

INTRODUCTION

The Canadian Merchant Service Guild (hereinafter referred to as the “Guild”) has represented the Ships’ Officers employed by the Federal Government since 1969. The majority of the Ships’ Officers in the bargaining unit serve on Canadian Coast Guard vessels, while a smaller portion serve on certain vessels of the Department of National Defence (DND).

The Treasury Board and the Guild have already agreed to two items of the Treasury Board’s proposals for this collective agreement on 6th and 7th July 2011, namely regarding Article 23.02 (a) (b) and Appendix “I” Article 20.

HISTORY OF BARGAINING

The collective agreement between the Guild and the Treasury Board for the Ships’ Officers group expired on 31st March 2011. Notice to bargain was given by the Guild to the Treasury Board on 15th March 2011.

In this round of bargaining, the Guild focussed on achieving equity and fairness with respect to the working terms and conditions in the collective agreement especially as compared to the Ships’ Crews represented by the Public Service Alliance of Canada (PSAC). The Guild takes the position that as a result of past collective bargaining history, significant inequities exist between the two bargaining groups as well as in relation to Officers employed in comparable systems in the private sector.

The Treasury Board tabled proposals demanding that the Guild give up long-standing retirement and other severance benefits together with a fixed set of proposals regarding economic increases. The Treasury Board also proposed a number of language changes on long established articles and sought further take-aways for certain types of paid leave and vacation.

The parties exchanged proposals on May 12th 2011 and subsequently engaged in eight (8) days of direct bargaining in July and September of 2011. The mediation services of the Public Service Labour Relations Board (PSLRB) were engaged from February 7th-9th 2012 and the Guild filed a request for arbitration on March 26th 2012. (See **Tab 2** of the Guild’s Brief.)

In the end, the parties were only able to agree on two inconsequential issues, both of which were proposed by the Treasury Board. The first was a change to the definition of bereavement leave and the second was a housekeeping item deleting reference to a past entitlement that had already been removed by a 2008 arbitral award.

GUILD ISSUES IN DISPUTE

Check Off	Article 10.06 Guild proposes that particulars identifying each Officer, as required by 10.06, be in accordance with Article 13.01
Information	Article 13.01 Guild proposes that information be provided in alphabetic order with the Officer’s full name, and the employer should notify the Guild on a monthly basis of overall status of officers recently hired, resigned etc.

Dirty Work Allowance	Article 40.01 Guild proposes Officers should receive an additional ½ of their straight time rate for every 15 minute period or part thereof worked.
Duration and Renewal	Article 43.02 Guild proposes all benefits and monetary items, including all allowances, be effective retroactive to April 1 2011.
Lay Day Operational Crewing System	Appendix H-Lay Days General -Guild proposes officers earn 1.17 lay days in addition to the Officer's Lay Day rate of pay.
Forty Hour Work Week System	Appendix K-Article 30-Hours of Work and Overtime -Guild proposes an Officer is entitled to compensation at double time for all overtime worked by them on their second or subsequent day of rest, provided the days of rest are consecutive.
Wages and Allowance	Guild proposes 2.9% increase in all wages scales and allowances in each year of 3 year term.

EMPLOYER ISSUES IN DISPUTE

In its original response of April 3rd 2012 to the Guild's request for arbitration, the Employer had proposals regarding 23.18(b)(iv) and Appendix "E" - Canadian Coast Guard Office Cadets Clause 1. In a letter of 27th November 2012, the Employer informed the PSLRB and the arbitration Board that it would be withdrawing these two proposals from the arbitration. The remaining Employer issues in dispute are therefore as follows:

Check Off	Article 10.04
Information for Officers	Article 14.01
Vacation leave with Pay	Article 20.02 and 20.03
Severance Pay	Article 29
Hours of Work and Overtime	Article 30.05
Duration and Renewal	Article 43
Averaging System Forty-Two (42) Hours	Article 22 (Sick Leave with Pay)
On-Call System-Average Forty-Six Point Six (46.6) hours	Preamble
Forty (40) Hour Work Week System	Article 30-Hours of Work
SO-Ship's Officer Group Annual Rates of Pay	Appendix A

THE BARGAINING UNIT

This collective agreement between the Treasury Board and the Canadian Merchant Service Guild governs Ships' Officers employed by the federal government. Approximately eighty-five percent (85%) are employed as Officers by the Canadian Coast Guard, which has been a Special Operating Agency within the Department of Fisheries and Oceans (DFO) since 2005. The rest work as Officers on certain ships under the Department of National Defence (DND) in the Canadian Naval Auxiliary fleet. In this government fleet, the Guild represents approximately eleven hundred (1100) Ships' Officers. During gales and storms when other vessels are hove-to or seeking refuge in ports, it is the ships and boats of this government fleet that are sent to save lives and provide urgent assistance to ships and seafarers in distress.

The DND Naval Auxiliary vessels provide support at sea and in port to the Canadian Forces and Canada's NATO allies. These Auxiliary vessels include harbour tugs, coastal tugs, floating cranes, a large ocean-going research ship, torpedo recovery vessels, a submarine range patrol vessel, floating plants for degaussing and fuelling operations and two fire-fighting tugs. These units are home-ported in Halifax and Victoria and Nanoose, B.C.

The Canadian Coast Guard is responsible for protecting Canadian Coastal Waters and provides a wide variety of services including search and rescue, environmental response, ice breaking, buoy-tending, offshore fisheries patrols, hydrographic surveying and oceanographic research, marine security operations, marine navigation services, marine communications and traffic services and navigable waters protection. Guild members in the "Instructor Group" (INS) are employed as instructors of Nautical Science and Marine Engineering at the Canadian Coast Guard College in Sydney, N.S.

The Canadian Coast Guard Fleet has approximately one hundred and twenty-six (126) vessels. These vessels include ice breakers, ocean-going research and survey vessels, rescue vessels, buoy tenders, offshore patrol vessels and others. Each different class of vessel requires different staff with different levels of expertise. Larger vessels may have approximately 6 to 8 Ships' Officers "on-duty" and 14-18 members from the Ships' Crews bargaining unit. A smaller vessel may only have as few as two Officers on board and an additional 2-4 Crew from the Ships' Crews bargaining unit. These vessels are home-ported at Coast Guard stations and bases across the country.

Becoming a Ships' Officer takes several years of study at either the Canadian Coast Guard College in Sydney or by working one's way up through the ranks of the Ships' Crew in combination with studies at an accredited Marine Institute. The entry level position as a Deck Officer is known as a Watchkeeping Mate. From there, Mates can work up through different levels, Chief Officer and finally Master of a vessel. The Master is the senior Officer on board the vessel. They are responsible for the safe and effective operation of the vessel and for supervising the Officers and Crew. The Master must hold a Master's Certificate as a minimum and is required to have extensive years of sea experience and certification, pursuant to national and international standards. In practice, it takes most individuals ten to fifteen (10 to 15) years of training and experience to become qualified as a Master. Similar rigorous training and experience apply to the Engineering Officer discipline advancing through to the level of Chief Engineer.

Depending on the area of expertise of an Officer, they will be assigned different responsibilities. For instance, Navigation Officers work under the leadership of the Commanding Officer and coordinate the ship's deck and navigation activities. They are responsible for the safety of the

ship, its crew and any other persons on board the vessel. They also directly supervise and coordinate the crew working on both the bridge and the deck. An Engineering Officer works under the Chief Engineer to coordinate the operation and maintenance of the vessel's propulsion machinery and auxiliary equipment as well as supervising the engine room personnel. Electrical Officers are responsible for the operation and maintenance of the vessel's electric and electronic department. Logistics Officers provide logistics support to the entire vessel with respect to hotel services, ship's administration and supplies.

The classifications within this bargaining unit are described in detail at **Tab 3** of the Guild's Brief. An Officer's pay and remuneration varies depending on type and size of vessel to which they are assigned. Class H vessels are highest ranked and Class A sub 2 are the lower ranked vessels within the fleets managed and controlled by the Coast Guard and DND.

Relationship between Ships' Officers and Ships' Crews

Ships' Officers not only command vessels but also command and supervise the Ships' Crews who are represented by a separate bargaining agent - the Public Service Alliance of Canada (PSAC).

The importance of maintaining hierarchy and accepted differences between classification levels is essential to ensuring appropriate respect within the command structure and the efficient operation of the vessel. Assigning the proper rates for these levels is simply a recognition of the increasing level of responsibility which comes with higher levels of competency, responsibility and accountability.

It will take a Ships' Officer no less than seven (7) years and more likely over ten (10) years of a combination of college, academic training and solid years of sea experience to meet the legislative requirements to achieve the appropriate level of Ships' Master Certification or Engineers' Certification for appointment to a position as Master (Captain) or Chief Engineer on many of the vessels under the Employer's control.

Unlike the unlicensed personnel who they supervise, Guild members bear complete responsibility for a multi-million dollar national asset that is not readily replaceable. Officers have complete and overall responsibility for both these valuable Canadian Government assets as well as the Ships' Crews who work under them on these same vessels under the same crewing systems.

These vessels are frequently operated in remote and desolate locations. The consequences for a Guild member of making an error at sea (especially for navigation or engineering) can be catastrophic. It can cause loss of life, loss of an essential government asset and environmental carnage on a huge scale. Without disparaging the expertise and dedication of the Ships' Crews, it is a fact that the academic training, responsibility, time and experience factors are significantly less than those necessarily required of a Ships' Officer.

The training and certification requirements of Ships' Officers needs to be recognized in the relative compensation levels between the Ships' Officers and the Ships' Crews as well as in the working conditions, especially in relation to "earned time off with pay", since Ships' Crews and Ships' Officers are employed on identical rotational crewing systems.

See **Tab 4** of the Guild's Brief, "Canadian Coast Guard Website Materials" Accessed 2012.

The Guild states that there are currently two significant areas where the working conditions and compensation as between the Ships' Officers and the Ships' Crews have "fallen" out of the appropriate relativity in a manner contrary to all labour relations principles and the legislative requirement to maintain fairness and equity between classification levels.

This Brief will focus on these two key areas which relate to: 1) The “lay-day” factor which is the rate at which a Ships’ Officer or Ships’ Crew earns time off with pay and 2) The actual compensation that is paid in specific circumstances impacting on the different allowances and overtime compensation paid as between Officers and Crews for identical work.

HOURS OF WORK

A Guild member working as a Ships’ Officer is required to provide their expertise and service for the Canadian public under working hours and scheduling systems that are dramatically and significantly different than any other federal public civil servant.

The Canadian Coast Guard is required to patrol and provide services 365 days a year around the clock. Since the early 1980s, the collective agreement has standardised work schedules on both east and west coasts and introduced a number of different scheduling systems to accommodate specific Coast Guard and DND requirements.

As the Board reviews the Guild’s submissions and its collective agreement, we would ask it to keep in mind that each of these systems is also utilised to schedule Ships’ Crews who also work on the same vessels as the Officers represented by the Guild.

