously considering job opportunities presented to them (referrals within the home department or organization, referrals from the PSC, and job offers made by departments or organizations), including retraining**, remote working** and relocation possibilities, specified period appointments and lower-level appointments.

1.4.3 Opting employees are responsible for:

a. considering the options in Part VI of this appendix;
b. communicating their choice of options, in writing, to their manager no later than one hundred and twenty (120) days after being declared opting.

Part III: relocation of a work unit

3.1 General

3.1.1 In cases where a work unit is to be relocated, departments or organizations shall provide all employees whose positions are to be relocated with the opportunity to choose whether they wish to move with the position, **enter into a remote work arrangement if possible,** or be treated as if they were subject to a workforce adjustment situation.

3.1.2 Following written notification, employees must indicate, within a period of six (6) months, their intention to move. If the employee's intention is not to move with the relocated position, the deputy head can provide the employee with either a guarantee of a reasonable job offer **in a remote work arrangement doing the same work, a guarantee of a reasonable job offer elsewhere in the department or the public service** or access to the options set out in section 6.4 of this appendix.

3.1.3 Employees relocating with their work units shall be treated in accordance with the provisions of 1.1.18 to 1.1.22.

3.1.4 After due consideration of remote work arrangements, where relocation is required, although departments or organizations will endeavour to respect employee location preferences, nothing precludes the department or organization from offering a relocated position to an employee in receipt of a guarantee of a reasonable job offer from his or her deputy head, after having spent as much time as operations permit looking for a reasonable job offer in the employee's location preference area.

Part IV: retraining

4.1 General

4.1.2 It is the responsibility of the employee, home department or organization and appointing department or organization to identify retraining opportunities, **including language training opportunities**, pursuant to subsection 4.1.1.

4.1.3 When a retraining opportunity has been identified, the deputy head of the home department or organization shall approve up to two (2) years of retraining. **Opportunities for retraining, including language training, shall not be unreasonably denied.**

4.2 Surplus employees
4.2.1 A surplus employee is eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates; and

b. there are no other available priority persons who qualify for the position.

4.X.X Retraining will not be unreasonably denied. When an employee's request for retraining is denied, the employer must provide the reasons why the retraining was denied to the employee in writing, and why the retraining would not facilitate re-employment.

4.2.2 The home department or organization is responsible for ensuring that an appropriate retraining plan is prepared and is agreed to in writing by the employee and the delegated officers of the home and appointing departments or organization. The home department or organization is responsible for informing the employee in a timely fashion if a retraining proposal submitted by the employee is not approved. ~~Upon request of the employee, feedback regarding the decision will be provided in writing.~~ **The employee will be advised in writing why the retraining plan was not approved.**

4.2.3 Once a retraining plan has been initiated, its continuation and completion are subject to satisfactory performance by the employee. **Status reports will be provided to the employee in writing on a regular basis.**

4.2.7 In addition to all other rights and benefits granted pursuant to this section, an employee who is guaranteed a reasonable job offer is also guaranteed~~, subject to the employee's willingness to relocate,~~ training to prepare the surplus employee for appointment to a position pursuant to 4.1.1, such training to continue for one (1) year or until the date of appointment to another position, whichever comes first. Appointment to this position is subject to successful completion of the training.

4.3 Laid-off persons

4.3.1 A laid-off person shall be eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position;

b. the individual meets the minimum requirements set out in the relevant selection standard for appointment to the group concerned;

c. there are no other available persons with priority who qualify for the position; and

d. the appointing department or organization cannot justify **in writing** a decision not to retrain the individual.

Part VI: options for employees

6.1 General

6.1.1 Deputy heads will be expected to provide a guarantee of a reasonable job offer for those affected employees for whom they know or can predict that employment will be available. A deputy head who cannot provide such a guarantee shall provide his or her reasons in writing~~, if so requested by the employee~~ **to the employee and to the PSAC, and why remote working opportunities have not been considered or have been discarded.** Employees in receipt of this guarantee will not have access to the choice of options below, **unless the GRO becomes dependent on a reasonable job offer to a location to which the employee is unable to relocate.**

6.3 Alternation

6.3.9 Alternation opportunities include instances where the alternate is able to perform the work remotely.

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Part VII: special provisions regarding alternative delivery initiatives

7.2.1 The provisions of this part apply only in the case of alternative delivery initiatives and are in exception to other provisions of this appendix. Employees who are affected by alternative delivery initiatives and who receive job offers from the new employer shall be treated in accordance with the provisions of this part, and only where specifically indicated will other provisions of this appendix apply to them. **Employees who are affected by alternative delivery initiatives and who do not receive job offers from the new employer shall be treated in accordance with the provisions of Parts I-VI of this Appendix.**

RATIONALE

The Union proposal is meant to address several deficiencies in the parties' Workforce Adjustment Appendix. First, the current definition of a guarantee of reasonable job offer (GRJO) does not provide an explicitly defined geographic radius within which the employee might avail themselves of certain rights afforded under the Workforce Adjustment Appendix (WFA). Second, there is a need for the recognition of years of service in the context of Appendix C. Years of service would serve as a fair and objective standard for the treatment of a reasonable job offer. Third, the concept of remote work should be introduced in the WFA to reflect situations where a workforce adjustment could be avoided by entering into a remote work agreement.

Currently, the provisions contained in Appendix C put the onus on departments and deputy heads to provide a reasonable job offer in the event of possible layoffs. But there are no clear geographic criteria applied with respect to where the Employer may offer a reasonable job offer. This can create significant problems for employees. For example, in a recent situation, in 2017, the government decided to close the Vegreville Immigration Centre and move it to Edmonton along with its 250 employees. PSAC members were left with very difficult choices: uproot their families and move to Edmonton, accept a three-hour daily commute, or leave the job they value. This situation materialized due to the Employer's interpretation of the existing language that offering a job anywhere else in the country met the criteria under the Appendix C as being 'reasonable'.

The Vegreville circumstances highlight a contradiction within the WFA. Under clause 3.1.1 of the WFA, the Employer had to give the employees the opportunity to choose

whether they wished to move with the position or be treated as if they were subject to a workforce adjustment situation. Under clause 3.1.2 the employees had a period of six months to indicate their intention to move or not. If an employee decides not to move with the relocated position, the deputy head may provide the employee with either a guarantee of a reasonable job offer or access to the options set out in section 6.4 of the WFA[110].

However, if an employee is in receipt of a reasonable job offer, even if it is at the same location that they have already indicated that they do not wish to move to, they are no longer able to access the options contained in the WFA. In the Vegreville instance, PSAC took a grievance to arbitration, and it was partially upheld. Because of the lack of clarity in the current WFA language, the decision sided with the Employer's interpretation that since the employee was in receipt of a GRJO, they did not have access to all of the options under the WFA if they refused to move. However, the arbitrator also ruled that employees in such a circumstance would have access to the transition support measure and/or the education allowance under the Voluntary Programs section of the WFA (2018 FPSLREB 74).

The Union submits that this proposal is necessary due to the Employer' interpretation of Part III. Fundamentally, it implies that the Employer can force workers to move or get laid off while limiting the WFA options to which they have access. The Union is proposing instead that people who cannot or do not wish to relocate to a certain location ought not to lose their rights under the WFA Appendix. As we will discuss further below, the changes proposed by the Employer to the WFA are not fully solving this issue and we believe that the language should be further clarified to entrench the rights of employees.

Our proposal is that in the event that a reasonable job offer cannot be made within a 40-kilometre radius, the employee may elect to be an 'opting' employee and therefore avail themselves of the rights associated with 'opting' status. This would provide employees will all options under the WFA. The Union is proposing a 40-kilometre radius as it is

[110] Options include being on a surplus priority list for 12 months to find another job, receiving a Transition Support Measure (i.e. enhanced severance) or and Education Allowance and a Transition Support Measure.

consistent with the practice currently in effect for the NJC Relocation Directive. Indeed, a 2013 NJC Executive Committee decision indicated agreement with this principle. It was noted that in accordance with subsection 248(1) of the *Income Tax Act*, "relocation shall only be authorized when the employee's new principal residence is at least 40 km (by the shortest usual public route) closer to the new place of work than his/her previous residence". Furthermore, the 40-kilometre radius is currently the standard for more than 50,000 unionized workers at Canada Post[111].

The Union is also proposing that reasonable job offers shall be made in order of seniority. Recognition of years of service is a central tenet of labour relations in Canada. Its application is found in collective agreements in every industry, every jurisdiction, and every sector of the Canadian economy. For example, the collective agreements covering employees working for both the House of Commons and the Senate of Canada contain seniority recognition for the purposes of layoffs[112]. It is also commonplace within the broader federal public sector, from Via Rail to Canada Post to the Royal Canadian Mint to the National Arts Centre to the Canadian Museum of Science and Technology Corporation. Additionally, it is already recognized under the parties' current collective agreement in the context of vacation leave scheduling and in the WFA itself as the tie-breaking procedure to choose which employee may avail themselves of the voluntary program.

Seniority recognition is universal in the unionized world. Indeed, to quote Brown and Beatty's Canadian Labour Arbitration (2007 edition, vol. 1): "Seniority systems are an integral part of virtually every collective agreement", and to quote Brown and Beatty's citation of the landmark 1964 *Tung-Sol of Canada Ltd* decision: "all arbitrators start from the premise that: '(s)eniority is one of the most far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining

[111] Agreement between Canada Post Corporation and the Canadian Union of Postal Workers, Expiry: January 31, 2022: https://www.cupw.ca/sites/default/files/urb-ja-31-2022-ca-en.pdf

[112] Collective Agreement between the Senate of Canada and PSAC: https://psacunion.ca/sites/psac/files/senate_en_exp_2014_september_30.pdf
Collective Agreement between the House of Commons and PSAC: https://psacunion.ca/sites/psac/files/operational_en_exp_2014_april_20.pdf

process".[113] To cite a recent Canada Industrial Relations Board decision: "Seniority has often been viewed as the most fundamental advantage to working in a unionized environment. It is referred to by several experts as the "industrial adaptation of a hierarchic principle inherent [to] the human condition".[114]

Recognition of years of service is a concept that is firmly entrenched within labour relations jurisprudence, including jurisprudence produced by the FPSLREB. In a 2009 decision the Board stated that:

> (…) through his or her years of service, an employee attains a breadth of knowledge and expertise as a result of his or her tenure with the organization. Through time, an employee becomes a more valuable asset, with more capabilities, and should be treated accordingly. (PLSRB 485-HC-40).

Thus, the Union's proposal for recognition of years of service in the context of Appendix C would introduce a fair and objective standard in the treatment of a reasonable job offer. This standard has been sanctioned via Board jurisprudence.

The Union submits that the current system of forcing employees to interview for jobs they are already doing - and have been doing for years in many cases – is madness. Countless hours of productivity loss, widespread anxiety, in some cases hundreds of employees threatened with layoff when only a dozen jobs are being eliminated.

During the harper era the Public Service Alliance of Canada was asked repeatedly by both our members and the media how the union could allow such an unfair, stressful and inefficient lay-off process to exist.

Since then, our members have demanded that we include ways to make the lay-off process more transparent and fairer in PSAC bargaining demands. In the collective

[113] Brown, Donald and Beatty, David. Canadian Labour Arbitration (Fourth Edition), Vol.1, Canada Law Book, September 2006.
[114] *Air Canada*, [2006] CIRB no. 349.

agreement that was signed with Treasury Board in 2016 the union made significant advances in improving alternation provisions and in creating a voluntary departure program.

The Union submits that is the round of bargaining in which the Treasury Board can and must join the rest of the unionized world and recognize employees' years of service.

In summary, the Union's proposals concerning Appendix C are predicated upon what has already been established elsewhere within the federal public sector. Moreover, applying geographic criteria to the process in terms of opportunities for employees exists already for tens of thousands of federal workers at Canada Post. In light of these factors, the Union respectfully requests that the Commission include the Union's proposals for Appendix C in its recommendations.

APPENDIX D
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO IMPLEMENTATION OF THE COLLECTIVE AGREEMENT

Delete the current MOU and replace with:

1. The effective dates for economic increases will be specified in the collective agreement. Other provisions of the collective agreement will be effective as follows:

a) All components of the agreement unrelated to pay administration will come into force on signature of this agreement unless otherwise expressly stipulated.

b) Changes to existing and new compensation elements such as premiums, allowances, insurance premiums and coverage and changes to overtime rates will become effective within one hundred and eighty (180) days after signature of agreement, on the date at which prospective elements of compensation increases will be implemented under 2.a).

c) Payment of premiums, allowances, insurance premiums and coverage and overtime rates in the collective agreement will continue to be paid as per the previous provisions until changes come into force as stipulated in 1.b).

2. The collective agreement will be implemented over the following time frames:

a) The prospective elements of compensation increases (such as prospective salary rate changes and other compensation elements such as premiums, allowances, changes to overtime rates) will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention.

b) Retroactive amounts payable to employees will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention.

c) Prospective compensation increases and retroactive amounts that require manual processing will be implemented within four hundred and sixty (460) days after signature of this agreement.

3. Employee recourse

a) **a) Employees in the bargaining unit for whom this collective agreement is not fully implemented within one hundred and eighty (180) days after signature of this collective agreement will be entitled to a lump sum of two hundred dollars ($200) non-pensionable amount when the outstanding amount owed after one hundred and eighty-one (181) days is greater than five hundred dollars ($500). This amount will be included in their final retroactive payment.**

b) **Employees will be provided a detailed breakdown of the retroactive payments received and may request that the compensation services of their department or the Public Service Pay Centre verify the calculation of their retroactive payments, where they believe these amounts are incorrect. The Employer will consult with the Alliance regarding the format of the detailed breakdown.**

In such a circumstance, for employees in organizations serviced by the Public Service Pay Centre, they must first complete a Phoenix feedback form indicating what period they believe is missing from their pay. For employees in organizations not serviced by the Public Service Pay Centre, employees shall contact the compensation services of their department.

RATIONALE

As a result of settled, ratified, and signed collective agreement between the Treasury Board and other PSAC bargaining units including the PA, TC, SV, and EB groups, the FB group tabled a proposal consistent with those renewed collective agreements. Generally, the agreed to implementation appendices included, as the FB group proposal does, three parts: 1) effective dates of economic increase and other provisions; 2) implementation time frame; and 3) employee recourse. Again, for consistency across the public service.

On May 25, 2023, the Employer tabled an Appendix D proposal with respect to implementation of the collective agreement. The Employer proposal excluded provisions on employee recourse. The Union argues that a lesser entitlement, in this case no employee recourse, for the FB group than others of the Core Public Administration is not acceptable. The Union request that the Commission include its proposal—consistent with what Treasury Board has agreed to with other PSAC groups—in its recommendations. The Union has no intention of agreeing to less than what was afforded other groups.

APPENDIX N
MEMORANDUM OF AGREEMENT BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO BILL C-20

RESERVE

The Union does not seek a recommendation from the Commission on this proposal.

APPENDIX O
LETTER OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO WORKPLACE CULTURE

This letter of understanding is to give effect to the agreement reached between the Treasury Board of Canada (the Employer) and the Public Service Alliance of Canada (the Alliance) regarding the creation of a joint working committee to examine and strengthen Workplace Culture within the CBSA.

Both parties share the objective of creating and maintaining healthy work environments for all employees and agree to establish a joint committee, co-chaired by a representative from each party, to discuss and identify potential opportunities and considerations to improve the workplace culture within the CBSA.

The joint committee will meet within 30 days of the ratification of the tentative agreement to commence its work. This timeline may be extended on mutual agreement between the parties.

UNION RESPONSE

The Agency's first culture survey was launched on September 6 and closed on October 7, 2022. This survey examined the work culture at CBSA in-depth, and produced unprecedented insight into a wide range of issues in how we work together at the Agency. This was the first-time employees were asked to provide comprehensive quantitative feedback on the workplace culture at the CBSA since the 2019 Diagnostic and the 2020 Public Service Employee Survey.

The January 2023 CBSA Culture Focus Group Report entitled "What We Heard Report: Insights into focus groups" pointed to the following key findings:

1) Sentiments around working at the CBSA
    a. Sentiments vary among participants, but in general, tend to be more negative than positive. When asked to choose one word that describes how it feels to work at the CBSA, a number of words are shared, reflecting a range of feelings. The following word cloud captures the feelings expressed. The most common words are:

i. Frustrating
ii. Disappointing
iii. Demoralizing
iv. Proud

2) Psychological health and safety

a. The survey results show that there are as many employees who believe that their workplace protects their psychological well-being and safety (42%) as there are who don't (42%). Among shift workers, only 20% agree that their workplace protects their psychological well-being and safety.

3) Fear of reprisal

a. According to several participants, recurring threats and punishments of frontline staff for voicing their opinions and concerns have led to workplaces where there is a lack of trust.
b. Fear of reprisal shows up in the workplace in many ways. Among other things, participants say:
    i. they can't be their authentic selves unless they are close to retirement (e.g. comfortable sharing concerns, voicing opinions, etc.)
    ii. they could be passed up for training and acting opportunities
    iii. their shift schedules could be affected
    iv. managers react defensively to suggestions from employees
    v. when problems occur, managers protect themselves first

(Exhibit 74)

While the Employer's submission with respect to Appendix O states that it wishes to pursue the discussions on this matter prior to determining whether it should be renewed.

The Union submits there is a clear and dramatic problem with respect to workplace culture and that the Appendix must be renewed.

~~APPENDIX P~~
~~MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO ARTICLE 41 LEAVE WITHOUT PAY FOR THE CARE OF FAMILY AND VACATION SCHEDULING~~

REMOVE

RATIONALE

The Employer has a dramatic concession on the table in negotiations concerning Article 41 – a concession the Union has no intention of agreeing to. As long as the employer continues to insist on the changes its proposing for Article 41 the Union sees no value in agreeing to the renewal of this Appendix.

MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO THE FIREARM TRAINING PARTICIPANT SELECTION

RENEW APPENDIX WITH EXPIRATION DATE TO ALIGN WITH NEW COLLECTIVE AGREEMENT.

RATIONALE

In August of 2006 the federal government announced that it would be equipping officers working in inland enforcement and at land and marine ports of entry with firearms. At the time it was announced that the government's plan was to begin training officers in 2007, and that the implementation would take 10 years, with 2016 being the target date for full implementation (Exhibit 75) The Union supported – and continues to support – this initiative. Indeed, the Union lobbied for many years to have officers armed.

Shortly after this announcement the PSAC application for the creation of the FB Border Services bargaining unit was sanctioned by the PSLRB. Notice to bargain for a first collective agreement was served in February of 2007.

From the very outset of negotiations in 2007 the Union signaled that protections for employees in the context of the implementation of firearms was a critical issue, and that two matters needed to be addressed. First, the process via which employees were to be selected for firearm training, and second, what happens to employees who participate in the training and are unsuccessful in passing the training. In tandem with the Union's raising of this issue in negotiations, the PSAC filed both a complaint with the Canadian Human Rights Commission and a policy grievance due to the failure of CBSA to establish whether or not the carrying of a firearm was or was not a bona fide occupational requirement - a factor that is critical in determining the Employer's obligations with respect

to the accommodation of employees under human rights legislation. The Union also filed a bad faith bargaining complaint in the 2007-2010 round of negotiations stemming from an Employer communication concerning the arming initiative. The matter of bad faith bargaining complaint was resolved via Board mediation, while the policy grievance was ultimately resolved via a Board decision issued in November of last year (PSLRB 569-02-39). Hence the matters of who is selected, what happens to employees should they not be successful in passing the training – and in the case of litigation between the parties, who needs to be armed – have been matters of contention between the parties almost since the initiative's first introduction.

The reason the Union raised the matter in negotiations in the two previous rounds, and ultimately the reason why the parties agreed to enshrine certain protections for employees into the collective agreement, is because the parties recognize that there are circumstances under which an employee might not pass firearm certification training and still meet accommodation requirements under the law.

The position taken by the Union in the previous three rounds, and ultimately agreed to by the Employer, was that while the Union supported the firearm initiative and provided that support with the backing of its membership, employees working for CBSA in 2006 were hired without firearm training as a condition of employment, and some of those employees had concerns about either the carrying of a firearm, or about what would happen if they were not successful in passing the training. The government had announced a 10-year phase in with the understanding that such a significant change in terms and conditions of employment would require time, and with the recognition that a smooth, step by step implementation was in the best interests of all concerned.

Ultimately the compromise that was arrived at between the parties in late 2008 was that, up until February of 2011 (immediately before the statutory freeze would take effect under the Section 107 of the PSLRA), only volunteers and employees hired with firearm training as a condition of employment would be selected to participate in firearm training, and that a number of protections would be afforded volunteers who were unsuccessful. Following

February of 2011, a joint consultation committee would be established to discuss selection of firearm participants and placement of unsuccessful volunteers on a go forward basis. The February date was agreed to as the Employer had concerns about what would happen post the expiration of the current agreement, and wanted to make sure that some flexibility was afforded the parties in the event that it ran out of volunteers or other participants provided for under the collective agreement, or in the event that the CBSA's mandate was changed by the government.

The post-February 1, 2011 joint-committee provided for under the collective agreement has not met. The reason it has not met is because there has been no need for it to meet, as there remain a tremendous number of both employees hired with firearm training as a term and condition of employment and volunteers that have not yet been tested and trained. The Union recently sent a letter to the Employer raising a concern that it was planning on deviating from its current practice concerning the selection of firearm training participants and therefore called for the joint-committee to be struck. The Employer responded by indicating that it has no plans to deviate from the practice, and should changes be contemplated, consultation with the Union will take place.

In the past round of negotiations, the parties again reached compromises and achieved protections in the context of both firearm training participant selection, as well as income security for those unsuccessful in passing the training among the population of officers hire prior to the 2007 deadline.

The Union's proposal with respect to Appendix F is simple: that the protections provided employees in the context of initial training under the current agreement be afforded in the context of recertification to all employees.

In September 2017, the external review of the Evaluation of the CBSA Arming Initiative wrote that as of March 2016, 6492 officers had received firearm training, with another 2000 having undergone recertification at four training campuses. (Exhibit 8) In addition, CBSA noted in their Five-Year Human Resources Plan (2018-2023) that after intake 10

(15 Dec. 2017) was allocated, the CBSA, nationally, was short 637 BSOs. Coupled with departure and separation rates, and to account for this staffing deficit:

> An increase in the hiring of new BSOs is required for the Agency to retain its integrity on the frontlines. Based on the numbers provided in this 3-5 year plan, HRB would have to continue to recruit and train 360 BSOs per year and increase that baseline number with an additional 328 BSOs per year (1640/5) for a total of 688 BSOs per year (328+360) in order to replace officers who leave the front line and sustain the increased workloads due to funded projects (Exhibit 13).

To offset this vacancy problem, this necessary hiring and training remains ongoing. As the numbers suggest, officers undergoing recertification – both firearm and control defence tactics - is now where much of the training continues.

It should be noted that both the initial training and the recertification programs are strenuous. Indeed, the targeting threshold employed by CBSA is more difficult than that of the RCMP. It is for this reason for example that retirement schemes that provide for workers to retire after 25 years are the norm elsewhere in the broader law enforcement community.

It is also for this reason that the Union is proposing to broaden the language in the parties' current agreement to cover all employees in the context of recertification. What is being proposed is that the Employer make every reasonable effort to place employees who are unsuccessful. In light of CBSA's operations, the Union believes that there would be ample opportunity to place employees in operational settings where being armed is not essential. Now that several years have passed since the initial implementation of firearm and control defence tactics training were introduced additional protections are necessary. The language proposed is modeled on what is currently contained in the Job Security and Workforce Adjustment clauses of the parties' collective agreement.

The Union is also proposing to maintain the current joint consultation arming committee that was been established during the first round of bargaining. The Union sees no reason to eliminate a committee that has been a positive forum for discussion about a matter of critical importance to both the employees and the employer.

There is a history of the parties negotiating additional protections for employees in the context of the arming initiative. There are employee protections contained in the parties' current agreement with respect to technological change and workforce adjustment. The current arming joint consultation committee has been beneficial to both parties. The Union submits that it is only fair and reasonable given these facts that its proposals be introduced into the collective agreement. Consequently, the Union respectfully requests that they be included in the Commission's recommendation.

NEW APPENDIX
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURY BOARD OF CANADA
AND
THE PUBLIC SERVICE ALLIANCE OF CANADA
WITH RESPECT TO NAME TAGS

The parties agree that no employee shall be required to wear a name tag with the employee's name, and that within ninety (90) days of ratification employees shall be issued number tags to replace name tags.

RATIONALE

For background and context, in December 2012, the Employer instituted a new policy (the Name Tag Policy) requiring BSOs and other staff to wear a name tag rather than their assigned badge number, as had been the practice until that point in time. The decision to convert from badge numbers to name tags was purported to be based on a need for improved customer service or "service excellence". The Employer also stated that the introduction of the name tags was done to bring the CBSA in line with related agencies.

At the time the Name Tag Policy was introduced, several employees exercised their right to refuse unsafe work under the *Code*. A Health and Safety Officer from the Labour Program was assigned to investigate these work refusals and made a finding of no danger but issued a direction that preventative measures be taken with respect to the hazard caused by the introduction of name tags. The Employer did appeal the direction to take preventative measures which was unsuccessful.[115]

[115] 2014 Hamel Decision

Since 2012, the Name Tag Policy remains the subject of numerous grievances, security incidences reports, and hazardous occurrences reports, and most recently, November 2020, an appeal (of a decision related to a Name Tag Policy complaint) at the Occupational Health and Safety Tribunal of Canada (Exhibit 76).

For some background on the November 2020 submission, in August 2018 an ATIP request led to the release of the first and last name, security clearance level, classification and work location for all staff employed by the Canada Border Services Agency (CBSA). This information was posted to Twitter by an account with the Twitter username @cdnati (ATIP bot). Employees of the CBSA became aware of this release of information in September 2018 and a number of Border Services Officers (BSOs) instituted work refusals on October 1-3, 2018, including employees at the Ambassador Bridge Port of Entry (POE). (Exhibit 77)

The fundamental issue is that the nature of BSO work is such that name tags put the officers at risk. BSO's working at land borders and in airports interact with thousands of individuals are responsible for law enforcement, including the breaking up of contraband rings – weapons, illegal drugs, human traffickers, to provide some examples. Many officers live in small communities, and there have been occasions where officers with unique last names have been tracked down via individuals researching last name and intimidated, even targeted. The Union has in discussion with CBSA suggested first name only, badge numbers, other means of identification. Yet despite the risk posed by the current practice to officers, the employer has refused.

The written statements from the Employees exercising the right to refuse unsafe work make it clear that the nametags have always been viewed as a hazard in the workplace and the release of information on Twitter only served to increase the availability of identifying information to ill-intentioned travelers.

With respect to the October 2018 work refusals, the Employer's *Refusal to Work Investigation Report* for the work refusals at the Ambassador Bridge concluded with a

finding of “no danger”. The Employees disagreed with the Employer’s finding and continued the work refusal resulting in referral to Ministerial Delegate. One day after appointment, the delegate concluded a danger did not exist. This decision was appealed pursuant to subsection 129(7) of the *Canada Labour Code (*the *Code*).

The Union (the Appellant) asked that the Tribunal find that the wearing of the name tag coupled with the release of information via ATIP constitutes a danger under the *Code.* To be clear, it was the Appellant’s position that the use of name tags presents a danger on its own, the release of additional information via ATIP contributed to the danger. The Appellant sought the remedy that the Employer be ordered to revert to the use of badge numbers pursuant to the hierarchy of controls outlined at section 122.2 of the *Code.*

In July 2022, however, the Union (the Appellant) lost its health and safety appeal before the CIRB. The Union submits that the risk continues to exist.

The Union raised this issue in the previous round of negotiations, however given that the Tribunal process was taking its course the decision was made to await the outcome. Now that a decision has been made, and given the outcome, the Union submits that the need for language on this issue is even more pressing now. Clearly given the grievances, complaints and work refusals, this is an issue of significant importance to the Union’s membership.

It is abundantly clear given these facts and the ever-present risk faced by the second largest law enforcement agency in Canada that clear language in the parties’ collective agreement on this issue is necessary. The Union therefore respectfully requests that the Commission include this proposed MOU in its recommendations.

NEW APPENDIX
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO DIVERSITY AND INCLUSION IN THE WORKPLACE

The Union's understanding is that the parties have an agreement in principle on the Employer's Counter Proposal (Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems) to the Union's proposed New Appendix.

DAY IS A DAY

ARTICLE 25
HOURS OF WORK

25.28 Specific Application of this Agreement

For greater certainty, the following provisions of this Agreement shall be administered as provided herein:

(h) **Leave**

~~(i) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

(i) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

ARTICLE 32
TRAVELLING TIME

32.08 Travel Status Leave

(a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for ~~forty (40)~~ **twenty (20)** nights during a fiscal year shall be granted ~~seven decimal five (7.5) hours~~ **one day** off with pay. The employee shall be credited with one additional ~~seven decimal five (7.5) hours of time~~ **day off with pay** for each additional twenty (20) nights that the employee is away from his or her permanent residence to a maximum of ~~eighty (80)~~ **one hundred (100)** additional nights.

(b) The maximum number of days off earned under this clause shall not exceed ~~five (5)~~ **six (6)** days in a fiscal year and shall accumulate as compensatory leave with pay.

(c) This leave with pay is deemed to be compensatory leave and is subject to paragraphs 28.06(c) and (d).

(d) The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer.

ARTICLE 33
LEAVE - GENERAL

33.01

(a) ~~When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.~~

~~(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

(b) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

(c) Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a "day" will mean a calendar day.

ARTICLE 43
LEAVE WITH PAY FOR FAMILY - RELATED RESPONSIBILITIES

43.01 The total leave with pay which may be granted under this Article shall not exceed ~~thirty-seven decimal five (37.5) hours~~ **ten (10) days** in a fiscal year.

RATIONALE

The parties' dispute concerning the issue of time granted to an employee for the purposes of paid leave (also known as "day is a day") has been on-going for well over a decade. In 2000 the Employer attempted to implement a system whereby a day of leave counted for 7.5 hours. This implementation was grieved more than once by the Union, and these grievances were upheld by the PSLRB in 2001 (2001 PSSRB 117). In the subsequent 2004 round of negotiations, when employees currently in the FB bargaining unit were in the much larger PA bargaining unit, the Employer was successful in achieving a collective agreement with the Union that removed the word "day" from the parties collective agreement in all areas related to the granting of leave with pay, and instead replacing it

with 7.5 hours, which are the hours worked by a regular day worker in the PA (and now the FB) agreement. This modification was accepted and ratified by the PA membership at a time when shift workers represented a small minority within the affected bargaining unit. As has been previously been stated, the opposite is now the case under the FB contract, in that a majority of the employees are shift workers.

The reason that this change represented such a significant concession is that many – a majority – of employees that are now in the FB bargaining unit do not work 7.5-hour shifts. Consequently, when an employee takes a day of leave, the employee does not get the equivalent of a "day's" leave, but rather less than what the employee would have worked that day. The result ends up being that the employee must make up the lost time either with annual leave, compensatory time or via working additional hours to make up the time later in the schedule.

The Union submits that this arrangement is patently unfair. It effectively punishes certain employees for being shift workers. Not only are employees that work shifts required to work irregular hours, but additionally they must either use their annual leave or work more hours later in their schedule if they take a day of leave. Day workers are not subjected to this. The Union submits that shift working employees should not be either.

At the time that the change was made, the Employer argued that the system that was in place prior to the 2004 round was unfair to day workers as it meant that, in over all hours, shift workers ended up being afforded more leave. However, the reason that this is in fact the case is because the Employer's operations are such that 7.5-hour shift are often not feasible. Hence the Employer is taking the position that, even though it is because of the Employer's operations that most employees do not work 7.5 days, the employees must still be forced to make up time later in a schedule, or use their annual leave, in order to ensure that they can be off for a full day of leave. This, when, as previously indicated, the adverse effects of shift work on workers is well documented. Again, the Union submits that this is patently unfair, and that this inequity should be rectified.

The position of the Union on this matter is one that has been both upheld and reinforced by the PSLRB. For example, in 1991 the Board in the *Phillips* decision stated that, in response to the position taken by the Employer (which in this round of bargaining reflects what is currently in the parties' Agreement), "…the employer's view would perpetuate unfairness on those employees who work long shifts…" (PSSRB 166-2-20099), and in the *King and Holzer* decision, the Board stated, in the context of Family Related Responsibility Leave, that "the events giving rise to family related leave do not fit within the confines of a 7.5 hour shift". (PSSRB 166-34-30346).

Thus, in light of the reasons provided above, and in light of the jurisprudence on this matter, the Union requests that the Commission include the Union's proposals for Day is a Day in its recommendation.

PART 3 - EMPLOYER PROPOSALS

ARTICLE 2
INTERPRETATION AND DEFINITIONS

EMPLOYER PROPOSAL

“continuous employment” (emploi continu)

has the same meaning as specified in the existing *Directive on Terms and Conditions of Employment* ~~of the Employer on the date of signing of this agreement~~.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission’s recommendations.

ARTICLE 7
NATIONAL JOINT COUNCIL AGREEMENTS

7.03

a. The following directives, as amended from time to time by National Joint Council recommendation, which have been approved by the Treasury Board of Canada, form part of this agreement:

- *Bilingualism Bonus Directive*
- *Commuting Assistance Directive*
- First Aid to the General Public: Allowance for Employees
- Foreign Service Directives
- *Isolated Posts and Government Housing Directive*
- ~~Memorandum of Understanding on Definition of Spouse~~
- *Public Service Health Care Plan Directive*
- *NJC Relocation Directive*
- *Travel Directive*
- *Uniforms Directive*
- ~~Occupational safety and health~~
- *Occupational Safety and Health Directive*
  - ~~*Committees and Representatives Directive*~~
  - ~~*Motor Vehicle Operations Directive*~~
  - ~~*Pesticides Directive*~~
  - ~~*Refusal to Work Directive*~~

The following was agreed in principle by the parties:

With respect to the National Joint Council Bilingual Bonus Directive, the Employer agrees to include the following statements in the preamble to the parties' tentative agreement. For greater clarity, these statements will not be included in the collective agreement:

- The Employer commits to not propose the elimination or the reduction of the existing bilingualism bonus set forth in the current National Joint Council (NJC) Bilingual Bonus Directive during the life of this collective agreement.

- The Employer further commits to recommending the inclusion of the NJC Bilingualism Bonus Directive in the 2023-2024 cyclical review.

UNION RESPONSE:

See rationale provided by the Union on page 150.

ARTICLE 10
INFORMATION

The Employer proposes that this article be amended to reflect the following changes submitted by the Employer:

10.02

~~The Employer agrees to supply each employee with a copy of this Agreement and will endeavour to do so within one (1) month after receipt from the printer~~. **Employees of the bargaining unit will be given electronic access to the collective agreement. Where electronic access to the agreement is unavailable or impractical, an employee will be supplied with a printed copy of the agreement upon request.**

UNION RESPONSE

With respect to the employer's proposal, the PSAC has not agreed to this proposed change in any of the previous rounds of negotiations. The Union would also point out that what the employer is proposing here is not the same as what was agreed-to at other PSAC-Treasury Board tables.

The FB bargaining unit is unique, in that a majority of the workers in the FB group spend very little time in front of a computer and therefore the language proposed by the employer effectively amounts to a restriction on access to the parties' agreement, which the Union submits is in neither party's interest. What's more, employees on shift at ports of entry are prohibited from accessing their personal electronic device which, again, means in effect that employees will not have access to the collective agreement while at work.

