

In the Matter of an Interest Arbitration

Between

CAW-Canada, Local 2002

And

A.S.P. Incorporated

Before: M. Brian Keller, Arbitrator
Joel Fournier and Ashley Watkins for the union
David Ross for the employer

Hearing in Toronto April 7, 2013

AWARD

The employer is contracted, through a bidding process, to provide a variety of security services under various contracts to the Greater Toronto Airports Authority. There are approximately 250 employees who are represented by the CAW. The contracts were awarded in 2010 and are now being re-tendered for a further three year period.

The security services provided by the employees include the control of restricted areas, by means of a variety of methods.

The CAW represents the employees as a result of a successful displacement application in December 2010. At the time, the employer had contracts at both Pearson and Billy Bishop airports. It subsequently lost the work at Billy Bishop and the current collective agreement applies only to employees at Pearson airport.

The award incorporates all matters agreed to by the parties to the date of this award. The provisions of the expired collective agreement remain in effect unless otherwise awarded, The provisions of the agreement awarded go into effect April 10, 2013 unless stated otherwise or unless not practicable.

Before dealing with the individual issues in dispute, general comment must be made about the financial circumstances of the employer as the items remaining in dispute all have monetary implications. I will not enter into a detailed rationale for my conclusions given the sensitivity of that information, particularly while the employer is formulating its bid in an effort to retain its contracts. Suffice it to say that I accept, based on the employer's financial disclosure that it has, for various reasons, operated at a loss the last two years. Given the nature of the tendering process, its future financial situation is, of course, unknown.

PENSIONS

The collective agreement with the predecessor bargaining agent required the employer to make a pension contribution of 20 cents per hour per employee. The accumulated money is still in the possession of the employer. On an on-going basis, the employer is to continue its contribution of 20 cents per hour per employee but payable in to employees RRSPs. It the responsibility of each employee to provide the employer with the necessary bank information to allow the employer to make the contributions to individual employees. Until an employee provides the information, the money will be held by the employer. Current employees have 60 days to provide the required information to the employer. New hires will provide the information within 30 days of being hired. Failure by new hires to provide the information in the time required will result in a loss of the payment until the information is provided, in which case, contribution will only commence at the time the information is provided.

Pension money accumulated to this point is to be distributed to the RRSPs of employees in the manner to be determined by the union. The union is to inform the employer within 60 days of this award how the money is to be distributed. The money is to be paid by the employer to individual recipients within 30 days from the date it is advised by the union how the money is to be distributed. Employees are, of course, free to use the payments lawfully, as they see fit.

UNION EDUCATION FUND

The employer is to contribute \$1500 per year to the union education fund, payable May 1 each year of the collective agreement.

SICK DAYS

This is a significant cost item, each sick day representing approximately \$40,000 in employee replacement and overtime cost to the employer. One additional sick day is awarded effective January 1, 2015.

TERM

The collective agreement will expire August 15, 2016, to coincide with the length of the contract to be awarded by the GTAA.

BONUS

In the event the employer is awarded the contract(s) by the GTAA, each employee who is employed on August 16, 2013, will be paid \$150, less those deductions required by law, the money to be paid by September 15, 2013.

WAGES

I have carefully considered the submissions of the parties and have applied the normal criteria during my deliberations. In particular, I have considered the financial situation of the employer, the nature of the work performed by the members of the bargaining unit as well as their current terms and conditions of employment. In my deliberations I have applied the principles of comparability and replication.

By replication, I mean I have attempted to come up with a result that the parties themselves might have achieved had they the same financial information I have and had they used the same considerations taking into account all relevant factors.

I have carefully examined the comparators offered by each party. While I find them somewhat helpful, I do not find any of them particularly dispositive. The union comparator in Vancouver has to be considered in light of a very different geographical region and somewhat different labour considerations. The comparison with the casinos is flawed based on the different nature of the work. The comparison with Garda is flawed based on the very significant difference in the nature of the work.

The employer comparators are equally flawed based on the differences of the work performed and the difference of the consequences of the work.

In addition to the above, I have also considered the fact that only one employee in the last year has not received an increase in remuneration based on grid movement. The increase for each employee has been in the order of three percent.

Finally, I have considered the consequences of awarding a wage increase that could affect the viability of the employer as a going concern. This could result in job losses, potentially significant in number, as well as a situation where the employees could find themselves unrepresented by any trade union with all the negative implications that flow from that.

Based on all the above, I award a 1.25 per cent across the board wage increase effective and retroactive to April 10, 2013. In addition, there will be two further across the board wage increases effective August 16, 2014 and 2015. The cost of living increase will be the increase in the cost of living (Toronto, all items), year over year, July to July.

