

IN THE MATTER OF AN INTEREST ARBITRATION:

BETWEEN:

PROVINCE OF MANITOBA

Employer,

- and-

THE MANITOBA GOVERNMENT AND GENERAL EMPLOYEES' UNION ("MGEU")

Union.

AWARD

BEFORE: MICHAEL D. WERIER, Q.C., Chairperson
RICK STEVENSON, Nominee of the Employer
TONY MARQUES, Nominee of the Union

APPEARANCES: KEITH D. LaBOSSIERE, Q.C. / MIRANDA D.
GRAYSON, Counsel for the Province
SUSAN DAWES / JOEL DEELEY, Counsel for
MGEU

DATES OF ARBITRATION: September 21 and 22, 2021

LOCATION OF ARBITRATION: Virtual

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INTRODUCTION

The Province of Manitoba (“Province”) employs approximately 10,000 employees (90% full-time) who are members of the Manitoba Government and General Employees’ Union (“MGEU”). MGEU has referred to interest arbitration the renewal of the 2014-2019 collective agreement (GEMA) with the Province. The agreement expired March 29, 2019. It continues in place pending a new agreement.

GEMA contains general articles applicable to all members of the bargaining unit, and component specific Article 5, which pertains to subgroups of the bargaining unit.

In their written brief MGEU set out the components and a representative group of some of the numerous classifications in each component. They are reproduced below:

Administration Component: includes such classifications as Administrative Analysts, Administrative Officers, Audit Managers, Business Analysts, Financial Officers, Information Technologists, Systems Analysts, and Tax Auditors.

Clerical Component: includes such classifications as Accounting Clerks, Administrative Secretaries, Clerks, Computer Operators, Postal Clerks, Storekeepers, Switchboard Operators, Web Publishers, Web Coordinator, and Word Processors.

Corrections Component: includes Corrections Officers and Juvenile Counsellors.

Health Component: includes Behaviour Counsellors, Dietitians, Dentists, Medical Equipment Technicians, Medical Examiner Investigators, Nurses, Occupational Therapists, Pharmacists, Physiotherapists, and Psychologists.

Legal, Inspection and Regulatory Component: includes Assessment Officers, Clerks of the Court, Compliance Officers, Court Reporters, Employment Standards Officers, Estates Officers, Human Rights Officers, Land Titles Clerks, Property Appraisers, Resource Officers, Safety and Health Officers, Sheriffs Officers, and Survey Examiners.

Physical Sciences Component: includes Agricultural Technologists, Agrologists, Architects, Biologists, Chemists, Engineering Aids, Environmental Officers, Foresters, Geologists, Park Planners, Resource Technicians, Scientists, and Surveyors.

Social Sciences Component: includes Chaplains, Community Corrections Workers, Economic Development Consultants, Educational Assistants, Home Advisors, Librarians, Media Technicians, Probation Officers, Research Assistants, Social Services Workers, and Translators.

Trades, Operations and Services Component: includes Air Mechanics, Aircraft Maintenance Engineers, Avionics Technicians, Camp Cooks, Construction Supervisors, Facility Managers, Fire Rangers, Laborers, Machinists, Maintenance Tradespersons, Mechanics, Park Attendants, Pilots, Security Officers, and Welders.

Corrections has a separate bargaining table for matters unique to their component and a separate right to interest arbitration.

The parties negotiated a first agreement for civil servants in 1966. Since then, they have negotiated collective agreements in nineteen rounds of bargaining. This is the first occasion that the parties have participated in an interest arbitration.

Bargaining began in the spring of 2019. This was subsequent to the passage of *The Public Services Sustainability Act* (“PSSA”) which was passed by the Legislature in 2017, and never proclaimed.

The PSSA and its impact will be reviewed later in this Award.

After an attempt at bargaining, MGEU requested the Minister of Finance to appoint an Arbitration Board to rule on the outstanding issues. The request was denied and was litigated. MGEU’s right to have an interest arbitration panel appointed was upheld by both the Manitoba Court of Queen’s Bench and the Manitoba Court of Appeal.

Bargaining continued. Agreement was reached on some issues. Ultimately a Board of Arbitration was appointed.

The Province’s nominee is Mr. Rick Stevenson, and MGEU’s nominee is Mr. Tony Marques. The Chairperson is Mr. Michael Werier, Q.C.

PROCESS

The parties reached agreement on a number of items which are attached as Appendix “A”, and which is incorporated in and forms part of this Award.

Each party referred a lengthy list of outstanding GEMA and component-specific issues (only MGEU) to this interest arbitration Board for final and binding determination. These are itemized below. Extensive written submissions and replies supported by authorities and additional documentation were provided to the Board.

Oral submissions were made virtually on September 21 and 22, 2021.

LIST OF OUTSTANDING ISSUES

MGEU referred the following outstanding GEMA issues to this interest arbitration. This list does not include matters that were initially referred and subsequently settled.

- (i) Article 2- Duration: MGEU proposes a four (4) year collective agreement for the term March 30, 2019 – March 24, 2023.
- (ii) General Wage Adjustments: MGEU proposes the following general wage increases over a four (4) year collective agreement:
 - March 30, 2019: 2.0%
 - March 28, 2020: 0.5%
 - March 27, 2021: 1.8%
 - March 26, 2022: 2.0%
- (iii) Special Wage Adjustments: MGEU is proposing special wage adjustments for the following classifications within each of the components identified below:

Legal, Inspection and Regulatory Component

Resource Officers (armed): a 20% wage increase to achieve competitive pay with comparators in other jurisdictions;

Sheriffs Officers: an adjustment to each step in every classification to reach the average of compensation for the equivalent position in Western Canada and Ontario;

Physical Sciences Component

Public Health Inspectors: an adjustment to each step in every classification to reach the average of compensation for the equivalent position in Western Canada and Ontario;

Health Component

Medical Examiner Investigators: an adjustment to each step in every classification to reach the average of compensation for the equivalent position in Canada and to better align with the compensation provided to nurses under the GEMA.

- (iv) Memorandum of Agreement #8 – Health Spending Account (HSA): increases to the maximum reimbursement/coverage amounts in the Health Spending Account, from \$700 to \$1000 for full-time and from \$350 to \$500 for part-time employees.
- (v) Memorandum of Agreement #4 – Professional Fees: an increase to the reimbursement rates for professional fees set out in Memorandum of Agreement #4, from \$500 to \$750 annually.
- (vi) Article 63 (Standby): increases to the amount paid for time spent on stand-by, from \$20.00 per 8 hour shift to two (2) times an employee’s regular hourly rate of pay per eight (8) hour shift or portion thereof.
- (vii) Appendix “B” – Remoteness Allowance: an increase to the remoteness allowance set out in Appendix “B” equivalent to the general wage increase awarded in this Interest Arbitration in each year of the Collective Agreement.
- (viii) Memorandum of Agreement #12 – Northern Premium: an increase to the Northern Premiums set out in MOA #12 equivalent to the general wage increase awarded in this Interest Arbitration in each year of the Collective Agreement.
- (ix) Appendix “F” – Meals and Miscellaneous Expenses: an increase to the meal allowance set out in Appendix “F” to attain the average meal allowance rates provided to employees in Western Canada and Ontario.
- (x) Retroactivity and interest: MGEU proposes that all monetary payments under this interest arbitration be retroactive and paid with interest.

In addition, MGEU referred the following Component specific issues to this interest arbitration:

(i) Physical Sciences Component

Qualification Pay for Biologists and Foresters while engaged in wildfire suppression:

MGEU proposes that Biologists and Foresters be eligible for Qualification Pay just like other classifications on the wildfire suppression team(s), which are entitled to such pay.

(ii) Trades, Operations and Services Component

Increase to the Tool Allowance:

MGEU is proposing to increase the annual Tool Allowance amounts for eligible members from \$350 to \$500 annually.

The Province referred the following items:

The details of the proposed changes to the articles are outlined in the body of the Award. This list does not include items that were initially referred and subsequently settled or withdrawn.