The vast majority of Officers and Crews today are scheduled by the Employer on the “lay-day” system that is found at Appendix “H” of the Officer’s collective agreement, while approximately 20% of the Officers and Ships’ Crews work under a scheduling system found at Appendix “J” of the Officers’ collective agreement and that is very similar to the “lay-day” system. The main difference between the two systems is that Appendix “H” Officers and Crews generally work on 28 day or 42 day cycles while Officers and Crews on Appendix “J” work on 14 day on-call cycles under a 46.6 hours per week averaging formula.

The Guild states that an examination of the conditions under Appendix “H” as between Officers and Crews and a comparison of compensation between Officers working under Appendix “H” and those working under Appendix “J”, show that immediate adjustments need to be made to the factor used to earn paid time away from work which under Appendix “H” is called the “lay-day” factor.

There are four different hours of work schedules contained in the collective agreement as Appendices “H”, “I”, “J” and “K”.

Appendix “H” - Lay-Day System-An Explanation

Approximately seventy percent (70%) of the members of this bargaining unit work on the “lay-day” crewing system, on a “time-on/time-off” basis under the provisions of Appendix “H”. Many of the Officers on the “lay-day” system work twenty-eight (28) days on and twenty-eight (28) days off. However this “lay-day” system, which was introduced to provide maximum flexibility in scheduling 365 days, 24 hours per day work schedules, is also used in the Arctic on a six (6) week “on-cycle” and six (6) week “off-cycle” equivalent to 42 days on and 42 days off and in some circumstances even allows for cycles of only 14 days on and off. Appendix “H” vessels operate with two (2) crews.

The section entitled “lay-days” in Appendix “H” of the collective agreement explains the Coast Guard “lay-day” system. Under this system, all days are considered working days and there are no days of rest.

During the “on-duty” portion of the work cycle, an Officer works twelve (12) hours each day but only receives pay for six (6) hours while the remaining six (6) hours pay is put into their “lay day” bank to be utilized during the “off-duty” cycle. While “on-duty”, an Officer receives no weekends or other days off but works at least twelve (12) hours each day continuously for the “on-duty” cycle of 28 days. For example, in a fifty-six (56) day cycle, twenty-eight (28) days are the “on-cycle”, and the remaining twenty-eight (28) are the “off-cycle”, the pay for which is covered by the “lay-day” bank earned each day during the “on-cycle”.

It is important to note that the “on-duty” and “off-duty” cycles are fixed and if an Officer needs to take any additional time off, they are normally obliged to use their vacation credits if they have any. Unless an Officer is working on the “on-duty” cycles, they will not be earning “lay-day” credits toward their “off-duty” cycle.

Appendix “I” - 42 Hour Averaging System

Officers on Appendix “I” work a system of rotating cycles which average 42 hours of work per week across four (4) different crews. There are very few Officers (only two firetugs at DND) remaining on this forty-two (42) hour averaging system. Appendix “I” was largely replaced by the “lay-day” system when it was introduced in the mid 1980s, save for exceptional circumstances. Article 30.05 of the collective agreement requires mutual agreement before vessels, other than those currently on this system may be moved from one of the other work systems to this Appendix.

Appendix “J” - 46.6 Hour On-Call System-The Search and Rescue System

The second largest group of Officers and Crew work under this system. Appendix “J” is a forty-six point six (46.6) hour averaging “on-call” system used by Search and Rescue lifeboats.

Appendix “J” Officers average 46.6 hours per week over a 14 day cycle. Many of the Appendix “J” vessels are located outside of urban areas in more remote, rural communities where most crew members will stay in the search and rescue station near the port for the duration of their 14 day “on-duty” cycle and return to their homes for their “off-duty” 14 day cycle, unless they happen to be from the community they are stationed in.

The communities in which these boats are stationed are as follows:

Newfoundland	Port au Choix; Lark Harbour; Burgeo and Burin.
New Brunswick	Saint John and Shippagan
Prince Edward Island	Summerside and Souris.
Nova Scotia	Louisbourg; Bickerton East; Sambro; Clark's Harbour and Westport.

Québec	Tadoussac; Havre Saint-Pierre; Rivière-au-Renard; Cap-aux-Meules and Kegaska.
Ontario	Thunder Bay; Amherstburg; Cobourg; Kingston; Port Weller; Port Dover; Tobermory; Meaford and Goderich.
British Columbia	Prince Rupert; Port Hardy; Powell River; Campbell River; Bella Bella; Sandspit; Tofino; Saltspring Island; Bamfield and Sidney.

Like the Officers under Appendix “H”, Officers working under Appendix “J” are on a rotational crewing “on-duty”/“off-duty” work system. Compensation for the “off-duty” cycle is “earned” during the “on-duty” cycle. While Appendix “H” Officers work 28 days on and have 28 days on “lay-day”, Appendix “J” Officers work 14 days on and 14 days off.

When the regular on-call compensation paid to Appendix “J” Officers during their 14 day “on-duty” cycle is considered, Appendix “J” Officers actually receive 11% more pay for their “on-duty” hours during their 14 day cycle than the Appendix “H” Officers receive for their “on-duty” hours during their 28 day cycle.

Appendix “K” - 40 Hour Work Week System

Approximately 8% of the membership work under Appendix “K” (a 40 hour work week system) with only one crew. The Officers on Appendix “K” work eight (8) hours per day and an average of forty (40) hours and five (5) days per week, with two (2) consecutive days of rest. Officers working sea watches normally work on the basis of either four (4) hours on and eight (8) hours off, or six (6) hours on and six (6) hours off. Many of the vessels covered by Appendix “K” are Department of National Defence (DND) vessels.

THE APPLICABLE LEGISLATIVE CRITERIA: SECTION 148 OF THE PSLRA

The factors to be considered by this Board in making its decision are set out in section 148 of the *Public Service Labour Relations Act*, which states:

148. In the conduct of its proceedings and in making an arbitral award, the arbitration board 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 arbitration board 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.

SUBMISSIONS ON GUILD PROPOSALS

The Guild submits that its proposals in this interest arbitration with respect to the lay day system, primarily engage:

s. 148(b)- The necessity for appropriate compensation in public sector as compared to the private sectors;

s. 148(c) - The importance and need to maintain appropriate relationships between different classification levels within an occupation and as between occupations in the public service; and

s. 148 (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.

APPENDIX "H" -LAY DAY OPERATIONAL CREWING SYSTEM

Current Language	Guild Proposal	Employer Response
Lay-Days General (c) The workday will consist on-duty-cycle of twelve (12) hours of work per day. For each day worked or for each on-duty-cycle day on which an officer is on authorized leave with pay other than compensatory leave and vacation leave with pay, an officer shall earn one (1) lay-day in addition to the officer's Lay-Day rate of pay.	Lay-Days General (c) The workday will consist on-duty-cycle of twelve (12) hours of work per day. For each day worked or for each on-duty-cycle day on which an officer is on authorized leave with pay other than compensatory leave and vacation leave with pay, an officer shall earn one decimal one seven (1.17) lay-days in addition to the officer's Lay-Day rate of pay.	No change Status Quo

Explanation of the Lay-Day System

The “lay-day” system is a rotational work system that allows uninterrupted service by using two alternating crews per vessel for a work cycle broken down into alternating “on cycle” and “off cycles” with salary being paid out over that full period. Many vessels operate with a 28 day “on cycle” followed by a 28 day “off cycle” but there are also vessels which operate with cycles of different lengths including 14 days on and off. For ease of reference we will refer to the 28 day on and off cycles.

For those employees working under the “lay-day” system, there are no weekends, no days of rest and Ships’ Officers are scheduled three hundred and sixty-five (365) working days in the year. During the twenty-eight days “on cycle”, an Officer works twelve (12) hours per day but receives pay for only six (6) hours while the remaining six (6) hours are put into a “lay-day” accumulation bank which is used to maintain the Officer’s daily rate of pay during the “off cycle” of twenty-eight (28) days.

“Lay-days” are essentially working days on the “off cycle” during which no work is scheduled. A six hour “lay-day” is really a day away from scheduled duties in compensation for the twenty eight (28) day and twelve (12) hour “on cycle” which often requires an Officer to work twenty eight (28) days straight at sea without any ability to return home for evenings or weekends. In order to maintain continuity of pay, six (6) hours per “lay-day” are deducted from the Officer’s “lay-day” bank for each “lay-day” on the “off cycle” of the schedule.

According to the language of the current collective agreement, (Appendix H-General (c)), for every day that an Officer works or is “on cycle” with pay, other than compensatory or vacation leave with pay, the Officer earns one (1) “lay-day”.

The “lay-day” system provides increased flexibility for the Employer with respect to scheduling Officers on vessels required to work all year round and creates a work scheduling system that allows the Employer to avoid restrictions found in other work systems and thus the payment of significant premiums. The Employer is able to save on staffing costs because only two crews are required to cover a twenty-four (24) hour cycle while in normal rotational 24 hour operations, an Employer that is bound by an eight (8) hour work day, must schedule at least three (3) shifts to cover a twenty-four (24) hour operation.

Discussion of the Lay-Day Factor and Comparison with the Ships’ Crews Entitlements

Since 1990 there has been a significant difference in the “lay-day” factor that has applied to Ships’ Officers represented by the Guild and Ships’ Crews represented by the Public Service Alliance. In the Ships’ Officers collective agreement, there is a 1:1 ratio as between days worked and “lay-days” earned. This ratio means that for every day worked, an Officer will earn one “lay-day” which will allow the Officer to maintain his/her pay for the “off-duty” cycle. It also means that an Officer who is unable to work for any complete 28 day “on-duty” cycle - either for personal or family reasons or due to operational requirements such as necessary vessel maintenance or seasonal layup - will be without sufficient “lay-day” credits to maintain their pay and will be forced to use vacation leave credits to maintain pay during the “off-duty” cycles as the “lay-day” credits will be exhausted after 28 days.

The Ships’ Crews on the other hand enjoy a higher “lay-day” credit accumulation ratio of 1:1.17. Since 1990, the Crews, whom the Officers supervise, have been earning “lay-day” credits at this more normative industry ratio of 1.17 days into the “lay-day” bank for every day worked.

Historically, this difference between the Officers and the Crews was part of the early negotiated “give and take” in bargaining that occurred during the 1984 and 1987 collective agreements when the federal government introduced the more flexible “lay-day” system for scheduling some

of its Coast Guard vessels.

Initially there were few vessels that were scheduled under the original "lay-day" system. However the Employer has seen the scheduling advantage to this system and has significantly increased the number of vessels and consequently employees on the "lay-day" system. Today, approximately 70% of Officers and Crews working for the Coast Guard are employed on this Appendix "H" - 28 day on, 28 day off "lay-day" system.

