

COLLECTIVE BARGAINING UPDATE NO. 1

General

A year has passed since we first served Notice to Bargain and it has almost been a year since the FS Collective Agreement expired June 30, 2007. Progress at the bargaining table has been moving at a snail's pace, which appears to be the case for other groups as well. The exception to this would be the Financial Officers, who recently ratified (May 30, 2008) a 2-year tentative agreement, which involved salary increases of 2.3 % in each of the 2 years, plus a \$ 500.00 signing bonus. PAFSO does not expect an easy round of negotiations this time, because economic increases are only a small part of resolving the pay anomalies that continue to exist in the FS group. The following examples illustrate the complexity of this round of negotiations.

1. The FS-2 rates of pay are completely out of harmonization with other groups at headquarters that do almost identical work, this issue needs to be addressed.
2. The new FS standard was not built on a comparison with other public service positions, as was the UCS standard. This means working abroad, a major difference between the FS group and the vast majority of other public service groups, is not a factor rated or compensated in the new FS Standard.
3. The new FS classification standard does not recognize the need, ability or necessity for an employee to speak a foreign language to do their job in some foreign assignments. In other words, the requirement to speak a foreign language is currently a non-compensable factor in the performance of the duties of their position.
4. The new FS classification plan has created far fewer employment opportunities within this group. This will result in large numbers of FS-2 level employees waiting excessively long for employment opportunities at the FS-3 level. PAFSO warned of this result and proposed a 3-level structure but that proposal fell on deaf ears. In our view the difference between FS-1 and FS-2 positions are artificial and exist only to accommodate the FSDP program. The department should be concerned with this especially if the FS-2 level employees, (after spending 3 long years in a questionable development program) will have to wait another 5 to 7 years for a vacancy at the FS-3 level. How many of these fully trained professionals can they expect to remain in the FS group if promotion to the next level is blocked? When there was only a 2-level system, and prior to the introduction of the FSDP, on average FS-1 level employees waited 8 years before they were promoted to the FS-2 level. This situation created a severe retention issue for the department because many of the FS1 level employees didn't wait the 8 years and left the FS group. We expect the same thing to happen with the current FS-2 level employees unless the departments address this issue.
5. The new FS classification standard was also intended to provide an alternative career path to the EX level, by creating specialist positions. The FS-4 level positions were intended to be equal to the EX-1 level positions. In order to recognize this the FS-4 level positions will need pay adjustments that exceed a 2.3% increase. We intend to address these, as well as other monetary issues, when we present our pay proposal.

Current Round of Bargaining - An Update

To date the parties have been scheduled to meet 12 days. We are still addressing the non-monetary parts of one another's proposals involving the first 8 articles in the Collective Agreement. The following is a summary of the rationale for our proposals on those articles and where they stand as of June 2, 2008.

Article 1 Preamble

1.03 Amend to read:

The Employer will retain all the functions, rights, powers and authority not specifically abridged or modified by this Agreement. **In exercising these functions, rights, powers and authority it will do so in a fair and reasonable manner without discrimination.**

PAFSO's proposal is intended to clarify what is referred to as the "Management's rights clause" in most Collective Agreements. PAFSO proposed that, when exercising its rights, the employer does so in a fair and reasonable manner without discrimination. The Treasury Board has resisted placing this language in the Collective Agreement, but has said it tries to exercise its rights in that way - but is not prepared to write this language into the Collective Agreement as it does not want to fetter its rights. After the 3rd meeting where this was discussed, PAFSO reluctantly withdrew its proposal.

New Article Past Practices

.01 Where this Agreement is silent on working conditions, the conditions existing immediately prior to the date of this Agreement shall continue to apply provided that:

(a) they are not inconsistent with the Agreement;

(b) they are reasonable, certain and known;

(c) they may be included in this Agreement in accordance with the Public Service Staff Relations Act;

and

(d) they are carried out in a fair and equitable manner.

.02 The onus of establishing an existing practice within the meaning of __.01 shall rest on the party who alleges the existence of same.