- Article 17 – Disciplinary Action
- Article 19 – Contracting Out
- Article 20 – Devolution and Transfer of Services
- Article 21 – Technological Change
- Article 28 – Sick Leave
- Article 45 – Union Business
- MOA #13 – Joint Committee to Optimize the Public Service
- MOA #14 – Enhancing Public Service

OVERVIEW OF CERTAIN BACKGROUND ISSUES

Prior to reviewing the submissions on each, it is useful to review a number of issues to give context to the submissions.

Interest Arbitration Principles

The parties made extensive submissions, both written and oral, on the interest arbitration principles to be applied.

It is not our intention to review all the legal authorities which were referenced. We will highlight the main themes in the respective submissions.

Submission of MGEU

MGEU stated that the task of an interest arbitrator is to replicate a negotiated settlement that the parties would have agreed upon had bargaining reached a successful conclusion, and to impose a fair and reasonable settlement based on an objective process. The Board's role is to make a substantive award rather than a compromise, and Government's ability to pay is not a factor to be considered.

MGEU referred to Arbitrator Hope's decision in *Beacon Hill Lodge* in which he stated that the replication "relies on a market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions".

MGEU reviewed the appropriate time frame in which to consider the relevant economic circumstances in the province. The replication principle calls for consideration of the situation in 2019, but as recognized by Arbitrator Peltz in the 2021 MACA award, "the horizon for such objective data will be extended to include the period after the onset of COVID."

MGEU acknowledged that the impact of COVID can't be ignored and that they took this approach in their proposals and particularly regarding general wage increases.

MGEU reiterated that in imposing fair and reasonable terms and conditions of employment, arbitrators must examine objective criteria such as the nature, terms and conditions of employment (as per Arbitrator Freedman in *Diageo Canada Inc. and UFCW 832*, 2016, Arbitrator Werier in 2016 MACA arbitration).

MGEU expounded on the submission that while economic conditions are a factor to consider, inability to pay is not relevant. This is important in this case because of the PSSA which was a political decision, and was not passed as a result of a financial crisis.

MGEU noted that in the recent MACA arbitration, the Province did not argue on the basis of inability to pay, but argued that the arbitrator must consider the state of the economy and the public interest.

MGEU stated that the Province's position is a "thinly disguised ability to pay argument". In the MACA arbitration Arbitrator Peltz rejected that the public interest is a relevant factor.

MGEU addressed the issue of an interest arbitration board implementing operational changes.

MGEU endorsed this Chairperson's comments in the 2016 MACA award which follow:

A point in issue between the parties is the extent to which interest arbitration is a conservative process. The Province argues that interest arbitrators should not delve into operational issues as these are best left to the parties to negotiate. While I agree that interest arbitrators do not usually make awards that deal with operational issues, that rule is not written in stone. On occasion, such awards will be made, particularly

where the arbitrator is satisfied on balance that such an award is justified and the parties are unlikely or refuse to compromise on such an issue.

MGEU referred to this Chairperson's decision in 2013 between MGEU (Corrections) and the Province in which the following objective factors were considered in determining fair and reasonable wages and benefits:

- i. terms and conditions of other employees performing similar work both internally and externally (inside and outside Manitoba);
- ii. the negotiating history of the parties;
- iii. the general economic climate;
- iv. cost of living increases;
- v. recruitment and retention issues; and
- vi. changes in working conditions.

MGEU said these factors are relevant in this case with the exception of changes in working conditions.

MGEU said it would concentrate its submission on the general economic climate and cost of living increases.

Submission of the Province

The Province reviewed the role of an interest arbitrator, the objective evidence that interest arbitrators should rely upon, and the relevant time frame for the replication analysis.

The Province confirmed the widely accepted replication principle that set out that an interest arbitrator's role is to replicate the agreement the parties would have achieved if they had continued to freely negotiate.

The Province said MGEU wants to change the historical relationship between the parties which is not appropriate. Interest arbitrators are to look at objective evidence. In the instant case this leads to an adoption of the MACA award as applicable.

The Province stated that the arbitration board is to act adjudicatively and not to deal with subjective fairness. An interest arbitrator's role is not to reach a compromise between the parties' positions.

The Province emphasized that arbitrators have consistently stated that interest arbitration is inherently conservative and should not result in breakthrough provisions for the parties (see *Richmond City et al*, 2009, Arbitrator McPhillips).

The Province stressed historical relationships must be respected, and here MGEU is trying to change a twenty five year relationship.

The Province reviewed the types of objective evidence which assists in replication. This includes an assessment of similar work performed in similar market conditions, internal comparables, external comparables, economic trends, economic viability, the prevailing economic climate, the historical bargaining pattern between the parties, and impacts on taxpayers.

The Province acknowledged that while it doesn't dispute that ability to pay should not be taken into account in its traditional sense, a public employer's ability to pay, and tax, cannot be seen as limitless (see *Halifax (Regional Municipality)*, 1998).

Lastly, the Province canvassed the proper time frame in which to consider replication. While MGEU said it should be two months in 2019, Arbitrator Peltz rejected this premise in the recent MACA award. The Province acknowledged that 2019 should be considered, but that this Board cannot ignore the impact of the pandemic in 2020 and beyond.

The 2019 Round of Bargaining

Submission of MGEU

The Province passed the Public Services Sustainability Act (“PSSA”) in 2017. It was never proclaimed.

MGEU reviewed the 2019 round of bargaining which was dominated by ongoing litigation between multiple union groups including MGEU, and the Province with respect to the constitutionality of the PSSA.

The decision by McKelvey J. on June 11, 2020 declaring the PSSA unconstitutional was overturned by the Manitoba Court of Appeal on October 13, 2021. The Province’s appeal did not appeal findings by the Court with respect to the economic evidence.

MGEU referred to the findings that the legislation was a “Draconian measure” and left no room for meaningful collective bargaining.

MGEU noted that the PSSA created a four year floating sustainability period that would start after the end of a collective agreement in effect on March 20, 2017. The maximum wage increases were 0% in years 1 and 2, .75% in year 3, and 1.0% in year 4.

In its written brief, MGEU reviewed the impact of the unproclaimed legislation on its bargaining with the Province. It is not our intent to delve into all the history, but to highlight certain aspects emphasized by MGEU in its oral submission to the Board.

MGEU stated that because of the PSSA, they decided not to bargain non-monetary items first. MGEU included a wage proposal in their initial position and wanted a

response from the Province. The Province did not answer this request, but said the Government wanted to make a deal.

According to MGEU, the Province indicated that if MGEU referred matters to binding arbitration, items would “come off the table” and the Province’s proposals would be less satisfactory. To MGEU this was unlike any message received in past bargaining.

Ultimately a request was made to the Minister for binding arbitration and the Province refused. Ultimately the Court of Queen’s Bench (upheld by the Court of Appeal) issued an order of mandamus requiring the matter to proceed to arbitration. Court of Queen’s Bench Justice Keyser stated in her decision it was not reasonable to expect MGEU to spend lengthy periods of time and substantial resources to resolve non-monetary issues.

MGEU stated that they were able to agree on a small number of matters in dispute. In the MACA negotiations, there were no agreed items. Arbitrator Peltz did not weigh in the nature of the bargaining process but confirmed his role to replicate what “lawful, meaningful collective bargaining would have produced” (see paragraph 42, MACA arbitration award).

Submission of the Province

The Province responded to the criticism of the bargaining impacts of the PSSA. While at the time of the submissions in this case, the litigation was ongoing (subsequently the Court of Appeal decision followed), the Province was not arguing for a four year contract with increases of 0%, 0%, .75% and 1.0%.

The Province stated that all the comparables have considered the same criticism of the PSSA and there have been awards and agreements with different amounts than under the PSSA.

The Province said that the PSSA, rightly or wrongly, was a result of a government that was elected to be fiscally responsible and whether they did it the right way is irrelevant because the Province was not arguing for the PSSA mandated wage increases in this case.

