



Arbitrage de différend des OFF - Mise à jour n ° 3
2 octobre 2018

Décision arbitrale rendue publique

Les bulletins précédents de la Guilde ont décrit en détail les raisons et les antécédents qui ont conduit la Guilde et l'employeur à atteindre l'impasse dans les négociations pour une nouvelle convention collective des officiers de la flotte fédérale en septembre 2017. Cette impasse a immédiatement été renvoyée à un arbitrage de différend. Les représentants de la guilde et l'équipe juridique de la guilde n'ont épargné aucun effort dans les soumissions ainsi que dans l'excellente présentation faites au nom des membres OFF. L'audience a eu lieu en mai 2018 et l'affaire a été confiée aux trois membres du comité d'arbitrage pour leurs délibérations.

L'arbitre Sydney Baxter a maintenant rendu la décision qui formera les termes et conditions du nouveau contrat.

Cette décision est jointe afin que les membres OFF puissent être informés rapidement. Une nouvelle mise à jour de la guilde suivra une analyse approfondie de cette décision.



Federal Public Sector
Labour Relations and
Employment Board

Commission des relations
de travail et de l'emploi
dans le secteur public fédéral

BY FAX and BY E-mail

Reference No / N° de référence
585-02-69

October 2, 2018

Mr. David Jewitt
Jewitt McLuckie & Associates LLP
1505 Carling Ave, 2nd Floor
Ottawa ON K1Z 7L9

Ms. Patricia Phee
Negotiator
Compensation and Labour Relations
Treasury Board of Canada
L' Esplanade Laurier
140 O'Connor Street
Ottawa ON K1A 0R5

**Re: Arbitral Award -
Canadian Merchant Service Guild and Treasury Board
Ships' Officers (SO) Group**

Pursuant to Section 153 of the *Federal Public Sector Labour Relations Act*, you will find enclosed the arbitral award in the above matter. As requested by the parties, and in consultation with the chairperson for the arbitration board, the French translation will be transmitted to the parties when available and, therefore, only the English version is enclosed at this time.

Sincerely yours,

Catherine Ebbs,
Chairperson

Encl.

c.c. S. Baxter
J. Herbert
A.D. Boettger
L. Morneault

Canada

File 585-02-69

IN THE MATTER OF

THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT

and a dispute affecting
the **Canadian Merchant Service Guild (the Guild)**

and

the **Treasury Board (the Employer)**,
in respect of the employees of the employer in the
Ships' Officers Group

Before: Sydney Baxter, chairperson
Joe Herbert and Anthony Boettger, Arbitration Board Members.

For the Guild: David Jewitt, Alison Longmore

For the Employer: Patricia A. Phee, Guiseppe DiRaimo, Karine Beauchamp

Heard at Ottawa, Ontario on May 14, 2018.

1. By letter of November 24, 2017, the Canadian Merchant Service Guild (the Guild) requested arbitration pursuant to section 136 of the *Federal Public Sector Labour Relations Act* (the *Act*) in respect of the Ships' Officers bargaining unit. Along with its request, the bargaining agent provided a list of the terms and conditions of employment it wished to refer to arbitration.

The Employer and the Bargaining Unit

2. The bargaining unit consists of approximately 1,100 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.

3. 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, a floating crane, torpedo recovery vessels, a submarine range patrol vessel, floating plants for degaussing and fuelling operations and a fire-fighting tug. These units are home-ported in Halifax, Victoria and Nanoose, B.C.

4. 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.

5. The Canadian Coast Guard Fleet has approximately one hundred and sixteen (116) vessels. These vessels include ice breakers, ocean-going research and survey vessels, rescue vessels, buoy tenders, mid-shore and off-shore 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 to 18 members from the Ships' Crews bargaining unit. A smaller vessel may only have as few as 2 Officers on board and an additional 2 to 4 Crew from the Ships' Crews bargaining unit. These vessels are home-ported at Coast Guard stations and bases across the country.

Bargaining History

6. The parties exchanged proposals on June 17 and 18, 2014 and subsequently engaged in around twenty (20) days of collective bargaining between November 25, 2014 and September 14, 2017 to renew the collective agreement.