Given this increased use of the "lay-day" system, it is imperative and the Guild submits, legislatively required under s. 148, to adjust the working conditions and in particular the "lay-day" accumulation factor for the Ships' Officers to equal that of the Ships' Crews who are working side by side under this same system.

Vacation Leave and Lay Days

While the "lay-day" system provides efficiencies and staff savings for the Employer, it has also created difficulties in the vacation entitlements for those Officers employed on a "lay-day" system.

Since "lay-days" are depleted during the twenty eight (28) day "off cycle", the 1.0 factor means that when an Officer takes vacation during the next "on cycle" they have no "lay-days" in the bank to cover salary continuance during the following 28 day "off cycle". This means that Officers will effectively have to wait two (2) years before they could take their one year normal vacation entitlement because the Officer on the 1:1 ratio is unable to build up sufficient "lay-day" credits under the formula to maintain their pay during their "off cycle" after a period of vacation.

This "long festering" problem was dealt with by the parties during the negotiations of the 1998 collective agreement. At that time, the Employer proposed that all vacation leave credits for Officers in the "lay-day" system would be converted to hourly banks. The proposed formula to calculate these hourly banks was a multiplication factor of 2.1 and this was incorporated in the collective agreement on September 17th 1998.

The effect of this change in the vacation accumulation factor continued in the collective agreement from 1998 until it was removed by an Interest Board in 2008. When this vacation leave factor was in effect, it allowed an Officer to accumulate more vacation leave credits than the Ships' Crews on the "lay-day" crewing system and this off-set the superior accumulation of "lay-day" credits enjoyed by the Crews. The Appendix "H" Officers assigned to the "lay-day" system could use their vacation leave credits without suffering a reduction in pay during the "off cycle" while this factor was in the collective agreement.

This 2.1 vacation factor would also assist Officers when their vessels were laid up for refit and they were unable to sail and therefore unable to work to earn money and "lay-day" credits. In its application, the 2.1 factor "leveled the playing field" between the Officers and the Crews who enjoyed the superior 1.17 "lay-day" factor.

In subsequent rounds of bargaining however the Employer targeted the superior 2.1 vacation entitlement factor enjoyed by the Officers without agreeing or offering to adjust the "lay-day" factor to the superior 1.17 enjoyed by the Ships' Crews.

The Comparability and Parity Argument

As noted, between 1998 and 2008 the Employer consistently argued that the Officers employed under Appendix "H" had a superior vacation leave entitlement as compared to the Ships' Crews employed under the same "lay-day" crewing system. The argument which the Employer consistently advanced and which ultimately succeeded in convincing the 2008 Interest

Arbitration Board to end the superior benefit, is obviously founded on the principle that there should be parity or equality in working conditions as between two classifications of employees as set out in s. 148(c) and (d) of the PSLRA. While this was true at the time, the Board determined that a lump sum financial payment would be paid to compensate for the removal of the superior vacation entitlement. However this compensation payment did not address in any way the operational problems that were inherent in the Officers' lower "lay-day" factor of 1:1 compared to the Ships' Crews' 1:1.17.

The Guild submits that in this round of bargaining, the principle of fairness and equitable treatment for employees performing similar work requires that the "lay-day" factor for the Officers be adjusted to the same factor - namely the 1:1.17 ratio. This would be consistent with the principle the Employer urged on the last Interest Board and in the last round of bargaining namely that the vacation leave factor between the two groups be adjusted to be the same factor in the interest of parity.

With the removal of the superior vacation leave credit in 2010, the Guild submits that the principles of fairness, comparability and parity now require that the "lay-day" credit between the Crews and the Officers employed under the identical system and working side by side on the same vessels also be the same "lay-day" credit - 1:1.17.

Officers at a Disadvantage

With the removal of the 2.1 vacation accrual from the Ships' Officer's collective agreement, the 1.0 "lay-day" factor is now inadequate and puts the Officers in a disadvantageous position compared to the Ships' Crews working directly under them who have a "lay-day" factor of 1.17.

This is a significant difference in leave accumulated for every day worked. Effectively a Crew member will put almost one full day extra into their leave bank for every five (5) days worked. There is no labour relations principle that would support a system that permits an employee (in this case the Ships' Crews) to accumulate almost 20 % more paid leave than the Officers who supervise them.

The current conditions mean Ships' Crews are able to use their superior "lay-day" credit banks to maintain their salary during seasonal shut down periods or maintenance periods or for other unforeseen personal purposes. On the other hand, Officers who have worked the exact same work cycle on the exact same vessel will be forced to-use personal vacation time which, prior to an interest arbitration award of 2008, was superior to the Ships' Crews vacation leave accrual factor. With the removal of that superior benefit, it is the Ships' Crews who have the superior leave bank to use on "off-duty" cycles.

Since Ships' Crews and Officers work on the same vessels, on identical "lay-day" schedules and will be subject to the same mandatory non-operational periods for refitting or maintenance, there will continue to be unjustified and unwarranted inequality and inequity between the Ships' Crews and Ships' Officers unless the "lay-day" factors are brought into parity.

The Guild submits that 70% of its membership is now subject to the "lay-day" system set out in Appendix "H". Further, the Employer can add even more vessels to this appendix if they so desire - simply upon "consultation" with the Union.

As noted above, the Officers working under this system now are not compensated in a comparable fashion whatsoever with the Ships' Crews working under the very same system.

There is no collective bargaining principle that justifies the continuation of the inferior "lay-day" factor for the Ships' Officers. The Guild hereby asks this Board to award its proposal to amend Appendix "H" as outlined above to bring the "lay-day" factor equal to that enjoyed by the Ships'

Crews - namely a factor of 1: 1.17 days for each and every day worked on the “on-duty” cycle - identical to the accumulation ratio of the Ships’ Crews.

The Chart below outlines the inequity that currently exists under the Agreement.

Officers		Ship’s Crews
Current Language	Appendix H Lay-Days General (c) The workday will consist on-duty-cycle of twelve (12) hours of work per day. For each day worked or for each on-duty-cycle day on which an officer is on authorized leave with pay other than compensatory leave and vacation leave with pay, an officer shall earn one (1) lay-day in addition to the officer’s Lay-Day rate of pay	Annex E Lay-Day Work System 1. (e)(i) The workday will consist of an on-duty-cycle of twelve (12) hours of work per day. For each day worked or for each on-duty-cycle day on which an employee is on authorized leave with pay other than compensatory leave and vacation leave with pay, an employee shall earn one decimal seventeen (1.17) lay-day in addition to the employee’s lay-day pay.
# of days needed to cover vacation	56 Days (28 days for vacation; 28 days to cover the non accumulation of lay days while on vacation)	56 Days (28 days for vacation; 28 days to cover the non accumulation of lay days while on vacation)
# of hours needed to cover vacation	672 hrs (12 hr workday x 56)	672 hrs (12 hr workday x 56)
Lay-Day Factor	1	1.17
Lay-days earned per Cycle	1 x 28= 28 days/cycle	1.17 x 28= 32.76 days/ cycle =4.76 days more/cycle than Officers 28.56 more days/year than Officers

The Inequity is Obvious: Ships’ Crews Earn One Entire Full Lay-Day Cycle per Year More Than Officers Employed under the Same System

The Board will note from the comparison of working conditions between Officers and Crews working under Appendix “H” “lay-day” system that both Officers and Crews now have identical working terms and conditions with respect to the length of the work day, number of days required to cover vacation and comparable vacation entitlements.

The Guild submits that it is intolerable and indefensible that the Ships’ Crews will earn one full 28 day cycle with pay in each 12 month cycle for working the same hours and days as an Officer. This is of course driven by the “lay-day” factor which the Guild has proposed be amended from 1:1 to 1:1.17 to bring it in conformity with the “lay-day” factor in the Ships’ Crews collective agreement.

Appendix “H” Comparators Show “Lay-Day” Factor of 1:1.17 is Consistent with Industry Norm

The Guild also submits there is further justification to amend this factor to 1.17 when the Board examines external comparators, a criteria set out in s. 148(b) of the PSLRA.

COLLECTIVE AGREEMENT	ARTICLE
<p>Agreement between Treasury Board and the PSAC Operational Services Group (SV) Expires: August 4th, 2014 - Appendix G - Ships’ Crews</p>	<p>Annex E Lay-Day Work System 1. (e)(i) The workday will consist of an on-duty-cycle of twelve (12) hours of work per day. For each day worked or for each on-duty-cycle day on which an employee is on authorized leave with pay other than compensatory leave and vacation leave with pay, an employee shall earn one decimal seventeen (1.17) lay-day in addition to the employee’s lay-day pay.</p>
<p>Agreement Between Seamaning Services Ltd and Canadian Merchant Service Guild (MSG) Expires: 2012</p>	<p>19. LAY-DAYS AND ACCUMULATED LAY DAYS 19:01 For each day on board the vessel, all Masters or Chief Engineers shall receive one (1) day off with pay plus a leave day premium of .15 days.</p>
<p>Agreement between Seaspan Ferries Corporation and the Canadian Merchant Service Guild (MSG) Expires: 30th September 2013</p>	<p>ARTICLE 5 Hours of Work and Weekly Leave 5.1 The principle of the thirty-seven and one-half 37 ½ hour week is recognized by this group. In the marine industry, as it is impracticable to work the thirty-seven and one-half (37 1/2) hour week, equitable compensation will be made by providing leave as follows: b) Officers working a twelve hour day (either six-and-six watch or a straight twelve (12) hour shift) at one decimal two four (1.24) calendar days per day worked.</p>
<p>Agreement between Seaspan International Ltd. (Kingcome, Cates and Seaforth) and Seafarers’ International Union of Canada Expires : 2013</p>	<p>2.12 Leave and Wage Commencement b) Where the twelve (12) hour day applies, the time off schedule will consist of 1.24 days off for each day worked.</p>

<p>Agreement between Western Forest Products and Canadian Merchant Service Guild (CMSG) Expires: September 30th 2015</p>	<p>1.16 Leave (Lay-days) 10. The method of calculating leave shall be 1.24 days leave earned for each day worked. Such leave shall be granted in the home port.</p>
<p>Agreement between Harken Towing Co. Ltd. and Canadian Merchant Service Guild (CMSG) Expires: September 30th 2015</p>	<p>1.16 Leave (Lay-days) 10. The method of calculating leave shall be 1.24 days leave earned for each day worked. Such leave shall be granted in the home port.</p>
<p>Agreement between Hodder Tugboat Co. Ltd and Canadian Merchant Service Guild (CMSG) Expires: September 30th 2015</p>	<p>1.16 Leave (Lay-days) 10. The method of calculating leave shall be 1.24 days leave earned for each day worked. Such leave shall be granted in the home port.</p>
<p>Agreement between Jones Marine Services Ltd. and Canadian Merchant Service Guild (CMSG) Expires: September 30th 2015</p>	<p>1.16 Leave (Lay-days) 10. The method of calculating leave shall be 1.24 days leave earned for each day worked. Such leave shall be granted in the home port</p>
<p>Agreement between Svitzer Canada Ltd. and Canadian Merchant Service Guild (CMSG) Expires: 2013</p>	<p>Article 4-Hours of Work Masters & Chief Engineers in Halifax, Port Hawkesbury, Sept-Iles and Baie Comeau receive two (2) lay-days for every 1 day ON. Mates & Second Engineers in Halifax, Port Hawkesbury, Sept-Iles and Baie Comeau receive 1.65 lay days for every 1 day ON.</p>

The Appendix “J” and “Lay-Day” System Comparator

Like the Officers on the Appendix “H” “lay-day” system, the Officers working on Appendix “J” work a rotational “on-duty” and “off-duty” work schedule. The Appendix “J” Officers work a 14 day schedule while the Appendix “H” Officers work a 28-day schedule. The Appendix "J" 14 day rotational work crewing system is the closest internal comparator to the Appendix "H" 28 day rotational crewing system.