The Province noted that the parties have a history of lengthy bargaining sessions. The Government opposed the referral to arbitration after one and a half days of bargaining. The Government wanted to negotiate. The Province acknowledged that MGEU has a different view of the Government's intentions, but in any event, the parties are still negotiating at the time of these hearings.

The Province stressed that it is necessary to consider all the relevant time frames, including the situation we are in now. In the Queen's Bench decision ordering that matters proceed to arbitration, Justice Keyser indicated that the parties would have to deal with the havoc wreaked on the Province by the pandemic.

The Province concluded that it is clear it is necessary in fashioning an award, that the realities that the Province is now facing must be considered.

State of the Economy and Government Finances

Introduction

The Board received extensive submissions on the Manitoba economy and the state of Government finances.

The Association engaged Dr. Eugene Beaulieu, a Professor of Economics, to provide a report. MGEU also provided the two expert reports Dr. Beaulieu provided in the Manitoba Federation of Labour litigation against the Government.

Some of the reports provided by MGEU include, “Manitoba Fiscal Report” dated August 31, 2021, prepared by Dr. Eugene Beaulieu, Professor of Economics and the Interim Scientific Director in International Policy and Trade and the School of Public Policy at the University of Calgary, The Manitoba Fiscal Report, July 20, 2019, Dr. Beaulieu, The Manitoba Fiscal Report Addendum, October 18, 2019, Dr. Beaulieu, Manitoba Economic Highlights, March 6, 2020, Budget 2020 Budget and Budget Papers, Province of Manitoba Annual Report and Public Accounts for the Year Ending March 31, 2020 (excerpt), and Press Release: “Manitoba Leads Nation in Economic Recovery”, August 6, 2021.

Dr. Beaulieu also provided an expert report for the MACA interest arbitration dated December 13, 2020 and multiple reports to the 2020 Manitoba Judicial Compensation Committee.

MGEU stated that Beaulieu’s report in the instant proceedings builds on his past reports based on updated economic data. This report was prepared eight months after the report for the MACA interest arbitration.

The Province tendered a wide range of reports and budget documents, Manitoba Finance reports, bank forecasts and media reports.

Submission of MGEU

MGEU made a lengthy written submission tracing the Province’s general economic climate in 2019 – 2021, and a review of the Province’s fiscal situation over these years.

Much of this is reviewed in the MACA award (at pages 49 – 56). By way of overview, MGEU noted that while the Province attacked Dr. Beaulieu’s earlier reports in July and October of 2019 as being overly optimistic, they did not appeal McKelvey J.’s findings about the economic evidence.

MGEU said that Manitoba Finance's update of June 7, 2021 was issued before Dr. Beaulieu's last report.

MGEU stated the latest available update is dated September 13, 2021 from the Government's Bureau of Statistics and will be referenced later on.

MGEU stated that 2019 should be the main focus for assessing the economic status of the Province. In his new report Dr. Beaulieu noted that prior to the pandemic the Manitoba economy was strong and robust and was forecasting healthy real GDP growth for 2019 and 2020.

He also concluded that prior to the pandemic, the fiscal situation in the Province was "very robust" and had been dramatically improving every year since 2016.

MGEU referred to certain portions of Dr. Beaulieu's report dealing with Manitoba's fiscal situation in 2018. In their written submission they stated:

Para 133. Dr. Beaulieu presents a table (Table 1) comparing deficits/surpluses as a share of GDP for all provinces from 2014 up to 2018 (i.e., the most up to date data that would have been available in early 2020). With respect to deficit to GDP ratios, Manitoba's reached a high of 2.4% of GDP in 2015, but the ratio had been declining since then and was only 1.3% of GDP in 2018. This compared well with other rates across Canada, and Manitoba was in the middle of the pack in this regard. He concludes that, upon a comparison of provinces, "Manitoba does not stand out as an outlier compared to other provinces."

Para 137. In his evidence at the MFL trial, Dr. Beaulieu described a "disturbing trend" of this Government overstating the size of the deficit:

- The 2015/2016 deficit was projected to be \$1.102B, but was actually \$846M
- The 2016/2017 deficit was projected to be \$911M, but was actually \$764M
- The 2017/2018 deficit was projected to be \$840M, but was actually \$695M
- The 2018/2019 deficit was projected to be \$521M, but was actually \$163M
- The 2019/2020 deficit was projected to be \$360M.

Para 141. Dr. Beaulieu also provided evidence, in his previous reports and in his testimony, about concerns he had regarding additional practices which impacted the budget, all of which were accepted by McKelvey J. as legitimate concerns.

- The 2016 budget lowered tax revenue by \$24.2M in 2017 by freezing taxes and indexing basic personal exemptions and tax brackets. This was projected to continue in subsequent years, reducing tax revenue by \$77M in 2019 and \$78M in 2020.
- Government reduced the PST by 1% on July 1, 2019, resulting in \$305M less in revenue for 2019/2020, and \$325M less in revenue in 2021.
- Small business tax deductions were also increased, resulting in further loss of tax revenue.
- The Government disregarded the Auditor General's opinion twice and excluded the WCB and Manitoba Agricultural Services Corporation revenues from the financial statements, resulting in the Auditor General issuing two qualified opinions.
- The Government made large transfers into the Rainy Day Fund, which added to the deficit.
- The Government's fiscal plans for the year ending March 31, 2019 included a plan to increase the deficit from \$163M to \$360M.
- The November 19, 2019 Throne Speech announced increased spending on highway construction and capital projects, and the creation of \$65M in "idea funds" in health care and education.

Para 146. Dr. Beaulieu then considers Budget 2020. He notes that at the time it was released, the Government was touting its impressive work in reducing the deficit over the previous years and had announced a further 1% reduction to the PST and a further \$300M contribution to the Rainy Day fund by the end of 2020-21, which would result in a balance of \$872M, at which point the fund would be fully funded.

Para 147. There are additional announcements in Budget 2020 that reveal that the Province's fiscal position was sufficiently healthy to spend on a wide variety of discretionary political choices.

Dr. Beaulieu considered the current state of the economy as a result of the pandemic. He writes: "The current economic climate has been significantly impacted by the pandemic and that there continues to be uncertainty. The economy contracted in 2020 by 4.8% but it fared relatively well compared with other provinces and outperformed the national average."

MGEU emphasized that throughout the pandemic the Province has been optimistic about the future growth prospects and the Finance Minister in November, 2020 stated that “Manitoba’s economy is performing better than most”, and in the 2021 Budget Speech stated that “Manitoba is Canada’s most resilient province”.

MGEU referenced certain portions of the Beaulieu Report dealing with data and forecasts for 2021 and 2022. These included the following:

- Based on the most recent forecast from BMO from July 31, 2021, inflation is forecast to be 2.9% in 2021 and 2.4% in 2022 in Manitoba.
- The Conference Board reports that wages and salaries per employee increased by 0.5% in Manitoba in 2020 and are forecast to increase 2.6% in 2021 and 2.0% in 2022.
- The Conference Board of Canada forecasts that Manitoba’s real GDP will grow at 4.3% in 2021, above the projected 4.1% real GDP growth in 2021 projected by the 2021 Manitoba Budget. RBC Economics forecasts a higher real GDP growth rate in Manitoba at 5.1%. Most recently, BMO Capital Markets have forecast Manitoba real GDP to grow by 5.4% in 2021 and 4% in 2022 – for an average of 4.7% over the two years.
- The 2021 Manitoba Budget forecasts that real GDP will increase by average of 3.6% in 2022, while the Conference Board forecasts growth of 4% in 2022 and RBC Economics forecasts growth of 4% in 2022.

MGEU said that the Province’s argument in its written submission is in direct contrast to the Provincial Press Release in August, 2021, which referenced Manitoba having the lowest unemployment rate in the country and experiencing substantial growth in jobs in the prior months.

MGEU pointed out that the Province argues that the fourth wave has created uncertainty only a week after the Minister’s statements. MGEU argued that the Province says one thing to this Board and another thing to the public. MGEU concluded that reliance should be placed on their public statements.