Thus, the Union respectfully requests that the employer's proposal not be included in the Board's recommendation, as the current proposed language represents a serious concession in the FB context.

ARTICLE 14
LEAVE WITH OR WITHOUT PAY FOR ALLIANCE BUSINESS

EMPLOYER PROPOSAL

14.14 Leave granted to an employee under clauses 14.02, 14.09, 14.10, 14.12 and 14.13 will be with pay **for a total cumulative maximum period of 3 months per fiscal year** and the Alliance will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by joint agreement in Appendix J. **Clause 14.14 expires on the expiry of the collective agreement, or upon implementation of the Next Generation Human Resources and Pay system, whichever comes first.**

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 17
DISCIPLINE

17.05

Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after two (2) years have elapsed since the disciplinary action was taken, **exclusive of any periods of leave without pay,** provided that no further disciplinary action has been recorded during this period.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 18
GRIEVANCE PROCEDURE

18.11 There shall be no more than a maximum of ~~four (4)~~ **three (3)** levels in the grievance procedure.
These levels shall be as follows:

a. Level 1: first level of management;
b. Levels 2 ~~and 3~~ in departments or agencies where such levels are established (intermediate level~~(s)~~);
c. Final level: chief executive or deputy head or an authorized representative.

~~Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either~~

~~Level 2 or 3.~~

No employer representative may hear the same grievance at more than one level in the grievance procedure.

*agreed to in principle.

UNION RESPONSE

The Union's understanding is that the parties have an agreement in principle on Article 18.11.

ARTICLE 19
NO DISCRIMINATION

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or **practiced** ~~practised~~ with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity and expression, family status, marital status, **genetic characteristics,** ~~mental or physical~~ disability, membership or activity in the Alliance or a conviction for which a pardon has been granted.

19.09 ~~Upon request by the complainant(s) and/or respondent(s),~~ **The Employer shall provide the complainant(s) and/or respondent(s) with** an official copy of the investigation report ~~shall be provided to them by the Employer~~, subject to the Access to Information Act and Privacy Act.

UNION REPONSE

The Union's understanding is that the parties have an agreement in principle on Article 19.

ARTICLE 20
SEXUAL HARASSMENT

EMPLOYER PROPOSAL

20.13 ~~Upon request by the complainant(s) and/or respondent(s),~~ **The Employer shall provide the complainant(s) and/or respondent(s) with** an official copy of the investigation report ~~shall be provided to them by the Employer~~, subject to the Access to Information Act and Privacy Act.

UNION RESPONSE

The Union is not opposed to the Employer's proposal for 20.13 as it replicates what was agreed-to at the other four PSAC-Treasury Board tables. However given chronic problems at CBSA related to harassment and abuse of authority on the part of CBSA management, this language concerning 20.13 alone is not sufficient for the parties to reach resolution on Article 20.

For the Union's proposals and rationale concerning Article 20 see pages 101-105.

ARTICLE 24
TECHNOLOGICAL CHANGE

EMPLOYER PROPOSAL

24.04

The Employer agrees to provide as much advance notice as is practicable but, except in cases of emergency, not less than ~~one hundred and eighty (180)~~ **thirty (30)** days' written notice to the Alliance of the introduction or implementation of technological change when it will result in significant changes in the employment status or working conditions of the employees.

UNION RESPONSE

As described above (see p. 76-84), Article 24, Technological Change, is a topic of significant contention for the Union.

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 25:
HOURS OF WORK

EMPLOYER PROPOSALS

25.12

a. An employee on day work whose hours of work are changed to extend before or beyond the stipulated hours of 7 am and 6 pm as provided in paragraph 25.06(b), and who has not received at least ~~seven (7) days'~~ **forty-eight (48) hours'** notice in advance of the
starting time of such change shall be paid for the first (1st) day or shift worked subsequent to such change at the rate of time and one half (1 1/2) for the first seven decimal five (7.5) hours and double (2) time thereafter. Subsequent days or shifts worked on the revised hours shall be paid for at straight-time rate, subject to Article 28: overtime.

25.18 Except as provided for in clauses 25.23 and 25.24, the standard shift schedule is:

a. midnight to 8 am, 8 am to 4 pm, and 4 pm to midnight
~~or, alternatively,~~
b. 11 pm to 7 am, 7 am to 3 pm, and 3 pm to 11 pm.

Notwithstanding the above-noted standard shift schedule, starting and finishing times shall be determined according to operational requirements as determined by the Employer.

25.21

a. An employee who is required to change his or her scheduled shift without receiving at least ~~seven (7)~~ **forty-eight (48) hours'** notice in advance of the starting time of such change in his or her scheduled shift shall be paid for the first (1st) shift worked on the revised schedule at the rate of time and one half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight-time rate, subject to Article 28: overtime.
b. Every reasonable effort will be made by the Employer to ensure that the employee returns to his or her original shift schedule and returns to his or her originally scheduled days of rest for the duration of the master shift schedule without penalty to the Employer.

c. Paragraphs (a) and (b) on shift change do not apply when employees are required to attend mandatory training for this group.

UNPAID MEAL BREAK

The Employer proposes that this article be amended to reflect the following changes submitted by the Employer:

25.04 It is recognized that certain operations require some employees to stay on the job for a full scheduled work period, inclusive of their **unpaid meal break** ~~meal period~~. In these operations, such employees will be compensated for their **unpaid meal break** ~~meal period~~ in accordance with the applicable overtime provisions.
[…]

Day work
25.06 Except as provided for in clauses 25.09, 25.10 and 25.11:

a. the normal workweek shall be thirty-seven decimal five (37.5) hours from Monday to Friday inclusive; and

b. the normal workday shall be seven decimal five (7.5) consecutive hours, exclusive of an ~~lunch period~~ **unpaid meal break**, between the hours of 7 am and 6 pm.

[…]
25.13 When, because of operational requirements, hours of work are scheduled for employees on a rotating or irregular basis, or on a non-rotating basis where the employer requires employees to work hours later than 6 pm and/or earlier than 7 am, they shall be scheduled so that employees, over a period of not more than fifty-six (56) calendar days:

a. on a weekly basis, work an average of thirty-seven decimal five (37.5) hours and an average of five (5) days;

b. work seven decimal five (7.5) consecutive hours per day, exclusive of a one half (1/2) hour **unpaid meal break** ~~meal period~~;

c. obtain an average of two (2) days of rest per week;

d. obtain at least two (2) consecutive days of rest at any one time except when days of rest are separated by a designated paid holiday which is not worked; the consecutive days of rest may be in separate calendar weeks.

[…]
25.19 A specified **unpaid meal break** ~~meal period~~ shall be scheduled as close to the midpoint of the shift as possible. It is also recognized that the **unpaid meal break** ~~meal period~~ may be staggered for employees on continuous operations. However, the Employer will make every effort to arrange **unpaid meal breaks** ~~meal period~~ at times convenient to the employees.
[…]

Terms and conditions governing the administration of variable hours of work 25.27

a. The scheduled hours of work of any day as set forth in a variable schedule specified in clause 25.25 may exceed or be less than seven decimal five (7.5) hours; starting and finishing times, **unpaid** meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer; and the daily hours of work shall be consecutive.

ARTICLE 25 HOURS OF WORK AND APPENDIX B – MEMORANDUM OF UNDERSTANDING (…) WITH RESPECT TO THE VARIABLE SHIFT SCHEDULING ARRANGEMENTS

The Employer proposes that this article and Appendix B be amended to reflect the following changes submitted by the Employer:

25.18 Except as provided for in clauses 25.23 and 25.24, the standard shift schedule is:

a. midnight to 8 am, 8 am to 4 pm, and 4 pm to midnight ~~or, alternatively,~~
b. 11 pm to 7 am, 7 am to 3 pm, and 3 pm to 11 pm.

Notwithstanding the above-noted standard shift schedule, starting and finishing times shall be determined according to operational requirements as determined by the Employer.

25.24 Variable shift schedule arrangements

a. Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.23 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.18. Such consultation will include all aspects of arrangements of shift schedules.
b. Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.
c. ~~Both parties will endeavour to meet the preferences of the employees in regard to such arrangements.~~
d. It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.
e. Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.25 to 25.28 inclusive.

APPENDIX B
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO THE VARIABLE SHIFT SCHEDULING ARRANGEMENTS

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

1. Consultation process

1.1 The intent of this Appendix is to provide the parties with a process to facilitate reaching agreement at the local level, within prescribed time frames, **consistent with clauses 25.24 and 1.02 of the collective agreement.** ~~**and maintain sustainable scheduling solutions.**~~

1.2 **The following principles shall be considered for the purposes of establishing effective scheduling:**

a) **Shift schedules are developed in a cost-effective manner** ~~**within existing resources**~~**.**
b) **Shift schedules reflect operational requirements and the service needs of Canadians.**
c) **Shift schedules comply with relevant clauses of the collective agreement.**

2. VSSA discussions

2.1 Local consultation pursuant to paragraph 25.24(a) of the agreement will take place within ~~five (5)~~ **forty (40)** days of notice served by either party to reopen an existing variable shift schedule agreement or negotiate a new variable shift schedule arrangement. Prior to this meeting, the Employer will provide to the Union ~~**the following**~~ information in respect of its operational requirements, **including the rationale for scheduling.**

~~a. the number of scheduled employees required for each hour, and~~
~~b. the rationale for scheduling.~~

2.2 The **operational requirements** ~~number of employees~~ identified in paragraph 2.1 does not represent the minimum presence required on any shift.

2.3 The parties shall endeavour to conclude discussions at the local level ~~shall be concluded~~ within five

(5) weeks from the time of the first meeting identified in paragraph 2.1 above.

2.4~~Should the parties come to an agreement on a proposed VSSA schedule at the local level, the Union shall submit the schedule for ratification by the employees.~~

2.5~~Should the discussions at the local level not result in an agreement on a proposed VSSA schedule, the parties will immediately refer the outstanding issues to representatives from the Union and regional representatives from the Employer for further consultation.~~

2.6~~Representatives identified under 2.5 above shall conclude their consultation within a maximum of three (3) weeks from the date the outstanding issues have been referred to their attention by the local committee.~~

2.7~~Joint recommendations of the representatives identified under 2.5 above on the outstanding issues, or a proposed VSSA schedule shall be sent back to the local level for consideration for a maximum of one (1) week period.~~

Subsequent renumbering

2.8~~4~~ Should the parties come to an agreement on a proposed VSSA schedule at the local level, the Union shall submit the schedule for ratification by the employees. Otherwise, the Union will submit the last Employer VSSA proposal to a vote.

2.9~~5~~ Unless otherwise mutually agreed upon, the ratification vote identified in paragraphs 2.4 ~~or 2.8~~ and provision of the results to the Employer shall be completed within two (2) weeks.

2.10~~6~~ Where proposed VSSA is rejected, by mutual agreement, the current VSSA may be extended. Should either party not elect to extend the current VSSA, shift schedule consistent with clause 25.13 will take effect. For employees not already covered by an existing VSSA, the current scheduling arrangement will remain in force.

2.11~~7~~ In the event that the proposed VSSA is accepted by a ratification vote, the new schedule will be posted in accordance with clause 25.16 of the agreement.

2.12~~8~~ Except as provided in paragraph 2.~~1~~06 above, both parties may terminate a VSSA by sending the other a thirty (30) day notice of termination of the existing VSSA unless discussions are ongoing pursuant to this appendix.

2.13~~9~~ Upon mutual agreement by the parties, time frames included in the provisions of this Appendix may be extended.

3. VSSA line selection

3.1 The Employer will establish the requirements for populating this schedule.

3.2 The Employer will canvass all employees covered by this specific VSSA for volunteers to populate the schedule.

3.3 Should more than one employee meeting the qualifications required select the same line on the schedule, years of service as defined in subparagraph 34.03(a)(i) will be used as the determining factor to allocate the line.

3.4 Subject to 3.3, by mutual consent the parties may agree to conduct a repopulation of schedules at any point over the life of the schedule.

3.5 In the event lines become vacant, the Employer will reassess its scheduling requirement. Should the line still be required, the Employer will review the qualifications required prior to canvassing all employees covered by this specific VSSA. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service as defined in subparagraph 34.03(a)(i) will be used as the determining factor to allocate the line.

For greater clarity, when a vacant line is selected, that line will continue to follow the pre-established pattern, according to the existing schedule.

UNION RESPONSE

Hours of Work and scheduling are matters of tremendous importance for the FB group. Unlike most other Treasury Board groups, a significant majority of employees in the Border Services group work shifts. The Union provided considerable rationale earlier in this brief with respect to issues that need addressing in the context of hours of work. New scheduling rights for employees in this bargaining unit is a priority for the Union in this round of negotiations.

The language found in the current collective agreement is the product of several rounds of negotiations. Indeed, Appendix B came into existence in the first round of negotiations, and Article 25 saw dramatic changes in that same round. Each successive round has seen some improvements with respect to scheduling rights for employees.

What the employer is proposing in negotiations is a dramatic break with the trend that has been set over the past several rounds. The employer is attempting to significantly expand management rights in the context of scheduling at the expense of the employees. To be clear, employees build their lives around the hours that they work, and a majority of our members work in 24/7 operational environments.

The employer's concessions would represent the introduction of a dramatic imbalance in the workplace. The Union has no intention whatsoever of watering down its rights in the context of the scheduling of employees. On the contrary, our members are seeking improvements, not concessions. Indeed, even were the Union to agree to the changes being sought by the employer (which, again, it has no intention of doing), they would not be acceptable to the Union's membership.

The Union therefore respectfully requests that the Board replicate what has happened in previous rounds of negotiations, and recommend improvements for the employees, and not the taking away of significant rights negotiated and agreed upon between the parties in the past.

ARTICLE 27
SHIFT AND WEEKEND PREMIUMS

EMPLOYER PROPOSAL

27.02 Weekend premium

a. An employee working shifts during a weekend will receive an additional premium of two dollars ($2) per hour for all **regularly scheduled** hours worked~~, including overtime hours,~~ on Saturday and/or Sunday.
b. Where Saturday and Sunday are not recognized as the weekend at a mission abroad, the Employer may substitute two (2) other contiguous days to conform to local practice.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate employers such as the CRA and Parks Canada also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 28
OVERTIME

EMPLOYER PROPOSAL

28.05 Overtime compensation on a day of rest

Subject to paragraph 28.02(a):

a. An employee who is required to work on a ~~first (1st)~~ day of rest is entitled to compensation at time and one half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter.

b. An employee who is required to work on a second (2nd) or subsequent day of rest is entitled to compensation at double (2) time**, provided that the employee also worked on the first (1st) day of rest** (second (2nd) or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest).

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 28 – OVERTIME AND APPENDIX L – MEMORANDUM OF UNDERSTANDING (…) PAID MEAL PREMIUM

28.02 General

…

c) For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked. **Uniformed employees in receipt of the annual paid meal allowance provided under Appendix L will not receive overtime compensation when required to perform work during unpaid meal breaks in the course of their regularly scheduled hours of work.**

28.02 d): Payments provided under the overtime, designated paid holidays, **paid meal allowance (as per the relevant appendix),** and standby provisions of this agreement shall not be pyramided, that is, an employee shall not be compensated more than once for the same service.

APPENDIX L
MEMORANDUM OF AGREEMENT BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO PAID MEAL PREMIUM

Notwithstanding the provisions of article 25: hours of work and article 28: overtime, uniformed employees in receipt of the annual paid meal premium under this Appendix are excluded from overtime compensation when required to perform work during unpaid meal breaks in the course of their regularly scheduled hours of work.

UNION RESPONSE

The Union has no intention of agreeing to this dramatic concession. The Treasury Board collective agreement for the CX group states the following:

> 21.07 Except as may be required in a penitentiary emergency, the Employer shall:
> a. grant a correctional officer a paid thirty (30) minute period, away from his work post, to have a meal break within the reserve, for every complete eight (8) hour period,
>
> and
>
> b. notwithstanding paragraph (a) above, a correctional officer may exceptionally be required to take their meal break at their work post when the nature of the duties makes it necessary.
>
> c. In the event that the Employer is unable to grant an employee a meal break, in lieu
>
> thereof the employee shall receive an additional one half (1/2) hour of compensation at time and three quarters (1 3/4).[116]

The RCMP collective agreement:

> Meal break premium

[116] Correctional Services (CX)- Canada.ca / Services correctionnels (CX)- Canada.ca

29.06 Due to operational requirements, the Employer may require a Member to remain on active duty for a fully scheduled work period, inclusive of the meal break period.

29.07 Pursuant to clause 29.06, a Member is entitled to be paid a meal break premium equal to one and a half (1 1/2) times their straight-time rate of pay for each fifteen (15) minute period where:

a. the Member was interrupted during their meal-break period for more than fifteen (15) minutes for operational requirements; or

b. the Member was unable to access a suitable location, as defined in clause 2.01, for the meal-break period.

29.08 For a scheduled twelve (12) hour shift, eligible Members are entitled to claim forty-five (45) minutes and for a scheduled shift less than twelve (12) hours, eligible Members are entitled to claim thirty (30) minutes.

Thus Treasury Board has agreed in the CX contract to maintain the language as it is currently constituted in 28.02 of the FB agreement. The Treasury Board has agreed to comparable language in the RCMP collective agreement.

There is no cogent reason why the Union should agree to these proposals, particularly given that what the Union has in our agreement now for the FB group is standard in Treasury Board agreements. Such a concession is unacceptable, particularly given the number of members who are regularly required to work through their breaks due to chronic shirt staffing at CBSA.