The language PAFSO is proposing was taken from the University Teachers Agreement. The language is intended to address a potential problem that could arise during the life of the collective agreement. This proposal was withdrawn on the basis that if there was a known practice and the employer attempted to alter it, the principle of estoppel would apply and the department would be prevented from doing so without first giving PAFSO enough notice of the change in practice that it could be addressed in

negotiations.

New Article Recognition

PAFSO Proposal

- .01 The Employer recognizes the Professional Association of Foreign Service Officers as the exclusive bargaining agent for all employees described in the certificate issued by the former Public Service Staff Relations Board on May 10, 1999 covering employees in the Foreign Service Group described as follows:

Foreign Service (FS) Group Definition

The Foreign Service Group comprises positions that are primarily involved in the planning, development, delivery and promotion of Canada's diplomatic, commercial, human rights, cultural, promotional and international development policies and interests in other countries and in international organizations through the career rotational foreign service.

Inclusions

Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one or more of the following activities:

1. *commercial and economic relations and trade policy* - the planning, development, delivery or management of policies, programs, services or other activities directed at Canada's economic or trade relations with foreign countries, including the development, promotion or strengthening of Canada's economic or trade interests in bilateral or multilateral forums;
2. *political and economic relations* - the planning, development, delivery or management of policies, programs, services or other activities directed at Canada's political relationships with foreign countries;
3. *Immigration affairs* - the delivery or management of immigration policies, programs, services or other activities in support of the Canadian immigration program abroad;
4. *legal affairs* - the provision of legal advice to the federal government on Canada's international rights and obligations; the interpretation and application of international legal obligations; the negotiation of various bilateral and multilateral agreements, treaties and conventions; and the defence of Canada's position respecting those obligations and agreements including dispute settlement;
5. *Communications and culture* - the planning, development, delivery or management of communications and cultural policies, programs, services or other activities in Canada and abroad to promote Canada's foreign service role to Canadians and to promote Canada in the world; and
6. The provision of related advice.

Also included are positions occupied by members of the group on assignments in Canada.

The FS group is one of the only groups in the Public Service that does not have an article referring to the bargaining certificate in the collective agreement.

The parties have agreed to insert a new Recognition Article into the collective agreement to read as follows:

- .01 The Employer recognizes the Professional Association of Foreign Service Officers as the exclusive bargaining agent for all employees described in the certificate issued by the former Public Service Staff Relations Board on May 10, 1999 covering employees in the Foreign Service Group .

Article 2 Interpretation and Definitions

PAFSO Proposal

2.01 Continuous employment / Continuous service

Amend to read:

has the same meaning as specified in the Public Service Terms and Conditions of Employment Regulations. Notwithstanding this reference continuous employment/service also includes:

- (i) previous employment with federal agencies recognized under the Canada Labour Code,
- (ii) previous employment in the public service as described in the Public Service Superannuation Act (PSSA) in schedule,
- (iii) the time spent on official language training for employees who were recruited into the Foreign Service through an external recruitment process, and
- (iii) all continuous employment-service previously recognized by the employer.

The intent of the PAFSO proposal is to broaden the definition of continuous employment/service to recognize the service of all of the employees where Her Majesty the Queen is the recognized employer and not just the Treasury Board Secretariat (TBS) or the core Public Administration. The second part of this proposal is to recognize the time spent on Ab Initio status as part of continuous service assuming the Ab Initio candidate was successful and was appointed to the FS group.

The rationale for the first proposals was to support the government's initiative on public service renewal. If the government truly wants to attract the best and the brightest to the core public administration it could start by recognizing past service with other crown employers. For example, if someone with ten years' service is recruited from a crown agency like the CBC or a civilian member of the RCMP, the employee's continuous service date for benefits under the collective agreement would not recognize the ten years the employee spent with these organizations. From our perspective this presents a disincentive to the person seeking a career in the core public administration.