MGEU referenced Arbitrator Peltz's MACA award in which he stated that the economic situation was serious (January, 2021) but there are reasonable prospects for a return to normal.

MGEU submitted that the Province's debt level is manageable and the fiscal position is strong, with historically low interest rates. Dr. Beaulieu opines that a certain rebound is underway economically.

MGEU referenced the most recent Survey of Economic Forecasts Report from the Province's Bureau of Statistics dated September 13, 2021. (referenced above)

Among other things, it forecast for Manitoba 4.9% real GDP growth for 2021 and 3.7% real GDP growth for 2022. The CPI index for 2021 was actually 2.8% and is forecast to be 2.4% for 2022.

MGEU said that these forecasts exceeded those in the budget forecasts.

In sum, MGEU argued that its monetary proposals are fair and reasonable in light of the economic evidence.

Submission of the Province

In its written submission, the Province stated "it is undeniable that the pandemic has brought unprecedented challenges for all Manitobans. When assessing the current state of Manitoba's economy, the Province submits that the impact of COVID-19 cannot be overemphasized."

The Province referenced economic data to support the above statement. Real GDP suffered a collapse of 4.8%. These are the worst numbers Manitoba has seen since the Great Depression. This followed a modest growth rate of 0.5% in 2019.

The Province also submitted that unemployment was impacted by the pandemic. There was a loss of 90,000 jobs within two months of March 2020, reaching 11.4% before recovering to 7.0% in October, 2020, and falling 4.1% between September and December, 2020. Further, immigration levels dropped by over 45% compared to 2019.

The Province stated that there has been unprecedented Government spending and borrowing. In the 2021 Budget, the Province allocated \$2.5 billion to COVID-19 response spending in 2020/21, and \$1.75 billion for 2021/22.

The Province's decreased revenue through taxation has prevented it from decreasing the Provincial deficit. The Province stated that Manitoba continues to have the highest ratio of gross debt per person among all provinces in Canada.

The Province allowed that there have been new economic numbers and there is no doubt that the economic forecast is better.

However, the Province cautioned against being overly influenced by the recent forecasts. It is difficult to predict with any certainty when economic recovery will be accomplished. The Province is still forecasting deficits in the billions, although as of June, 2021, real GDP was expected to rebound and rise by 4.6% in 2021, followed by 3.5% in 2022.

The Province's recovery is contingent on the Province's ability to manage future waves of COVID-19.

In the Manitoba Finance Report relied upon by the Province, the following was noted:

- **There remains significant uncertainty in the post-COVID environment that is not fully captured by Beaulieu.** The report indicates in its concluding section that Manitoba has high vaccination rates. While this is a positive

development, we see uncertainties in other jurisdictions with similarly high vaccination rates due to COVID-19 variants of concern.

- These factors are expected to negatively affect the pace of the global recovery, further impacting supply chains and consumer confidence, with knock-on effects for provinces, including Manitoba. The potential emergence of other highly contagious strains of the virus that are more dangerous and resistant to vaccinations than the Delta variant could further exacerbate the economic situation.
- As reported in Budget 2021, Manitoba's GDP growth outlook projections for 2021 were updated regularly throughout the year due to the changing public health situation (see "Revisions to Real GDP Growth Forecast, 2021" and "Range of Real GDP Forecasts for Manitoba (%), 2020-2022"); the longer-term outlook continues to show similar uncertainty. Indeed, the province recently reinstated some public health restrictions in response to the highly volatile nature of COVID-19.
- In addition, we do not know how fast, but we anticipate that interest rates will eventually increase in the months and years ahead as the recovery eventually sets in (recognizing the downside risks from viral resurgence noted above). Increased interest rates will increase the debt-servicing costs of the province. Given Manitoba's high public debt loads, this remains a fiscal pressure.

The Province concluded that the economy is going to be a challenge and will continue to be a challenge. Everyone is struggling in the country and the fact Manitoba is a little better than some provinces doesn't mean things are good. Therefore, modest wage increases, consistent with others in the public sector, are appropriate and reasonable in the circumstances.

Conclusions on the State of the Economy and Government Finances

In these proceedings, we are in the somewhat unusual situation in which issues relating to the economy and Government fiscal status have already been the subject of scrutiny and analysis in prior arbitrations involving one of these parties in these proceedings, the Province. The same experts provided opinions, albeit updated in this case.

The MACA award was argued in January, 2021 and the award was issued in May, 2021.

In the instant case, the hearing was in September, 2021, with the decision rendered in May, 2022.

The awards cover the same time frame save and except the potential of a fourth year in this case.

What we do have available in this case is updated financial information based on what has transpired from January to September, 2021, together with updated economic forecasts based on current events.

Based on the economic information available to us at the time of the hearings, we conclude, as Arbitrator Peltz did in the MACA award, that the Manitoba economy is stable with a diversified base and certainly has the fiscal capacity for certain salary increases based on relevant and applicable comparators (as opposed to the PSSA figures argued by the Province in MACA).

We also accept, as was done in the MACA award, that the parties were not significantly apart in their analysis of these economic issues. The Province was more cautious in forecasting the future than was MGEU. The Province stressed the impact of the deficit. But both recognized the stability and diversity of the Manitoba economy and the prospects for continued steady economic growth.

We recognize that the pandemic has had a profound impact on the Manitoba economy. We also recognize that the future is difficult to predict because of the uncertainty of future waves of the virus, and the general overall frailties of economic forecasting.

However, we do have available to us updated forecasting and economic information since the MACA award, which shows that while public finances are under pressure, a recovery is underway, with much stronger financial indicators in terms of real GDP and employment. As the MACA award indicated, there are reasonable prospects for a return to normal and there is reason to endorse the optimism expressed by the Government in their public statements on which we place reliance and weight. We accept that the Province has fiscal capacity to handle a certain level of wage increases.

We have factored all of the above in our determinations of the issues, in particular pertaining to wage increases, duration of the contract and any special wage adjustments.

Outstanding Issues

Duration of the Collective Agreement – Article 2

Submission of MGEU

MGEU proposed a four year collective agreement commencing March 30, 2019 and running to March 24, 2023. Article 2.01 of the agreement would be amended to reflect the new dates. They noted that of the last three agreements dating back to 2006, two were for four years and one for three years. MGEU highlighted that the Province had legislated a four year term and never proposed a three year term in bargaining until the filing of briefs in this arbitration. MGEU maintained that a four year term was supported by the replication principle.

MGEU also argued that a four year term was appropriate for the following reasons:

- (i) There is objective economic data that can be relied upon in making an award for a four year agreement. While there is always some uncertainty with forecasts, and they are continuously revised, forecasters have been optimistic about the future, which supports a longer agreement.
- (ii) With the lifting of COVID-19 restrictions and an anticipated economic recovery, the uncertainty that was present at the outset of the pandemic is not present.

MGEU acknowledged that interest arbitrators have often imposed shorter terms at times of uncertainty. Arbitrator Peltz in the MACA decision considered December, 2020 and January, 2021 data in awarding a three year term. MGEU pointed out that the economic data was more limited than what is available to this Board. MGEU stressed that things have changed since the release of the MACA award, so earlier conclusions about the inappropriateness of a four year term are no longer valid.

- (iii) MGEU stated that there are practical reasons for a four year term. The parties need some “breathing space”. In addition, MGEU has a process in which they meet with Union members in order to develop bargaining proposals. To proceed immediately to bargaining would preclude MGEU from following its internal processes which are critical to meaningful bargaining.
- (iv) Lastly, MGEU argued that the parties would benefit from labour relations peace. The parties have been in litigation for years and time will allow the parties to rebuild trust, which is critical for collective bargaining.

Submission of the Province

The Province argued a three year term is appropriate because of the uncertainty economically due to COVID-19. The Province argued it would be impractical and unadvisable to have a longer term. A three year term makes most sense.

The Province argued that the parties would have reached an agreement on a three year term had collective bargaining proceeded in the ordinary course.