Like the Appendix "H" “lay-day” system, the Appendix “J” system is an "earned time off" rotational work system. The Officers only receive half of their earned and accumulated pay for their "on-duty " daily pay and bank the other half for the 14 days of their “off-duty” cycle so that they are not out of income during their non operational-active duty days.

During the 14 days they are “on-duty”, most of the Officers on Appendix “J” are required to be stationed at or near the designated outposts, which are located strategically along the coastlines

across Canada where search and rescue operations can be most effectively launched when required. During the “off-duty” 14 days, they return to their homes and families.

The difference between the two systems is that the active “on-duty” time under Appendix “J” is 8 hours each day together with 5.33 hours “on-call” pay each night during the 14 day “on-duty” cycle compared to the 12 hours each day for an Appendix “H” “lay-day” Officer.

Both sets of Officers however are “on-call” 24 hours a day with the difference being that the Appendix “H” “lay-day” Officers are effectively “captive” on board a vessel while at sea during their 28 day “on-cycle” - while the Appendix “J” Officers are “captive” in the sense that they are usually assigned to a remote work location for their “on-duty” cycle. Furthermore, during their “on -duty” cycle, the Appendix “J” Officers must be able to report to the vessel within 30 minutes of any Search and Rescue call received at that station. Similarly, if an Appendix “H” vessel is not at sea, all Officers must be able to return to the vessel in less than one hour, and in some cases in 30 minutes.

During the 14 day “on-duty” cycles, the Appendix “J” Officer works 8 hours but is also paid 5.33 hours standby pay per day worked during the “on-cycle”. (Article 30 (a) - Appendix “J”) If there is a call that requires the Appendix “J” Officer to respond to the call, the pay treatment is the same as that applicable to an Appendix “H” “lay-day” Officer called to work during their 12 hour “off-duty” cycle.

This means that there is a real and true comparison with those Officers under Appendix “H” who are required to be stationed on the vessel if it is at sea for the entire length of their “on-duty” cycle and Appendix “J” Officers.

To explain, - if there is a search and rescue call within the area that the Appendix “H” vessel is operating then the vessel may be pressed into service to assist the Appendix “J” search and rescue vessel. This has in fact happened on occasion off the east and west coast. This type of situation or other inclement weather emergencies which require “all hands on deck” may require the Appendix “H” Officer to work during their 12 hours scheduled “off-duty” while at sea on the “on -duty” 28 day rotational cycle. The purpose of explaining this pay situation is to illustrate that the only difference between the compensation paid to Appendix “J” and Appendix “H” Officers relates to their usual pay, not overtime or actual call-in pay.

As will be seen below, the actual difference works out to a 1:1.11 “earned leave” factor payable to Appendix “J” Officers while the Appendix “H” Officers only receive the 1:1 “lay-day” factor for comparable hours and work.

Both groups of Officers are being compensated for being available to the Employer for 24 hours a day during their “on-duty” cycle. However when the compensation per working hour is analysed, there is an 11% difference (mathematically 10.5%) between the compensation generated by an Officer working under Appendix “J” as compared to an Officer working under Appendix “H”.

The language of the collective agreement that outlines the compensation for Appendix “J” Officers is calculated as follows:

Appendix “J”: The calculation of the 46.6 hour week

8 hours per day x 7 days	56 hours
5.33 hours standby x 7 days	37.31 hours
	=93.3 hours per week which is divided by the two weeks they spend on assignment
Total	46.6 hours per week

During the 14 day “on-duty” cycle, the Appendix “J” Officer actually earns 93.3 hours accumulated pay but only receives half of that pay for that working cycle. This system ensures there is adequate working credit to sustain pay for both the 14 day “on-duty” cycle and the following 14 day “off -duty” cycle that immediately follows. Over a full 28 day cycle of both “on-duty” and “off-duty” employment, the Appendix “J” Officer earns 186.6 hours of pay.

By comparison, the Appendix “H” Officers are employed on a 28 day on and 28 day off cycle. Each day of work “on-duty” is 12 hours but the Officer only receives pay at the rate of six (6) hours per day and accumulates only one (1) additional six (6) hour day in the “lay-day” leave bank based on the 1:1 “lay-day” factor. Therefore over the 28 day cycle, an MAO Officer under Appendix “H” will receive pay equivalent to 168 hours while an Officer at the same classification level under Appendix “J” will receive pay equal to 186.6 for working and being available to the Employer over the same 28 day time frame.

This is a difference of 18.6 hours per comparable 28 day cycle. On a daily basis, the Appendix “J” Officer receives 6.66 hours pay and banks 6.66 hours of pay into their "earned leave bank" for the “off-duty” cycle per day while the Appendix “H” Officer only receives six (6) hours per day and banks six (6) hours in their “earned leave” “lay-day” bank for the “off-duty” cycle.

The Guild submits that when the internal comparison is done as to the two types of Officers under this collective agreement who work a comparable "earned leave" rotational crewing system, it is clear that the “earned leave” factor under Appendix “H” based on internal comparability alone, should be adjusted upwards.

The Guild submits again that the appropriate factor is the 1:1.17 factor which is the factor the Ships’ Crews receive under the same 28 “lay-day” system.

Officers under Appendix “J” operate under what is mathematically equivalent to a 1:1.11 “earned leave” factor. It is arguable that the working conditions for the Appendix “J” Officers are preferable to that of the Appendix “H” Officers because their earned leave factor is higher yet is paid based on an actual working day of only eight (8) hours per day and the remainder of the compensation is paid for being “on-call” for the balance of the 24 hour cycle. By comparison, the Appendix “H” Officers work 12 hours per day without “on-call” pay but are usually at sea for a much longer time frame than the Appendix “J” Officers.

In all of these circumstances the Guild submits that the Appendix “J” Officers compensation package under comparable work systems supports the principal position being put forward by the Guild - namely that the “lay-day” factor for the Appendix “H” Officers needs to be adjusted immediately and retroactively to that enjoyed by the Ships Crews for years - 1: 1.17.

APPENDIX “K”- 40 HOUR WORK WEEK SYSTEM

Current Language	Guild Proposal	Employer Proposal
<p>Article 30 Hours of Work and Overtime</p> <p>(f) An officer is entitled to compensation at double (2) time:</p> <p>1) for overtime worked following eight (8) hours of overtime worked in excess of his normal daily hours of work;</p> <p>2) for overtime worked on his/her day of rest in excess of the officer’s normal daily hours of work;</p> <p>and</p> <p>(3) when the officer is required by the Employer to work on two (2) or more consecutive and contiguous days of rest, for each hour worked on the second (2nd) and each subsequent day of rest. Second (2nd) or subsequent day of rest means the second (2nd) or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest.</p>	<p>Article 30 Hours of Work and Overtime</p> <p>(f) An officer is entitled to compensation at double (2) time:</p> <p>1) for overtime worked following eight (8) hours of overtime worked in excess of his normal daily hours of work;</p> <p>2) for overtime worked on his/her day of rest in excess of the officer’s normal daily hours of work;</p> <p>and</p> <p>(3) for all overtime worked by an officer on the officer’s second or subsequent day of rest, provided the days of rest are consecutive.</p>	<p>Status Quo</p>

Discussion Regarding Double Time on Sundays (or second day of rest) for Officers Working under Appendix “K”

The Guild’s proposals on overtime apply only to those Officers working on ships on a conventional 40 hour week schedule pursuant to Appendix “K”. Their designated hours of work are more clearly laid out in Article 30 of Appendix “K” which essentially states that their hours of work will be designated so that the Officers work eight (8) hours per day; an average of forty (40) hours; five (5) days per week; and two (2) days of rest shall be consecutive.

The overtime compensation for working in excess of these normal daily hours of work is currently paid at either time-and-one-half or double time in accordance with Article 30 of Appendix “K”. Officers who are required to work on their first day of rest receive time-and-one-half for the normal daily hours on the first day of rest and this overtime becomes payable at

double time if it exceeds eight (8) hours on the first day of rest. Note that the time worked on the second day of rest is paid at double time, however under the current language, those days must be consecutive and contiguous for double time to be paid.

For example, the current practice would be that when an Officer works from Monday to Friday, he or she only gets paid double time on the Sunday if he has worked the Saturday, despite the Sunday being a day of rest.

The Guild proposes to amend the current language to provide that Officers receive double time for any hours worked on their second day of rest. This would bring the Guild's collective agreement in line with what is paid to the Ships' Crews under their collective agreement and avoid the situation where on a Sunday, a Ships' Crew member would be making more than an Officer because the Ships' Crew gets double on Sunday even if they have not worked the Saturday.

The following is the relevant excerpt from the PSAC Operational Services Collective Agreement, Appendix "G" Ships' Crews Specific Provisions:

2.03 Overtime Compensation

- a) An employee performing overtime work which ceases before the expiration of one (1) hour shall nevertheless be credited with one (1) hour's overtime.
- b) After the first (1st) hour of overtime, each further period of one-half (1/2) hour shall entitle the employee to one-half (1/2) the applicable hourly overtime rate.
- c) Subject to paragraph (d) an employee shall be entitled to compensation at time and one-half (1 1/2) for overtime worked by the employee.
- d) An employee shall be entitled to compensation at double (2) time:
 - (i) for work performed following eight (8) hours of overtime worked in excess of the employee's normal daily hours of work;
 - (ii) for overtime worked on the employee's days of rest in excess of the employee's normal daily hours of work;
 - (iii) for all overtime worked by an employee on the employee's second or subsequent days of rest, provided the days of rest are consecutive.**except:
with respect to Annex C, 42 Hour Averaging, Annex D, forty-six decimal six (46.6) Hour Averaging, and Annex E, Lay Day.

Under the Ships' Crews agreement, the Employer pays double time for any time worked on second or subsequent days of rest without an employee having had to work the first designated day of rest. This has resulted in an inequity between the Ships' Officers and Crews. The Officers frequently receive only time-and-a-half on their second day of rest (because they did not work the first day of rest) while the employees that they supervise are making double time.