The second proposal is intended to address an anomaly between the recruitment date and the appointment date for FS candidates required to take official language training. In our view if the candidate successfully completes official language training the time spent on this training should count towards pensionable service and for continuous service for all purposes under the FS collective agreement. This issue remains outstanding.

PAFSO Proposal

Overtime

(A) Amend to read:

In the case of a full-time employee, authorized work performed in excess of the employee's daily or weekly hours of work prescribed in this collective agreement.

The intent of this proposal was to clarify the current language to ensure that overtime is paid after 7.5 hours per day or for working more than 5 consecutive days in a row or for working more than 37.5 hours per week.

The parties have agreed to this change.

TBS Proposal

The TBS tabled a proposal to deal with overtime as it related to part-time employees. The thrust of its proposal was intended to clarify the overtime entitlement for part-time employees who had more than one part-time position. The TBS withdrew its proposal when it realized that its employees who may occupy part-time positions in the FS group would not occupy more than one position.

PAFSO Proposal

NEW - Deployment

For the purpose of the FS group, deployment means the transfer of an employee from his/her substantive position to a pool of positions in the rotational foreign service at a level within the FS group.

PAFSO has also tabled a separate article on Deployments.

The TBS reaction was that deployment relates to staffing which cannot be negotiated in a collective agreement. PAFSO's position is that a deployment does not result in an "appointment" under the *Public Service Employment Act* (PSEA), and therefore we are able to negotiate the principles of when the department can utilize a deployment process. We pointed out that the Deployment policy until the **new** PSEA was introduced in 2005 was under the purview of the TBS. It has since found a new home with the Canada Public Service Agency (CPSA). In our view the content of this policy is subject to negotiations. The parties have agreed to discuss this matter further when our New Article on deployments is discussed.

PAFSO Proposal

NEW (2.01)

“Family” means father, mother, (or alternatively stepfather, stepmother, or foster parent), brother, sister, spouse (including common-law partner, child (including child of common-law partner), foster child, stepchild or ward of the employee, grandchild, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law and relative permanently residing in the employee’s household or with whom the employee permanently resides.

(Remove definitions of family contained in Bereavement Leave, Leave Without Pay for the Care of Immediate Family (25.02) and Family Related Leave articles (26.01). Amend all references in the collective agreement to “immediate family” to read “family”.

PAFSO’s proposal is intended to combine the different definitions of family that currently exist in the collective agreement at Article 25 Leave Without Pay for the Care of Immediate Family 25.02, Article 26 Leave With pay for Family-Related Responsibilities and Article 30 Bereavement Leave with Pay.

The parties have agreed to leave the existing definitions of family in the respective articles with the following amendment:

- remove the requirement that the common-law partner must be “resident with the employee”.

PAFSO continues to hold an amended position with respect to the definition of family in the Bereavement Leave article. PAFSO’s amended proposal would include a “person and/or relative permanently residing in the employee’s household or with whom the employee permanently resides”. The intent of our proposal is to recognize that employees may live with another person who is not a relative or a common-law partner but who is nonetheless a significant person in the life of the employee. PAFSO did indicate in our discussions with the TBS that we were prepared to amend our proposal to offset the employer’s concern that the language as written has no qualifiers as to how long the person had to live with the employee before the employee would be eligible for the leave entitlement.

PAFSO pointed out that the proposal addresses bereavement leave and, in our estimation, the usage of this entitlement would be minimal and of little cost to the employer. The proposal will be discussed further when we look at the Bereavement Leave Article.

Article 3 Check-off

3.01 Amend to read:

Subject to the provisions of this Article, the Employer will, as a condition of employment, deduct an amount equal to the membership dues from the monthly pay of all employees in the bargaining unit or persons assigned to bargaining unit positions.

PAFSO’s proposal relates to keeping track of employees who are “assigned to FS positions”. We are referring to non-FS employees who accept “single assignments” abroad or in headquarters. Our interest is to ensure that these employees pay the PAFSO dues for the duration of these assignments and to avoid overpayments.