The Province pointed out that the parties have concluded three year agreements in the past, including in 1997, 2000, and 2003.

In sum, the Province stressed that the full extent of the fallout from COVID-19 remains unclear. Therefore a three year agreement is fair, reasonable and appropriate and serves both parties' best interests.

Decision on Duration of the Collective Agreement – Article 2

Recently the parties have entered into agreements of at least four years. Of the last three, two were for four years and one is for five years. Therefore applying the principle of replication, a strong case can be made for a four year agreement.

MGEU argues that a shorter agreement will result in an immediate return to the bargaining table. We find that the parties need time off before entering into bargaining given the past history of ongoing conflict and litigation.

Also we accept that MGEU has to undertake a process of consultation with its membership across the province. They should have the full opportunity to do so to facilitate a meaningful round of bargaining.

Accordingly, we award a four year agreement effective March 30, 2019, and continuing to March 24, 2023.

General Wage Increases

Submission of MGEU

MGEU proposed the following wage increases over a four year contract:

- Year 1 (March 30, 2019): 2.0% general wage increase;
- Year 2 (March 28, 2020): 0.5% general wage increase;
- Year 3 (March 27, 2021): 1.8% general wage increase;
- Year 4 (March 26, 2022): 2.0 % general wage increase.

The proposed increases are to be applied to all classifications and step levels under GEMA in each year, and MGEU proposes that all increases are to be paid retroactively and with interest.

While MGEU argued that the replication task involves an assessment of the situation when the parties would have been at the bargaining table, they acknowledged that one cannot completely ignore the economic situation created by the pandemic subsequent to the onset of bargaining.

MGEU submitted that wage comparisons with other employees in the civil service with settled agreements are relevant considerations. The only other civil service award is the MACA interest arbitration award released on May 19, 2021. Doctors Manitoba entered into an agreement on July 15, 2019 for the term 2019 – 2023, with salary increases of 0%, 0%, .75% and 1%.

MGEU noted that while the Province relied on both, the Doctors Manitoba settlement should be disregarded (it was not referenced in the MACA award respecting wage increases).

MGEU acknowledged that the MACA award is relevant but does not provide a basis for replication. Historically GEMA negotiations have proceeded before MACA negotiations and MACA wages are never considered as a factor in negotiating GEMA wages.

MGEU also maintained that certain economic and other considerations warrant different wage increases from the MACA award in certain years of this contract.

MGEU tabled a chart reflecting recent Manitoba public sector wage settlements and awards for 2019 – 2021 and argued that their proposed general wage increases for 2019 – 2021 were “well supported” by these settlements and awards. They pointed out that the award in Pembina Trails School Division included a COLA award for 2021 based on CPI for that year, which could mean a significant increase for that year.

MGEU reviewed their proposal for each of the four years separately.

As stated, for year one of the contract they proposed 2.0% versus the Province’s proposal of 1.4%.

In their written submission, MGEU argued that the greater wage increase should be awarded because of the following reasons:

- MGEU would not have agreed to a 1.4%-1.5% increase in 2019, at a time when the Government had reached its first surplus in years, particularly when MGEU members have been provided with 2% increases in each of 2016, 2017 and 2018;
- the cost of living in 2019 was 2.2%. MGEU would not have agreed to increases so far below the cost of inflation at a time of economic prosperity in Manitoba;

- the Manitoba Labour Board imposed a 2% general wage increase in 2019 for school bus drivers employed by the Winnipeg School Division represented by UFCW 832, based on the same economic data for that year that has been considered in other arbitration awards, thereby confirming that a 1.4%-1.5% award is not a ceiling for 2019; and
- the application of the doctrine of replication results in these parties agreeing to general wage increases greater than 1.4%-1.5% for 2019, based on what the parties knew about the economy and other settlements at the time.

MGEU agreed with the Province that a .5% general wage increase is appropriate for 2020/21 based on the impact of the pandemic and the alignment with the CPI for that year.

MGEU proposed 1.8% for 2021/22 as opposed to the Province's 1.2% proposal which was based on the MACA award which actually forecast CPI to be 1.6%. MGEU pointed out that the Manitoba Labour Board awarded IBEW 2034 members a 1.5% increase for 2021.

MGEU argued that there is little analysis as to how Arbitrator Peltz concluded that a 1.2% increase is appropriate for 2021/22. MGEU noted that the Teachers' contracts contemplate COLA which is 2.8%, a full 1% higher than their proposal.

MGEU maintained that their proposal of 1.8% is "highly modest" and if a 2% increase is not awarded in the first year, then the increase should be backended in this year.

MGEU acknowledged that no arbitrator has considered the appropriate wage rate for 2022/23. MGEU submitted that a 2% increase is a reasonable general wage increase as CPI is forecast to be 2.3%.

MGEU stated that economic forecasts are for a full economic recovery in 2022. Dr. Beaulieu reports that forecasts are for a 2% increase in CPI in 2022, with other forecasts predicting higher increases. MGEU emphasized that their proposal for the fourth year would therefore be at or near the projected cost of living for that year.

In support of its proposal, MGEU tabled historical data setting out increases since the 1997 – 2000 collective agreement ranging from 1% in 1997, increases of over 2% or over from 1999 to 2009, and increases of 2% from 2016 - 2018.

MGEU insisted that their proposals are well within the range of what has been agreed to in past collective agreements, and most recently in 2014 – 2019. In particular increases in 2016 – 2018 were 2% with deficits of \$764M, \$695M and \$163M in those years.

MGEU noted that the Province experienced a surplus in 2019 and therefore there is objective data to find that the parties would have agreed to at least the same general wage increase that was awarded in the three prior years when there was a deficit.

All of the above submissions in support of MGEU's proposal were in addition to the other arguments advanced respecting the economic climate and fiscal situation in Manitoba reviewed earlier in this award.

Submission of the Province

The Province proposed increases of 1.4% in 2019, 0.5% in 2020 and 1.2% in 2021. The proposal mirrors the award in MACA. The proposal in year 2 is the same as that proposed by MGEU.

As outlined above, the Province is opposed to a four year term. The Province allowed that if this Board was not persuaded that three years is appropriate, then the fourth year increase should not be more than 2%.

The Province stressed that it was coming forward with a principled position based on a number of crucial facts.

Firstly they stated that the COVID-19 pandemic “has placed unprecedented strain on the Province’s economic and fiscal circumstances and society as a whole”. The Province highlighted that GDP has declined, unemployment has increased and revenues have fallen, and expenses have increased. The Province is looking at a forecast of deficit being in the billions. The Province emphasized that there is tremendous uncertainty in the future.

While acknowledging that there are a range of economic forecasts, the Province argued that these change day to day. The pandemic is ever changing with new waves coming with different variants on the scene. Vaccine efficiencies are waning. In sum, there is great uncertainty as to when the pandemic might end. There has been a dramatic effect on the economy and Government is having to wrestle with this.

Secondly, the Province submitted that the “job is done” as it relates to the wage increases. There is a thirty-three year history of matching general increases (except one year) with MACA.

The Province argued that the order of bargaining is relevant. MACA have always proposed a greater wage increase than MGEU, and every round of bargaining they agreed to the same increase, or an arbitrator imposed the same increase. The Province stressed that MGEU has never argued that they need to be paid more. Based on replication, MGEU can’t dispute what they have done over the years.

Thirdly, the Province argued that even if the Board was not concerned about MACA, the Province maintained its proposal is consistent with other recent public sector deals.

In sum, the Province stressed that COVID’s devastation on the public purse is undisputed and that their proposal takes the impact of the pandemic into account, and is consistent with the MACA award.

Decision on General Wage Increases

Our task is to replicate the settlement the parties would have achieved at bargaining by looking at objective data. Obviously the parties haven't achieved agreement. This arbitration process can be challenging, especially when parties are far apart in their proposals, and when economic conditions are ever changing due to unforeseen events such as the onset of a financial crisis, war, natural disasters or pandemics. Economic forecasting can therefore be difficult due to changing circumstances and volatility in the economy.