For example:

An Officer at the top rate of SO-MAO-3 under the current collective agreement would earn \$39.10 per hour (\$26.07 x 1.5) at time-and-a-half, while at the same time supervising a Crew member at DED-3 who under their current collective agreement is earning \$46.12 per hour (\$23.06 x 2) at double time, on the same shift. **In other words, the Ships' Officer would earn \$7.02 less per hour than the Ships' Crew he or she supervises while working the same shift on the same vessel.**

The current language creates a wage differential problem in that several Ships' Crews are being paid higher or similar to the salaries of the Officers. The Guild's proposal would remedy this inequity.

A recent interest arbitration award by Chairperson Tarte, the Board awarded the Union's request to delete a section of the collective agreement that limits overtime payments to 1.5 the normal rate when the overtime is worked on a second day of rest.

See **Tab 2** of the Guild's Book of Authorities, *CAPE v. Treasury Board*, (July 12th 2012) (Tarte)

We submit that our proposed change is precisely what is contemplated and recognized in Section 148(c) of the PSLRA, which provides that this Board must take into consideration the appropriate levels between occupations within the public service. In addition, as this item only applies to a limited number of bargaining unit members, namely those working the 40 hour week, the additional expense would not raise substantial concerns with regard to section 148(e) of the PSLRA.

COMPARATORS

COLLECTIVE AGREEMENT	ARTICLE
<p>Operational Services Group (SV) Agreement between Treasury Board and the PSAC expires August 4, 2014 - Appendix G - Ships' Crews</p>	<p>2.03 (d) An employee shall be entitled to compensation at double (2) time: (iii) for all overtime worked by an employee on the employee's second or subsequent days of rest, provided the days of rest are consecutive.</p>
<p>Agreement between the Treasury Board and The Federal Government Dockyard Chargehands Association (East Coast) Group: Ship Repair Expiry 31st March 2011</p>	<p>6.09 Overtime Compensation Subject to clause 6.13, overtime shall be compensated at the following rates: (a) double (2) time for all hours worked in excess of eight (8) hours in a continuous period of work or in excess of eight (8) hours in a day to a maximum of sixteen (16) hours in a continuous period of work; and for all hours worked on a day of rest to a maximum of sixteen (16) hours;</p>
<p>Agreement between the Treasury Board and The Federal Government Dockyards Trades and Labour Council (Esquimalt) Group: Ship Repair Expiry 30 January 2012</p>	<p>16.09 Overtime compensation Subject to clause 16.11, overtime shall be compensated at the following rates: (a) double (2) time for each hour of overtime worked after having worked the scheduled hours of work to a maximum of sixteen (16) hours on a regular workday Monday to Friday inclusive and for all hours worked on a day of rest up to a maximum of sixteen (16) hours;</p>
<p>Agreement between the Treasury Board and The Federal Government Dockyard Trades and</p>	<p>15.10 Overtime Compensation Subject to clause 15.14, overtime shall be compensated at the following rates:</p>

Labour Council (East) Group: Ship Repair (East) Expiry 31 st December 2011	(a) double (2) time for all hours worked in excess of eight (8) hours in a continuous period of work or in excess of eight (8) hours in a day to a maximum of sixteen (16) hours in a continuous period of work; and for all hours worked on a day of rest to a maximum of sixteen (16) hours;
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WAGE SCALES AND ALLOWANCES

Guild Proposal	Employer Response
2.9 % increase in all wage scales and allowances in each year of a 3 year term.	1.5% salary increase (excluding allowances) in each year of a 3 year term

The Standardized Employer Proposal

This Board is no doubt aware that over the last couple of years, the Employer has approached negotiations with its various bargaining agents with a standard proposal on economic increases of 2.3%, 1.5%, 1.5%, and 1.5% across the federal public service, in the form of non-negotiable final offers. These figures were based on the federal government's Economic and Fiscal Statement of 2008 which claims that these minimal increases represent reasonable wage increases for bargaining unit members that are also affordable for the Government.

See **Tab 5** of the Guild's Brief "Economic and Fiscal Statement of November 27th 2008" at p.54.

Despite this wide-spread and standardized proposal from the Treasury Board, some bargaining units have negotiated increases beyond these mandated figures but have done so by giving up voluntary severance pay in their collective agreements.

The Treasury Board has been making it abundantly clear to its various bargaining units, including the Guild, that termination of the severance pay for voluntary departures is a pre-condition to concluding negotiations and that a failure to agree on this item would result in an impasse at the bargaining table. As a result, many bargaining units have been forfeiting this benefit in return for higher wage increases that would benefit the entire bargaining unit. According to the Employer, more than 100,000 unionized employees in the Core Public Administration have accepted the elimination of severance benefits for voluntary separation, namely for retirement or resignation.

See **Tab 6** of the Guild's Brief, "Treasury Board of Canada's Collective Bargaining Update".
Date Modified 11th November 2012.

As illustrated in the chart below, where the Treasury Board and federal public sector unions have agreed to eliminate voluntary severance, they have reached an agreement to higher economic increases of 1.75%, 1.5% and 2%.

Federal Public Sector

Employer	Union	2011	2012	2013	2014	Note
Treasury Board	PSAC (Operational Services including Ships' Crews (SV))	1.75%	1.5%	2.0%		Additional "Wage harmonization" increase also negotiated effective April 1, 2013
Treasury Board	Architecture/Engineering/Land Survey (NR group)	1.75%	1.5%	2.0%		Additional "restructuring" amounts negotiated in 2011 and 2012
Treasury Board	National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)	1.75%	1.5%	2.0%		
Treasury Board	PSAC (Education and Library Science)	1.75%	1.5%	2.0%		
Treasury Board	PSAC (Program and Administrative Services)	1.75%	1.5%	2.0%		
Treasury Board	Canadian Military Colleges Faculty Association	1.75%	1.5%	2.0%		Additional "restructure" negotiated for 2011

While Treasury Board will no doubt ask this Board to adopt the above economic increases in this Agreement, the Guild submits that the nature and status of this bargaining unit and the expressed importance of its work to the Canadian government demands that this Board not follow this rigid and regressive template approach which is contrary to all principles of labour relations and collective bargaining in this free and democratic country called Canada.

Problems with Recruitment and Retention in the Coast Guard and the Need for Competitive Compensation

The first criteria listed by the legislation in section 148 that this Board is required to take into account is the "necessity of attracting competent persons to and retaining them in the Public Service in order to meet the needs of Canadians". As of 2012, "recruitment and retention", has assumed critical importance in the Canadian Coast Guard. There are very particular and immediate pressures currently facing the Canadian Coast Guard that have brought this issue to the forefront.

i. Competition with Private Sector

The Canadian Coast Guard management has identified that labour market pressure, in part, makes recruitment and retention of Ships' Officers especially challenging. They state that other organizations routinely hire away their sea-going personnel, thus placing a further strain on human resources planning.

See **Tab 7** of the Guild's Brief, "Canadian Coast Guard Strategic Human Resources Plan 2010-2013"

The fleet needs Officers with valid certificates of competency in key positions aboard vessels in order to set sail. The fleet has historically lost Officers with higher level certificates to other federal departments such as Public Works and Government Services and to ship procurement projects and to Transport Canada, as well as to commercial fleets.

See **Tab 8** of the Guild's Brief, "Project of Attrition and Replacement of Ships' Officers in the Canadian Coast Guard".

An additional factor contributing to Officers leaving for opportunities in the private sector is the delays in staffing processes in the federal government which can take a long time to fill vacant positions on an indeterminate basis. This can be frustrating for Officers who have a higher level of certification than required by their substantive position and are seeking a promotion to a position on a vessel with an increased level of responsibility and compensation.

See **Tab 8** of the Guild's Brief.

As the Guild is the bargaining agent for many private sector Maritime employers, it has become acutely aware of this trend in which some private sector employers offer more competitive rates than the Coast Guard or DND. Coast Guard Officers are viewed by shipping "headhunting" organizations as excellent employees to recruit into the private sector since their certifications, training, medicals and passports are up to date. They are essentially "job ready".

ii. Attrition Rates

The Coast Guard is also facing another reality- an aging workforce. There are already a large number of employees eligible for retirement and this number is steadily increasing.

According to the Coast Guard 2011-2014 Strategic Human Resources Plan, 2010 attrition rates were higher than they have been since 2006 due to higher than typical rates of retirement and attrition rates that may increase year over year. By 2015, the Coast guard anticipates that approximately 30% of its total workforce will have left. The Coast Guard the trend of rapidly increasing retirement and has acknowledged that it will need to be "imaginative and innovative if it is to recruit sufficient numbers of technically-skilled people."

See **Tab 9** of the Guild's Brief, Canadian Coast Guard Strategic Human Resources Plan 2011-2014"

One of the ways that the Coast Guard has identified to overcome challenges to recruitment is to promote its total employment package, highlighting job security, salary, benefits, pension and learning and development opportunities. See **Tab 9** of the Guild's Brief at p. 20.

iii. Expansion of the Coast Guard's Work

In its Human Resources Plan the Employer - the Coast Guard - has also recognized the expanding nature of its work in the face of challenges to recruitment and retention. Its plan notes that since 2005, the Government of Canada has allocated 1.4 billion for the acquisition of 15 large vessels for the Coast Guard. See **Tab 9** in the Guild's Brief at p.6

In addition, it notes:

"Enhancement of Canada's national security has been identified as a government priority. The Government of Canada has made significant investments across a wide range of sectors...including the maritime sector. CCG contributes to these efforts through the use of its vessel fleet, on-water expertise and extensive vessel monitoring systems to enhance awareness of possible maritime security threats, support on-water law enforcement and responsiveness and enhance collaboration with departments and agencies throughout the maritime security community."

See **Tab 9** in the Guild's Brief at p. 7

The 2012 federal Budget also identifies "renewing the Canadian Coast Guard fleet" as a priority for the Government:

Promote job creation by renewing the Canadian Coast Guard Fleet; supporting the involvement of small and medium-sized enterprises in the National Shipbuilding Procurement Strategy; investing in transportation infrastructure, including railways and ports; and providing funding for community public infrastructure facilities.

See **Tab 10** in the Guild's Brief, "Jobs Growth and Long-Term Prosperity: Economic Action Plan 2012: the Budget in Brief" at p. 8

The government in recent years has paid increasing attention to asserting Canadian sovereignty offshore, particularly in the Arctic. Initiatives include a new polar icebreaker for the Canadian Coast Guard (CCG), additional funds for important research, and increasing the presence of the Canadian Forces in the North. The Harper government has been on record for some time as insisting that Canada is going to continue to assert its sovereignty offshore, particularly in the Arctic. Chapter 3.1 of the 2012 Budget Plan states:

The Canadian High Arctic Research Station

Economic Action Plan 2012 announces the Government's ongoing commitment to establishing the Canadian High Arctic Research Station.

