

IN THE MATTER OF AN ARBITRATION

BETWEEN:

GARDA OF CANADA

- and -

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Interest Arbitration concerning 2012-2015 Collective Agreement.

A hearing was held in Toronto on November 14, 2012.

Arbitrator: James Hayes

For the Union: Ron Fontaine, Grand Lodge Representative
Lou Pagrach, District 140 Representative
Carlos DaCosta, Grand Lodge Representative
Sasha Sukunda, Chief Steward, Island Airport
Robert Craig, Chief Steward, Terminal 3
Gi Gi Ninjam, Chief Steward, Terminal 1
Paul Cuprys, Steward, Island Airport
Colin Husbands, Negotiations Committee
Pearlet Browne, Negotiations Committee
Surjit Singh, Negotiations Committee
Barrington Barnett, Negotiations Committee
Vimalanathan Paramanathan, Negotiations Committee

For the Employer: Michel Brisebois, Counsel
Colleen Arnold, Regional Director

AWARD

On November 1, 2012 the union and the employer executed a binding Arbitration Agreement pursuant to Section 79 of the *Canada Labour Code* which appointed me to arbitrate a final and binding determination respecting the parties' collective agreement.

Negotiations took place before my appointment. A draft agreement reached by the negotiating committees was not ratified by the union membership. The parties then agreed to proceed to arbitration. While most terms of the renewal collective agreement had been resolved directly by the parties, four issues were referred to me as set out below.

The arbitration was conducted in an expeditious manner. Oral submissions supported by exhibit material were focussed and sharp. Both parties requested that a decision be rendered as quickly as possible. As indicated at the hearing therefore, this Award will be presented succinctly and summarily.

Background

Garda counsel at the hearing provided a helpful description of the history of collective bargaining and government action concerning airport screeners which is unnecessary to set out here. Suffice it to say that service suppliers such as Garda are selected on a regional basis. More recently, the intention was that there would be one service supplier per region. There are four regions, one of which is Ontario. Garda originally obtained the contract for the Ontario Region and subsequently, as the result of a corporate acquisition, also obtained the contract for the Prairie Region (Alberta, Saskatchewan, and Manitoba).

There is now arm's length direct collective bargaining between unions and the respective service suppliers over wages, a change from the past when CATSA's role was significant in establishing parameters. The union has recently taken over as bargaining agent with respect to this bargaining unit although, of course, the IAMAW has been well established in the Canadian airline industry for decades.

On March 14, 2012 IAMAW was certified by the Canada Industrial Relations Board to represent a bargaining unit consisting of "all employees of Garda Security Screening Inc. providing pre-board screening services under the CATSA contract at the Pearson International Airport, Buttonville Airport and Toronto City Centre Airport, excluding dispatchers, terminal supervisors and those above the rank of terminal supervisors". This bargaining unit had previously been represented by the Canadian Airport Workers Union.

I was advised that the bargaining was not conducted from scratch and employer counsel described it as carried out in a civilized, business like manner.

Issues

The union identified the following four issues which required resolution:

1. Section 25: wages
2. Section 28.3: the number of sick days per year
3. LOU #3: pension plan fund contribution
4. Part Time employee complement

Union submission

The union submission on wages focussed primarily on an effort to replicate a collective agreement recently reached concerning airport screeners at the Calgary airport. Mr. Fontaine provided exhibit material which, among other things, he said illustrated that housing costs were significantly higher in Toronto and that the cost of living recently had risen appreciably higher in Toronto than Calgary.

The union requested that a number representing the COLA adjustment achieved in Calgary (\$2.66) be added (to all rates) which, in the case of the top rate of \$18.81 per hour, would bring that number to \$21.47, to be effective as of November 1, 2012. \$21.47 is the hourly rate paid to classification Level 3.4 in Calgary. The union requested that all rates be adjusted with further 2.5% increases to be effective on April 1, 2013 and April 1, 2014. The union also requested a further lump sum of \$2,000. It noted that the sum of \$1700 was paid in Calgary with 60% paid to part time employees.

On the sick leave issue, the union emphasized that exposure to the public at airports seriously enhanced the likelihood of its members becoming sick. It submitted that it would be "fair and just" to add to the current entitlement of 7 days per year by 1 additional day effective on April 1, 2013 and again on January 1, 2014 bringing the number to 9 days per year.

On the pension issue, the union submitted that the employer should be required to match the 0.85 per hour contribution which it makes in Calgary and Edmonton.

With respect to part time complement, the union acknowledges the existence of LOU #7 but requests language which would limit the employer's access to part time employees to no more than 15% of full time staffing, the base number to be settled as of April 1 annually. The union claims that the employer has not honoured LOU #7.

Employer submission

Counsel for Garda emphasizes that an agreement had been reached in collective bargaining and signed by all members of the union negotiating committee, an agreement which should be respected as presumptively appropriate. He noted that only 45% of the members of the bargaining unit had voted and that the union had refused to put the draft agreement to a second vote. He pointed out that the union had sought a wage increase of \$2.35 per hour and that negotiations produced \$2.22. That number was frozen until further increases effective April 1, 2013 and then April 1, 2014 but a lump sum of \$1020 was to be paid.

The employer submits that higher rates payable in Calgary are entirely explicable given recruitment and retention issues applicable to the Alberta economy and, in particular, the draw of Fort McMurray. He stated that the Calgary comparator had not been discussed in negotiations and that "everyone knew" at that time that housing prices were higher in Toronto. He submitted in any event that "everything else" is more expensive in Calgary.

On the sick leave issue, the employer is prepared to move to 8 days per year entitlement in 2013 but "no-one in the country" has 9 days. He pointed out that the union has achieved entitlement also for use when immediate family are sick.