7. In the end, the parties reached agreement and signed off the following provisions:

1. Article 10 - Check-off;
2. Article 20 - Vacation Leave with Pay;
3. Article 23.02(a) - Bereavement leave increase quantum for bereavement leave;
4. Article 23.28 - Changes to the reasons to grant Leave with Pay for family related responsibilities;
5. Article 29 - Severance pay (and consequential amendments to Article 20.03 (Vacation); and
6. Article 31 - Call Back Pay: paragraph 31.02(a) replace mileage with kilometric.

8. By letter dated January 30, 2018, Catherine Ebbs, Chairperson of the Federal Public Sector Labour Relations and Employment Board appointed the following as an arbitration board to hear and determine the matters in dispute:

Sydney Baxter, Chairperson

Joe Herbert and Anthony Boettger, Members

9. An arbitration hearing was scheduled for May 14, 2018.

10. Prior to the arbitration hearing, the parties exchanged briefs, copies of which

were submitted to the Arbitration Board (the Board), providing the Board with an opportunity to review the parties' positions prior to the scheduled hearing.

11. At the outset of the arbitration hearing on May 14, 2018 the parties advised the Board that they had signed off the following provisions of the collective agreement:

Article 12 - Statement of duties; and

Article 36 - Officer Performance Review and Officer File.

12. At the hearing on May 14, 2018, the Board afforded the parties the opportunity to submit additional argument and elaborate on their positions contained in their briefs.

13. During the Employer's presentation to the Board, Ms. Phee, the Employer's Chief Negotiator, asked for an opportunity to reply to the Guild's reply to the Employer's submissions.

14. Despite the fact that this request does not follow the normal procedure (wherein the Guild would make its presentation, after which, the Employer would then make its presentation and reply to the Guild's position and finally the Guild would have an opportunity to reply to the Employer's submission) the Board, in an effort not to appear rigid in its proceedings, allowed Ms. Phee the opportunity to respond after the Guild had made its final reply to the Employer's submission.

15. Further, in the interest of fairness, the Board granted the Guild's request to submit any additional information in writing in reply to new matters raised in the Employer's submission which occurred at day's end, rather than schedule a further day of hearing for the Guild to orally respond.

16. The Board therefore, accepts the additional information provided to it by way of letter from Mr. Jewitt, the Guild's counsel, dated June 21, 2018 over the objection of Ms. Phee, by way of her letter dated July 22, 2018, for the following reason.

17. The Board found the Guild's submissions in this regard to be responsive and compliant with what the Board requested and permitted the Guild to submit,

particularly in view of the irregular order of proceedings on May 14, 2018. The contents of the Letter of June 21, 2018 were an appropriate reply to information the Employer submitted at the end of the hearing day on May 14, 2018.

18. Finally, it should be noted that both parties were offered every opportunity to submit additional information up to and including Friday, July 27, 2018. In fact, as late as that day, the Employer provided to the Board a copy of a binding conciliation board decision, authored by Chairperson Serge Brault which dealt with the determination of outstanding pecuniary and economic issues tied to the 2014-2018 collective agreement for the Association of Justice Council (AJC). A decision the Board considered and will comment on later in this award.

19. The Board now turns to the issues remaining in dispute.

20. In arriving at its award, the Board considered the submissions of the parties in light of the factors enumerated in Section 148 of the Act.

Preponderant factors

148(1) In determining whether compensation levels and other terms and conditions represent a prudent use of public funds and are sufficient to allow the employer to meet its operational needs, the arbitration board is to be guided by and to give preponderance to the following factors in the conduct of its proceedings and in making an arbitral award:

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

(b) Canada's fiscal circumstances relative to its stated budgetary policies.

Other factors

(2) If relevant to the making of a determination under subsection (1), the arbitration board may take any of the following factors into account;

(a) relationships with compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;

(b) the compensation and other terms and conditions of employment relative to employees in similar occupations in the private and public sectors, including any geographical, industrial or other variations that the arbitration board considers relevant;

(c) compensation and other terms and conditions of employment that are reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and

(d) the state of the Canadian economy.

21. The Board also considered the letter by the Honourable Scott Brison, P.C., M.P., President of the Treasury Board to the Heads of the Public Service Bargaining units dated June 3, 2016 which states in part:

Preponderant Arbitration / Conciliation Factors:

Bargaining agents within the core public administration and separate agencies may submit to a PIC [Public Interest Commission] or arbitration board that the Commission or Board, as a truly independent third party, is free to weigh the factors as it sees fit without regard to preponderance. The employer shall not object to this submission, nor will it argue that any factor is "preponderant."