Canada's Economic Action Plan laid the groundwork to establish a world-class research station in the North. As announced by the Prime Minister in August 2010, the station will be located in Cambridge Bay. Once established, the station will provide a year-round presence in the region and anchor the network of research infrastructure across Canada's North, making a significant contribution towards the Government's Northern Strategy. The Government will be announcing next steps in the establishment of the Canadian High Arctic Research Station in the coming months.

These ambitions expressed by the federal government raise serious concerns about its ability to actually provide the necessary manpower to fulfill these goals which will include the need to patrol the extensive Arctic coastline and to attract the necessary qualified and competent individuals to implement these strategic plans.

See **Tabs 11 and 12** in the Guild's Brief, "Controlling Canada's Arctic: Role of the Canadian Coast Guard" and "Statement on Canada's Arctic Foreign Policy".

The Officers and Crews of the Coast Guard are the primary guardians and watch keepers of Canada's coastal borders. As national security grows in importance to Canadians, finding a fair and reasonable compensation and benefit structure to encourage younger Canadians to enter into this field is of paramount importance. Canada has one of the largest coastlines in the world which is attracting increasing attention as the concern with security issues shifts to its largely undefended coastal borders.

In view of the issues identified above, it is critical that the federal government present the most competitive and attractive compensation and leave package available if Canada is going to meet its needs to fulfill the critical functions all Government Ships' Officers perform for Canadians. It is evident to the Guild that this round of bargaining is not a time to remove benefits or beneficial working conditions that Ships' Officers currently enjoy but rather, it is a

time to ensure that the compensation and other terms and conditions of employment for Ships' Officers are brought on to a competitive footing both within the Coast Guard and with the private sector.

The State of The Canadian Economy and the Ability to Pay

A significant factor to consider in making a compensation award is commonly referred to as "ability to pay". In this regard, Arbitrators have consistently ruled that "public sector employers always have the ability to pay through the use of the taxing power directly or indirectly. In the public sector, 'ability to pay' means simply that the employer, for reasons which are often political, does not want to pay."

Teplitsky, Martin, "Ability to Pay in the Public Sector: An Arbitrator's Viewpoint" (1991) 2 Lab. Arb. Yearbook 277 at 280, fn. 8.

While "ability to pay" is not the only factor to consider, the Guild submits that it must be kept in mind when this Board reviews the remaining factors including the state of the Canadian economy and the Government's fiscal circumstances.

Canada's economy has not been hit as hard by the global recession as other countries and, in fact, Canada's 2012 Budget in Brief documents state not only that Canada's economy has shown the strongest growth amongst the G7 countries but that job growth continues and the Canadian economy remains "resilient" showing "sustained growth":

- The Canadian economy has remained resilient despite external weakness, reflecting sustained growth in the domestic economy.
- Canada has had the strongest economic growth over the recession and recovery among Group of Seven (G-7) countries. This reflects our solid economic fundamentals and the timely support of the stimulus phase of Canada's Economic Action Plan.
- 610,000 more Canadians are working now than in July 2009, the strongest job growth among G-7 countries over the recovery. This continues the strong performance that has resulted in over 1.1 million new jobs created since the beginning of 2006.

See **Tab 10** of the Guild's Brief, "Jobs Growth and Long-Term Prosperity: Economic Action Plan 2012: the Budget in Brief" at p. 14

Furthermore, the 2012 Budget confirms that Canada's economic recovery is well underway and that Canada's economic output "is now well above pre-recession levels":

Since 2006, the Government has supported the security and prosperity of Canadians and promoted business and investment to create jobs. When the global financial and economic crisis struck, these underlying strengths helped Canada to avoid a deep and long-lasting recession. The Government's sound fiscal position prior to the crisis provided the flexibility to launch the stimulus phase of Canada's Economic Action Plan, which was timely, targeted and temporary in order to have maximum impact. This plan was one of the strongest responses to the global recession among the Group of Seven (G-7) countries.

Economic output in Canada is now well above pre-recession levels, and more than 610,000 jobs have been created since the recovery began in July 2009, the best performance in the G-7.

See **Tab 10** of the Guild's Brief, at p. 4

The 2012 Budget goes on to identify “renewing the Canadian Coast Guard fleet” as a priority for the Government:

Promote job creation by renewing the Canadian Coast Guard Fleet; supporting the involvement of small and medium-sized enterprises in the National Shipbuilding Procurement Strategy; investing in transportation infrastructure, including railways and ports; and providing funding for community public infrastructure facilities.

See **Tab 10** of the Guild’s Brief at p. 8

As of August 2012, Statistics Canada lists the Consumer Price Index for 2011 as 2.9 and the year to date as 1.8.

See **Tab 13** of the Guild’s Brief, “Ministry of Labour Collective Bargaining Highlights, August 2012”.

Consumer Price Index October 2012 from Statistics Canada, reports an increase in consumer prices of 1.2% in the 12 months to October, matching the increases in August and September.

See **Tab 14** of the Guild’s Brief, “Consumer Price Index October 2012”

In view of the above, the Guild submits that the Employer’s proposal of a 1.5% salary increase, excluding allowances, is not consistent with Canada’s economic recovery nor with the Government’s ability to pay. The Guild requests that this Board award its proposals regarding increases in wages and allowances.

Application of s. 148 Criteria Supports a General Economic Increase as Proposed by the Guild

This Board is not bound to award the "standardized" Employer proposal for economic increases.

Section 148 of the PSLRA specifically gives this Board jurisdiction to award rates of pay that are fair and reasonable and comparable to other employees in similar occupations in the public and private sector. Fair compensation has always been understood to represent compensation that would enable an employee to maintain pace with the cost of living. As noted above, the Consumer Price Index for 2011 was 2.9%.

When the Board examines the private sector marine industry comparators for the same timeframes applicable to this collective agreement, it will note that the increases average approximately 2.9%-an amount that will permit those Officers working in the private sector of the marine industry to keep pace with the consumer price index and inflation.

The Board will note that many of these private sector marine industry collective agreements contain cost of living allowance (COLA) clauses tied to the annual consumer price index (CPI) increase. The Guild submits that if the federal government is going to retain and attract sufficient Officers to meet the demands set by the government in its human resources plan to expand the Coast Guard's work, this Board must give effect to economic increases that are being freely negotiated in the comparable private sector industry. Those increases are approximately 2.9% annually.

For all the foregoing reasons, the Guild asks the Board to award its proposal for an across the board economic increase of 2.9% for the three year collective agreement and to specifically include all allowances.

Wage Comparators

HRSDC lists the average wage adjustments as follows:

	Jan 2012	Feb 2012	March 2012	June 2012	July 2012	August 2012	Average
Public sector	2.3%	1.7%	1.3%	2.0%	0.9%	2.4%	1.8%
Private sector	2.4%	2.6%	3.1%	2.2%	1.2%	1.6%	2.2%

The first quarter report also notes that in “the federal jurisdiction, 6 major agreements recorded an average wage adjustment of 2.8%. Of these agreements, five were in the private sector, while only one was in the public sector (560 unlicensed personnel at Marine Atlantic Inc.)”

See **Tabs 15 and 16** of the Guild’s Brief “Canadian Labour Profile, March 2012” and “Major Wage Settlements, by month”

	2011	2012	2013	2014	2015
Marine Industry¹	2.89%	2.84%	2.72%	3.03%	3.66%

Private Sector Marine Industry Comparators

As indicated throughout this Brief, issues of compensation and comparability, both internally and externally with the private sector, stem in large part from the urgent priority of recruitment and retention and the necessity to offer competitive compensation and benefit packages comparable to those of employees in the private sector.

Employer	Union	2011	2012	2013	2014	2015	Notes
Atlantic Pilotage Authority (Pilots)	Canadian Merchant Service Guild		2.0%	2.50%	2.50%	3.0%	Expiry 31 st January 2016
Atlantic Pilotage Authority (Launchmasters)	Canadian Merchant Service Guild		2.0%	2.0%	2.0%	2.25%	Expiry 31 st December 2015
Bay Ferries Limited (Mates)	Canadian Merchant Service Guild	2.0%	2.0%	2.0%			Expiry 31 st December 2013

¹ Annual Averages calculated from Industry Comparators listed below.

Marine Atlantic Incorporated (Masters, Chief Engineer, Chief Electrical Engineers)	Canadian Merchant Service Guild	2.0%	2.0%				2009: 2.8% 2010: 2.8% Expiry 31 st December 2012
Marine Atlantic Incorporated (Mates, Engineers, Electricians)	Canadian Merchant Service Guild	2.5%	2.5%	2.5%			Expiry 31 st December 2013
Northumberland Ferries Limited (Mates)	Canadian Merchant Service Guild	2.84%	2.0%	2.0%			Expiry 31 st December 2013
Svitzer Canada Limited	Canadian Merchant Service Guild	Greater of CPI or 2%	Greater of CPI or 2%	Greater of CPI or 2%			Expiry 31 st December 2013
Ocean Remorquage Trois-Rivières (Tug captains & Launchmasters)	Canadian Merchant Service Guild	3.5%	3%	2.5%			Expiry 27 th September 2014
ArcelorMittal Mines Canada (Marine engineer officers)	Canadian Merchant Service Guild	3.5%	4.93%	4.12%	5.3%	4.2%	2016: 5.1% Expiry 31 st May 2017
ArcelorMittal Mines Canada (Tug captains)	Canadian Merchant Service Guild		3.5%	4.93%;	4.12%	5.3%	2016: 4.2%; 2017: 5.1% Expiry 31 st August 2017
ArcelorMittal Mines Canada (Harbour pilots)	Canadian Merchant Service Guild		7.5%	4.93%	4.12%	5.3%	2016: 4.2% 2017: 5.1% Expiry 31 st May 2017
LPA (Launchmasters and Engineers)	Canadian Merchant Service	1.60%	2.00%	2.40%			2010: 1.50%

	Guild						Expiry 2013
Groupe Ocean Qc (Tug Captain)	Canadian Merchant Service Guild	2.76%	COLA	COLA			2010 : COLA Expiry 2013
Groupe Ocean Qc (Launchmasters)	Canadian Merchant Service Guild	2.00%	2.75%	3.00%	3.00%	3.70%	2010 : 2.00%
Desgagnes Marine Cargo (Mates and Engineers)	Canadian Merchant Service Guild	3.00%	2.50%	2.50%	2.50%	2.75%	2016 : 3.50%
Desgagnes Marine Petro (Mates and Engineers)	Canadian Merchant Service Guild	3.00%	2.50%	2.50%	2.50%	2.75%	2016 : 3.50%
Seamanning Services Ltd (Acting for A.P. Moller-Maersk A/S) (Captains & Chief Engineers)	Canadian Merchant Service Guild	3.00%	3.00%				CPI paid if greater than wage increase amount for previous 12 months Expiry 31 st Dec 2012
Seamanning Services Ltd (Acting for A.P. Moller-Maersk A/S) (Deck & Engineering Officers)	Canadian Merchant Service Guild	3.00%	3.00%				CPI paid if greater than wage increase amount for previous 12 months Expiry 31 st Dec 2012
Comtug Ltd (Captains & Chief Engineers)	Canadian Merchant Service Guild	3.00%	3.00%	3.00%			Expiry 31 st August 2014
Cancrew Enterprises Limited (Umiak 1) (all Licensed Officers)	Canadian Merchant Service Guild	6.0%	Greater of 2.0% or COLA	Greater of 2.0% or COLA			Expiry 30 th June 2014
Algoma Central Marine	Seafarers' International Union of Canada	3.71%	COLA	COLA			