ARTICLE 28 – OVERTIME
AND
ARTICLE 30 – DESIGNATED PAID HOLIDAY

EMPLOYER PROPOSAL

28.08 Transportation expenses

a. When an employee is required to report for work and reports under the conditions

described in paragraphs 28.04(b), (c) and 28.05(c) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:

i. kilometric allowance**, up to seventy-five (75) kilometers,** at the rate normally paid to an employee when authorized by the Employer to use his or her automobile, when the employee travels by means of his or her own automobile;

30.08 Reporting for work on a designated holiday

d. […]

i. kilometric allowance**, up to seventy-five (75) kilometers,** at the rate normally paid to an employee when authorized by the Employer to use his or her automobile when the employee travels by means of his or her own automobile;

or

ii. out-of-pocket expenses for other means of commercial transportation.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate employers such as the CRA and Parks Canada also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The

Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 30
DESIGNATED PAID HOLIDAY

30.02 For greater certainty, employees who do not work on a Designated Paid Holiday are entitled to seven decimal five (7.5) hours pay at the straight-time rate."

(New clause – Renumber subsequent clauses consequentially)

30.09 Scheduling of shift-working employees on a designated holiday

a. Should there be more employees scheduled to work a designated paid holiday than is needed, the Employer shall canvass employees scheduled to work **on each applicable** ~~the~~ **shift** ~~holiday~~ to determine if there are volunteers who wish to have the **shift** ~~day~~ off. In the event that there are excessive volunteers, years of service as defined in subparagraph 34.03(a)(i) will be used as the determining factor to select which employees shall be granted the **shift** ~~day~~ off.

b. Should there be insufficient or no volunteers after the Employer has canvassed consistent with
a) above, the employees with the least amount of service, **on each shift**, as defined in subparagraph 34.03(a)(i) shall be given the ~~day~~ **shift** off.

c. Notwithstanding paragraphs (a) and (b) the Employer shall ensure that there is a sufficient number of qualified employees scheduled to work the designated holiday.

d. Should the Employer require employees to work the holiday after it has given employees the **shift** ~~day~~ off, the Employer shall first offer the shift(s) to be worked to qualified employees that were initially scheduled to work the holiday and were subsequently given the day off consistent with b) and c) above, before offering the hours consistent with Article 28: overtime.

For greater certainty, scheduled shifts will continue to follow the pre-established pattern, according to the existing schedule, as a result of the application of this clause.

30.10 In accordance with clause 25.21, the Employer shall make every reasonable effort to ensure that the processes outlined in 30.09 a) through (d) are undertaken at least seven (7) days prior to the designated paid holiday.

For greater certainty, this means that no penalties and costs identified under clause 25.21 will apply as a result of the application of clause 30.09.

UNION RESPONSE

The current language in 30.09 was negotiated two rounds ago to deal with chronic issues related to decisions concerning who works a Designated Paid Holiday and who does not.

The language in 30.09 has become the standard practice at CBSA ports of entry for almost a decade and has solved many of the problems that arose when employees were scheduled on a DPH.

The employer is now proposing to upend the balance that the parties achieved two rounds ago between management's need to add or remove employees from the schedule and employees' desires to either work the holiday or take it off.

The main problem with what the employer is proposing is that, unlike under the current language, a less senior employee could have the option of having the holiday off while a more senior employee would have to work it – this is because seniority would now be applied for a given shift, rather than for the day as a whole. This proposal is therefore inconsistent with what the Union has negotiated in scheduling provisions throughout the parties' agreement: Namely that when a tie-breaker is needed, seniority prevails. To introduce language allowing for less senior employees having a holiday off while more senior employees have to work it is unacceptable to the Union and its membership.
Thus the Union respectfully requests that the panel award status quo.

VARIOUS ARTICLES
EXTRA DUTY WORK PERFORMED FROM A REMOTE LOCATION

The Employer proposes that these articles be amended to reflect the following changes submitted by the Employer:

The Employer is proposing the following modifications to Article 28: Overtime, Article 29: Standby and Article 30: Designated Paid Holidays to distinguish between when an employee physically reports to the workplace versus when the employee works remotely from the employee's residence or at another place to which the Employer agrees.

28.04 Overtime compensation on a workday

Subject to paragraph 28.02(a):

a. An employee who is required to work overtime on his or her scheduled workday is entitled to compensation at time and one half (1 1/2) for the first seven decimal five (7.5) consecutive hours of overtime worked and at double (2) time for all overtime hours worked in excess of seven decimal five (7.5) consecutive hours of overtime in any contiguous period.

b. If an employee is given instructions during the employee's workday to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid**:**

a minimum of two (2) hours' pay at straight-time rate or for actual overtime worked at the applicable overtime rate, whichever is the greater **when the employee has to physically report to the workplace.;**

or

ii. **For actual overtime worked at the applicable overtime rate when, at the discretion of the Employer, the employee works at their residence or at another place to which the Employer agrees.**

c. An employee who is called back to work**, without prior notice,** after the employee has completed his or her work for the day and has **physically** left his or her place of work, and who **physically** returns to **the** work**place** shall be paid the greater of:

i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay ~~for each call-back, to a maximum of eight (8) hours' compensation in an eight~~

~~(8) hour period~~; **which shall apply only the first time an employee performs work during an eight (8) hour period.** ~~s~~**S**uch maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision,

or

ii. compensation at the applicable overtime rate for actual overtime worked,

provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

d. An employee who is called back to work, without prior notice, after the employee has completed his or her work for the day and has physically left his or her place of work may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be ~~compensated in accordance with clause 28.07.~~ paid the greater of:

i. compensation at the applicable overtime rate for any time worked,
or

ii. compensation equivalent to one (1) hour's pay at the straight-time rate, which shall apply only the first time an employee performs work during an eight (8) hour period, starting when the employee first commences the work.

d. **e**. The minimum payment referred to in subparagraph (c)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 6~~0~~**1**.06 or 6~~0~~**1**.07.

28.05 Overtime compensation on a day of rest

Subject to paragraph 28.02(a):

…

c. When an employee is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** on a day of rest, the employee shall be paid the greater of:

i. compensation equivalent to three (3) hours' pay at the applicable overtime rate ~~for~~

~~each reporting, to a maximum of eight (8) hours' compensation in an eight (8) hour period~~ **which shall apply only the first time an employee performs work during an eight (8) hour period**;

or

ii. compensation at the applicable overtime rate.

d. An employee who is required to work on a day of rest may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be paid for the time actually worked at the applicable overtime rate;

e. The minimum payment referred to in subparagraph (c)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 60~~0~~1.06.

28.07 Meals

[…]

c. Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.

d. Meal allowances under this clause shall not apply**:**

ii. to an employee who is in travel status, which entitles the employee to c~~l~~aim expenses for lodging and/or meals.**;**

or

iii. to an employee who has obtained authorization to work at the employee's residence or at another place to which the Employer agrees.

Article 29: Standby

[…]

29.02

[…]

d. An employee on standby who is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** shall be compensated in accordance with paragraph **28.04 (b)(i),** 28.04(c) or 28.05(c), and is also eligible for reimbursement of transportation expenses in accordance with clause 28.08.

e. An employee on standby who is required to work may, at the discretion of the

Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be compensated at the applicable overtime rate for any time worked.

30.08 Reporting for work on a designated holiday

a. When an employee is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** on a designated holiday, the employee shall be paid the greater of:

i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay ~~for each reporting, to a maximum of eight (8) hours' compensation in an eight~~(8) ~~hour period~~, **which shall apply only the first time an employee performs work during an eight (8) hour period,** such maximum shall include any reporting pay pursuant to paragraph 28.04(c);

or

- compensation in accordance with the provisions of clause 30.07.

b. An employee required to work on a designated holiday may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be paid for the time actually worked at the applicable overtime rate.

c. ~~b.~~ The minimum payment referred to in subparagraph (a)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 60~~0~~**1**.10 of this agreement.

d. ~~c.~~ When an employee is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** under the conditions described in paragraph (a) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of

agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 33
LEAVE, GENERAL

EMPLOYER PROPOSAL

~~**33.03** An employee is entitled, once in each fiscal year, to be informed, upon request, of the balance of his or her vacation and sick leave credits.~~

33.09 An employee shall not earn **or be granted** leave credits under this agreement in any month **nor in any fiscal year** for which leave has already been credited **or granted** to him or her under the terms of any other collective agreement ~~to which the Employer is a party~~ or under other rules or regulations ~~of the Employer~~ **applicable to organizations within the federal public administration, as specified in Schedule I, Schedule IV or Schedule V of the *Financial Administration Act*.**

UNION RESPONSE

In negotiations for the four other PSAC-Treasury Board tables, the Union agreed to the employer's proposal concerning 33.09. The Union would be prepared to potentially agree to the employer's proposal depending on the contents of an overall settlement between the parties.

However, with respect to 33.03, the Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Board's award.

ARTICLE 34
VACATION LEAVE WITH PAY

34.02 For each calendar month in which an employee has earned at least seventy-five (75) hours' pay, the employee shall earn vacation leave credits at the rate of:

a. nine decimal three seven five (9.375) hours until the month in which the anniversary of the employee's eighth (8th) year of service occurs;
b. twelve decimal five (12.5) hours commencing with the month in which the employee's eighth (8th) anniversary of service occurs;
c. thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;
d. fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;
e. fifteen decimal six two five (15.625) hours commencing with the month in which the employee's eighteenth (18th) anniversary of service occurs;
f. sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;
g. eighteen decimal seven five (18.75) hours commencing with the month in which the employee's twenty-eighth (28th) anniversary of service occurs.

34.03

a.

i. For the purpose of clause 34.02 **and 34.18** only, all service within the public service, whether continuous or discontinuous, shall count toward vacation leave.
ii. For the purpose of clause 34.03(a)(i) only, effective April 1, 2012, on a go-forward basis, any former service in the Canadian Forces for a continuous period of six (6) months or more, either as a member of the Regular Force or of the Reserve Force while on class B or C service, shall also be included in the calculation of vacation leave credits.

34.18

a. An employee shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay on the first (1st) day of the month following the employee's second (2nd) anniversary of service, as defined in clause 34.03. **For clarity, employees shall be credited the leave described in 34.18(a) only once in their total period of employment in the public service.**
b. The vacation leave credits provided in paragraph 34.18(a) above shall

be excluded from the application of paragraph 34.11, dealing with the carry-over and/or liquidation of vacation leave.

UNION RESPONSE

In negotiations for the four other PSAC-Treasury Board tables, the Union agreed to the employer's proposal concerning 33.09. The Union would be prepared to potentially agree to the employer's proposal depending on the contents of an overall settlement between the parties.

ARTICLE 41
LEAVE WITHOUT PAY FOR THE CARE OF FAMILY

The Employer proposes that this article be amended to reflect the following changes submitted by the Employer:

41.02

Subject to operational requirements, an employee ~~shall~~ **may** be granted leave without pay for the care of family in accordance with the following conditions:

a. an employee shall notify the Employer in writing as far in advance as possible but not less than four (4) weeks in advance of the commencement date of such leave unless, because of urgent or unforeseeable circumstances, such notice cannot be given;
b. leave granted under this article shall be for a minimum period of **twelve (12)** ~~three (3)~~ weeks;
c. the total leave granted under this article shall not exceed five (5) years during an employee's total period of employment in the public service;
d. ~~leave granted for a period of one (1) year or less shall be scheduled in a manner which ensures c~~continued service delivery;
e. an employee who intends to take leave granted for a period of one (1) year or less during the summer leave period will submit their leave request on or before April 15, and on or before September 15 for the winter leave period.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

ARTICLE 46
BEREAVEMENT LEAVE WITH PAY

EMPLOYER PROPOSAL

46.01 For the purpose of this article, “family” is defined as per Article 2 and in addition:

a. a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee. An employee shall be entitled to bereavement leave with pay under 46.02~~1~~**1**(a) only once during the employee’s total period of employment in the public service.

UNION RESPONSE

Please see the Union’s proposal at Article 46 as it addresses the Employer’s proposal by adding this section to the definition of family per Article 2.

The Union respectfully requests that the Commission include the Union’s proposal at Article 46 proposal in its recommendation.

ARTICLE 55
STATEMENT OF DUTIES

EMPLOYER PROPOSAL

The Employer proposes that this article be amended to reflect the following changes submitted by the Employer:

55.01

Upon written request, an employee shall be provided with a**n official** ~~complete and current~~ statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. Separate agencies also made the same or similar proposals over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission’s recommendations.

ARTICLE 65
DURATION

EMPLOYER PROPOSAL

65.01 This agreement shall expire on **June 20, 2026.**

UNION RESPONSE

The Employer has not tabled a wage proposal. Please refer to the Union's wage proposal with respect to duration (p. 41).

APPENDIX C
WORKFORCE ADJUSTMENT

General

Application

This appendix applies to all **indeterminate** employees. Unless explicitly specified, the provisions contained in Parts I to VI do not apply to alternative delivery initiatives.

Collective agreement

With the exception of those provisions for which the Public Service Commission **of Canada** (~~PSC~~) is responsible, this appendix is part of this agreement.

Notwithstanding the job security article, in the event of conflict between the present Workforce Adjustment Appendix and that article, the present Workforce Adjustment Appendix will take precedence.

Objectives

It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.

To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the core public administration. Those employees for whom the deputy head cannot provide the guarantee will have access to transitional employment arrangements (as per Parts VI and VII).

Definitions

Accelerated lay-off (mise en disponibilité accélérée)

occurs when a surplus employee makes a request to the deputy head, in writing, to be laid-off at an earlier date than that originally scheduled, and the deputy head concurs. Lay-off entitlements begin on the actual date of lay-off.

Affected employee (employé-e touché)

is an indeterminate employee who has been informed in writing that ~~his or her~~ **their** services may no longer be required because of a workforce adjustment situation.

Alternation (échange de postes)

occurs when an opting employee or a surplus employee who is surplus as a result of having chosen option 6.4.1(a) who wishes to remain in the core public administration exchanges positions with a non- affected employee (the alternate) willing to leave the core public administration with a Transition Support Measure or with an education allowance.

Alternative delivery initiative (diversification des modes de prestation des services)

is the transfer of any work, undertaking or business of the core public administration to anybody or corporation that is a separate agency or that is outside the core public administration.

Appointing department or organization (ministère ou organisation d'accueil)

is a department or organization that has agreed to appoint or consider for appointment (either immediately or after retraining) a surplus or a laid-off person.

Core public administration (Administration publique centrale)

means that part of the public service in or under any department or organization, or other portion of the federal public administration specified in Schedules I and IV to the *Financial Administration Act* ~~(FAA)~~ for which the ~~PSC~~ **Public Service Commission of Canada** has the sole authority to appoint.

Deputy head (administrateur général)

has the same meaning as in the definition of "deputy head" set out in section 2 of the *Public Service Employment Act*, and also means ~~his or her~~ **their** official designate.

Education allowance (indemnité d'études)

is one of the options provided to an indeterminate employee affected by ~~normal~~ workforce adjustment for whom the deputy head cannot guarantee a reasonable job offer. The education allowance is a payment equivalent to the Transition Support Measure (see Annex B), plus a reimbursement of tuition from a recognized learning institution**,** and **of** book**s** and mandatory equipment costs, up to a maximum of seventeen thousand dollars ($17,000).

Guarantee of a reasonable job offer (garantie d'une offre d'emploi raisonnable)

is a guarantee of an offer of indeterminate employment within the core public administration provided by the deputy head to an indeterminate employee who is affected by workforce adjustment. Deputy heads will be expected to provide a guarantee of a reasonable job offer to those affected employees for whom they know or can predict that employment will be available in the core public administration.

Surplus employees in receipt of this guarantee will not have access to the options available in Part VI of this ~~A~~**a**ppendix.

Home department or organization (ministère ou organisation d'attache)

is a department or organization declaring an individual employee surplus.

Laid-off person (personne mise en disponibilité)

is a person who has been laid-off pursuant to subsection 64(1) of the ~~PSEA~~ ***Public Service Employment Act*** and who still retains an appointment priority under subsection 41(4) and section 64 of the ~~PSEA~~ ***Public Service Employment Act***.

Lay-off notice (avis de mise en disponibilité)

is a written notice of lay-off to be given to a surplus employee at least one (1) month before the scheduled lay-off date. This period is included in the surplus period.

Lay-off priority (priorité de mise en disponibilité)

a person who has been laid-off is entitled to a priority, in accordance with subsection 41(~~5~~**4**) of the ~~PSEA~~ ***Public Service Employment Act*** with respect to any position to which the ~~PSC~~ **Public Service Commission** is satisfied that the person meets the essential qualifications; the period of entitlement to this priority is ~~one (1) year~~ ~~as~~ set out in ~~section 11 of~~ the **Public Service Employment Regulations** (~~PSER~~).

Opting employee (employé-e optant)

is an indeterminate employee whose services will no longer be required because of a workforce adjustment situation, who has not received a guarantee of a reasonable job offer from the deputy head and who has ~~one hundred and twenty~~ **ninety** (~~120~~**90**) days to consider the options in section ~~6.3~~**6.4** of this appendix.

Organization (organisation)

~~A~~**a**ny board, agency, commission, or other body, specified in Schedules I and IV of the *Financial Administration Act* ~~(FAA)~~, that is not a department.

Pay (rémunération)

has the same meaning as "rate of pay" in this agreement.

Priority Information Management System (système de gestion de l'information sur les priorités)

is a system designed by the ~~PSC~~ **Public Service Commission** to facilitate appointments of individuals entitled to statutory and regulatory priorities.

Reasonable job offer (offre d'emploi raisonnable)

is an offer of indeterminate employment **to an opting employee, a surplus employee or laid off person** within the core public administration, normally at **the same group and level (or equivalent)** ~~an equivalent level~~, but which could include **one (1) group and level lower (or equivalent).** ~~lower levels.~~

Surplus employees must be both trainable and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters as defined in the *Travel Directive*. In alternative delivery situations, a reasonable offer is one that meets the criteria set out under Type 1 and Type 2 in Part VII of this ~~A~~appendix. A reasonable job offer is also an offer from a FAA Schedule V ~~E~~employer, providing that:

a. The appointment is at a rate of pay and an attainable salary maximum not less than the employee's current salary and attainable maximum that would be in effect on the date of offer.
b. It is a seamless transfer of all employee benefits including a recognition of years of service for the definition of continuous employment and accrual of

Reinstatement priority (priorité de réintégration)

is an entitlement **under the *Public Service Employment Regulations*** provided to surplus employees and laid-off persons who are appointed or deployed to a position in the ~~federal~~ **core** public administration at a lower level. ~~As per section 10 of the PSER, the entitlement lasts for one (1) year~~.