The employer also undertakes to advise the Commission or Board that Canada's fiscal circumstances relative to its stated budgetary policies are not a material factor. However, the Government of Canada retains the right to make arguments on the state of the Canadian economy, as well as the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians.

Issues remaining in dispute

Appendix G: Extra Responsibility Allowance

22. The Guild proposes to amend Appendix G to:

1. expand the list of positions entitled to the ERA to include "Floating Plant Sub-Group" and the Instructors at the Canadian Coast Guard College.
2. extend the length of time that an officer is entitled to receive the ERA when assigned ashore for training purposes, or to a shore based position on an acting basis. Currently, when Guild members move to these assignments the Employer ceases paying the ERA after 120 days. The Guild proposes to amend the clause so that its members would receive the ERA for 365 days.

23. The Employer recommends that the Board include the current ERA without change in the arbitral award.

24. The Board determines that this provision shall be amended to extend the time that an officer is entitled to receive the ERA when assigned ashore for training purposes, or to a shore based position on an acting basis, from the current 120 days to 365 days.

Article 24 and Appendix H - Overtime entitlements during travel time.

25. The current language in this article which the Guild proposes to change is as follows:

24.04 If an officer is required to travel as set forth in clauses 24.02 and 24.03:

b) On a normal working day on which the officer travels and works, the officer shall be paid:

ii. at the applicable overtime rate for additional travelling time in excess of the officer's normal daily hours of work, with a maximum payment for such additional travelling time not to exceed eight (8) hours' pay at the straight-time rate in any day.

c) On a day of rest or on a designated holiday on which the officer travels, the officer shall be paid at the applicable overtime rate for travelling time to a maximum of eight (8) hours' pay at the applicable overtime rate.

Appendix H, Article 24 - Travelling time

An officer who is subject to Appendix "H" and who travels on a lay-day in accordance with the provisions of clauses 24.02 and 24.03 of the Collective Agreement shall be paid at the applicable overtime rate as specified in the overtime clause of Appendix "H" for travelling time to a maximum of eight (8) hours' pay at the applicable overtime rate.

26. The Guild proposes to amend Article 24.04(b)(ii) and (c) and Appendix H, Article 24 to reflect nine (9) hours.

27. The Employer in its comprehensive offer of September 12, 2017, provided the following counter proposal to the Guild as part of a negotiated settlement, which the Guild declined.

24.04 If an officer is required to travel as set forth in clauses 24.02 and 24.04:

a. On a normal working day on which the officer travels but does not work, the officer shall receive his/her regular pay for the day

b. On a normal working day on which the officer travels and works, the officer shall be paid:

ii. at the applicable overtime rate for additional travelling time in excess of the officer's normal daily hours of work, with a maximum payment for such additional travelling time not to exceed **twelve (12) hours' pay at the straight- time rate in any day or not to exceed fifteen (15) hours' pay at the straight-time rate of pay when the travel is outside Canada or the Continental USA.**

c. On a day of rest or on a designated holiday on which the officer travels, the officer shall be paid at the applicable overtime rate for travelling time to a maximum of **twelve (12) hours' pay at the straight-time rate or not to exceed fifteen (15) hours' pay at the straight time rate of pay when the travel is outside Canada or the Continental USA.**

28. The Board determines that the provisions under Article 24.04 and Appendix H be amended in accordance with the Guild's proposal.

Article 25.02 and 25.03 - Meal allowance - Where meals and quarters are normally provided but not available: and

Article 30.09 - Meal allowance where meals are not provided.

29. The Guild proposes to amend Articles 25.02 (a), (b) and 25.03 (a), (b) as follows:

Replace quantum with National Joint Council Travel Directive

30. The Employer opposes the Guild's proposals.

31. The Board determines the following:

That ten dollars and ninety-eight cents (\$10.98) be replaced by thirteen dollars (\$13.00) and twelve dollars and three cents (\$12.03) be replaced by fourteen dollars (\$14.00), in Article 25.02 (b) and Article 25.03 respectively.

32. Further, that all references to ten dollars (\$10.00) in Article 30.09 be replaced by twelve dollars (\$12.00).

Rates of Pay.