British Columbia Maritime Employers Association	International Longshore and Warehouse Union	2.5%	2.5%	2.5%	2.8%		COLA paid if CPI for Vancouver exceeds 2.9% for 12 months ending March 31, 2016 (3.2% for 2017; 3.6% for 2018). See formula at Addendum 3.
Algoma Central Lakers (Former Upper Lakes Shipping)	Canadian Auto Workers	3.0%	2.0%	Greater of 1.5% or COLA	Greater of 1.5% or COLA		COLA is the annual average by Statistic Canada Jan-Dec
Average		2.89	2.84	2.72	3.03	3.66	

Non-federal public sector

Employer	Union	2011	2012	2013	2014	2015
B.C. Ferry Services Inc.	B.C. Ferry and Marine Workers Union (licensed and unlicensed personnel)		2.1% average annual increase over 36 months for Agreement expiring Oct. 2015			
City of Ottawa	CUPE Local 503	2.75%	1.91%	1.91%		
City of Ottawa – OC Transpo	ATU Local 279	2.0%	2.0%	2.0%	2.0%	2.25%

The Guild’s Proposals on Allowances and Economic Increases

When considering the allowances being proposed by the Guild in light of the legislative factors, the Guild submits that its proposed increases are consistent with the Government's own stated objectives for the Coast Guard and are mandated by section 148 of the PSLRA.

It is important for the Board to note that these allowances are not global in nature. “Allowances” are defined in Article 2 of the collective agreement as: “...compensation payable for the performance of special or additional duties or in the case of a Canadian Coast Guard Officer

Cadet an amount payable to help defray expenses incurred as a cadet.” These allowances are not a big economic item at all for the employer as they only apply to a small number of Officers when the Employer is requiring the Officer to perform a specific task or additional responsibility.

For example, the monthly Rescue Specialist Allowances only applies to those Certified Rescue Specialists who have maintained their certification and who are assigned to sea going positions where they may be required to perform such duties. The monthly Armed Boarding Allowance is only paid to those Officers who have undertaken specialized training and have maintained their qualifications and are assigned to a seagoing position on selected offshore patrol vessels which carry special armaments for the purpose of fisheries enforcement duties where the Officer may be required to participate in armed boarding activities.

The Guild submits that none of these allowances as forms of compensation for additional duties and responsibilities have kept pace with inflation and the relatively minor increases that the Guild is proposing do not raise significant concerns with regard to cost to the employer and the state of the Canadian economy particularly because these have not kept pace with the cost of living.

In the initial stages of bargaining, the Guild proposed increases for certain allowances that were flatly rejected by the Employer. The Guild has therefore elected to not bring the individual proposals to arbitration but is proposing a generalised increase in wages and allowance of 2.9% for each year of the collective agreement. The Employer on the other hand has proposed annual economic increases of 1.5% per year to salaries but has specifically excluded all allowances from this proposal.

There is no principle of labour relations or collective bargaining which supports the Employer's proposal to exclude all allowances from the economic increases to be applied to the collective agreement. In fact, in its two most recent interest arbitrations of 2004 and 2008, the Boards applied annual economic increases to allowances and in Arbitrator Mitchnick's award of 2004, it was explicitly stated that "annual increases would be applied to the specific Officer **Allowances effective** those same dates, as has been the practice in the past."

See **Tabs 3 and 4** of the Guild's Book of Authorities, *CMSG v. Treasury Board* (August 13th 2004) (Mitchnik) and *CMSG v. Treasury Board* (June 27th 2008) (Tarte).

The Guild submits that there is no precedent or practice for excluding allowances from the generalised economic increase applied to the collective agreement as a whole with respect to monetary benefits and requests the Board to increase the allowances across the board by the economic increase awarded "as has been the practice in the past".

With the exclusion of the dirty work allowance that is dealt with in more detail below, the following chart illustrates the list of allowances and the exceptional circumstances in which they would be paid. As noted above, the Guild submits that there is no rationale for denying Officers the general economic increase for these allowances. This is not nor can it be a significant economic cost to the Employer.

Allowance	Eligibility Requirements
Article 25: Meals and Quarters Allowance	Paid when an Officer is working on a vessel on which meals and/or quarters normally provided are not available and employer does not provide alternative meals and/or quarters.
Appendix E: Canadian Coast Guard	Monthly training allowance for Cadets .

Officer Cadets: Monthly Allowance	
Appendix E: Canadian Coast Guard Officer Cadets: Monthly Sea Training Allowance	Paid to Cadets on sea training in addition to the training allowance above.
Appendix G: Extra Responsibility Allowance ²	Paid in recognition of additional responsibilities to Officers assigned as Master/Commanding Officer or Chief Engineer on “C” Class Vessels and above, or as Master/Commanding Officer or Chief Engineer on DND Glen Class tugs and “S” Class Torpedo and Ship Ranging Vessels, or as DND Dockyard Pilot.
Appendix F: Rescue Specialist Allowances ³	Certified Rescue Specialist receives the allowance for each month certification is maintained and is assigned to sea going position where the Officer may be required to perform such duties.
Appendix F: Fisheries Enforcement Allowance	Completion of required training and assignment to a sea going position where the Officer may be required to participate in enforcement duties.
Appendix F: Armed Boarding Allowance	Assignment to selected Offshore Patrol Vessels of the Department of Fisheries and Oceans which carry special armaments for the purposes of enforcement duties and where the Officer may be required to participate in armed boarding activity.
Appendix F: Diving Duty Allowance	Required to perform diving duties and maintain diving equipment on vessels.
Appendix F: Nuclear Emergency Response Team	Officers working at CFB Esquimalt and CFB Halifax who are designated as members of Nuclear Emergency Response Team, who are trained, maintain their qualifications and assigned such duties.

ARTICLE 40-DIRTY WORK ALLOWANCE

Another Inequity between Officers and the Ships’ Crews

The purpose of the “Dirty Work Allowance” is to compensate Ships’ Officers and Crews for performing work in “dirty” conditions by providing a premium which under the current language is one (1) additional hours pay for each hour spent performing “Dirty Work”. This premium is pro-rated for every fifteen minutes worked. Typically, this “dirty work” is performed by workers involved in engineering and electrical tasks, including Engineering and Electrical Officers who are required to do repairs and maintenance under the decks.

The type of work that constitutes “dirty work” is best described by the current language in the collective agreement:

40.01 When an Officer is required to:

² According to Appendix G, Extra Responsibility Allowance (ERA) is “considered as part of pay for purposes of PSSA, Disability Insurance, Public Service Management Plan and Severance Pay”

³ According to Appendix F, all allowances under this Appendix “shall form part of pay for purposes of Article 29 Severance Pay.”

(a) work in bilges and spaces below the bottom floor plates for periods in excess of fifteen (15) minutes, or

(b) repair or maintain ships' sewage disposal tanks and associated piping, pumps and valves, including any part of a vessel's sewage system, which necessitates the officer to come into contact with effluent, or system components which are downstream from the fixture connection and contain effluent. The grey water system is not considered to be a part of the sewage disposal system. Or

(c) work on top of boilers while steam pressure is being maintained, or

(d) work inside water tanks or work inside oil tanks that have contained oil, or work in the fire side of boiler furnaces, combustion chambers, or in air heater space. The grey water tank shall be considered to be a water tank for the purpose of the administration of clause 40.04(d). Work on the exhaust manifolds of the opposed piston Fairbanks-Morse engines (punching carbon) shall be considered to be the equivalent of work on the fire side of combustion chambers. Or

(e) come in physical contact with the pollutant while engaged in the cleaning up of oil spills in excess of 200 litres which resulted from a disaster, mechanical failure, bunkering or fuel transfer operations, or

(f) repair or maintain the ships' grey water system, including holding tanks, associated piping, pumps and valves, provided the officer is required to come into direct contact with the grey water. Cleaning of clogged drains shall not constitute dirty work.

The officer shall receive, in addition to the appropriate rate of pay, an additional one (1) hours pay the officer's straight-time rate for each hour worked.

An officer is entitled to the above compensation on a pro rata basis for each completed fifteen (15) minute period worked.

The Guild's proposal would amend the current language so that it is identical to the language in the Ships' Crews collective agreement. This proposal would increase the applicable rate in Article 40.01 from one (1) times the Officer's straight-time hourly rate of pay for each hour worked to $\frac{1}{2}$ **the straight time hourly rate of pay for each fifteen (15) minutes** worked. This change would ensure the Officers receive at least the same level of compensation for performing the same "dirty work" as the Ships' Crews, whom they supervise and who receive under their current collective agreement, "...in addition to the appropriate rate of pay, an additional one-half (1/2) the employee's straight-time rate for every fifteen (15) minute period, or part thereof, worked."

Below is an illustration of the difference in "dirty work" pay between one hour of "dirty work" being done by a Ships' Officer SO-MAO-3 under Appendix A's hourly rate of \$26.07 versus a comparable member of the Ships' Crew, at an hourly rate of \$23.06 for the same length of "dirty work" and how this compares to the Guild's proposed language.

The Board will see that the Guild's proposal simply restores a minimal comparability as between the Ships' Officers and the Ships' Crews for identical work.

Hourly Rates for SO-MAO-3 (Appendix A)	Ships' Officer Collective Agreement	Ships' Crew Collective Agreement –Deck and Engine-3	Proposed Article 40.01-SO-MAO-3
\$26.07	\$26.07-Hourly Rate <u>\$26.07</u> -DWA Rate \$52.14	\$23.06-Hourly Rate <u>\$46.12</u> -DWA Rate \$69.18	\$26.07-Hourly Rate <u>\$52.14</u> -DWA Rate \$78.21

It is clear that the current situation must change. It is unacceptable that the Ships' Officers performing "Dirty Work" alongside the Ships' Crews would continue to earn significantly less for performing the same work with individuals whom they supervise. This creates an inequity between the two classifications of employees that should be rectified pursuant to s. 148(c) of the PSLRA.

The Comparators

In addition to the disparity of compensation between the Officers and Crew, the Guild also submits that the Dirty Work Allowance currently paid to Ships' Officers is less than the appropriate comparators within the public and private sector. Furthermore, the majority of federal public service comparators provide dirty work allowance at the higher rate. See below for a comparison of these provisions.