The TBS has proposals on this Article as well. The parties have agreed to “park” the respective proposals pending the outcome of the discussions on a joint union dues policy currently being discussed with all of the bargaining agents through the National Joint Council (NJC).

Article 5 Information

PAFSO Proposal

5.01 Amend to read:

The Employer and employing departments agree to supply the Association each month with the name, geographic location, the classification and level of every employee who enters or leaves the bargaining unit and in the case of the employees who leave, the reason for leaving.

The employing departments agree to supply the Association each month with any classification decisions including the rationale for the decision that results in additions or deletions to the bargaining unit, or a change to an existing classification level.

PAFSO’s proposal was directed at two (2) areas of concern: (1) keeping track of employees who left the FS group and the reason for leaving and (2) understanding the rationale for a classification decision that results in a FS position being converted to another occupational group. With regard to the first issue PAFSO noted that despite increased recruitment since the early 2000s, the size of the FS group has not increased. By way of comparison we noted that there is anecdotal evidence to suggest both the CO and ES groups have grown substantially in DFAIT.

We also noted that a number of FS positions at DFAIT have been converted to other occupational groups and PAFSO was not informed or given the rationale for these classification decisions.

The TBS negotiator suggested it would be difficult to track employees who leave the FS group but remain within the public service. However, he promised to look at this further and asked both DFAIT and CIC to see if they had the information requested. CIC came back the next day with the information requested though for permanent employees only. For example from 2000-2008, CIC hired 180 FS and during this same period 101 FS left. The 101 who left, did so for the following reasons:

- 16 resigned
- 24 resigned but stayed within the public service
- 9 transferred to DFAIT as FS
- 5 failed language training
- 37 retired
- 5 rejected on probation
- 2 Ab Initio resigned
- 3 died

What the CIC stats do not reveal is that approximately 25% of the CIC work force overseas is made up of single assignments because of a chronic shortage of FS officers in the department. Increased recruitment has not closed the gap. DFAIT has not provided the information requested but is looking into it. The TBS cautioned that while it was endeavouring to provide us with this information it was on an ad hoc basis.

However, the TBS does not wish to write specific language in the collective agreement. PAFSO has since amended its proposal to read:

5.01

The Employer agrees to supply the Association each month with the name, geographic location and classification level of each employee who enters or leaves the bargaining unit. The departments shall endeavour to provide, in the case of an employee who leaves the FS group, the reason for the employee leaving.

With regard to the second issue identified with this proposal, PAFSO expressed a concern with the growing number of FS positions that are being converted to other occupational groups. PAFSO has not been advised by the department when these classification decisions are made nor have we been given the rationale for these decisions. We noted in the Trade Divisions there are over 250 positions, a good number of which were converted from the FS group to either CO or ES positions. However, the only difference in the job package appears to be the absence of the word “rotational”. PAFSO believes the vast majority of these positions should be classified in the FS group, but in the absence of the rationale for the classification decision, PAFSO is unable to review these decisions. In our view, this has created an uneven playing field. Further, the balance required to effectively operate a rotational foreign service is no longer in place as returning FS officers are unable to rotate into a good number of headquarters positions because they are occupied by non FS who effectively own these positions. On the other hand the non FS officers are being considered for assignments abroad together with the rotational FS officers. In our view this acts as a disincentive for FS officers to remain in the FS group. After some discussion on this issue, PAFSO continues to hold to our position on this issue pointing out that we see this as a very important issue that needs to be addressed.

TBS proposal

The TBS had proposed to delete its requirement to produce a hard copy of the FS Collective Agreement and, instead, give each employee access to an electronic version.

The employer did not provide the cost savings for such a proposal for our group or the broader cost savings should they be successful in accomplishing this with all groups in the public service.

PAFSO was not in favour of this proposal and after some discussion the TBS withdrew its proposal.

Article 7 Suspension and Discipline

PAFSO proposal

7.01 Amend to read:

7.01 An employee who is required to attend a meeting, the purpose of which is to conduct a disciplinary investigation or to render disciplinary decision shall:

(A) be advised by the employer representative that the employee has a right to have a representative of the Association present at the meeting.