33. The Employer proposes to increase all rates of pay in the following way:

April 1, 2014: 1.25%

April 1, 2015: 1.25%

April 1, 2016: 1.25%

April 1, 2017: 1.25%

34. The Guild's proposal is as follows:

April 1, 2014: Increase all rates of pay by 1.25%

April 1, 2015: Increase all rates of pay by 1.25%

April 1, 2016: Market adjustment of 15%; eliminate or adjust increments as required to implement market adjustment.

April 1, 2016: Increase all rates of pay by 1.25%

April 1, 2017: Increase all rates of pay by 1.25%

On April 1, 2018: Increase all rates of pay by greater of CPI or 2%

All increases to apply to all allowances.

35. The parties are in agreement for the wage increases effective April 2014, 2015, 2016 and 2017 which have been a common pattern across the federal public service.

36. The Guild however, argues that a 15% market adjustment is necessary for its membership as their pay is not only falling behind the private sector but their internal relativity to the Ships' Crews which they supervise is becoming increasingly unbalanced.

37. The Guild further argues that the market adjustment increase is necessary due

to the significant recruitment and retention issue facing the Canadian Coast Guard. The Guild cites examples of an increasing frequency and despite operational needs, vessels are being "tied up" and rendered non-operational for periods of time only because there are insufficient officers available to operate the vessels.

38. Finally, the Guild argues that when one compares its wages to those of the private sector, the wages offered by the private sector have been increasing at a faster pace than the wages offered to Ships' Officers in the Federal Public Service. In support of this position the Guild provided the Board with a number of examples of private sector employer wage collective agreements which illustrate the wage rates.

39. The Employer submits that at the beginning of this round of bargaining (2014), the two departments who hire officers, the Department of Fisheries and Oceans (DFO) and the Department of National Defence (DND) were surveyed and did not identify any recruitment and retention issues for this group.

40. The Employer further submits that compensation levels for the Ships' Officers group are sufficient to attract and retain qualified employees. The hiring rate for the Ships' Officers group, the Employer notes, has outpaced the Core Public Administration (CPA) over all five of the last fiscal years and the total separation rate for the Ships' Officer group has been declining since 2013-2014. In addition, the hiring-to-separation ratio has also been consistently higher than the CPA average.

41. Further, the results from the Public Service Employees Annual Survey in 2014 show high job satisfaction among officers.

42. Concerning external comparability, the Employer argues that the 2014 wage comparability study by the human resources consulting firm Deloitte, conducted on behalf of the Employer, shows that the wages of the Ships' Officers group are competitive with external comparators.

Wage Proposal Analysis

43. To begin the discussion, the Board notes that all of the public sector bargaining units that have concluded negotiations in this round of bargaining, have received

incremental adjustments, bonuses, new allowances and or market adjustments to address wage imbalances. The wage adjustments vary in range from 0.5% to 15%.

44. Of particular note, is the fact that the ships crews were awarded a 5% market adjustment.

45. In its deliberations, the Board considered the letter from the Honourable Scott Brison, which permits us to make a fair economic award without legislative restrictions.

46. In fashioning an appropriate monetary award, the Board is cognizant of the fact that this bargaining unit is not an administrative group like many others in the CPA. Rather, it is a unique operational group which has very little in common with employees who work in an office environment. As such, any comparison to the wage rates paid to groups within the greater CPA are of little persuasion. Many members of this group are first responders who venture to sea in storms and other inclement weather to assist private vessels in need. Therefore, the Canadian Public needs assurance that there will be enough officers to meet those needs.

47. The Board is of the view that despite the Employer's argument to the contrary, there is a problem with retention and recruiting of Ships' Officers.

48. From as far back as 2008, this problem was identified by George Da Pont, Commissioner, Canada Coast Guard, Fisheries and Ocean's in his report to the Standing Committee on Fisheries and Oceans and by Charles Gadula, the Deputy Commissioner of the Canadian Coast Guard, Fisheries and Oceans in his speech to the Canadian Ship Owners and Lake Carrier's Association.

49. The fact that ships are being tied up for lack of qualified crew members is, in the Board's view, further evidence of a problem with recruitment and retention.

50. The Employer at the hearing on May 14, 2018 took issue with this argument of the Guild. It pointed out that very little information was provided concerning crew issues, including the length of time that any vessel may have been delayed in port.

51. The Employer insisted that the delays cannot always be inferred to be caused by a crew shortage and may be the result of last minute illness. However, it did not contest that there were delays nor did it provide any evidence to suggest that the delays were caused by anything other than crew shortages as the Guild maintained. The Board, therefore, is persuaded by the Guild's submission on this point.