Relocation (réinstallation)

is the authorized geographic move of a surplus employee or laid-off person from one place of duty to another place of duty located beyond what, according to local custom, is a normal commuting distance.

A relocation of a surplus employee or a laid-off person, which is equal to, or reduces the usual kilometric commute (or former commute in the case of a laid-off person), using the most direct route by car from the employee's principal residence to the new place of duty, will not entitle the employee or laid-off person to relocation benefits under the National Joint Council Relocation Directive.

Relocation of a work unit (réinstallation d'une unité de travail)

Is the authorized move of a work unit of any size, to a place of duty located beyond what, according to local custom, is normal commuting distance from the former work location and ~~from the employee's current residence~~ **the new work location. Relocation benefits under the National Joint Council Relocation Directive will then be determined for each employee in the work unit based on the distance from their principal residence and the new work location.**

For greater clarity, the employee's principal residence is not their place of duty.

A relocation of a work unit which is equal to, or reduces, the usual kilometric commute using the most direct route by car from the employee's principal residence to the new place of duty will not entitle the employee to relocation benefits under the National Joint Council Relocation Directive.

Employees who work in the same work unit at different locations are eligible for the provisions under a relocation of a work unit if they meet the criteria above based on their place of duty.

Retraining (recyclage)

is on-the-job training or other training intended to enable affected employees, surplus employees and laid-off persons to qualify for known or anticipated vacancies within the core public administration.

Surplus employee (employé-e excédentaire)

is an indeterminate employee who has been formally declared surplus, in writing, by ~~his or her~~ **their**

deputy head.

Surplus priority (priorité d'employé-e excédentaire)

is an entitlement for a priority in appointment accorded in accordance with section 5 of the ***Public Service Employment Regulation*** ~~PSER~~ and pursuant to section 40 of the ~~PSEA~~ ***Public Service Employment Act***; this entitlement is provided to surplus employees to be appointed in priority to another position in the ~~federal~~ **core** public administration for which they meet the essential **qualifications** ~~requirements~~.

Surplus status (statut d'employé-e excédentaire)
~~A~~**a**n indeterminate employee has surplus status from the date ~~he or she is~~ **they are** declared surplus until the date of lay-off, until ~~he or she is~~ **they are** indeterminately appointed to another position, until ~~his or her~~ **their** surplus status is rescinded, or until the person resigns.

Transition support measure (mesure de soutien à la transition)

is one of the options provided to an opting employee for whom the deputy head cannot guarantee a reasonable job offer. The Transition Support Measure is a payment based on the employee's years of service as per Annex B.

Twelve (12) month surplus priority period in which to secure a reasonable job offer (priorité d'employé-e excédentaire d'une durée de douze (12) mois pour trouver une offre d'emploi raisonnable)

is one of the options provided to an opting employee for whom the deputy head cannot guarantee a reasonable job offer.

Work unit (unité de travail)

Is an identifiable group of employees that offers a particular service or program as defined by operational requirements determined by the organization. A deputy head may determine that a work unit may consist of an individual employee.

Workforce adjustment (réaménagement des effectifs)

is a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function, a relocation **of a work unit** in which the employee does not wish to participate, or an alternative delivery

Authorities

The ~~PSC~~ **Public Service Commission of Canada** has endorsed those portions of this ~~A~~appendix for which it has responsibility.

Monitoring

Departments or organizations shall retain central information on all cases occurring under this Appendix, including the reasons for the action; the number, occupational groups and levels of employees concerned; the dates of notice given; the number of employees placed without retraining; the number of employees retrained (including number of salary months used in such training); the levels of positions to which employees are appointed and the cost of any salary protection; and the number, types and amounts of lump sums paid to employees.

This information will be used by the Treasury Board **of Canada** Secretariat to carry out its periodic audits.

References

The primary references for the subject of workforce adjustment are as follows:

- ~~*Canada Labour Code*, Part I~~
- *Financial Administration Act*
- ~~Pay Rate Selection (Treasury Board Homepage, Organization, Human Resource Management, Compensation and Pay Administration).~~
- *Values and Ethics Code for the Public Sector* ~~*Service*, Chapter 3: Post-Employment Measures~~.
- ~~Employer regulation on promotion~~

- ~~*Policy on Termination of Employment in Alternative Delivery Situations* (Treasury Board Manual, Human Resources volume, Chapter 1-13)~~
- *Public Service Employment Act*
- *Public Service Employment Regulations*
- *Federal Public Sector Labour Relations Act*
- *Public Service Superannuation Act*
- ***Directive on Terms and Conditions of Employment***
- ~~*NJC*~~ ***National Joint Council*** *Relocation Directive*
- *Travel Directive*

Enquiries

Enquiries about this ~~A~~**a**ppendix should be referred to the Alliance or to the responsible officers in departmental or organizational headquarters.

Responsible officers in departmental or organizational headquarters may, in turn, direct questions regarding the application of this Appendix to the Senior Director, **Union Engagement and National Joint Council Support, Employee Relations and Total Compensation Sector**, ~~Excluded Groups and Administrative Policies, Labour Relations and Compensation Operations,~~ Treasury Board **of Canada** Secretariat.

Enquiries by employees pertaining to entitlements to a priority in appointment or to their status in relation to the priority appointment process should be directed to their departmental or organizational human resource advisors or to the ~~P~~**p**riority ~~A~~**a**dvisor of the ~~PSC~~ **Public Service Commission of Canada** responsible for their case.

Part I: roles and responsibilities

1.1 Departments or organizations

1.1.1 Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as public service employees.

1.1.2 Departments or organizations shall carry out effective human resource planning to minimize the impact of workforce adjustment situations on indeterminate employees, on the department or organization, and on the public service.

1.1.3 Departments or organizations shall establish joint workforce adjustment committees, where appropriate, to advise and consult on the workforce adjustment situations within the department or organization. Terms of reference of such committees shall include a process for addressing alternation requests from other

departments and organizations.

1.1.4 Departments or organizations shall, as the home department or organization, cooperate with the ~~PSC~~ **Public Service Commission of Canada** and appointing departments or organizations in joint efforts to redeploy departmental or organizational surplus employees and laid-off persons.

1.1.5 Departments or organizations shall establish systems to facilitate redeployment or retraining of their affected employees, surplus employees, and laid-off persons.

1.1.6 When a deputy head determines that the services of an employee are no longer required beyond a specified date due to lack of work or discontinuance of a function, the deputy head shall advise the employee, in writing, that ~~his or her~~ **their** services will no longer be required.

Such a communication shall also indicate if the employee:

a. is being provided with a guarantee from the deputy head that a reasonable job offer will be forthcoming**,** and that the employee will have surplus status from that date on;
or

b. is an opting employee and has access to the options set out in section 6.~~3~~**4** of this ~~A~~**a**ppendix because the employee is not in receipt of a guarantee of a reasonable job offer from the deputy head.

Where applicable, the communication should also provide the information relative to the employee's

possible lay-off date.

1.1.7 Deputy heads will be expected to provide a guarantee of a reasonable job offer for those employees subject to workforce adjustment for whom they know or can predict that employment will be available in the core public administration.

1.1.8 Where a deputy head cannot provide a guarantee of a reasonable job offer, the deputy head will provide ~~one hundred and twenty~~ **ninety** (~~120~~**90**) days to consider the three (3) options outlined in Part VI of this ~~A~~**a**ppendix to all opting employees before a decision is required of them. If the employee fails to select an option, the employee will be deemed to have selected ~~O~~**o**ption **6.4.1** (a), twelve (12) month surplus priority period in which to secure a reasonable job offer.

NEW 1.1.9 The deputy head shall review the case of every surplus employee with a guarantee of a reasonable job offer on an annual basis. Should the deputy head determine that a reasonable job offer is no longer a possibility, they may rescind the guarantee of a reasonable job offer and offer options 6.4.1 (b) or 6.4.1 (c) (i) instead.

1.1.9~~10~~ The deputy head shall make a determination to provide either a guarantee of a reasonable job offer or access to the options set out in section 6.~~3~~**4** of this ~~A~~appendix upon request by any indeterminate affected employee who can demonstrate that ~~his or her~~ **their** duties have already ceased to exist.

1.1.~~10~~11 Departments or organizations shall send written notice to the ~~PSC~~ **Public Service Commission of Canada** of an employee's surplus status, and shall send to the ~~PSC~~ **Public Service Commission of Canada** such details, forms, resumés, and other material as the ~~PSC~~ **Public Service Commission of Canada** may from time to time prescribe as necessary for it to discharge its function.

1.1.~~11~~12 Departments or organizations shall advise and consult with the Alliance representatives as completely as possible regarding any workforce adjustment situation as soon as possible after the decision has been made and throughout the process and will make available to the Alliance the name and work location of affected employees.

1.1.~~12~~13 The home department or organization shall provide the ~~PSC~~ **Public Service Commission of Canada** with a statement that it would be prepared to appoint the surplus employee to a suitable position in the department or organization commensurate with ~~his or her~~ **their** qualifications if such a position were available.

1.1.~~13~~14 Departments or organizations shall provide the employee with the official notification that he or she has become subject to a workforce adjustment and shall remind the employee that Appendix C, Workforce Adjustment, of this agreement applies.

1.1.~~14~~15 Deputy heads shall apply this ~~A~~appendix so as to keep actual involuntary lay-offs to a minimum, and a lay-off shall normally occur only when an individual has refused a reasonable job offer, is not mobile, cannot be retrained within two (2) years, or is laid-off at ~~his or her~~ **their** own request.

1.1.~~15~~16 Departments or organizations are responsible for counselling and advising their affected employees on their opportunities for finding continuing employment in the public service.

1.1.~~16~~17 Appointment of surplus employees to alternative positions with or without retraining shall normally be at a level equivalent to that previously held by the employee, but this does not preclude appointment to a lower level. Departments or organizations shall avoid appointments to a lower level except where all other avenues have been exhausted.

1.1.~~17~~18 Home departments or organizations shall appoint as many of their own surplus employees or laid-off persons as possible or identify alternative positions (both actual and anticipated) for which individuals can be retrained.

1.1.~~18~~19 Home departments or organizations shall relocate surplus employees and laid-off ~~individuals~~ **persons**, if necessary.

1.1.~~19~~20 Relocation of surplus employees or laid-off persons shall be undertaken when the individuals indicate that they are willing to relocate and relocation will enable their redeployment or reappointment, provided that:

a. there are no available priority persons, or priority persons with a higher priority, qualified and interested in the position being filled;

or

b. there are no available local surplus employees or laid-off persons who are interested and who could qualify with retraining.

1.1.~~20~~21 The cost of travelling to interviews for possible appointments and of relocation to the new location shall be borne by the employee's home department or organization. Such cost shall be consistent with the *Travel Directive* and ~~*NJC*~~ ***National Joint Council*** *Relocation Directive*.

1.1.~~21~~22 For the purposes of the ~~*NJC*~~ ***National Joint Council*** *Relocation Directive*, surplus employees and laid-off persons who relocate under this ~~A~~appendix shall be deemed to be employees on employer- requested relocations. The general rule on minimum distances for relocation applies.

1.1.~~22~~23 For the purposes of the *Travel Directive*, a laid-off person travelling to interviews for possible reappointment to the core public administration is deemed to be a "traveller" as defined in the *Travel Directive*.

1.1.~~23~~24 For the surplus and/or lay-off priority periods, home departments or organizations shall pay the salary, salary protection and/or termination costs as well as other authorized costs such as tuition, travel, relocation and retraining for surplus employees and laid-off persons, as provided for in this agreement and the various directives unless the appointing department or organization is willing to absorb these costs in whole or in part.

1.1.~~24~~25 Where a surplus employee is appointed by another department or organization to a term position, the home department or organization is responsible for the costs above for one (1) year from the date of such appointment, unless the home department or organization agree to a longer period, after which the appointing department or organization becomes the new home department or organization consistent with ~~PSC~~ **Public Service Commission of Canada** authorities.

1.1.~~25~~26 Departments or organizations shall protect the indeterminate status and surplus priority of a surplus indeterminate employee appointed to a term position under this ~~A~~appendix.

1.1.~~26~~27 Departments or organizations shall inform the ~~PSC~~ **Public Service Commission of Canada** in a timely fashion, and in a method directed by the ~~PSC~~ **Public Service Commission of Canada**, of the results of all referrals made to them under this ~~A~~appendix.

1.1.~~27~~28 Departments or organizations shall review the use of private temporary agency personnel, consultants, contractors, and their use of contracted out services, employees appointed for a specified period (terms) and all other non-indeterminate employees. Where practicable, departments or organizations shall refrain from engaging or re-engaging such temporary agency personnel, consultants or contractors, and their use of contracted out services, or renewing the employment of such employees referred to above where this will facilitate the appointment of surplus employees or laid-off persons.

1.1.~~28~~29 Nothing in the foregoing shall restrict the employer's right to engage or appoint persons to meet short-term, non-recurring requirements. Surplus **employees** and laid-off persons shall be given priority even for these short-term work opportunities.

1.1.~~29~~30 Departments or organizations may lay-off an employee at a date earlier than originally scheduled when the surplus employee so requests in writing.

1.1.~~30~~31 Departments or organizations acting as appointing departments or organizations shall cooperate with the ~~PSC~~ **Public Service Commission of Canada** and other departments or organizations in accepting, to the extent possible, affected **employees**, surplus **employees** and laid-off persons from other departments or organizations for appointment or retraining.

1.1.~~31~~32 Departments or organizations shall provide surplus employees with a lay-off notice at least one

(1)month before the proposed lay-off date if appointment efforts have been unsuccessful. A copy of this notice shall be provided to the National President of the Alliance.

1.1.~~32~~33 When a surplus employee refuses a reasonable job offer, ~~he or she~~ **they** shall be subject to lay- off one (1) month after the refusal, but not before six (6) months have elapsed since the surplus declaration date. The provisions of Annex C of this ~~A~~appendix shall continue to apply.

1.1.~~33~~34 Departments or organizations are to presume that each employee wishes to be redeployed unless the employee indicates the contrary in writing.

1.1.3435 Departments or organizations shall inform and counsel affected and surplus employees as early and as completely as possible and, in addition, shall assign a counsellor to each opting and surplus employee and laid-off person, to work with ~~him or her~~ **them** throughout the process. Such counselling is to include explanations and assistance concerning:

a. the workforce adjustment situation and its effect on that individual;

b. the Workforce Adjustment ~~A~~appendix;

c. the ~~PSC~~ **Public Service Commission of Canada's** Priority Information Management System and how it works from the **individual's** ~~employee's~~ perspective;

d. preparation of a curriculum vitae or resumé;

e. the **individual's** ~~employee's~~ rights and obligations;

f. the **individual's** ~~employee's~~ current situation (for example, pay, benefits such as severance pay and superannuation, classification, language rights, years of service);

g. alternatives that might be available to the **individual** ~~employee~~ (the alternation process, appointment, relocation, retraining, lower-level employment, term employment, retirement including the possibility of waiver of penalty if entitled to an annual allowance, Transition Support Measure, education allowance, pay in lieu of unfulfilled surplus period, resignation, accelerated lay-off);

h. the likelihood that the **individual** ~~employee~~ will be successfully appointed;

i. the meaning of a guarantee of a reasonable job offer, a twelve (12) month surplus priority period in which to secure a reasonable job offer, a Transition Support Measure and an education allowance;

j. advise **individuals** ~~employees~~ to seek out proposed alternations and submit requests for approval as soon as possible after being informed they will not be receiving a guarantee of a reasonable job offer;

k. the Human Resources **services available to the individual** ~~employee~~ **;** ~~Centres and their services (including a recommendation that the employee register with the nearest office as soon as possible);~~

l. preparation for interviews with prospective employers;

m. feedback when an **individual** ~~employee~~ is not offered a position for which ~~he or she was~~ **they were** referred;

n. repeat counselling as long as the individual is entitled to a staffing priority and

has not been appointed; ~~and~~

o. advising the **individual** ~~employee~~ that refusal of a reasonable job offer will jeopardize both chances for retraining and overall employment continuity;

p. advising **individuals** ~~employees~~ of the right to be represented by the Alliance in the application of this ~~A~~appendix.**; and**

g. the Employee Assistance Program (EAP).

1.1.~~35~~36 The home departments or organizations shall ensure that, when it is required to facilitate appointment, a retraining plan is prepared and agreed to in writing by it, the employee and the appointing department or organization.

1.1.~~36~~37 Severance pay and other benefits flowing from other clauses in this agreement are separate from and in addition to those in this ~~A~~appendix.

1.1.~~37~~38 Any surplus employee who resigns under this Appendix shall be deemed, for purposes of severance pay and retroactive remuneration, to be involuntarily laid off as of the day on which the deputy head accepts in writing the employee's resignation.

1.1.~~38~~39 The department or organization will review the status of each affected employee annually, or earlier, from the date of initial notification of affected status and determine whether the employee will remain on affected status or not.

1.1.~~39~~40 The department or organization will notify the affected employee in writing, within five (5) working days of the decision pursuant to subsection 1.1.3~~8~~**9**.

1.2 Treasury Board **of Canada** Secretariat ~~of Canada~~

1.2.1 It is the responsibility of the Treasury Board **of Canada** Secretariat to:

a. investigate and seek to resolve situations referred by the ~~PSC~~ **Public Service Commission of Canada** or other parties;

b. consider departmental or organizational requests for retraining resources; and

c. ensure that departments or organizations are provided to the extent possible with information on occupations for which there are skill shortages.