The Guild submits that the Dirty Work Allowance does not represent a significant economic cost to the Employer at all.

As noted above, the allowances generally are not a significant economic cost to the Employer. The Guild submits that the Dirty Work allowance in particular is a glaring inequity which needs to be corrected by this Board and does not represent a significant economic cost to the Employer at all.

Frankly, the Guild is puzzled why the employer would not simply correct the obvious inequity and injustice in this untenable difference between compensation paid to an Officer and the Crew that he/she is supervising in those rare occasions when the dirty work allowance is applicable.

When considered along with the other factors listed in the PSLRA, such as the necessity of offering compensation and other terms and conditions of employment that are comparable to those of employees in similar occupations in the public and private sector (148(b)), the need to maintain appropriate relationships with respect to compensation (148(c)) and the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the work performed and the nature of the services rendered (148(d)), the Guild submits that in these circumstances it is a situation of fundamental fairness and the Guild asks the Board to increase the Ships' Officers' Dirty Work Allowance as set out in its proposal.

Current Language	Guild Proposal	Employer Response
<p>40.01 When an officer is required to:</p> <p>a) to e)</p> <p>The officer shall receive, in addition to the appropriate rate of pay, an additional one (1) hours pay the officer's straight-time rate for each hour worked.</p> <p>An officer is entitled to the above compensation on a pro rata basis for each completed fifteen (15) minute period worked.</p>	<p>40.01 When an officer is required to:</p> <p>a) to e) no change</p> <p>The officer shall receive, in addition to the appropriate rate of pay, an additional one half (1/2) the officer's straight time rate for every fifteen (15) minute period, or part thereof worked.</p>	<p>No Change</p> <p>Status Quo</p>

When the Board examines the other federal public service comparators it would appear that the other two bargaining unit groups that would be called upon to deal with an oil spill or come in contact with major pollutants in the course of their duties, receive the same dirty work allowance as the Ships' Crews. This allowance effectively works out to double time but is counted in 15 minute increments of exposure to the pollutant(s) listed in the article.

The Ships' Officers are "in the same boat" as the Crews and will literally be required to attend at the same oil spill, disaster etc. (Pun intended)

As noted earlier, there should be equal or comparable pay for equal or comparable work. The Guild's proposal which is identical language to that found in the Ships' Crews agreement represents a fair and modest rebalancing of the pay inequity that currently exists between the Officers and Crews for this allowance. The Guild therefore requests that its proposal be awarded.

COMPARATORS

COLLECTIVE AGREEMENT	ARTICLE
<p>Agreement between Treasury Board and the PSAC Operational Services Group (SV) Expires August 4th, 2014 - Appendix G - Ships' Crews</p>	<p>Annex F- 1. When an employee is required to:</p> <p>(a) clean or work in bilges and spaces below the bottom floor plates for periods in excess of fifteen (15) minutes.</p> <p>or</p> <p>(b) clean boiler tubes or repair and maintain ships' sewage disposal tanks and associated piping, pumps and valves, or clean on top of boilers while steam pressure is being maintained, or clean inside water tanks, or clean inside oil tanks that have contained oil, or perform spray painting or sand blasting in void or confined areas, or work in the fire side of boiler furnaces combustion chambers or in air heater spaces.</p> <p>or</p> <p>(c) come in physical contact with the pollutant while engaged in the cleaning up of oil spills in excess of two hundred (200) litres which resulted from a marine disaster, mechanical failure, bunkering or fuel transfer operations.</p> <p>or</p> <p>(d) repair or maintain the ships' grey water system including holding tanks, associated piping pumps, and valves provided the employee is required to come into direct contact with the grey water. Cleaning of clogged drains shall not constitute dirty work.</p> <p>the employee shall receive, in addition to the appropriate rate of pay, an additional one-half (1/2) the employee's straight-time rate for every fifteen (15) minute period, or part thereof, worked</p>

<p>Agreement between Treasury Board and the PSAC</p> <p>Operational Services Group (SV)</p> <p>Expires: August 4th, 2014</p> <p>- Appendix B - General Labour & Trades</p>	<p>6.01 When an employee is required to come in physical contact with the pollutant while engaged in the cleaning up of oil spills in excess of two hundred (200) litres which resulted from a marine disaster, mechanical failure, bunkering or fuel transfer operations, the employee shall receive, in addition to the appropriate rate of pay, an additional one-half (1/2) his straight-time rate for every fifteen (15) minute period, or part thereof, worked. All of the foregoing duties must have the prior approval of the Employer before work is commenced.</p>
<p>Agreement between Parks Canada Agency and the PSAC</p> <p>Expired: August 4th, 2011</p>	<p>59.02 Dirty Work Allowance</p> <p>When an employee is required to come in physical contact with the pollutant while engaged in the cleaning up of oil spills in excess of two hundred (200) litres which resulted from an accident or disaster, mechanical failure, bunkering or fuel transfer operations, the employee shall receive, in addition to the appropriate rate of pay, an additional one-half (1/2) his straight-time rate for every fifteen (15)-minute period, or part thereof, worked. All of the foregoing duties must have the prior approval of the Agency before work is commenced.</p>

ARTICLE 10- CHECK OFF

Current Language	Guild Proposal	Employer Response
<p>10.06 The amount deducted in accordance with Clause 10.01 shall be remitted to the Secretary-Treasurer of the Guild by cheque within a reasonable period of time after deductions are made and shall be accompanied by particulars identifying each officer and the deductions made on his/her behalf.</p>	<p>10.06 The amount deducted in accordance with Clause 10.01 shall be remitted to the Secretary-Treasurer of the Guild within a reasonable period of time after deductions are made and shall be accompanied by particulars identifying each officer in accordance with Clause 13.01 and the deductions made on his/her behalf.</p>	<p>No Change Status Quo</p>

ARTICLE 13-INFORMATION

Current Language	Guild Proposal	Employer Response
<p>13.01 The Employer agrees to supply the Guild on a quarterly basis with a list of all officers in the bargaining unit. The list shall contain the following information:</p> <ul style="list-style-type: none"> a) officer's name; b) employing department; c) home port or the geographic location to which an officer is normally assigned d) classification. 	<p>13.01 The Employer agrees to supply the Guild on a quarterly basis with a list in alphabetic order of all officers in the bargaining unit. The list shall contain the following information:</p> <ul style="list-style-type: none"> a) officer's first and last name including middle initial if applicable; b) employing department; c) home port or the geographic location to which an officer is normally assigned d) classification. <p>The Employer will notify the Guild on a monthly basis of the name, classification and work location of officers who have been hired, retired, dismissed, transferred in or out of the bargaining unit, resigned or deceased.</p>	<p>No Change Status Quo</p>

Discussion on Articles 10 and 13

Articles 10 and 13 relate to the widely accepted principle of labour relations that a Union is entitled to certain information from the Employer about its members that is adequate and necessary to representing those employees. This information includes a list of employees showing their names, addresses and classifications. It is part of the Employer's duty to bargain in good faith to disclose to the Union such information in a timely and accurate fashion, as this information is critical to the Union's ability to ensure that the collective agreement is being honoured for all its members.

See for example the decision of the Canada Industrial Relations Board of *Atomic Energy of Canada Limited* in which the CIRB ruled that the Employer's refusal to produce employee's salary information to the Union constituted bad faith bargaining and *Monarch Transport Inc.* where the CIRB ruled that the Employer's failure to provide the Union with an employee list, indicating correct addresses and telephone numbers for all of those employed within the bargaining unit constituted interference in the Union's capacity to represent them as per s. 94(1)(a) of the *Canada Labour Code*.

See **Tab 5** of the Guild's Book of Authorities, *Atomic Energy of Canada Limited* [2001] CIRB no. 110.

See **Tab 6** of the Guild's Book of Authorities, *Monarch Transport Inc. and Dempsey Freight Systems Ltd.* [2003] CIRB no. 249.

Despite the longstanding presence of these articles in the collective agreement, the Guild has experienced ongoing difficulties in understanding the data that is received from the Employer. The information is not detailed enough to enable the Guild to have an accurate accounting of its membership. Without even first names or work locations, the Guild has problems confirming the identity of the members who have submitted monthly dues by payroll check off. While the list of last names and initials of employees paying dues is provided monthly, on the other hand the list of employees by classification and work location is only provided quarterly and these two lists bear no resemblance to one another, are arranged in a random half-hazard manner and cannot be cross-referenced. The Guild submits that in order for these clauses to have substance and relevance, the Guild requires detailed and accurate information that is provided on a monthly basis. This information is of particular importance to the Guild in order to properly represent its members, given that its membership is dispersed all across Canada.

The Guild notes that this Board in a recent arbitration between the Public Service Alliance of Canada and the House of Commons ordered the exact same language being proposed by the Guild to be included as a new clause to the collective agreement.

See **Tab 7** of the Guild's Book Of Authorities, *Public Service Alliance of Canada v. House of Commons*, 2010 PSLRB 121

ARTICLE 43-DURATION AND RENEWAL

Current Language	Guild Proposal	Employer Response
43.02 Unless otherwise explicitly stipulated, the agreement will become effective on the date it is signed.	43.02 All benefits and monetary items, including all allowances, shall be effective retroactive to April 1 2011	No Change Status quo

Discussion

The Employer has taken a position in bargaining that there be no retroactive application of the collective agreement and has also proposed the addition of Article 43.03 which would provide 150 days for implementation of the collective agreement. While the parties have agreed that the length of the collective agreement would be three years, the Guild asks this Board to order that the usual principles regarding retroactivity apply and some reasonable time frame be imposed for implementation of the terms of this agreement.

In determining whether provisions of a collective agreement apply retroactively, it is a generally accepted principle and the approach of Canadian arbitrators to start from the presumption that all clauses of a collective agreement are retroactive to the effective date of the contract unless this would lead to impractical and unintended results or the parties specify otherwise.

See for example **Tab 8** of the Guild's Book of Authorities, *Penticton Retirement Service* (1977) (Weiler)

See for example **Tab 9** of the Guild's Book of Authorities, *Durham Memorial Hospital* (1991) (Kaufman)

The purpose of the Guild's proposed change to the current language is to clarify the presumption at law as well as the past practice of the parties which assumes that all benefits and monetary items are applied retroactively to the effective date of the contract as this is not

currently clearly stated in the provisions of the collective agreement.

With regard to the substance of this proposal, the Guild's submission is that "benefits" include all categories of all monetary benefits provided by the Collective Agreement including but not limited to: vacation, sick and other types of leave; travelling time; meals and quarters; uniforms and safety footwear and the financial compensation associated with such benefits.

As noted above, "Allowances" are defined in Article 2 of the Collective Agreement as: "...compensation payable for the performance of special or additional duties or in the case of a Canadian Coast Guard Officer Cadet an amount payable to help defray expenses incurred as a cadet."