52. The conclusion that there is a retention problem in the Auxiliary Fleet Group is best demonstrated by Ed Gerow the Engineering and Float Platform Manager of the Auxiliary Fleet Group, in an email dated February 12, 2018, wherein he claims that the problem has moved from recruitment to retention:

We seem to be able to attract many engineers from all over the world, but once they have a true understanding of what we pay they either refuse a job offer, accept one then quit after a few months to work at BC ferries or Seaspam, or they ask to be retained in our inventory until a higher paying position becomes available. Our single most impediment to staffing is the low pay...

...In some situations the private sector is paying up to 40% more...

53. Further, in an email dated October 31, 2017 to various hiring managers of the Auxiliary Fleet, titled Hiring of Ships Officers, Ms. Elena DeCurtis, the Manager of the National Staffing team for the RCN, working from Halifax, stated:

As you may be aware, our ADM is currently in the process of signing a pilot project agreement with the Public Service Commission (PSC) to utilize a new staffing approach called the New Direction in Staffing interface (NDSi) with our traditionally difficult to recruit Ships Officers.

54. Attached to the email was a synopsis of some of the steps taken by Auxiliary Fleet Management to address "the severe engineering shortages and recruitment and retention issues since 2008." Of particular note in the synopsis is the following statement:

The only demographic that is sincerely interested in employment with the Auxiliary Fleet are retired ships officers who are already receiving a pension from other employers specifically BC Ferries, Coast Guard and the west coast tow boat industry. These applicants are very knowledgeable and experienced and as long as they remain available, the Auxiliary Fleet can maintain a minimum level of operation. Some of these folks are beyond the normal retirement

age, but as long as they comply with the required medical requirements, they are often the best type of employee to have, albeit not for the long term.

55. The synopsis concluded with the following:

The critical issue is pay...

...While the **difference in pay** between the private sector and our ships officers group can approach 40%, the difference in pay on the shore side engineering positions is closer to 50%

...Many initiatives have been applied to try and address this problem, but the **low pay** continues to be the cause. (The emphasis was included by the author of the synopsis)

56. To counter assertions that there is a recruitment and retention problem, the Employer noted the Public Service Employee survey in 2014 which it maintains shows high job satisfaction level among officers. The Employer stated that the response of officers were generally better than the public service average when looking at measures of overall job satisfaction.

57. The Board is of the view that this survey may have had more persuasive power had a higher number of officers participated. More particularly, with only 182 employees responding of the potential 1,100 Guild members, this participation can hardly be considered representative of the total group.

58. Considering then all of the above, the Board is of the view that it is reasonable to conclude that there is considerable merit to the Guild's position that this group has historical issues related to retention and recruitment.

59. With the foregoing in mind we turn now to the comparator collective agreements which were submitted by the Guild in support of its position that there is a disparity in wages between its members and employees of similar employers.

60. In this regard, the Board's job is to attempt to replicate what the parties could have reached had they been left to negotiate in good faith and reach a bargained settlement.

61. In *Regional Municipality of Peel v. Canadian Union of Public Employees, Local 966*, 2018 CanLII 9482 (ON LA) Arbitrator Stout considered the relationship between

replication and comparator collective agreements. At paragraph 19 of his interest arbitration award he notes as follows:

Replication makes use of "comparators" to assist in determining what the parties would have achieved in free collective bargaining. By comparators we mean boards of arbitration examine comparable agreements that were either freely negotiated or awarded by other interest arbitration boards. The use of comparators provides the objective evidence of the bargaining market place.

62. Arbitrator Stout was of the view that the most relevant comparators are those of agreements involving similar facilities and similar employees in similar communities.

63. In the circumstances before us, the Board is satisfied that the comparators submitted by the Guild, in particular B.C. Ferries, CanCrew Enterprises and Teekay Atlantic are appropriate comparators for the purpose of this arbitral award.

64. These comparators clearly show that the wages for the Ships' Officers represented by the Guild lag significantly behind those of their counterparts in the other industries.

65. When one compares the hourly wages, which in the Board's view is the appropriate way to make a comparison of wages, the evidence reveals that the disparity with the Guild's members and BC Ferries is in the range of 13.9% to 28.3% depending on the level of classification, CanCrew Enterprises 20.9% to 34.7% and Teekey Atlantic 29.6% to 76%.