1.3 Public Service Commission of Canada

1.3.1 Within the context of workforce adjustment, and the Public Service Commission **of Canada**'s (~~PSC~~) governing legislation, it is the responsibility of the ~~PSC~~ **Public**

Service Commission of Canada to:

a. ensure that priority entitlements are respected;

b. ensure that a means exists for priority persons to be assessed against vacant positions and appointed if found qualified against the essential qualifications of the position; and

c. ensure that priority persons are provided with information on their priority entitlements.

1.3.2 The ~~PSC~~ **Public Service Commission of Canada** will, in accordance with the *Privacy Act*:

a. provide the Treasury Board **of Canada** Secretariat with information related to the
administration of priority entitlements which may reflect on departments' or organizations'

level of compliance with this **appendix** ~~directive~~,

and;

b. provide information to the ~~bargaining agents~~ **Alliance** on the numbers and status of their members in the Priority Information Management System, as well as information on the overall system.

1.3.3 The ~~PSC~~ **Public Service Commission of Canada's** roles and responsibilities flow from its governing legislation, not the collective agreement. As such, any changes made to these roles/responsibilities must be agreed upon by the **Public Service** Commission **of Canada**. For greater detail on the ~~PSC~~ **Public Service Commission of Canada's** role in administering surplus and lay-off priority entitlements, refer to Annex C of this ~~A~~**a**ppendix.

1.4 Employees

1.4.1 Employees have the right to be represented by the Alliance in the application of this ~~A~~**a**ppendix.

1.4.2 Employees who are directly affected by workforce adjustment situations and who receive a guarantee of a reasonable job offer or opt, or are deemed to have opted, for ~~O~~**o**ption **6.4.1** (a) of Part VI of this ~~A~~**a**ppendix are responsible for:

a. actively seeking alternative employment in cooperation with their departments or organizations and the ~~PSC~~ **Public Service Commission of Canada**, unless they have advised the department or organization and the ~~PSC~~ **Public Service Commission of Canada**, in writing, that they are not available for appointment;

b. seeking information about their entitlements and obligations;

c. providing timely information (including curricula vitae or resumés) to the home department or organization and to the ~~PSC~~ **Public Service Commission of Canada** to assist them in their appointment activities;

d. ensuring that they can be easily contacted by the ~~PSC~~ **Public Service Commission of Canada** and appointing departments or organizations, and attending appointments related to referrals;

e. seriously considering job opportunities presented to them (referrals within the home department or organization, referrals from the ~~PSC~~ **Public Service Commission of Canada**, and job offers made by departments or organizations), including retraining and relocation possibilities, specified period appointments and lower-level appointments.

1.4.3 Opting employees are responsible for:

a. considering the options in Part VI of this ~~A~~**a**ppendix;
b. communicating their choice of options, in writing, to their manager no later than ~~one hundred and twenty~~ **ninety** (~~120~~**90**) days after being declared opting.
c. if requesting an alternation with an unaffected employee, submitting an alternation request to management before the close of the ninety (90) day period.

Part II: official notification

2.1 Department or organization

2.1.1 As already mentioned in 1.1.1~~1~~**2**, departments or organizations shall advise and consult with the~~ bargaining agent~~ **Alliance** representatives as completely as possible regarding any workforce adjustment situation as soon as possible after the decision has been made and throughout the process, and will make available to the ~~bargaining agent~~ **Alliance** the name and work location of affected employees.

2.1.2 In any workforce adjustment situation which is likely to involve ten (10) or more indeterminate employees covered by this ~~A~~**a**ppendix, the department or organizations concerned shall notify the Treasury Board **of Canada** Secretariat ~~of Canada~~, **in writing and** in confidence, at the earliest possible date and under no circumstances less than four (4) working days before the situation is announced.

2.1.3 Prior to notifying any potentially affected employee, departments or organizations shall also notify the National President of the Alliance. Such notification is to be in writing, in confidence and at the earliest possible date and under no circumstances less than two (2) working days before any employee is notified of the workforce adjustment situation.

2.1.4 Such notification will include the identity and location of the work unit(s) involved, the expected date of the announcement, the anticipated timing of the workforce adjustment situation and the number, group and level of the employees who are likely to be affected by the decision.

Part III: relocation of a work unit

3.1 General

3.1.1 In cases where a work unit to be relocated, departments or organizations shall provide all employees whose positions are to be relocated with the opportunity to choose whether they wish to move with the position or be treated as if they were subject to a workforce adjustment situation.

3.1.2 Following written notification, employees must indicate, within a period of six (6) months, their intention to move. If the employee's intention is not to move with the relocated position, the deputy head can provide the employee with either a guarantee of a reasonable job offer or access to the options set out in section 6.4 of this ~~A~~appendix.

3.1.3 Employees relocating with their work units shall be treated in accordance with the provisions of 1.1.1~~8~~**9** to 1.1.2~~2~~**3**.

3.1.4 Although departments or organizations will endeavour to respect employee location preferences, **after consultation and review of each situation with the Treasury Board of Canada Secretariat**, nothing precludes the department or organization from offering a relocated position to an employee in receipt of a guarantee of a reasonable job offer from ~~his or her~~ **their** deputy head, after having spent as much time as operations permit looking for a reasonable job offer in the employee's location preference area.

3.1.5 Employees who are not in receipt of a guarantee of a reasonable job offer shall become opting employees and have access to the options in Part VI of this ~~A~~appendix.

Part IV: retraining

4.1 General

4.1.1 To facilitate the redeployment of ~~affected employees~~, surplus employees and laid-off persons, departments or organizations shall make every reasonable effort to retrain such persons for:

a. existing

vacancies; or

b. anticipated vacancies identified by management.

4.1.2 It is the responsibility of the employee, home department or organization and appointing department or organization to identify retraining opportunities pursuant to subsection 4.1.1.

4.1.3 When a retraining opportunity has been identified **for a position which would be deemed as a reasonable job offer at the same group and level (or equivalent) or one (1) group and level lower (or equivalent)**, the deputy head of the home department or organization shall approve up to two (2) years of retraining.

4.2 Surplus employees

4.2.1 A surplus employee is eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates; and

b. there are no other available priority persons who qualify for the position.

4.2.2 The home department or organization is responsible for ensuring that an appropriate retraining plan is prepared and is agreed to in writing by the employee and the delegated officers of the home and appointing departments or organization. The home department or organization is responsible for informing the employee in a timely fashion if a retraining proposal submitted by the employee is not approved. Upon request of the employee, feedback regarding the decision, **including the reason for not approving the retraining**, will be provided in writing.

4.2.3 Once a retraining plan has been initiated, its continuation and completion are subject to satisfactory performance by the employee. **Departments and organizations should provide the employee with regular feedback on the progress of the retraining plan.**

4.2.4 While on retraining, a surplus employee continues to be employed by the home department or organization and is entitled to be paid in accordance with ~~his or her~~ **their** current appointment unless the appointing department or organization is willing to appoint the employee indeterminately, on condition of successful completion of retraining, in which case the retraining plan shall be included in the letter of offer.

4.2.5 When a retraining plan has been approved and the surplus employee continues to be employed by the home department or organization, the proposed lay-off date shall be extended to the end of the retraining period, subject to 4.2.3.

4.2.6 An employee unsuccessful in retraining may be laid-off at the end of the surplus period if the Employer has been unsuccessful in making the employee a reasonable job offer.

4.2.7 In addition to all other rights and benefits granted pursuant to this section, a~~n~~ **surplus** employee who is guaranteed a reasonable job offer is also guaranteed, subject to the **surplus** employee's willingness to relocate, training to prepare the surplus employee for appointment to a position pursuant to 4.1.1, such training to continue for one (1) year or until the date of appointment to another position, whichever comes first. Appointment to this position is subject to successful completion of the training.

4.3 Laid-off persons

4.2.8 A laid-off person shall be eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position;

b. the individual meets the minimum requirements set out in the relevant selection standard for appointment to the group concerned;

c. there are no other available persons with priority who qualify for the position; and

d. the appointing department or organization cannot justify**, in writing,** a decision not to retrain the individual.

4.2.9 When an individual is offered an appointment conditional on successful completion of retraining, a retraining plan shall be included in the letter of offer. If the individual accepts the conditional offer, he or she will be appointed on an indeterminate basis to the full level of the position after having successfully completed training and being assessed as qualified for the position. When an individual accepts an appointment to a position with a lower maximum rate of pay than the position from which he or she was laid-off, the employee will be salary-protected in accordance with Part V.

Part V: salary protection

5.1 Lower-level position

5.1.1 Surplus employees and laid-off persons appointed to a lower-level position under this A**a**ppendix shall have their salary and pay equity equalization payments, if any, protected in accordance with the salary protection provisions of this agreement or, in the absence of such provisions, the appropriate provisions of the ~~*Regulations Respecting Pay on Reclassification or Conversion*~~ ***Directive on Terms and Conditions of Employment*** **governing reclassification or classification conversion**.

5.1.2 Employees whose salary is protected pursuant to 5.1.1 will continue to benefit from

salary protection until such time as they are appointed or deployed into a position with a maximum rate of pay that is equal to or higher than the maximum rate of pay of the position from which they were declared surplus or laid-off.

Part VI: options for employees

6.1 General

6.1.1 Deputy heads will be expected to provide a guarantee of a reasonable job offer for those affected employees for whom they know or can predict that employment will be available. A deputy head who cannot provide such a guarantee shall provide ~~his or her~~ **their** reasons in writing, if so requested by the employee. Employees in receipt of this guarantee will not have access to the choice of options below.

6.1.2 Employees who are not in receipt of a guarantee of a reasonable job offer from their deputy head have ~~one hundred and twenty~~ **ninety** (~~120~~**90**) days to consider the three options below before a decision is required of them.

6.1.3 The opting employee must choose, in writing, one (1) of the three (3) options of section 6.4 of this ~~A~~**a**ppendix within the ~~one hundred and twenty~~ **ninety** (~~120~~**90**) day window. The employee cannot change options once he or she has made a written choice.

6.1.4 If the employee fails to select an option, the employee will be deemed to have selected ~~O~~**o**ption (a), twelve (12) month surplus priority period in which to secure a reasonable job offer, at the end of the ~~one hundred and twenty~~ **ninety** (~~120~~**90**) day window.

6.1.5 If a reasonable job offer which does not require relocation is made at any time during the ~~one hundred and twenty~~ **ninety** (~~120~~**90**) day opting period and prior to the written acceptance of the Transition Support Measure (~~TSM~~) or education allowance option, the employee is ineligible for the ~~TSM~~ **Transition Support Measure**, the pay in lieu of unfulfilled surplus period or the education allowance.

6.1.6 A copy of any letter issued by the ~~Employer~~ **departments or organizations** under this part or notice of lay-off pursuant to the *Public Service Employment Act* shall be sent forthwith to the National President of the Alliance.

6.2 Voluntary departure programs

~~Departments and organizations shall establish voluntary departure programs for all workforce adjustments situations involving five or more affected employees working at the same group and level and in the same work unit. Such programs shall:~~

~~A. Be the subject of meaningful consultation through joint Union-management WFA~~

~~committees; B. Volunteer programs shall not be used to exceed reduction targets. Where reasonably possible,~~
~~departments and organizations will identify the number of positions for reduction in advance of the voluntary programs commencing;~~

~~C. Take place after affected letters have been delivered to employees;~~

~~D. Take place before the department or organization engages in the SERLO process;~~

~~E. Provide for a minimum of 30 calendar days for employees to decide whether they wish to participate;~~

~~F. Allow employees to select Options B, C(i) or C(ii);~~

~~G. Provide that when the number of volunteers is larger than the required number of positions to be eliminated, volunteers will be selected based on seniority (total years of service in the public service, whether continuous or discontinuous).~~

6.2.1 Departments and organizations may establish voluntary departure programs where:

a. Workforce reductions are required because of workforce adjustments situations involving less than five (5) affected employees working at the same group and level and in the same work unit; and

b. The deputy head cannot provide a guarantee of a reasonable job offer to the less than five (5) affected employees working at the same group and level in the same work unit.

6.2.2 Departments and organizations shall establish voluntary departure

a. Workforce reductions are required because of workforce adjustments situations involving five or more affected employees working at the same group and level and in the same work unit; and

b. the deputy head cannot provide a guarantee of a reasonable job offer to all five or more affected employees working at the same group and level in the same work unit.

6.2.3 If a voluntary program is established as per 6.2.1 or 6.2.2, such program

a. Be the subject of meaningful consultation through joint Union-management Workforce Adjustment committees;

b. Volunteer programs shall not be used to exceed reduction targets. Where reasonably possible, departments and organizations will identify the number of positions for reduction in advance of the voluntary programs commencing;

c. a. Only opting and surplus employees who are surplus as a result of having chosen ~~Option A~~ **option 6.4.1(a)** may alternate into an indeterminate position **d.** that remains in the core public administration.

e.

b. If an alternation is proposed for a surplus employee, as opposed to an opting **f.** employee, the Transition Support Measure that is available to the alternate under **g.** 6.4.1(b) or 6.4.1 (c)(i) shall be reduced by one week for each completed week between the beginning of the employee's surplus priority period and the date the alternation is proposed.

or discontinuous).

6.3 Alternation

6.3.1 All departments or organizations must participate in the alternation process.

6.3.2 An alternation occurs when an opting employee **or a surplus employee having chosen option**

6.4.1 (a) who wishes to remain in the core public administration exchanges positions with a non- affected employee (the alternate) willing to leave the core public administration under the terms of Part VI of this ~~A~~appendix.

6.3.4 An indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee **or a surplus employee having chosen option 6.4.1 (a)**. Management will decide, however, whether a proposed alternation is likely to result in retention of the skills required to meet the ongoing needs of the position and the core public administration.

6.3.5 An alternation must permanently eliminate a function or a position.

6.3.6 The opting employee **or a surplus employee having chosen option 6.4.1 (a)** moving into the unaffected position must meet the requirements of the position, including language requirements. The alternate moving into the opting position must meet the requirements of the position except if the alternate will not be

performing the duties of the position and the alternate will be struck off strength within five (5) days of the alternation.

6.3.7 An alternation should normally occur between employees at the same group and level. When the two (2) positions are not in the same group and at the same level, alternation can still occur when the positions can be considered equivalent. They are considered equivalent when the maximum rate of pay for the higher-paid position is no more than six-per-cent (6%) higher than the maximum rate of pay for the lower-paid position.

6.3.8 An alternation must occur on a given date, that is, the two (2) employees must directly exchange positions on the same day. There is no provision in alternation for a "domino" effect or for "future considerations."

For clarity, the alternation will not be denied solely as a result of untimely administrative processes.

6.4 Options

6.4.1 Only opting employees who are not in receipt of the guarantee of a reasonable job offer from the deputy head will have access to the choice of options below:

a.

i. Twelve (12) month surplus priority period in which to secure a reasonable job offer. It is time limited. Should a reasonable job offer not be made within a period of twelve (12) months, the employee will be laid-off in accordance with the *Public Service Employment Act*. Employees who choose or are deemed to have chosen this option are surplus employees.

ii. At the request of the employee, this twelve (12) month surplus priority period shall be extended by the unused portion of the ~~one hundred and twenty~~ **ninety** (~~120~~**90**) day opting period referred to in 6.1.2 which remains once the employee has selected in writing ~~O~~**o**ption **6.4.1**(a).

iii. When a surplus employee who has chosen or is deemed to have chosen ~~O~~**o**ption **6.4.1**(a) offers to resign before the end of the twelve (12) month surplus priority period, the deputy head may authorize a lump-sum payment equal to the surplus employee's regular pay for the balance of the surplus period, up to a maximum of six (6) months. The amount of the lump-sum payment for the pay in lieu cannot exceed the maximum of what he or she would have received had he or she chosen ~~O~~**o**ption **6.4.1**(b), the Transition Support Measure.

iv. Departments or organizations will make every reasonable effort to market a surplus employee within the employee's surplus period within ~~his or her~~ **their** preferred area of mobility.

or

b. Transition Support Measure (~~TSM~~) is a lump-sum payment, based on the employee's years of service in the public service (see Annex B), made to an opting employee. Employees choosing this option must resign but will be considered to be laid-off for purposes of severance pay. The ~~TSM~~ **Transition Support Measure** shall be paid in one (1) or two (2) lump-sum amounts over a maximum two (2)-year period.

or

c. Education allowance is a Transition Support Measure (see ~~O~~**o**ption **6.4.1**(b) above) plus an amount of not more than seventeen thousand dollars ($17,000) for reimbursement of receipted expenses of an opting employee for tuition from a learning institution and costs of books and relevant equipment. Employees choosing ~~O~~**o**ption **6.4.1**(c) could either:

i. resign from the core public administration but be considered to be laid-off for severance pay purposes on the date of their departure;
or

ii. delay their departure date and go on leave without pay for a maximum period of two
(2) years while attending the learning institution. The ~~TSM~~ **Transition Support Measure**
shall be paid in one (1) or two (2) lump-sum amounts over a maximum two (2)-year period. During this period, employees could continue to be public service benefit plan members and contribute both employer and employee shares to the benefits plans and the Public Service Superannuation Plan. At the end of the two (2)-year leave without pay period, unless the employee has found alternative employment in the core public administration, the employee will be laid-off in accordance with the *Public Service Employment Act*.

6.4.2 Management will establish the departure date of opting employees who choose ~~O~~**o**ption **6.4.1**(b) or ~~O~~**o**ption **6.4.1**(c) above.

6.4.3 The ~~TSM~~ **Transition Support Measure**, pay in lieu of unfulfilled surplus period, and the education allowance cannot be combined with any other payment under the Workforce Adjustment ~~A~~**a**ppendix.