Interest arbitrators cannot apply a scientific formula to arrive at a fair and reasonable award based on the objective market data and criteria. There needs to be a close analysis of all of the objective information available to the Board.

Earlier in this award we reviewed the principles of replication and also the time frames to be considered when fashioning the award. We have taken into account the significant impacts of the pandemic on the economy, particularly for the middle years of this agreement.

We have also taken into account the general state of the Manitoba economy and its fiscal condition as outlined earlier, accepting that Manitoba has faced significant challenges and an increased deficit, but that Manitoba has a diverse economy and had a strong financial condition prior to the pandemic which has allowed it to withstand certain events. There are optimistic forecasts for the future.

Much attention was paid to the MACA award and its application to these proceedings. The Province relies on the longstanding linkage between the salaries over the last 30 years and that based on the principle of replication, this trend should continue.

MGEU denies a linkage arguing that MGEU has never tied its bargaining proposals to MACA and that MACA has always followed the negotiation of GEMA.

In our view, the MACA interest arbitration award is relevant and merits close attention. While the MACA unit has 230 Crown Attorneys and the MGEU unit has approximately 10,000 members working across a range of classifications, they are both public sector employees with the same Employer who have enjoyed identical pay increases for years.

Having said that, it does not follow that the MACA award is automatically a binding precedent, and must be followed in every respect. There can be specific issues which can impact general wage proposals.

Also the parties can take different bargaining positions in each set of negotiations for any number of reasons, including intervening events, and/or changes in the economy, to name a few.

Are there any distinguishing facts or circumstances here to justify different wage increases than what was awarded in the MACA award? To answer that question it is necessary to compare the two cases in a number of areas.

The MACA case was argued in January – March, 2021, and the decision was issued on May 19, 2021. The instant case was argued on September 21 and 22, 2021, and the decision is being issued on May 18, 2022.

In the MACA case it is relevant to note that the Province was proposing a wage pause, 0% and 0% for a two year contract and if a three year contract was awarded, 0% in the third.

MACA was proposing 2% plus a 2% special wage adjustment in year 1, 2% in year 2, and 2% wage increase and a one time 2.5% special wage payment for year 3.

Arbitrator Peltz awarded a total of 3.1% over three years and rejected the Province's claim that the Province's economic situation was dire and there was a lack of fiscal capacity to increase wages.

In dealing with the third year of the contract, Arbitrator Peltz acknowledged that the economic data was limited and uncertain. He noted that in Pembina Trails, COLA was awarded for 2021/22. In that case the parties were willing to accept an agreement extending into 2021/22. As noted earlier, COLA for that time frame is higher than both parties' proposals in the instant case.

In the MACA case, it was noted that there was "no appetite for a formula" (i.e. COLA). Arbitrator Peltz awarded a 1.2% increase for 2021/22. He did not have comparator agreements and based it on forecasts of positive economic and employment growth and inflation rising to 1.6% in 2021 and 2.0% in 2022. It is relevant to note that after this award, the Manitoba Labour Board awarded (without reasons pursuant to section 87 of the *Labour Relations Act*), a wage increase of 1.5%.

To summarize, the MACA award was rendered in the context of a 0% proposal for the entire contract from the Government, and limited data for 2021/22. The MACA award has to be understood in light of those factors.

The economic situation, while far from certain, became somewhat clearer by the end of 2021. Since the MACA decision, forecasts for cost of living increases have been adjusted upwards. The Government has projected a 1.8% increase (at the time of submission) and in his report, Dr. Beaulieu noted a number of forecasts to be above 2% and the Conference Board of Canada forecasting wages and salary increases of 2.6% in 2021.

The forecasts for 2022/23 are for continued economic recovery and for CPI increases of 2.4% for 2022. The Government forecasts a 2.0% increase in CPI.

The totality of our findings with respect to the Government's economic condition and fiscal status are set out earlier in this award.

We accept that for earlier years careful consideration must be given to the effects of the pandemic, but we also have weighed the evidence before us that Manitoba entered the pandemic in good financial shape and its diverse economy allowed it to withstand the impact of it.

We do accept as well that while we are not bound to automatically apply increases awarded to MACA, we must carefully weigh the decision made there to determine its applicability.

In the circumstances, we are prepared to accept that the percentage increases for 2019/20 (1.4%) and 2020/21 (0.5%) are fair and reasonable based on the objective data.

However we find that the 1.2% increase for 2021/22 awarded for MACA and proposed by the Province is not fair and reasonable based on objective data. We find that a general wage increase of 1.65% should be awarded.

Earlier in this award we determined, for the reasons set out, that a four year contract is objectively fair and reasonable. We also find that MGEU's proposed increase of 2% is appropriate given the more recent forecasting of the cost of living and the rebound of the economy. We have also taken into account the Province's alternative argument that if a fourth year is considered, the award not be higher than 2%.

Therefore, we award general wage increases as follows:

- March 30, 2019 1.4%
- March 28, 2020 0.5%
- March 27, 2021 1.65%

- March 26, 2022 2.0%

These increases will be retroactive and with interest as set out below.

Retroactive Pay and Interest

Submission of MGEU

MGEU referred to Article 10.01 of the GEMA, which provides for retroactive pay. MGEU seeks retroactive pay for monetary increases, special wage adjustments, remoteness allowance, Northern premium and professional fees. MGEU confirmed it was not seeking it for the Health Spending Account, standby pay and meal allowances, and tool allowances.

MGEU maintained that the payment of interest was in line with three earlier MACA decisions, Arbitrator Freedman (2001), Arbitrator Werier (2016) and Arbitrator Peltz (2021).

MGEU pointed out that the Province opposed payment of interest in 2016, arguing that it would be a significant breakthrough. The Province was not successful in their opposition.

MGEU responded to the Province's assertion that MGEU caused the delays in the bargaining and therefore should not be entitled to interest.

MGEU responded that the Province didn't propose wages until the filing of its brief in these proceedings.

MGEU denied that it was in any way responsible for delay.

Submission of the Province

The Province agrees that there should be retroactivity for general wages and Northern premium, and remoteness allowance under Article 10.01 of the agreement. The parties have negotiated effective dates in agreements.

All other changes ought to be effective on the first day of the bi-weekly pay period following the signing of the agreement in line with Article 2.03 of the agreement.

The Province submitted that interest should not be awarded. The parties have never agreed to interest in an agreement. The Province argued that the length of time to resolve matters is not a justification. At all times the Province has remained willing to bargain. The Province stressed that this is no time to award a breakthrough provision.

Decision on Retroactivity and Interest

We find that retroactivity shall apply to all general wage increases, special wage adjustments, Northern premium and remoteness allowance.

All other increases shall be effective on the first day of the bi-weekly pay period following the signing of the agreement.

We see no basis to depart from earlier MACA awards providing for the payment of interest.

In line with the three MACA awards, interest shall be payable on retroactive amounts at the lowest rate at which the Province is able to borrow as of the date of this award.

In so awarding, we do not find MGEU responsible for any delay in bargaining which would preclude the awarding of interest on retroactive wages.

Special Wage Adjustments

MGEU proposed special wage adjustments for the following classifications:

- (a) Resource Officers;
- (b) Sheriff's Officers;
- (c) Public Health Inspectors;
- (d) Medical Examiner Investigators

The overriding reasons for their requests are based on recruitment and retention issues and significant gaps in pay compared to comparators in other jurisdictions. The Province stated that if all special wage adjustments are awarded, it would amount to an increase of 4.9% of payroll.

Each classification is reviewed separately below.

(a) Resource Officers

Submission of MGEU

The MGEU proposes a 20% special wage adjustment for armed Resource Officers in Classes 3-5 (approximately 100 Officers).

Resource Officers monitor, investigate and enforce conservation laws. They carry sidearms. Annual re-certification is required in order to maintain employment.

MGEU alleges a “severe and enduring recruitment and retention problem”.