66. The Employer argues that the Guild performed no job matching to compare the rates of pay. However, the Guild's position is that Guild Officers can and do move into the positions outlined in the comparator collective agreements, particularly the positions set out in the collective agreement that the Guild negotiated with CanCrew Enterprises.

67. On considerable reflection regarding the two positions, this Board is, therefore satisfied that the Guild has compared the salaries of equivalent rankings in the private sector to those of the Ship Officers that the Guild represents.

68. The Employer provided the Board with a survey conducted, on its behalf by the firm of Deloitte. The Board found this survey to be of limited utility as the authors themselves admitted that of the 40 employers contacted, only 3 responded. Of the 3 that responded, all are relatively small employers compared to the current group. The total employees in the 3 companies that responded amounted to 1,753 with 170 officers at Marine Atlantic and 48 officers at Rigel Shipping.

69. Seeking to validate its third party wage study the Employer referred to a CanCrew comparator which was included in the Guild's book of comparators.

70. That comparator, the Employer argued demonstrated that the SO-MOA-12 wage level was currently 23% to 29% ahead of the market for the Master position.

71. The Guild, on the other hand, pointed out that the Employer had mistakenly compared the wage scales for the Master and Chief of a "Tugboat" collective agreement to an MAO-12 level. In order to make a true comparison, the wages between the Cancrew Officers assigned to the two tugboats should be compared to the wages of the federal government tugboat operators, operating the DND tugboats. This comparison, the Guild maintains, shows that in fact the private sector CanCrew tugboat operators are earning approximately 15% to 24% more than the appropriate comparator in the federal government. This is a difference of between \$12,583.41 and \$20,451.93 annually.

72. After carefully reviewing the Deloitte report, including the secondary sources, the Board finds it to include a less than reliable sampling for the purposes of this exercise. As such, the report was of limited assistance in the Board's deliberations.

73. Finally, a factor that cannot be ignored is the 5% market adjustment to the ships' crew salaries which has significantly reduced the disparity in wages between officers and crews and which the Guild submits in some instances has resulted in crew members earning more than the officers who supervise them.

74. Before reaching its conclusion on wages, the Board wishes to make the following comments on Mr. Brault's binding conciliation decision.

75. The Board found the case useful in the following two areas: 1) The duration of the agreement; 2) The annual rates of pay. Regarding this latter point, the Board notes that the arbitration board in the AJC case refused to grant the bargaining unit's demand for a significant market adjustment owing to the fact that the AJC benefited from a similar exceptional increase in the 2012 round of bargaining of 15.25%. This increase, by the AJC's own admission raised it to the third highest of the external references, namely the provinces.

76. Having found that there is merit to the Guild's position that there is a retention and recruitment problem and that the wages of this group are low in comparison to employees in similar industries, the Board is therefore, satisfied that a market adjustment increase is necessary to both retain and recruit ships officers and further to bring their wages closer to that of their counter parts in the private sector.

77. The following monetary award may fall short of the Guild's demands. Be that as it may, the Board is of the view that our determination of the wages is both fair and reasonable under all of the circumstances and will, in our considered view, go a long way towards negating the recruitment and retention issue, as well as closing the gap between the wages paid to this group and their comparators in the private sector.

78. The Board determines that the rates of pay will be as follows:

April 1, 2014:	Increase of all rates of pay by 1.25%
April 1, 2015:	Increase of all rates of pay by 1.25%
April 1, 2016:	Increase of all rates of pay by 1.25%
April 1, 2017:	Increase of all rates of pay by 1.25%
April 1, 2017:	A market adjustment of 12%

79. The dissenting view of both nominees to the wage award is to be found at Appendix A and B to this award.

Duration of Collective Agreement

80. The Employer proposes an agreement of four years duration, to expire on March 31, 2018, while the Guild proposes an agreement of five years duration, to expire on March 31, 2019. The Board adopts the Employer's proposal and determines that an agreement of four years duration is appropriate under the circumstances. In

granting a collective agreement of four years duration, the Board is cognizant of Section 156(3) of the Act, which stipulates:

An arbitral award may not be for a term of less than one year or more than two years from the day on which it becomes binding on the parties, unless the arbitration board determines otherwise in any case where paragraph 2(a) or (b) applies.