It is to be noted that the employer was required to increase the start rate as a result of the increase to the minimum wage. The result was that the start rate and the three month rate became the same. Consequently, there is no need to maintain the three month rate. That is, employees starting work, or having less than three months of service, will have the same wage rate as three month employees.

SENIORITY

Classification seniority will govern for bids. Over-all date of hire will govern in the case of a lay-off, meaning last-in, first- out. In the case of recall, it will be last-out, first-in. Before any part-time or full-time employees are laid off, the employer will cease using casual employees. Except in the case of G4S employees, referred to below, overall seniority will govern except as provided above.

LETTERS OF UNDERSTANDING

Letters of Understandings are renewed with the exception of the LOU dealing with Billy Bishop employees, which is deleted.

The 2008 LOU dealing with G4S employees is spent and not renewed.

FORMER G4S EMPLOYEES

Former G4S employees hired after January 27, 2008 until February 14, 2008, will maintain their vacation entitlement based on their total seniority even if they move to another classification. If they change classification, they will, for all other purpose, go to the bottom of the seniority list for their new classification.

ARTICLE 20.9

The employer's proposal regarding 25 years of age is not awarded.

OTHER

In addition to the above specifically enumerated changes, there are other provisions awarded. They are contained at Schedule "A"

The parties are to meet within two weeks to complete the collective agreement.

I remain seized to deal with any issue arising from the interpretation, application, administration or implementation of any aspect of this award.

Ottawa, this this day 11th of June, 2013



M. Brian Keller, Arbitrator

SCHEDULE A

(The numbering has to be confirmed.)

Article 1

1.1 The Employer recognizes CAW/TCA Local 2002 as the exclusive representative for the purpose of collective bargaining, and grievances arising from the Agreement, of all employees of ASP Incorporated located at Lester B. Pearson International Airport , excluding those who perform management functions and those employed in a confidential capacity in matters relating to industrial relations, as per CIRB Order No. 9572-U.

1.5. A “Full-time Employee” is an employee who holds a permanent position on a continuous basis, in accordance with Article No. 17(b).

1.6. A “Permanent Part-time Employee” is an employee who holds a permanent position on a continuous basis, in accordance with Article No. 18(2)(a).

1.7. An “On-Call Casual Employee” is an employee who is offered work as set out in Article No. 19(a).

1.8. “Classification Seniority” (Department Seniority) is for purposes of this agreement;

- Assignment of hours
- Displacement within the classification
- Scheduling (incl. shift vacancies)
- Job posting within the classification
- Awarding of over time

1.9. “Start Date Seniority” (Overall Seniority) shall be the last date of hire with company and for purposes of this agreement;

- Payment of wages (Article No. 24)
- Lay off
- Severance pay
- Vacation entitlement

1.10. “Day” shall refer to calendar day unless expressly stated to the contrary

1.11. A “grievance” is defined as any difference arising out of the interpretation, application, administration or alleged violation of the provisions of this Agreement. Any reference in any article to the right to grieve by an Employee or by the Union is solely for the purpose of emphasis.

1.12. "Assignment Displacement" occurs when the client of the employer notifies the employer that a particular job assignment that will no longer be required, this results in the loss of those shifts at that post/assignment.

Article 6

6.3.1. The Employer will grant upon request up to Four (4) days Leave of Absence with pay in the event of death in the immediate family, (mother, father, husband, wife, children, sister, brother, common law partner, & grandparent/grandchildren) and two (2) days Leave of Absence with pay, event of death in the extended family (mother-in-law, father-in-law, brother-in-law, sister-in-law), provided the days fall on a regularly scheduled work day of the employee.

Additional time unpaid leave may be granted with documentation for purposes of overseas travel.

6.3.3 Proof of death may be required, if requested by management. The Employer will not require any person already on bereavement leave to report for work during the bereavement period. If an employee is notified of a death in his immediate family while working, he/she shall be relieved from duty and paid the balance of his/her shift.

6.5.2. A shift change can be made and approved by a local Supervisor/Coordinator as long as the request is made by two qualified parties, within the same pay period and no overtime is a result of the exchange.

Article 8

8.1 All employees will purchase their own first uniform in accordance with the following values and will remit payment by payroll deduction in an amount not to exceed twenty-five dollars (\$25.00) per pay period. In the event an employee is terminated from employment for any reason, all remaining outstanding amounts will be deducted from the final pay cheque in one lump sum.