(B) at the employee's request have a representative of the Association attend the meeting to advise the employee, when the representative is readily available.

(C) whenever possible give the employee two days' written notice of such a meeting and its purpose.

7.02 Amend to read:

Whenever the deputy head exercises his/her authority under section 12(1)(c) (d) or (e) of the Financial Administration Act, the Deputy Minister shall notify the employee affected in writing of the decision taken together with the reason(s) for it. A copy of this letter will be forwarded to the Executive Director of the Association.

7.04 The employer agrees not to introduce as evidence in a hearing related to the matters described in clause 7.02 any document from the file of an employee, the existence of which the employee was not aware at the time of filing or within a reasonable period thereafter.

7.05 Renew

7.06 Subject to the Access to Information and Privacy Act, the Employer shall provide the employee with access (and copies if requested by the employee) to the information used during an investigation leading up to a decision taken by the Deputy Minister described at clause 7.02

New .07 An employee may be disciplined only for just and reasonable cause.

New .08 Investigations of matters which may give rise to disciplinary action shall be initiated within thirty (30) days of the date on which the Employer knew or ought to have known of such matters, and shall be carried out expeditiously. Any disciplinary action shall be imposed within thirty (30) days of the date the Employer completes its investigation of the matter-giving rise to the discipline.

New .09 An employee may not be suspended pending the investigation unless the employer has reasonable cause to believe the employees continued presence at the work place would create a safety or security concern.

PAFSO's proposal was directed at a number of issues it had with the existing Article. We wanted to:

- clarify that an employee is entitled to PAFSO representation if an employee is either under investigation or required to attend a meeting where a disciplinary decision is to be rendered;
- confirm that the employer is responsible for advising the employee of their right to representation;
- confirm that the employee representative is there in an advisory capacity and has the right to participate in the investigation stage of the process;
- provide for two days' written notice of these meetings and their purpose;
- amend the article to ensure that employees who are suspended or terminated for cause including poor work performance are given the reasons for the decision in the letter informing them of the decision;

- amend the Article to ensure that in the above cases there are “no surprises”. When it comes to supporting the decision, including those that concern poor work performance, the employer would be prohibited from using documents at a hearing from the employee’s file that the employee was not aware of at the time of filing or within a reasonable period thereafter;
- reflect in the collective agreement what is provided for in the Financial Administration Act - the concept that discipline can only be imposed for just and reasonable cause
- reflect in the collective agreement the accepted staff relations practice that disciplinary decisions must be taken within a reasonable period of time; and
- limit suspensions pending investigations to situations where the employee’s continued presence at the work place would create a safety, security or health concern.

TBS Proposal

Article 7

The TBS tabled a proposal to amend the current clause 7.05 which concerns documents related to discipline being destroyed after two (2) years provided no further disciplinary action was taken. It is proposing to extend their 2-year probationary period by the amount of time an employee would be away from work on leave without pay. Its rationale, as it was explained to us, was to prevent employees from utilizing the leave without pay provisions to avoid further disciplinary action being taken against them while the employee was on probation. (PAFSO views the 2-year period referred to in the Collective Agreement as a probationary period.) PAFSO has asked for examples of where this may have happened in the FS group. But more importantly the employer’s proposal talks about any period of leave without pay which could be as short as a day or as long as five (5) years. Its proposal is targeted at employees who would deliberately use the LWOP provision to circumvent the 2-year probation period to clear a disciplinary decision from their file. We don’t see this happening but if it were to happen it would be seldom. We are also concerned that if we were to agree to this in this round of negotiations, in the next round the TBS would propose to include all periods of “leave with pay” to warrant an extension of the 2-year probationary period. PAFSO is not interested in journeying down this road and besides the 2-year probationary period is already excessive, one year would make more sense. In our view if an employee has been disciplined and does not become a repeat offender within a year of the infraction, the record should be destroyed.

