

(Translation – original document in French)

File: 591-02-01

Binding conciliation pursuant to section 182 of the *Federal Public Sector Labour Relations Act*
(SC. 2003, c. 22, s. 22)

Treasury Board of Canada (“TB”)

(The “Employer” or the “TB”)

AND:

Association of Justice Counsel (“AJC”)

(The “Bargaining Agent” or the “AJC”)

Determination of matters still in dispute in connection with the renewal of the
2014 - 2018 collective agreement

**COMMENTS OF ME JEAN-FRANÇOIS MUNN
(Member of the Binding Conciliation Board designated by the TB)
IN RESPONSE TO THE COMMENTS OF ME PAUL CAVALLUZZO
(Member of the Binding Conciliation Board designated by the AJC)**

I am sorry that Maître Paul Cavalluzzo felt the need to make comments following Maître Serge Brault’s decision. In my view, this is consistent with the AJC’s approach before the Conciliation Board in this case. That is to say: attempting to obtain maximum monetary gains without seeking out rigorously and objectively verifiable and convincing facts. Respectfully, this is contrary to the approach that a Crown prosecutor should take in the performance of his duties and that, given the nature of the arguments raised, would have been justified in the circumstances.

As a result, it was not possible to get the parties to exchange views on the data, methodology, analysis and appropriate solutions to the problems of comparators, matching and discrepancies in order to try to arrive at a consensus. In short, there was no negotiation, but, rather, a completely sterile, inflexible and legalistic approach.

I can only hope that this does not mean that the parties will not take heed of the final observations set out in paragraph 80 of the decision:

[TRANSLATION]

[80] *“The negotiations between the parties and my task would have been more effective and transparent if the parties had had more joint tools and had shared data which both considered comprehensive and reliable. In view of their upcoming negotiations, I strongly recommend that they take steps to jointly obtain a reliable, comprehensive and non-partisan study on the overall compensation of lawyers, which study should contain complete data on the reference jurisdictions and the justification therefor.”*

In my opinion, although this is an arduous route, it is the only one that will allow the parties to arrive at mutually satisfactory and acceptable solutions, given the context.

That being said, in essence, Maître Cavalluzzo criticizes Maître Brault for not agreeing with the AJC and, more specifically, referring to his conclusion on page 14 of his comments, he claims that Maître Brault did not base his decision on the AJC’s wage study.

His comments disregard the substance of the decision and the process followed:

- The positions of the parties and their differences were accurately summarized in paragraphs 6 to 48;
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- The approach followed and the related legislative guidance were explained in paragraphs 49 to 52;
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- He reminded the parties of the guidance and instructions given to them in his interim decision dated 27/07/18:

[TRANSLATION]

[53] *“As regards this case, it is worth recalling certain guidance and instructions given to the parties in the interim decision rendered by the undersigned in this case in July 2017 in the largely vain hope of bringing the parties closer together⁷*

In a Memorandum of Understanding signed on February 28, 2017, the parties opted for a conciliation procedure pursuant to section 182 of the FPSLRA instead of adopting a conciliation/strike route.

In order to bring about conditions favourable to frank and open discussions, the parties and their representatives undertook to participate in this process in good faith, to act transparently and to actively cooperate in seeking out a negotiated solution.

⁷ Interim decision 647-17, Treasury Board and Association of Justice Counsel, Maître Serge Brault, July 27, 2017. At my request, editorial corrections were made to this decision.

The essential matters still in dispute will require substantial discussions between the parties prior to the hearings set out below.

To this end, the TB will be required to file, by August 11, 2017, a detailed, quantified and reasoned written response to the AJC's submission and to the accompanying report prepared by Salopek and Associates. This response will have to include the TB's proposals and identify the comparables that the TB considers relevant.

The AJC will be required to reply in the same manner to the employer's proposals by September 15, 2017. It will be required to ensure that its own proposals are detailed, quantified and reasoned and include the comparables it considers relevant.

Any employer or union proposal that is not unbiased and quantified and is not supported by relevant objective comparative data will be considered to have been waived.

And lastly:

(...) The parties have clearly previously been apprised of the fact that there is no "deadlock premium" and that they therefore have nothing to gain by not arriving at a negotiated solution. Finally, if a decision on the merits is rendered, it will be rendered in accordance with the usual rules applicable to such matters. (Emphasis added)"

Regrettably, just like the AJC, Maître Cavalluzzo has disregarded or failed to address the guidance and instructions. However, they are fundamental to the rest of the case.

The result is, as Maître Brault clearly stated in paragraph 54, that [TRANSLATION] "he did not have access to rigorous data that would have united both sides or would have been seen as beyond reproach or suspicion." At paragraph 55, he reminded the parties that [TRANSLATION] "the exercise must ultimately be based on sufficiently convincing elements that are plausible and hold up well.... I cannot see how rigorous negotiations carried out directly between articulate parties could lead to a result that does not have a rational basis." Paragraph 56 then set out the elements "whose relative importance is likely to vary according to the circumstances that serve to concretely outline the objective to be achieved." Maître Brault then rightly concluded that no justification for the increases sought by the AJC had been shown and he granted them the increases that over 85% of employees in the federal public sector had obtained.

Maître Cavalluzzo referred to the Salopek study filed by the AJC. However, this study and its presentation at the hearing revealed deep-seated flaws and unjustified biases, such that it is not worth the paper it was written on. Suffice it to mention the following:

- Blatant methodological biases aimed at maximizing Toronto's weight;
- An approximate, non-rigorous, undocumented and unverifiable methodology;
- Flaws in matching Ontario, British Columbia and Alberta;
- No regard to the situation of lawyers in the national capital;
- Selectively chosen comparables and manipulated results (Québec);
- Unjustified and biased weighting.

Maître Brault clearly rejected this study. He did so not out of favouritism, but rather because there were no facts justifying a conclusion that differed from the model applied to the majority of groups negotiating with the Treasury Board.

The same is true of internal equity and attraction-retention. Maître Cavalluzzo would like the effects of these factors to be minimized, because the facts do not favour the AJC's position; this is not a valid approach and he cannot reproach Maître Brault for having exercised his jurisdiction entirely correctly.

As for the compensatory leaves and points 3 (weekends and holidays) and 5 (travelling time), Maître Brault used very restrained language. These were essentially monetary demands whose value Maître Cavalluzzo was careful not to mention, but which were rightly set aside because their purpose was to indirectly increase wages, without justification and, above all, without regard to the sources of their existence.

Lastly, the decision on performance pay stemmed from the AJC's legalistic approach, which did not favour sound and transparent negotiations between the parties. However, some time has now passed, such that the parties are already in negotiations and are therefore able to resume discussions on this topic.

I therefore consider the decision to be well founded.

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