Full Time Tactical:

3 Shirts
2 Pairs of Pants
1 Tie
1 Hat
1 Bomber Jacket

Full Time Tactical

\$385.00

Part Time Tactical:

2 Shirts
1 Pair of Pants
1 Tie
1 Hat
1 Bomber Jacket

Part Time Tactical

\$265.00

8.2. All uniforms shall be expected to last a minimum of 12 months after the date of issue. After that time uniforms will be replaced on an as needed basis only, without further cost to the employee.

8.3. The employer shall reimburse up to eighty (\$80.00) dollars for CSA approved safety boots after twelve (12) months of employment with the presentation of a valid receipt of purchase and shall reimburse up to eighty (\$80.00) dollars every twenty-four (24) months thereafter with the presentation of a valid receipt.

8.4 All uniforms shall be expected to last a minimum of 12 months after the date of issue. After that time uniforms will be replaced on an as needed basis only, without further cost to the employee.

8.5. The Employer shall hold back \$50.00 for each piece of ID that they are issued through their tenure of employment with the company. Upon termination of employment the employee is required to return their ID prior to the last processing date for payment of wages to ensure that the hold back is refunded.

Article 9

9.2. NO DISCRIMINATION / HARASSMENT

9.2.1. The parties agree that there shall be no discrimination or harassment against any employees by reason of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, union membership or non-membership, nor for any other reason which is prohibited by the Canadian Human Rights Act. The Company and the Union further agree that bullying shall be dealt with in a serious manner and treated with the same severity and level of concern as discrimination and harassment.

9.2.2. Bullying and Harassment

Bullying and harassment are often described as a course of comment or conduct that is known, or ought reasonably to be known, to be unwelcome. The unwelcome conduct causes an intimidating, threatening, or hostile work environment such that the victim's work performance is impaired, their relationships are negatively affected and their dignity is denied. Management responsibilities such as the assignment of work tasks, employee coaching and progressive discipline are not considered bullying.

9.2.3. The Employer and the Union will not condone harassment in the workplace and will cooperate to maintain a harassment free workplace.

9.2.4. Complaint Resolution – Discrimination or Harassment:

If an employee believes that he/she has been harassed and/or discriminated against on the basis of a prohibited ground of discrimination the employee may:

- a) Tell the person involved as soon as possible how he/she feels and request that they stop the conduct found offensive.
- b) If the employee feels uncomfortable approaching the person, or if the harassment continues, they should bring the incident forming the basis of the complaint to the attention of a Manager and the CAW Regional Vice President, CAW District Chair, the CAW National Representative or the Local 2002 President.
- c) The parties will review the complaint and, if the complaint is between members of the bargaining unit, may strike a committee and carry out a joint investigation. Where the complaint is in respect of a member of management or a non-member of the bargaining unit the parties will discuss the best approach and, absent agreement, the Employer will investigate.
- d) The Joint Committee will consist of equal members of Management and the Union. The actual composition of the joint committee will be determined by the parties on a case by case basis but with no less than one member each.
- e) Where the Joint Committee does not render a decision with majority support, the determination of the Management will prevail.
- f) All matters brought before the committee will be dealt with the utmost confidentiality.
- g) Nothing herein shall prevent an employee from seeking redress under the Canadian Human Rights Act with respect to complaints of discrimination or harassment

Article 12

12.1. All questions, disputes and controversies arising under this Agreement or any supplement hereto shall be adjusted and settled within the terms and conditions as set forth in this Agreement in the manner provided by this Article, unless otherwise expressly provided in this Agreement. The procedure for such adjustment and settlement shall be as follows:

STEP 1: Any grievance of an employee shall first be taken up between such employee and their immediate Supervisor or Employer designate. However, such employee will be entitled to be accompanied by a Shop Steward or a Union Representative Step 1 must be completed with ten (10) days, (exclusive of Saturdays, Sundays and Holidays): ...

12.4 All disciplinary action, save and except discipline imposed for harassment, workplace violence, shall be withdrawn from the employees personnel record eighteen (18) months from the date on the disciplinary notice and cannot be used against the employee at a later date.

Article 13

13.2. The Employer shall provide every employee covered by this Agreement with a separate or detachable written or printed itemized statement in respect of all wage payments made to such employee. The delivery of this pay statement will be by email unless a written request is received by the employee for it to be mailed. Such statement shall set forth the total hours worked, the total overtime hours worked, the rate of wages applicable, and all deductions made from the gross amount of wages.

Article 14

14.2. In the first year of employment, employees will be credited with one (1) day of vacation for each month of employment, to a maximum of two (2) weeks during that calendar year. Such vacation is to be taken within the period of January 1st of the year following the first year of employment through to December 31st of the next year. Vacation will be four percent (4%) of the gross wages paid to that employee in the portion of the year worked.