In their written submission they outlined the extent of the problem:

- Between 2014-2018, there were a total of 9 departures from the RO3 classification with nearly all of those employees (7) specifically departing for a “better opportunity.” By reference, there were only 54 members in 2018;
- With the RO4 classification, there were an additional 15 departures in the 2014-2018 period (with only 48 employees in 2018);
- With the RO5 classification, there were 3 departures and only 11 employees in the classification in 2018.

MGEU stated that they had “repeatedly” raised concerns about recruitment and retention, including a December 19, 2018 letter to the Minister, and a letter dated March 5, 2021 to the Minister reiterating concerns, and stating that Resource Officers were stretched too thin to do their jobs effectively.

The Government responded on July 6, 2021 that retention of Conservation Officers was a priority.

The Province conducted an internal review in 2020 which was leaked to the media and ultimately obtained by MGEU. The report contained the following statements:

- While the Province aspires to have 91 conservation officers in the field, up to 56 vacancies could emerge within five years through retirements and other openings. The report states that “the recruitment of new Conservation officers will need to continue and succession planning will be critical.”
- As of late 2020, six of Manitoba’s 38 subdistricts did not have a single conservation officer.
- The report found the starting wage in Manitoba for three different classifications (RO3’s to R05’s, i.e., those who are armed) was at least \$10,000 lower than the average starting salary for those in the western provinces and Ontario, as well as officers in federal parks and wildlife officers.
- For supervisors in the highest wage bracket, the pay ceiling in Manitoba is \$19,000 lower than their counterparts elsewhere.

- The report also included a survey of current and former conservation employees, many of whom voiced long-standing complaints around wages, benefits and housing. The report contained the following statement:

“Results from the jurisdictional wage scan indicate that wage concerns expressed in survey responses from officers ... [are] warranted.
Manitoba ranks last in salary and hourly wages in every classification.”

- The report found that Manitoba’s Officers also work longer than those in every jurisdiction surveyed, except for Ontario, with Manitoba officers’ 80 biweekly hours adding up to an extra 16 to 32 days a year. Working more hours for less pay is a “major contributing factor to low morale within the service and is likely a significant contributing factor to recruitment and retention issues.”
- Specifically, the report calls for “immediate solutions”, ranging from pay increases to boosting the recruitment budget. It suggests better incentives to entice officers to work in northern Manitoba, such as paid flights from isolated postings, as well as improving employee housing in those communities.
- Survey respondents also expressed concern with the requirement for more graveyard shifts to enforce night hunting regulations, a priority for the Progressive Conservative government. The decision results in fewer officers working in the daytime, which decreases public interactions and, in turn, the number of informants, the report found.
- Including current vacancies, Manitoba Conservation Officer Service could be short 39% of its full complement by 2025 through retirements alone. It is estimated that Manitoba has the potential to require up to 56 new Officers within the next five (5) years. The recruitment of new Officers will need to continue and succession planning will be critical.
- In recent years, the Department has failed to attract ample qualified candidates when recruiting for entry level Conservation Officers, given the competing economy. Past competitions resulted in an average of 2-6 candidates being hired, which does not cover the resignation and retirement rates.
- Active officers and those who resigned within the past 10 years were invited to provide their views in a survey. 55 of the 60 respondents stated that wages as their top concern (**page 14**). When those surveyed were asked what would be the top aspect of the job in Manitoba they would change active Officers listed wages their top issue. Similar responses were provided by those who had retired.
- “[T]he other CO jurisdictions are starting at a much higher wage, working shorter hours, with equal or less responsibility than an entry level Conservation Officer in Manitoba.”

- “Manitoba ranks last in salary and hourly wages in every classification. Manitoba Cos also work longer than every jurisdiction, except Ontario, working 80 hours bi-weekly compared to as little as 70 hours bi-weekly worked by British Columbia Cos. This results in Manitoba Cos working from 130 to 260 hours more per year, which translates to 16 to 32 more days every year than any other jurisdiction and getting paid a fraction of the salary. Manitoba Cos work more hours and are paid less. The team believes, and results from the survey suggests that this is a major contributing factor to low morale within the service and is likely a significant contributing factor to recruitment and retention issues within the Manitoba COS.”
- One of the recommendations of the report is that “the department engage in a management-initiated wage adjustment for Conservation Officers, to bring them up to competitive wages with other jurisdictions.

MGEU maintained that their proposal would provide appropriate compensation in line with counterparts across Canada.

Submission of the Province

Firstly, the Province argued that given the economic impacts of the pandemic, it is not an appropriate time for substantial special wage adjustments.

The Province noted that MGEU’s rationale for all special adjustments was a comparison with other jurisdictions. The Province’s response was that there was no evidence that there had been comparisons in the past and that Manitoba salaries were still in the middle of the pack, and there is no evidence of people leaving the jurisdiction to work elsewhere.

In any event, Ontario, British Columbia and Alberta have never been considered as proper comparators to Manitoba, given the differences in the economy, cost of living and weekly earnings.

The Province noted that Resource Officers who are armed receive qualification pay under the agreement.

The Province insisted that it had no difficulty recruiting multiple applicants for vacancies and that while there is a turnover, it is not the Province's job to eliminate turnover.

The Province submitted that over the last six years, appointments to the three classifications have exceeded terminations. The turnover rates, ranging from 4.8% to 7.1% annually, are reasonable and manageable.

A 20% increase would skew the internal relativity inside and outside the bargaining unit. Based on replication principles, there is no justification for a dramatic increase and even if one accepts that there should be an adjustment, the average in the past is 1.57%, and some have been 2%, 3% and 5%. Therefore a 20% increase is inappropriate and in any event, an increase should be in the form of qualification pay consistent with the agreement. Further, the current qualification pay is adequate.

The Province submitted that any increase should be viewed within the context of total compensation as a whole.

The Province also proposed a joint committee be appointed, which is best suited to address workload, morale and work/life balance issues.

Decision on Resource Officers Special Wage Adjustments

Claims for special adjustments succeed when a Union is able to establish on balance that there is a compelling rationale to award an additional increase to a specific group of employees.

An ongoing recruitment and retention problem which persists can, in the right circumstances, provide a foundation for such a claim. In those instances where it is established that there exists this issue, it is appropriate to make an adjustment.

We find that MGEU has made out a case for a special adjustment. We note that the Province, while challenging whether the turnover and vacancy rates were an issue, did not challenge head on a number of the findings in the report relied upon by MGEU. We accept, based on the submissions before us, that there is a retention issue which in turn puts an added burden on the existing workforce.

We do agree, however, that a 20% increase is not appropriate for a number of reasons, including the current economic conditions in the province and also because some of the comparators relied upon by MGEU are not appropriate given the difference in economic conditions, including the cost of living in those provinces.

In the circumstances we award a 4% special adjustment to the Resource Officers, RO3, RO4, and RO5 classifications. The special adjustment shall be applied after the percentage general wage increase is applied.

(b) Sheriff's Officers

Submission of MGEU

There are four classifications within GEMA. There are eighty-three officers. Sheriff's Officers perform a range of duties in the justice system, including escort of prisoners, service of subpoenas, seizure of property, courtroom officer and other clerical duties. They argue that they are underpaid and that this has created a considerable retention issue within the classification.

MGEU tabled a spreadsheet showing a total of 50 resignations between 2018 and 2021, most of whom left for a higher salary, both in and outside Government. The workforce is young and 43% have less than two years experience.

MGEU proposes the following increases:

- Sheriff's Officers 1 – 15% in order to reach the average pay of the highest rate of their counterparts in Ontario and Western Canada.
- Sheriff's Officers 2 – 15.9% increase to attain the average of the highest rate of Sheriff's Officers in Ontario and Western Canada.
- Sheriff's Officers 3 – 12.3% increase to attain the average of the highest rate of Sheriff's Officers in Ontario and Western Canada.
- Sheriff's Officers 4 – 25.2% increase to be equivalent to the average of the highest rate of Sheriff's Officers in the Western Provinces.

MGEU argued that the increases should be across the board and not just for the North, as was argued in the alternative by the Province, and which was agreed to in 2006 and 2010.