81. The Board notes that the majority, if not all of the collective agreements entered into between the Employer and the 26 other groups in the CPA, have been for periods of four years, expiring in 2018. As such, the Board is of the view that awarding a collective agreement for a period outside of the time limits is warranted and that an exception under Section 156 paragraph 2 (b) (ii) is applicable.

Coming into force

82. The Board further concludes, as proposed by the employer, that the new provisions of the collective agreement be implemented within one hundred and fifty days (150) from the date of signing. Finally, the Board determines that all benefit changes, with the exception of wages, shall become effective on the date of the arbitral award.

83. Any proposals which were made to the Board, that are not dealt with in this decision, should be considered to have been dismissed.

84. The Board will remain seized of this matter for a period of four months, in the event that the parties have any difficulty in implementing this award.

Original signed by
Original signé par

Sydney Baxter
Arbitration Board, Chairperson

Dated at Ottawa this 2nd Day of October 2018

APPENDIX A

PARTIAL DISSENT of the Bargaining Agent's Nominee

My comments which follow are in no way intended to question the degree of carefulness or fairness with which I am aware the Chair of the arbitration board has approached this interesting case. Nonetheless, because the overall result falls somewhat short of where it ought to, in my own view at least, I must register a partial dissent.

First of all, the recruitment and retention evidence provided to this Board overwhelmingly supported the Guild's proposal for a 15% special adjustment to salary. The evidence establishes that every Treasury Board bargaining unit was able to negotiate a 'market adjustment' and that 15% is at the upper end, but falling within the range of these adjustments. In our case, the evidence indicates that the seafaring industry generally has, as forecast, found the recruitment and retention of employees, particularly at the Officer level, to be difficult due in part to generational and cultural shifts.

While shipping and cargo companies are in the end able to perhaps lessen seafaring requirements by alternate forms of shipping, obviously that is not an option here. Put simply, the Coast Guard, DND and the Department of Fisheries and Oceans cannot abandon the sea and coastal waters. In our case, there is a structural need to address recruitment and retention difficulties by establishing terms and conditions of employment that will alleviate those recruitment and retention difficulties.

Second, the normal arbitral principle of 'replication' the keystone of which is comparability, suggests that the Guild's proposed salary adjustment is appropriate without reduction. The Chair's award notes disparities ranging from 13.9% to much higher, between the salaries paid here and at comparators. The Guild's proposal was, in my view, one supported by the replication principle and should not have been reduced. I would have awarded the requested 15% adjustment. While the Chair notes that his award goes part way, my own preference would have been to eliminate disparities to the extent we are able. Moreover, adjustments of this sort were normally awarded one year early (2016) than has occurred here, except in the case cited in the Chair's award where the adjustment occurred in the previous bargaining round.

Joe Herbert
Nominee of the Guild

APPENDIX B

Dissent of the Employer's Nominee

I disagree with the Board's conclusion that a 12% Market Adjustment is reasonable for the Ships' Officers group.

The Board's conclusion that there exists a significant recruitment and retention problem with this group is not supported by the data and the demonstrated evidence put by the Employer. Recruitment challenges and turnover are a normal part of the employment relationship and absent significant supporting vacancy statistics do not constitute the crisis concluded by the Board or the consequent market adjustment.

The Board's application of the pay data presented by the parties is fundamentally flawed by selecting only specific employers as proposed by the bargaining agent for rate comparison. The Board has failed to respect the total compensation package of the SO Group and the need for some statistical balance that reflects a broader representation of the pay, benefits and working conditions of the industry as a whole. The Board should have given more consideration to the Employer's pay data and not dismissed it so readily.

Contrary to the Board's conclusion, there is no serious wage compression or overlap with the Ships' Crews group. The Board has ignored the actual reporting relationships and consequent pay relationships submitted by the Employer.

Finally, I disagree that the Ships' Officers should be considered as outsiders to the CPA. The Ships' Officers are just one of many occupational groups in the CPA that are not administrative and do not work in offices. The SO's are part of the broad CPA employment community and realize many compensation related advantages from its inclusion in this community. The application of the replication principle by the Board errs in suggesting otherwise and ignoring the settlement reached the Ships' Crews Group and the context of other market adjustments negotiated in the CPA.

In conclusion, I do not agree with the 12% market adjustment awarded by the Board and do not consider it supportable on the data presented.

A.D. Boettger