14.18 Despite Article No 1.9 former G4S employees hired after Jan 27 2008 until Feb 14 2008 will have their vacation entitlement based on their classification seniority instead of "start date seniority" while remaining only in the 'TAC' classification.

Article 15

15.2. Each full-time employee shall be paid 1/20th of the wages he has earned during the thirty calendar days immediately preceding that general holiday which is calculated from the first day on payroll. In order to qualify for General Holiday pay, employees must work their last scheduled shift before the holiday and their first regularly scheduled shift after the holiday, and work their scheduled shift on the holiday if the holiday falls on the employee's regularly scheduled day of work.

15.3. Following the first thirty (30) days of employment each permanent part-time employee shall be paid 1/20th of the wages he has earned during the thirty calendar days immediately preceding that general holiday. In order to qualify for General Holiday pay, employees must have worked on at least fifteen (15) of the thirty (30) days immediately before that specific General Holiday.

15.6. Any time worked on a holiday is not counted in calculating overtime entitlement.

Article 16

16.2. Strict seniority (as defined in Article No 1.8 & 1.9) shall prevail at all times, subject to the particular employee(s) being capable and having the appropriate qualification for any work which is to be done. Seniority shall be based from the last date of hire with the Company.

Seniority shall cease and employment shall be terminated for any of the following reasons:

- if an employee quits;
- if an employee fails to report for their scheduled shift without notifying the employer in advance of the reason for their absence, and subsequently does not make contact directly with the employer (messages are not sufficient) within seventy two (72) hours of start of their scheduled shift.
- is laid off and not recalled for a continuous period in excess of twelve (12) months or; where an employee has been employed for a period of less than twelve (12) months, the length of the recall period will be limited to the length of the employee's employment;
- fails to notify the Employer of his/her intention to return to work within seven (7) calendar days of being given notice of recall or fails to return to work on the date of recall as set out in the notice of recall;
- Works for a direct competitor of the Employer.
- Fails to return to work upon the expiration of an authorized leave of absence or vacation.

16.5 For purposes of any assignment displacements;

- a) The affected employee shall displace the most junior person on same shift, same status, within the classification, so that they can keep their same 'time of day' hours if possible.
- b) the first displaced employee will displace the most junior on another shift, same status, within the classification if possible or (e),
- c) the second displaced junior employee will displace the most junior employee on the last shift, same status, within the classification if possible or (e)
- d) the last employee displaced will be offered casual work when available.
- e) Any employee can opt to go directly to a casual status during this process and the displacements will stop at that point.

16.10. Part-time employees will be end-tailed onto the classification/departmental seniority list.

16.14. It is understood that an employee who transfers to a different classification/department shall be end-tailed on the Classification/Department Seniority list regardless of the employee's date of last hire.

Article 17

17.6. The Employer will avoid adjusting an employee's permanent schedule for the sole purpose of avoiding paying overtime.

17.15.2. Employees scheduled on twelve (12) hour shifts shall be entitled 75 minutes paid break time. Employees scheduled twelve (12) hour shifts will be provided 45 minutes "free from work" during their shift. This may be broken in two intervals (30 & 15 minutes). This time is inclusive of the total breaks, not in addition.

17.15.6. If an employee's break is interrupted, he or she should note this with a supervisor immediately so arrangements for a replacement break may be made.

17.15.7 Where an employee is working in a position where he or she has facilities (eg. gate), it is understood that breaks will be self-directed and taken at the post as scheduled by the employee having regard to the normal work flow. If an employee at such a post is unable to take breaks as a result of being recalled for recorded work duty interruptions, he will immediately note this with a supervisor and break relief will be scheduled. It is understood that Supervisory Personnel may perform break relief.

Article 18

18.5. Seniority (Classification) will be the deciding factor as to who gets priority on part-time shift schedules.

18.6. The Employer will offer the opportunity to Part-time employees to move to Full-time prior to offering work to new employees. Seniority (Classification) will be the deciding factor as to who would move to Part-time should positions be available. Should Part-time employees choose to go to Full-time, they will maintain their classification seniority for a period of ninety (90) days. If after ninety (90) days, they choose to remain as permanent Full-time, they will be placed on the Full time seniority list as of the date of the transfer. Should they choose to return to Part-time status at a later date, they will be placed at the bottom of the Part-time seniority list when an opening occurs in part-time.

Article 20

20.6 In the event that an employee is unable to acquire, possess and maintain a RAIC or Access Control Certification, the Employee will be suspended without pay until such time that the employee is able to obtain the RAIC and/or Access Control Certification.

In no case shall such suspension exceed forty-five (45) days, at which point seniority will cease and employment shall be terminated.