6.4.4 In cases of pay in lieu of unfulfilled surplus period, ~~O~~**o**ption **6.4.1**(b) and ~~O~~**o**ption

6.4.1(c)(i), the employee relinquishes any priority rights for reappointment upon the Employer's acceptance of ~~his or her~~ **their** resignation.

6.4.5 Employees choosing ~~O~~**o**ption **6.4.1**(c)(ii) who have not provided their department or organization with a proof of registration from a learning institution twelve (12) months after starting their leave without pay period will be deemed to have resigned from the core public administration and be considered to be laid-off for purposes of severance pay.

6.4.6 All opting employees will be entitled to up to one thousand dollars ($1,000) towards counselling services in respect of their potential re-employment or retirement. Such counselling services may include financial and job placement counselling services.

6.4.7 ~~An opting employee~~ **person** who has received a ~~TSM~~ **Transition Support Measure**, pay in lieu of unfulfilled surplus period, or an education allowance, and is reappointed to the public service shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective date of such reappointment or hiring to the end of the original period for which the ~~TSM~~ **Transition Support Measure** or education allowance was paid.

6.4.8 Notwithstanding 6.4.7, an opting employee who has received an education allowance will not be required to reimburse tuition expenses and costs of books and mandatory equipment for which he or she cannot get a refund.

6.4.9 The deputy head shall ensure that pay in lieu of unfulfilled surplus period is only authorized where the employee's work can be discontinued on the resignation date and no additional costs will be incurred in having the work done in any other way during that period.

6.4.10 If a surplus employee who has chosen or is deemed to have chosen ~~O~~**o**ption **6.4.1**(a) refuses a reasonable job offer at any time during the twelve (12) month surplus priority period, the employee is ineligible for pay in lieu of unfulfilled surplus period.

6.4.11 Approval of pay in lieu of unfulfilled surplus period is at the discretion of management, but shall not be unreasonably denied.

6.5 Retention payment

6.5.1 There are three (3) situations in which an employee may be eligible to receive a retention payment. These are total facility closures, relocation of work units and alternative delivery initiatives.

6.5.2 All employees accepting retention payments must agree to leave the core public administration without priority rights.

6.5.3 An individual who has received a retention payment and, as applicable, either is

reappointed to that portion of the core public administration specified from time to time in Schedules I and IV of the *Financial Administration Act* or is hired by the new employer within the six (6) months immediately following ~~his or her~~ **their** resignation shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective date of such reappointment or hiring to the end of the original period for which the lump-sum was paid.

6.5.4 The provisions of 6.5.5 shall apply in total facility closures where public service jobs are to cease and:

a. such jobs are in remote areas of the country; or
b. retraining and relocation costs are prohibitive; or
c. prospects of reasonable alternative local employment (whether within or outside the core public administration) are poor.

6.5.5 Subject to 6.5.4, the deputy head shall pay to each employee who is asked to remain until closure of the work unit and offers a resignation from the core public administration to take effect on that closure date, a sum equivalent to six (6) months' pay payable on the day on which the departmental or organizational operation ceases, provided the employee has not separated prematurely.

6.5.6 The provisions of 6.5.7 shall apply in relocation of work units where core public administration work units:

a. are being relocated;
and
b. the deputy head of the home department or organization decides that, in comparison to other options, it is preferable that certain employees be encouraged to stay in their jobs until the day of workplace relocation;
and
c. the employee has opted not to relocate with the function.

6.5.7 Subject to 6.5.6, the deputy head shall pay to each employee who is asked to remain until the relocation of the work unit and who offers a resignation from the core public administration to take effect on the relocation date, a sum equivalent to six (6) months' pay payable on the day on which the departmental or organizational operation relocates, provided the employee has not separated prematurely.

6.5.8 The provisions of 6.5.9 shall apply in alternative delivery initiatives:

a. where the core public administration work units are affected by alternative delivery initiatives;
b. when the deputy head of the home department or organization decides that,

compared to other options, it is preferable that certain employees be encouraged to stay in their jobs until the day of the transfer to the new employer;
and

c. where the employee has not received a job offer from the new employer or has received an offer and did not accept it.

6.5.9 Subject to 6.5.8, the deputy head shall pay to each employee who is asked to remain until the transfer date and who offers a resignation from the core public administration to take effect on the transfer date, a sum equivalent to six (6) months' pay payable upon the transfer date, provided the employee has not separated prematurely.

Part VII: special provisions regarding alternative delivery initiatives

Preamble

The administration of the provisions of this part will be guided by the following principles:

a. fair and reasonable treatment of employees;
b. value for money and affordability; and
c. maximization of employment opportunities for employees.

7.1 Definitions

For the purposes of this part, an **alternative delivery initiative** (diversification des modes de prestation des services) is the transfer of any work, undertaking or business of the core public administration to any body or corporation that is a separate agency or that is outside the core public administration.

For the purposes of this part, a **reasonable job offer** (offre d'emploi raisonnable) is an offer of employment received from a new employer in the case of a Type 1 or Type 2 transitional employment arrangement, as determined in accordance with 7.2.2.

For the purposes of this part, a **termination of employment** (licenciement de l'employé-e) is the termination of employment referred to in paragraph 12(1)(f.1) of the *Financial Administration Act.*

7.2 General

Departments or organizations will, as soon as possible after the decision is made to proceed with an alternative delivery initiative (~~ADI~~), and if possible, not less than one hundred and eighty (180) days prior to the date of transfer, provide notice to the Alliance component(s) of its intention.

The notice to the Alliance component(s) will include:

a. the program being considered for ~~ADI~~ **alternative delivery initiative**;
b. the reason for the ~~ADI~~ **alternative delivery initiative**; and
c. the type of approach anticipated for the initiative.

A joint Workforce Adjustment-Alternative Delivery Initiative (WFA-ADI) committee will be created for ~~ADI~~ **alternative delivery initiative** and will have equal representation from the department or organization and the component(s). By mutual agreement, the committee may include other participants. The joint WFA-ADI committee will define the rules of conduct of the committee.

In cases of ~~ADI~~ **alternative delivery initiative**, the parties will establish a joint WFA-ADI committee to conduct meaningful consultation on the human resources issues related to the ~~ADI~~ **alternative delivery initiative** in order to provide information to the employee which will assist him or her in deciding on whether or not to accept the job offer.

1. Commercialization

In cases of commercialization where tendering will be part of the process, the members of the joint WFA-ADI committee shall make every reasonable effort to come to an agreement on the criteria related to human resources issues (for example, terms and conditions of employment, pension and health care benefits, the take-up number of employees) to be included in the request for proposal process. The committee will respect the contracting rules of the federal government.

2. Creation of a new agency

In cases of the creation of new agencies, the members of the joint WFA-ADI committee shall make every reasonable effort to agree on common recommendations related to human resources issues (for example, terms and conditions of employment, pension, and health care benefits) that should be available at the date of transfer.

3. Transfer to existing employers

In all other ~~ADI~~ **alternative delivery initiative** where an employer-employee relationship already exists, the parties will hold meaningful consultations to clarify the terms and conditions that will apply upon transfer.

In cases of commercialization and the creation of new agencies, consultation opportunities will be given to the component(s); however, in the event that agreements are not possible, the department may still proceed with the transfer.

7.2.1 The provisions of this part apply only in the case of alternative delivery initiatives and are in exception to other provisions of this appendix. Employees who are affected by alternative delivery initiatives and who receive job offers from the new employer shall be treated in accordance with the provisions of this part, and only where specifically indicated will other provisions of this appendix apply to them.

7.2.2 There are three (3) types of transitional employment arrangements resulting from alternative delivery initiatives:

a. Type 1, full continuity

Type 1 arrangements meet all of the following criteria:

i. legislated successor rights apply; specific conditions for successor rights applications will be determined by the labour legislation governing the new employer;

ii. the ~~*Public Service*~~ ***Directive on*** *Terms and Conditions of Employment* ~~*Regulations*~~, the terms of the collective agreement referred to therein and/or the applicable compensation plan will continue to apply to unrepresented and excluded employees until modified by the new employer or by the **Federal Public Sector Labour Relations and Employment Board (**FPSLREB**)** pursuant to a successor rights application;

iii. recognition of continuous employment, as defined in the ~~*Public Service*~~ ***Directive on*** *Terms and Conditions of Employment* ~~*Regulations*~~, for purposes of determining the employee's entitlements under the collective agreement continued due to the application of successor rights; iv. pension arrangements according to the Statement of Pension Principles set out in Annex A or, in cases where the test of reasonableness set out in that Statement is not met, payment of a lump-sum to employees pursuant to 7.7.3;

v. transitional employment guarantee: a two (2)-year minimum employment guarantee with the new employer;

vi. coverage in each of the following core benefits: health benefits, long-term disability insurance ~~(LTDI)~~ and dental plan;
vii. short-term disability bridging: recognition of the employee's earned but unused sick leave credits up to the maximum of the new employer's **long-term disability insurance** ~~(LTDI)~~ waiting period.

b. Type 2, substantial continuity

Type 2 arrangements meet all of the following criteria:

i. the average new hourly salary offered by the new employer (= rate of pay + equal pay adjustments + supervisory differential) for the group moving is eighty-five per cent (85%) or greater of the group's current federal hourly remuneration (= pay + equal pay adjustments + supervisory differential) when the hours of work are the same;
ii. the average annual salary of the new employer (= rate of pay + equal pay adjustments + supervisory differential) for the group moving is eighty-five per cent (85%) or greater of federal annual remuneration (= per cent or greater of federal annual remuneration (= pay + equal pay adjustments + supervisory differential) when the hours of work are different;
iii. pension arrangements according to the Statement of Pension Principles as set out in Annex A or, in cases where the test of reasonableness set out in that Statement is not met, payment of a lump-sum to employees pursuant to 7.7.3;
iv. transitional employment guarantee: employment tenure equivalent to that of the permanent workforce in receiving organizations or a two (2)-year minimum employment guarantee;
v. coverage in each area of the following core benefits: health benefits, long-term disability insurance (~~LTDI~~) and dental plan;
vi. short-term disability arrangement.

c. Type 3, lesser continuity

A Type 3 arrangement is any alternative delivery initiative that does not meet the criteria applying in Type 1 and Type 2 transitional employment arrangements.

7.2.3 For type 1 and type 2 transitional employment arrangements, the offer of employment from the new employer will be deemed to constitute a reasonable job offer for purposes of this part.

7.2.4 For type 3 transitional employment arrangements, an offer of employment from the new employer will not be deemed to constitute a reasonable job offer for purposes of this part.

7.3 Responsibilities

7.3.1 Deputy heads will be responsible for deciding, after considering the criteria set out above, which of the types applies in the case of ~~particular~~ **alternative** delivery initiatives.

7.3.2 Employees directly affected by alternative delivery initiatives are responsible for seriously considering job offers made by new employers and advising the home department or organization of their decision within the allowed period.

7.4 Notice of alternative delivery initiatives

7.4.1 Where alternative delivery initiatives are being undertaken, departments or organizations shall provide written notice to all employees offered employment by the new employer, giving them the opportunity to choose whether or not they wish to accept the offer.

7.4.2 Following written notification, employees must indicate within a period of sixty (60) days their intention to accept the employment offer, except in the case of type 3 arrangements, where home departments or organizations may specify a period shorter than sixty (60) days, but not less than thirty (30) days.

7.5 Job offers from new employers

7.5.1 Employees subject to this appendix (see ~~a~~**A**pplication) and who do not accept the reasonable job offer from the new employer in the case of type 1 or type 2 transitional employment arrangements will be given four (4) months' notice of termination of employment and their employment will be terminated at the end of that period or on a mutually agreed-upon date before the end of the four (4)- month notice period, except where the employee was unaware of the offer or incapable of indicating an acceptance of the offer.

7.5.2 The deputy head may extend the notice-of-termination period for operational reasons, but no such extended period may end later than the date of the transfer to the new employer.

7.5.3 Employees who do not accept a job offer from the new employer in the case of type 3 transitional employment arrangements may be declared opting or surplus by the deputy head in accordance with the provisions of the other parts of this appendix.

7.5.4 Employees who accept a job offer from the new employer in the case of any alternative delivery initiative will have their employment terminated on the date on

which the transfer becomes effective, or on another date that may be designated by the home department or organization for operational reasons, provided that this does not create a break in continuous service between the core public administration and the new employer.

7.6 Application of other provisions of the ~~A~~appendix

7.6.1 For greater certainty, the provisions of Part II, Official Notification, and section 6.5, Retention Payment, will apply in the case of an employee who refuses an offer of employment in the case of a type 1 or type 2 transitional employment arrangement. A payment under section 6.5 may not be combined with a payment under the other section.

7.7 Lump-sum payments and salary top-up allowances

7.7.1 Employees who are subject to this appendix (see application) and who accept the offer of employment from the new employer in the case of type 2 transitional employment arrangements will receive a sum equivalent to three (3) months' pay, payable on the day on which the departmental or organizational work or function is transferred to the new employer. The home department or organization will also pay these employees an eighteen (18) month salary top-up allowance equivalent to the difference between the remuneration applicable to their core public administration position and the salary applicable to their position with the new employer. This allowance will be paid as a lump-sum, payable on the day on which the departmental or organizational work or function is transferred to the new employer.

7.7.2 In the case of individuals who accept an offer of employment from the new employer in the case of a Type-2 arrangement and whose new hourly or annual salary falls below eighty per cent (80%) of their former federal hourly or annual remuneration, departments or organizations will pay an additional six (6) months of salary top-up allowance for a total of twenty-four (24) months under this section and 7.7.1. The salary top-up allowance equivalent to the difference between the remuneration applicable to their core public administration position and the salary applicable to their position with the new employer will be paid as a lump-sum, payable on the day on which the departmental or organizational work or function is transferred to the new employer.

7.7.3 Employees who accept the reasonable job offer from the successor employer in the case of Type-1 or Type-2 transitional employment arrangements where the

test of reasonableness referred to in the Statement of Pension Principles set out in Annex A is not met, that is, where the actuarial value (cost) of the new employer's pension arrangements is less than six decimal five per cent (6.5%) of pensionable payroll (excluding the employer's costs related to the administration of the plan), will receive a sum equivalent to three (3) months' pay, payable on the day on which the departmental or organizational work or function is transferred to the new employer.

7.7.4 Employees who accept an offer of employment from the new employer in the case of Type-3 transitional employment arrangements will receive a sum equivalent to six (6) months' pay, payable on the day on which the departmental or organizational work or function is transferred to the new employer. The home department or organization will also pay these employees a twelve (12) month salary top-up allowance equivalent to the difference between the remuneration applicable to their core public administration position and the salary applicable to their position with the new employer. The allowance will be paid as a lump sum, payable on the day on which the departmental or organizational work or function is transferred to the new employer. The total of the lump-sum payment and the salary top-up allowance provided under this section will not exceed an amount equivalent to one (1) year's pay.

7.7.5 For the purposes of 7.7.1, 7.7.2 and 7.7.4, the term "remuneration" includes and is limited to salary plus equal pay adjustments, if any, and supervisory differential, if any.

7.8 Reimbursement

7.8.1 An individual who receives a lump-sum payment and salary top-up allowance pursuant to 7.7.1, 7.7.2, 7.7.3 or 7.7.4 and who is reappointed to that portion of the core public administration specified from time to time in Schedules I and IV of the *Financial Administration Act* at any point during the period covered by the total of the lump-sum payment and salary top-up allowance, if any, shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective date of reappointment to the end of the original period covered by the total of the lump-sum payment and salary top-up allowance, if any.

7.8.2 An individual who receives a lump-sum payment pursuant to 7.6.1 and, as applicable, is either reappointed to that portion of the core public administration specified from time to time in Schedules I and IV of the *Financial Administration Act* or hired by the new employer at any point covered by the lump-sum payment, shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective

date of the reappointment or hiring to the end of the original period covered by the lump-sum payment.

7.9 Vacation leave credits and severance pay

7.9.1 Notwithstanding the provisions of this agreement concerning vacation leave, an employee who accepts a job offer pursuant to this Part may choose not to be paid for earned but unused vacation leave credits, provided that the new employer will accept these credits.

7.9.2 Notwithstanding the provisions of this agreement concerning severance pay, an employee who accepts a reasonable job offer pursuant to this Part will not be paid severance pay where successor rights apply and/or, in the case of a Type-2 transitional employment arrangement, when the new employer recognizes the employee's years of continuous employment in the public service for severance pay purposes and provides severance pay entitlements similar to the employee's severance pay entitlements at the time of the transfer. However, an employee who has a severance termination benefit entitlement under the terms of Article 63.05(b) or (c) of ~~A~~**a**ppendix L shall be paid this entitlement at the time of transfer.

7.9.3 Where:

a. the conditions set out in 7.9.2 are not met,
b. the severance provisions of this agreement are extracted from this agreement prior to the date of transfer to another non-federal public sector employer,
c. the employment of an employee is terminated pursuant to the terms of 7.5.1, or
d. the employment of an employee who accepts a job offer from the new employer in a Type-3 transitional employment arrangement is terminated on the transfer of the function to the new employer,

the employee shall be deemed, for purposes of severance pay, to be involuntarily laid-off on the day on which employment in the core public administration terminates.

Annex A: ~~s~~**S**tatement of pension principles

1. The new employer will have in place, or **His** ~~Her~~ Majesty in right of Canada will require the new employer to put in place, reasonable pension arrangements for transferring employees. ~~The test of reasonableness will be that the actuarial value (cost) of the new employer pension arrangements will be at least six decimal five per cent (6.5%) of pensionable payroll, which in the case of defined-~~

~~benefit pension plans will be as determined by the Assessment Methodology developed by Towers Perrin for the Treasury Board, dated October 7, 1997. This Assessment Methodology will apply for the duration of this collective agreement.~~ Where there is no reasonable pension arrangement in place on the transfer date or no written undertaking by the new employer to put such reasonable pension arrangement in place effective on the transfer date, subject to the approval of Parliament and a written undertaking by the new employer to pay the Employer costs, *Public Service Superannuation Act* ~~(PSSA)~~ coverage could be provided during a transitional period of up to a year.