The parties expect to reach a consensus on Article 7 when the parties next meet.

Article 8 Grievance Procedure

PAFSO proposal

8.02 Amend to read:

Subject to and as provided in Section 208 of the *Public Service Labour Relations Act* (PSLRA), an employee who feels that he has been treated unjustly or considers himself aggrieved by any action or lack of action by the Employer in matters other than those arising from the classification process is entitled to present a grievance in the manner presented in clause 8.05 except that:

(A) Unless the parties agree otherwise, where there is another administrative procedure provided by or under any Act of parliament to deal with the employees specific complaint, such procedure must be followed,
and
(B) Renew

8.03 Add (d)

(d) where the grievance relates to the interpretation or application of this Agreement or an Arbitral Award the grievance will be presented at the final level.

8.13 Renew - amend to provide 20 days (currently 30 days)

8.19 New sub-clause

Notwithstanding clause 8.03 (c)

The Deputy Head cannot appoint a representative to hear the grievance and to render a decision and the twenty (20) day time limit within which the Employer is to reply at the final step may be extended to a maximum of forty (40) days by mutual agreement of the Employer and the appropriate representative of the Association.

8.21 Amend to read:

When an employee fails to present a grievance to the next higher level within the prescribed time limits, the employer will confirm in writing that the employee no longer wishes to pursue the grievance.

Discussion

PAFSO proposal

There was an extensive discussion on both the PAFSO and TBS proposals on this Article.

The first PAFSO proposal was intended to modify the existing clause 8.02 by inserting the words “unless otherwise agreed” in cases where there is another administration procedure for redress to address employee complaints. This proposal was withdrawn because the parties are not free to opt out of procedures provided for in other legislation - most notably the Public Service Staffing Tribunal.

PAFSO had also proposed to amend clause 8.03 by adding a new sub clause. PAFSO suggested it was a waste of good resources to hear grievances at the first level of the grievance process that concerned the interpretation or application of the collective agreement when the department had solicited and received an interpretation from the TBS. In our view, grievances that arise as a result of the TBS interpretation, should be presented at the final level of the grievance procedure. A manager below this level would not have the authority to alter the TBS interpretation. The TBS response saw a difference between grievances that concern an interpretation as opposed to an application of the collective agreement. However, it is reluctant to change the current language.

PAFSO also proposed to shorten the time it takes to receive a final level response from the employer from 30 to 20 days (clause 8.13) and cited the ES collective agreement where the change was made as support. The TBS acknowledged that this change was made to the ES collective agreement but is reluctant to expand this to other collective agreements.

PAFSO also has a proposal to require the Deputy Head to hear grievances relating to termination of employment as opposed to delegating this responsibility to other levels of management. We also recognized that this may require more time to make a decision and proposed to extend the time limit to 40 (forty) days in these cases. This change was made in the ES collective agreement in the last round.

Our last proposal on the grievance procedure concerned clause 8.21. This clause addresses the situation where the employee has not presented their grievance to the next highest level within the time lines provided for in the collective agreement. PAFSO noted that there is a procedure that would allow the Public Service Labour Relations Board to extend the time limits in these situations. However, it would be a better investment of time if the employee was asked for an 'expression of interest' prior to the department declaring that the employee had abandoned their grievance. The TBS noted that the parties can also agree to extensions of time and the employee had some responsibility to ensure that their grievance was moved to the next highest level. It didn't see the employer having a role in this process other than to consider extensions of time when a request was made.

TBS proposal

The TBS proposals were the same proposals it has tabled for all groups in the core public administration. The proposal is intended to write a process for group grievances and policy grievances into the collective agreement. PAFSO is not opposed to the principle of doing this but wants to ensure the wording reflects the changes made to the PSLRA in that regard. We also see a need to identify the process for dealing with grievances that concern the NJC Directives in particular grievances that concern the FSDs.

The parties are close to an agreement on this article.

The next meetings are scheduled for June 23, 24 and 25.

During these meetings we expect to continue discussions on the non-monetary aspects of our proposals.