LETTER OF UNDERSTANDING – SCHEDULES

The Parties hereto agree to the following:

L3.1. Upon ratification of the contract the Employer will determine the appropriate manpower requirements based on customer requirements at the Toronto Pearson International Airport. The Employer will build a schedule that meets those requirements.

L3.2. The new schedule will be posted seven (7) days prior to June 1 each year, after which management will consult with the employees in order of classification seniority to allow them to pick their preferred shift. Once that shift is picked it is ineligible for others to pick. The next person in order of seniority will pick their preferred shift, etc. etc. Seniority by classification will prevail for the purpose of this selection. It is understood that the first shift bid will occur on or before August 1, 2013.

L3.3. Employees will have an opportunity for work selection within the classification, on basis and in order of classification seniority or start date seniority (whichever is greater). For the 2013 reclassification only, the statuses of employees will not affect the order (1. full-time, 2. part-time, 3. casual).

L3.4. The shifts will be implemented on the second Sunday, but not less than fourteen (14) days following the end of the shift selections for each classification.

L3.5. The Company will staff its operation with full time employees whenever possible as per Article No. 18. It is recognized, however, that the use of part time employees may be required in certain situations. Therefore, the following will apply in the use and employment of all employees within the bargaining unit.

Work Schedules:

L3.6. The Company will build full time shift lines over thirty (30.25) to forty (40) hours per week.

L3.7. Hours not deemed as part of the full time complement and any outstanding hours not allocated will be available to the part time employees per Article No. 18 who will be scheduled between sixteen (16) and thirty (30) hours per week. Any remaining hours will be distributed to On-Call Casual employees as per Article No. 19.

L3.8. Shift lines will be offered in order of seniority to all employees for bid in order of classification seniority. Shift lines not selected during the bid process will be assigned to the most junior employee(s) in reverse order of seniority.

L3.9. A review of the shift schedules will take place on an annual basis. The Union will be advised of the establishment of any new schedules and the effects it may have on the bargaining unit employees

LETTER OF UNDERSTANDING RE: ADVANCES ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS

The Parties hereto agree to the following:

L5.1. The Parties agree to use the ADR process outlined in this Letter of Understanding for one (1) year from the date of ratification. At the end of that one year period, this letter will expire and the process will no longer be used unless, with both Parties written agreement, the Letter of Understanding is extended.

The parties will continue to strive to have grievances resolved at the lowest possible step in the grievance process.

ADR Processes;

L5.2. The intent of the ADR processes are to provide a neutral third party who will attempt to resolve the grievance in a timely manner, normally at a preset quarterly review. As set out below, grievances which are selected for ADR may be submitted for Mediation or may be submitted to a binding Med/Arb pursuant to section 50 of the Labour Relations Act.

L5.3. The parties will agree to a Chief Mediator / Arbitrator who will be asked to act or appoint another person to act if he or she is unable to do so. The parties shall equally share in the fees of the Mediator / Arbitrator.

L5.4. All Med/Arb sessions will be attended by a maximum of four (4) representatives from each Party unless notified with reasons for a greater number no less than 10 days in advance. The persons attending should be familiar with the content of the grievance and have the authority to enact a resolution.

L5.5. The Parties and / or the Mediator/Arbitrator will create a timetable for the provision of written briefs, witness statements and documentary production. These shall be provided to the Mediator/Arbitrator and the other Party no less than ten (10) days in advance of the scheduled hearing date.

L5.6. It is agreed that no more than three (3) grievances will proceed or be submitted for mediation / arbitration at a single session.

L5.7. The session will normally be conducted at the workplace. This will be altered at the consent of both parties. Should the ADR process occur during an employee's scheduled hours of work they will be paid their normal rate of pay.

Mediation / Arbitration (Med/Arb);

L5.8. Grievances to be referred to Med/Arb will be discussed by the parties before an application is made and only when the Parties both agree that the grievance is appropriately addressed by Med/Arb process. The Parties may agree that a grievance is referred only for Mediation (see below) or may agree to a Med/Arb with a binding decision.

L5.9. It is understood that all Med/Arb decisions are without prejudice or precedent and may not be relied upon save as resolution of the grievance at issue. The issue of a termination will not be the subject of Med/Arb.

Mediation;

L5.10. Any concessions, discussions or offers to settle the grievance, which occur during a mediation process, are made in confidence and will not prejudice either party at arbitration should the matter not be resolved.

L5.11. Notwithstanding the forgoing, any grievances submitted to mediation that remain unresolved in the process or at the request of either party may be advanced to the normal arbitration process in accordance with Article No. 12.