2. Benefits in respect of service accrued to the point of transfer are to be fully protected.
3. **His** ~~Her~~ Majesty in right of Canada will seek portability arrangements between the Public Service Superannuation Plan and the pension plan of the new employer where a portability arrangement does not yet exist. ~~Furthermore, Her Majesty in right of Canada will seek authority to permit employees the option of counting their service with the new employer for vesting and benefit thresholds under the PSSA.~~
4. **Potential pension benefit reductions that would have otherwise applied to individuals who do not meet the age and service requirements for an unreduced pension under the public service pension plan, will be mitigated for eligible employees, in accordance with the *Portions of the Public service General Divestiture Regulations* (the Regulations). The Regulations provide that the duration of employment with the new employer, and an individual's age when they end their employment with the new employer, will be used to determine eligibility for an unreduced pension under the public service pension plan. The Regulations also mitigate adverse effects on pension benefits by allowing survivor benefits in situations where transferred individuals marry or enter into a common-law relationship or acquire a child while employed by the new employer.**

Annex B: Transition Support Measure (TSM)

Years of service in the public service	Transition Support Measure (TSM) (Payment in weeks' pay)
0	10
1	22
2	24
3	26
4	28
5	30
6	32
7	34
8	36
9	38

10	40
11	42
12	44
13	46
14	48
15	50
16	52
17	52
18	52
19	52
20	52
21	52
22	52
23	52
24	52
25	52
26	52
27	52
28	52
29	52
30	49
31	46
32	43
33	40
34	37
35	34
36	31
37	28
38	25
39	22
40	19
41	16
42	13
43	10
44	07
45	04

For indeterminate seasonal and part-time employees, the ~~TSM~~ **Transition Support Measure** will be pro- rated in the same manner as severance pay under the terms of this agreement. Severance pay provisions of this agreement are in addition to the ~~TSM~~ **Transition Support Measure**.

Annex C: rRole of ~~PSC~~ Public Service Commission of Canada in administering surplus and lay-off priority entitlements

1. The ~~PSC~~ **Public Service Commission of Canada** will refer surplus employees and laid-off persons to positions, in all departments, organizations and agencies governed by the PSEA, for which they are potentially qualified for the essential qualifications, unless the individuals have advised the ~~PSC~~ **Public Service Commission of Canada** and their home departments or organizations in writing that they are not available for appointment. The ~~PSC~~ **Public Service Commission of Canada** will further ensure that entitlements are respected and that priority persons are fairly and properly assessed.
2. The ~~PSC~~ **Public Service Commission of Canada**, acting in accordance with the *Privacy Act*, will provide the Treasury Board **of Canada** Secretariat with information related to the administration of priority entitlements which may reflect on departments' or organizations' and agencies' level of compliance with this **appendix** ~~directive.~~
3. The ~~PSC~~ **Public Service Commission of Canada** will provide surplus and laid-off ~~individuals~~ **persons** with information on their priority entitlements.
4. The ~~PSC~~ **Public Service Commission of Canada** will, in accordance with the *Privacy Act*, provide information to **the Alliance** ~~bargaining agents~~ on the numbers and status of their members who are in the Priority **Information Management** ~~Administration~~ System and, on a service-wide basis.
5. The ~~PSC~~ **Public Service Commission of Canada** will ensure that a reinstatement priority is given to all employees who are appointed to a position at a lower level.
6. The ~~PSC~~ **Public Service Commission of Canada** will, in accordance with the *Privacy Act*, provide information to the Employer, departments or organizations and/or **the Alliance** ~~bargaining agents~~ on referrals of surplus employees and laid-off persons in order to ensure that the priority entitlements are respected.

Public Service Commission **of Canada** "Guide to the Priority Information Management System".

UNION RESPONSE:

The Treasury Board made the same proposals at the four other PSAC bargaining tables over this cycle of negotiations. The vast majority of these proposals were withdrawn, either earlier in the bargaining process or as part of final settlements.

With respect to the employer's proposals, the Union would be prepared to replicate what the parties' agreed to at the other four tables for Workforce Adjustment, provided that the employer is prepared to address the Union's proposals concerning Reasonable Job Offer and years of service recognition.

The Union has no intention of agreeing to anything else that has been proposed by the employer here. The Employer did not require them for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require them for Border Services. The Union therefore respectfully requests that it not be included in the Board's award.

APPENDIX D
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO IMPLEMENTATION OF THE COLLECTIVE AGREEMENT

All language included in Appendix D of the collective agreement expiring on June 20, 2022 will be deleted and replaced by the following:

Notwithstanding the provisions of clause 63.03 on the calculation of retroactive payments and clause 65.02 on the collective agreement implementation period, this memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada regarding a modified approach to the calculation and administration of retroactive payments for the current round of negotiations.

1. **The effective dates for economic increases will be specified in the collective agreement. Other provisions of the collective agreement will be effective as follows:**

    a. **All components of the agreement unrelated to pay administration will come into force on signature of this agreement unless otherwise expressly stipulated.**
    b. **Changes to existing and new compensation elements such as premiums, allowances, insurance premiums and coverage and changes to overtime rates will become effective within one hundred and eighty (180) days after signature of agreement, on the date at which prospective elements of compensation increases will be implemented under 2.a).**
    c. **Payment of premiums, allowances, insurance premiums and coverage and overtime rates in the collective agreement will continue to be paid as per the previous provisions until changes come into force as stipulated in 1.b).**

2. **The collective agreement will be implemented over the following time frames:**

    a. **The prospective elements of compensation increases (such as prospective salary rate changes and other compensation elements such as premiums, allowances, changes to overtime rates) will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention.**
    b. **Retroactive amounts payable to employees will be implemented within**

one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention.

c. Prospective compensation increases and retroactive amounts that require manual processing will be implemented within four hundred and sixty (460) days after signature of this agreement.

UNION RESPONSE

As a result of settled, ratified, and signed collective agreement between the Treasury Board and other PSAC bargaining units including the PA, TC, SV, and EB groups, the FB group tabled a proposal consistent with those renewed collective agreements. Generally, the agreed to implementation appendices included, as the FB group proposal does, three parts: 1) effective dates of economic increase and other provisions; 2) implementation time frame; and 3) employee recourse. Again, for consistency across the public service.

On May 25, 2023, the Employer tabled an Appendix D proposal with respect to implementation of the collective agreement. The Employer proposal excluded provisions on employee recourse. The Union argues that a lesser entitlement, in this case no employee recourse, for the FB group than others of the Core Public Administration is not acceptable. The Union request that the Commission include its proposal—consistent with what Treasury Board has agreed to with other PSAC groups—in its recommendations. The Union has no intention of agreeing to less than what was afforded other groups.

APPENDIX J
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA IN RESPECT TO LEAVE FOR UNION BUSINESS: COST RECOVERY

The Employer proposes that this appendix be amended to reflect the following changes submitted by the Employer:

This Memorandum of Understanding (MOU) is to give effect to an agreement reached between the Treasury Board (the Employer) and the Public Service Alliance of Canada (the Union) to implement a system of cost recovery for leave for union business.

The parties agree to this MOU as a direct result of current Phoenix pay system implementation concerns related to the administration of leave without pay for union business.

~~The elements of the new system are as follows:~~

- ~~Recoverable paid leave for Union business for periods of up to 3 months of continuous leave per year;~~
- ~~Cost recovery will be based on actual salary costs during the leave period, to which a percentage of salary, agreed to by the parties, will be added;~~
- ~~The Employer will pay for all administration costs associated with the operation of this system.~~

~~The surcharge will be based on average expected costs incurred by the Employer for payroll taxes, pensions and supplementary benefits during the operation of the program as described above, calculated according to generally accepted practices.~~

~~Notwithstanding anything else in this agreement, and as an overarching principle, it will not include costs for benefits that would otherwise be paid by the Employer during an equivalent period of leave without pay. The consequences of the implementation of clause 14.14 will be cost neutral for the Employer in terms of compensation costs, and will confer neither a substantial financial benefit, nor a substantially increased cost, on the Employer.~~

As per clause 14.14 of this collective agreement, effective on date of signing:

- Leave granted to an employee under clauses 14.02, 14.09, 14.10, 14.12 and 14.13 of the collective agreement will be with pay **for a total cumulative maximum period of three (3) months per fiscal year**;
- ~~The Alliance will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by this agreement.~~

This MOU confirms the terms established by joint agreement between the Employer and the Alliance are as follows:

- It is agreed that leave with pay granted under the above-noted clauses for Alliance business will be paid for by the Employer effective on the date of signing of this collective agreement, pursuant to this MOU. The Alliance shall then compensate the Employer by remitting an amount equivalent to the actual gross salary paid for each person-day, in addition to which shall also be paid the Employer by the Alliance an amount equal to six per cent (6%) of the actual gross salary paid for each person-day, which sum represents the Employer's contribution for the benefits the employee acquired at work ~~as per the terms established in the appendices noted above~~.
- On a bimonthly basis and within one hundred and twenty (120) days of the end of the relevant period of leave, the hiring department/agency will invoice the Alliance or Component for the amount owed to them by virtue of this understanding. The amount of the gross salaries and the number of days of leave taken for each employee will be included in the statement.
- The Alliance or Component agrees to reimburse the department/agency for the invoice within sixty (60) days of the date of the invoice.

This Memorandum of Understanding expires on the expiry of the collective agreement, or upon implementation of the Next Generation Human Resources and Pay system, whichever comes first.

UNION RESPONSE

The Treasury Board made the same proposal at the four other PSAC bargaining tables over this cycle of negotiations. In negotiations for all of these other groups the Employer withdrew this concession, either earlier in the bargaining process or as part of final settlements. The Union did not agree to this concession for its other one-hundred and fifty thousand members working in the core public service. It has no intention of agreeing to it for its Border Services members. The Employer did not require it for settlement elsewhere with the PSAC. The Union sees no cogent reason whatsoever as to why it should require it for Border Services. The Union therefore respectfully requests that it not be included in the Commission's recommendations.

APPENDIX O
LETTER OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO WORKPLACE CULTURE

The Employer wishes to pursue the discussions on this matter prior to determining whether it should be renewed.

UNION RESPONSE

The Agency's first culture survey was launched on September 6 and closed on October 7, 2022. This survey examined the work culture at CBSA in-depth, and produced unprecedented insight into a wide range of issues in how we work together at the Agency. This was the first-time employees were asked to provide comprehensive quantitative feedback on the workplace culture at the CBSA since the 2019 Diagnostic and the 2020 Public Service Employee Survey.

The January 2023 CBSA Culture Focus Group Report entitled "What We Heard Report: Insights into focus groups" pointed to the following key findings:

1) Sentiments around working at the CBSA
    a. Sentiments vary among participants, but in general, tend to be more negative than positive. When asked to choose one word that describes how it feels to work at the CBSA, a number of words are shared, reflecting a range of feelings. The following word cloud captures the feelings expressed. The most common words are:
        i. Frustrating
        ii. Disappointing
        iii. Demoralizing
        iv. Proud
2) Psychological health and safety
    a. The survey results show that there are as many employees who believe that their workplace protects their psychological well-being and safety (42%) as there are who don't (42%). Among shift workers, only 20% agree that their workplace protects their psychological well-being and safety.
3) Fear of reprisal
    a. According to several participants, recurring threats and punishments of frontline staff for voicing their opinions and concerns have led to workplaces where there is a lack of trust.

b. Fear of reprisal shows up in the workplace in many ways. Among other things, participants say:
    i. they can't be their authentic selves unless they are close to retirement (e.g. comfortable sharing concerns, voicing opinions, etc.)
    ii. they could be passed up for training and acting opportunities
    iii. their shift schedules could be affected
    iv. managers react defensively to suggestions from employees
    v. when problems occur, managers protect themselves first

(Exhibit 74)

While the Employer's submission with respect to Appendix O states that it wishes to pursue the discussions on this matter prior to determining whether it should be renewed.

The Union submits there is a clear and dramatic problem with respect to workplace culture and that the Appendix must be renewed.

APPENDIX P
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO ARTICLE 41 LEAVE WITHOUT PAY FOR THE CARE OF FAMILY AND VACATION SCHEDULING

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

The parties agree to establish a joint consultation committee to discuss issues raised by the Employer concerning operational challenges associated with the scheduling of Article 41 leave in conjunction with vacation scheduling. The committee shall meet within sixty (60) days of ratification. The mandate of the committee shall be to discuss matters subject to this appendix and, where possible, provide recommendations to the parties to resolve identified problems.

This memorandum expires on **June 20, 2026.**

UNION RESPONSE:

The Employer has a dramatic concession on the table in negotiations concerning Article 41 – a concession the Union has no intention of agreeing to. As long as the employer continues to insist on the changes its proposing for Article 41 the Union sees no value in agreeing to the renewal of this Appendix.

NEW APPENDIX
MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO A JOINT REVIEW ON EMPLOYMENT EQUITY, DIVERSITY AND INCLUSION TRAINING AND INFORMAL CONFLICT MANAGEMENT SYSTEMS

This memorandum of understanding is to give effect to the agreement reached between the Treasury Board of Canada (the Employer) and the Public Service Alliance of Canada (the Alliance).

The parties recognize the importance of a public service culture that fosters employment equity, diversity and inclusion (EEDI); one where all public service employees have a sense of belonging, and where difference is embraced as a source of strength.

The parties also recognize the importance of an inclusive informal conflict resolution experience where employees feel supported, heard and respected.

To that end, the parties commit to establish a Joint Committee, **in collaboration with the EB, PA, SV and TC groups,** to be co-chaired by the Employer and the Alliance who will guide the work of the Committee. The Committee will be comprised of an equal number of representatives of the Employer and the Alliance. Both parties will endeavour to ensure that the membership of the Committee reflects the diversity of the workforce.

The Committee shall meet within thirty (30) days of the ratification of the tentative agreement to establish the terms of reference and establish the frequency of meetings. Subject to the Co-Chairs' pre- approval, subject-matter experts (SME) may be resourced by the Employer and invited to contribute to the discussions, as required. They may also consider inviting representatives from the Joint Employment Equity Committee (JEEC) of the NJC to contribute to its work.

1. The Committee will review existing training courses related to EEDI which are currently available to employees in the Core Public Administration (CPA) in order to:

    a. Create an inventory of existing training courses;

    b. Identify potential training gaps in the inventory of existing training courses and possible options to address them;

2. To ensure employees are fully aware of training opportunities available to them during their normal hours of work, the Committee will make recommendations on options to promote available EEDI training courses to employees.
3. Recognizing that the informal conflict management approach is a pillar of workplace harassment and violence prevention, the Committee will review

existing informal conflict management systems (ICMS) currently available to employees of the CPA to:

a. identify the specific needs for ICMS in departments or organizations;

b. draw from existing research and best practices with regards to ICMS that take into consideration EEDI to make recommendations on measures to improve upon ICMS in the CPA.

The parties will endeavor to finalize the review and present the work of the Committee to their principals within one (1) year. This timeline may be extended by mutual agreement.

This memorandum of understanding expires on the expiry date of this collective agreement.

UNION RESPONSE

The Union's understanding is that the parties have an agreement in principle on the Employer's Counter Proposal (Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems) to the Union's proposed New Appendix.

PART 4 - SUMMARY

With very few exceptions, what the Union is seeking in this round of negotiations are changes that have already been agreed to by the federal government for other workers in its employ, or is based on significant precedent established for persons engaged in similar occupations in the broader public sector. An early retirement scheme, a fully paid meal period, the increased vacation leave quantum, investigatory suspension and discipline-related language – all are modeled on what the Employer has already agreed to, or in the case of the RCMP, implemented on its own as a matter of policy. In the case of telework, the Union's proposals reflect principles that have been in the past been advocated by the federal government. In the case of technological change, a precedent has been set with one of the largest employers in the federal public sector.

Again, the Act states that a public interest commission must take into consideration the following when rendering its recommendation for a settlement:

- the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the public interest commission considers relevant;
- the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;
- the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and

Employees in the FB bargaining unit work in law enforcement. In addition to the Canada Border Services Act and the Customs Act, bargaining unit employees enforce over 90 acts, regulations and international agreements on behalf of federal departments, agencies, the provinces and territories[117]. They are responsible for the safety and security

[117] **CBSA Legislation, Regulations and Other Instruments:** http://www.cbsa-asfc.gc.ca/agency-agence/legislation-eng.html

of the Canadian public. The Union submits that it would be neither fair nor reasonable for these employees to be denied the same terms and conditions of employment as employees in similar occupations elsewhere in the federal public service and in the broader Canadian labour market. Employees in the FB bargaining unit lag behind their fellow Canadian law enforcement workers, and the Union submits that the on-going issues with respect to low employee morale, toxic labour relations and the surfacing of problems witnessed in a number of workplaces across the country will continue until such time as the Employer properly recognizes the work done by employees in the FB bargaining unit and the vital services that they provide the Canadian public.

This round of bargaining represents an opportunity to address these issues and rectify these problems. It is also an opportunity for the parties to put labour relations on a new, more positive trajectory. However for that to occur the Employer will need to finally address the issues raised by the Union and its membership and agree to a collective agreement that provides parity with other enforcement workers both within the federal public service and within the broader Canadian labour market.

For a great many years, the needs and concerns of these employees went unaddressed as they represented a small minority within a much larger bargaining unit. In the last four rounds of bargaining some progress was made. But terms and conditions of employment continue to lag behind. CBSA is a law enforcement agency and its employees are law enforcement personnel. The Union submits that it is time that workers in the FB bargaining unit be treated as such.

In light of these facts, the Union submits that it has fully justified the amendments proposed in the brief, and respectfully requests for their incorporation into the Commission’s recommendations.