On the pension issue, the employer is prepared to pay 0.60 per hour and to add 0.10 in the third year. He emphasizes that the company has already agreed to move to the IAMAW pension plan.

With respect to the request for a part time cap, the employer states that this proposal is entirely impractical given CATSA's requirements and reductions which have been announced across the country. LOU #7 was negotiated mid-term with the previous union and there is an arbitrator available to address issues which have been raised in a pending grievance.

Decision

With respect, I am not persuaded by the union's economic argument concerning the Calgary comparator which appears to have been made only lately. The economic issues are complex and cannot be reduced to housing cost differentials. It also appears that the employer's reference to recruitment and retention issues has merit although, in future, one would expect to see supporting data.

I understand that a prior draft agreement was accepted by the negotiating committees and I believe this fact to be of relevance and significance as the employer submits.

However, in my opinion, the right of the union membership to vote on a proposed contract is an important democratic right which should not be treated as a formality. It is not a requirement of the *Canada Labour Code* but it is a right which this union takes seriously, to its credit. Frequently, parties will return to a bargaining table after a failure to ratify. Sometimes they do not. In this case the parties agreed to voluntary arbitration

by an arbitrator selected by them. Voluntary arbitration, invariably, is a superior option to arbitration imposed upon unwilling parties. The refusal of a bargaining unit to ratify a collective agreement however should not and does not create any entitlement to a contract superior to the one which has been rejected. That may or may not be the outcome.

I turn now to the issues in dispute.

The part time complement issue is obviously one of importance to members of the bargaining unit but it is one which should be returned to the parties for further direct discussions. I understand that a current dispute may be headed for collective agreement arbitration where the rights of the parties will be determined. This is a complex issue well beyond the reach of this interest arbitration. The union and its members may well have legitimate concerns. It is clear also that the employer has operational concerns about CATSA requirements. The union's proposal on this issue is rejected.

I make the following award with respect to the three remaining issues which I believe to be a fair outcome in all of the circumstances as they have been presented and explained to me.

My position on the wages is the following. The union proposal on the lump sum is rejected. I consider that \$2.35 per hour is a reasonable amount for the value of the COLA (Cost of Living Adjustment) and VRSC (Volume Risk Stress and Consequences). Therefore, \$2.35 is to be applied to the actual hourly rates. Such amount is to be increased by 1% as of November 1, 2012 (i.e. as of the complete pay period following November 1, 2012). As of April 7, 2013, the hourly rates will be increased by 2.5% and by 2.5% as of April 6, 2014.

The specific hourly rates resulting from this decision are represented in the following chart:

Section 25

Hourly Rates

Screening Officer Level	Nov. 1, 2012 (1 st complete pay period following Nov. 1, 2012)	April 7, 2013	April 6, 2014
L1	\$18.10	\$18.55	\$19.01
L3.1	\$20.25	\$20.76	\$21.28
L3.2	\$20.62	\$21.14	\$21.67
L3.3	\$21.00	\$21.53	\$22.07
L3.4	\$21.37	\$21.90	\$22.45
Team Leader	\$22.44	\$23.00	\$23.57
Grandfather Point Leader	\$23.72	\$24.25	\$24.80

- Team Leaders will receive a premium equivalent to five per cent (5%) of the wage rate of level 3.4.
- Former Point Leaders are considered grandfathered and will receive a premium of \$2.35 per hour on the wage rate of level 3.4.

Section 28.3

The Company shall provide 7 sick days for the first year of the collective agreement, and will provide an additional day in the second year of the collective agreement (therefore, 8 days) as of April 1st, 2013. Employees hired after January 1st in any year will for that year accumulate sick days at the rate of 1 day for each 3 full calendar months worked. These sick days will not be eligible to be carried over from one year to the next. The sick day benefits will only be available to "full-time" employees. Sick days may be used to care for members of the immediate family of the full-time employee who are sick. The Company can demand medical certificates from the employee at the Company's expenses. Finally, in order to be eligible for payment of a sick day, an employee who claims the same must take a shift work within a two week period following the claimed sick day unless unable to do so because of absence on sick leave.

Full-time employees who have unused accumulated sick days as of December 31 in any year shall be paid for such days at their normal hourly rate for their normal work day, such payment to be made by January 30 of the following year.

During an employee's leave of absence due to illness or injury (compensable or non-compensable), the Employer agrees to pay the full cost of the Welfare Plan on each employee's behalf to a maximum of six (6) months.

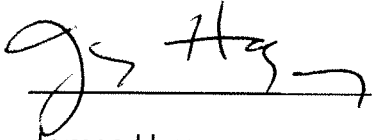
When an employee suffers an injury or illness which requires his absence, he shall report the fact to the Employer as soon as possible, prior to this actual starting time, so adequate replacement may be made if necessary. Employees must keep the employer notified of correct address and phone number at all times.

The Employer may request medical evidence for an absence exceeding three (3) consecutive days except in the case of abuse.

Letter of Understanding no. 3

The Employer's contribution to the Pension Fund shall be sixty-five cents (\$0.65) per hour worked as of January 1, 2013 (as of the 1st complete pay period after January 1, 2013), seventy cents (\$0.70) per hour worked as of January 1, 2014 (as of the 1st complete pay period after January 1, 2014) and seventy-five cents (\$0.75) per hour worked as of January 1, 2015 (as of the 1st complete pay period after January 1, 2015).

I remain seized for the purpose of implementing this award and, also, for the purpose only of correcting any errors or omissions which may be brought to my attention.

A handwritten signature in black ink, appearing to read "James Hayes", written over a horizontal line.

James Hayes
Sole Arbitrator

Dated at Toronto
December 3, 2012