Submission of the Province

The Province disputed that there was a recruitment and retention problem, and stated that it was inappropriate for there to be any increase at all for the classifications. The Province challenged the appropriateness of using external comparators in Western Canada and Ontario.

The Province acknowledged that employees in this classification use the job as a stepping stone to police work. There is no difficulty replacing them.

The Province allowed, that to the extent there are difficulties, it is filling jobs in the North and an increase by way of a modest Northern premium could be considered. The Province noted that there were such increases in 2006 (3%) and 2010 (2%).

Decision on Sheriff's Officers Special Wage Adjustments

Sheriff's Officers are an important part of the justice system. The turnover rate is significant. While we appreciate the Province's argument that the position is used as a stepping stone to police work, there is a benefit to retaining employees for longer periods of time.

We have determined that MGEU has made out a case for a special adjustment. However, the amounts requested are far in excess of what can fairly and reasonably be considered to have been the result of bargaining. We agree with the Province that the external comparators used are not appropriate.

In light of the above, we award a 3.0% adjustment to Officers outside of those in the North. The special adjustment shall be applied after the percentage general wage increase is applied.

We have taken into account the Province's alternative submission regarding Officers working in the North and award a 4.0% increase to the Northern premium. The special adjustment shall be applied after the percentage general wage increase is applied.

(c) Public Health Inspectors

Submission of MGEU

MGEU's position can be summarized as follows.

Inspectors do routine and complaint-based safety audits of food handling establishments, recreational water services, care facilities, personal services and residential housing. During the pandemic inspectors have been enforcing orders under *The Public Health Act*.

Inspectors are underpaid compared to various comparator groups. There are severe shortages of employees and vacancy rates are high (20% in May 2019). In October 2020, it was reported that seven out of 44 positions were vacant. As a result, the public is at risk because restaurant and care facility inspections are overdue. Workloads are heavy. Lobbying of Government by MGEU has not resulted in any meaningful response.

MGEU stated that Manitoba offered the second lowest wages in Canada. Prince Edward Island is the lowest. Manitoba salaries are \$30,000.00 lower than Alberta.

MGEU acknowledged that an increase to the qualification pay for the 2014 – 2019 GEMA resulted in a \$4,140.00 annual increase.

MGEU said they are requesting the following increase which would increase the top rate in each classification to the average of the top rate in the four comparator provinces and then to apply that same percentage increase to every step in the classification.

Public Health Inspector 1	27.5%
Public Health Inspector 2	25%

Public Health Inspector 3	17.5%
Public Health Inspector 4	40.2%
Public Health Inspector 5	41%

MGEU stated that they are not opposed to the increase being achieved by increasing the qualification pay under Article 5.02 of the Physical Science Component.

Submission of the Province

The Province argued that there was no basis for the massive increases requested by MGEU and denied that any special adjustment is warranted. The Province maintained that reliance on extra provincial comparators was inappropriate.

The Province denied that it has a retention problem, and that any recruitment problem is because of the training and certification (pre-employment) which is not available at present in Manitoba.

The Province stated it has three practicum students to fill three out of seven vacancies, but acknowledged it can be “difficult” to attract practicum students given the absence of an accredited program in Manitoba. The Province insisted that a special adjustment would not be warranted, but that if any special adjustment is to be awarded, it should be by way of qualification pay under Article 5.02 of the Physical Sciences Component.

Decision on Public Health Inspectors Special Wage Adjustment

We have considered all the material submitted by the parties. We find that MGEU has met the onus on it to establish that a special adjustment is warranted. We accept that there are unfilled vacancies which have resulted in delayed inspections which are not acceptable, and have resulted in an unreasonable workload for existing Inspectors.

The increases proposed by MGEU are very high and cannot be justified in light of current circumstances. In so finding, we do not rule out the applicability of extra-provincial comparators as they may very well constitute the best comparators. However, any movement upwards would have to be staged over successful agreements.

We have taken note of the parties' position on an increase being made to qualification pay.

In the circumstances, we award a 6% increase to the qualification pay under Article 5.02.

(d) Medical Examiner Investigators

Submission of MGEU

Investigators work pursuant to *The Manitoba Fatalities Inquiries Act*. They are involved in determining the cause and circumstances surrounding unexpected, unnatural or unexplained deaths and for identifying the time of death and the deceased. There are currently seven positions in the province.

MGEU proposes a 3.75% increase by way of special adjustment for the seven investigators. MGEU advances two reasons for the increase. Firstly, they are underpaid compared to comparators in Western Canada. Secondly, the pay lags behind nurses under GEMA.

MGEU stated that while the postings for the position state that applicants can be nurses or have equivalent qualifications, the jobs are filled by nurses.

MGEU argued that the proposed increases are fair and reasonable and would bring the salaries back on track with other nursing positions in the province.

Submission of the Province

The Province submitted that the Examiners are not underpaid and that the comparison to other nurses is misguided. Investigators are not required to be nurses.

The Province maintains that recruitment efforts have been successful even though the potential pool of candidates is small.

The Province argued that their proposed general wage increase would place Manitoba in the middle of the pack in Canada as it relates to this classification. Therefore no additional special adjustment is warranted.

Decision on Medical Examiner Investigators Special Wage Adjustments

We are not prepared to award any special adjustment. The salary as adjusted by increases in this award will be in the range of appropriate comparator salaries across Canada, and there are presently no vacancies. The request for an adjustment is therefore denied.

Health Spending Account

Submission of MGEU

The Health Spending Account was implemented in 2005. The account is usually utilized to top up existing benefits or to pay for medical costs incurred which meet the requirements for the medical expense credit as set out by the Canada Revenue Agency.

MGEU proposes that current maximum claims be increased from \$700.00 to \$1,000.00 for each full-time employee, and from \$350.00 to \$500.00 for each part-time employee annually.

MGEU noted that their membership has identified this as a priority. The account has been in place since 2005. In 2016 it was increased from \$600.00 to \$700.00 (full-time) and \$300.00 - \$350.00 part time.

MGEU argues that the costs of various health services have increased significantly over time. There is a greater need for mental health supports as mental illness is the leading cause of disability in Canada.

While the Province points out that not all employees are accessing the maximum, MGEU replied that for some, there is a need. In response to the Province's concerns about costs, MGEU emphasized that the burden of mental illness is high and there will be a return on the investment. There will be savings if employees are not on long term disability.

MGEU stated if these additional amounts become part of the extended health benefit plan, employees pay the expense.

Lastly, while a request before the Pembina Trails School Division Arbitration Board was denied, this was considered a breakthrough as the Teachers did have this provision in their agreement.

Submission of the Province

The Province opposes an increase for a number of reasons. Firstly, the cost is expensive.

There is no concrete evidence of the need for additional amounts. A similar request was rejected in Pembina Trails and neither Crown Attorneys nor Legal Aid lawyers received increases.

The Province argued that this is a unique benefit and external comparators are not beneficial.

The Province did not dispute the value of the various health services accessed by employees, but argued that the data shows that current funding is sufficient as very few employees “max” out their benefits.

As an alternative, the Province proposed that mental health issues be examined by a joint committee or alternately, increases be made to the Extended Health Benefit.

Decision on Health Spending Account

While there is evidence before us that a majority of employees do not reach the maximum of their spending account, there are others in the bargaining units who rate this as a priority because of need.

We are all aware of the challenges Manitobans are facing because of the pandemic and because of the strains put on families and workers returning to their workplaces. We are mindful of rising costs for services in other areas.

In our view it is incumbent to provide support to those dealing with these challenges. We are mindful of the potential costs spread across a sizeable workforce.

A fair and reasonable increase is from \$700.00 to \$850.00 (full-time) and \$350.00 to \$425.00 (part-time) and we so award.

Professional Fees

Submission of MGEU

MGEU proposes an increase from \$500.00 to \$750.00 for the maximum professional fees as per MOA #4, which was introduced in the 2006-2010 GEMA.

MGEU acknowledged that the payment is an offset of fees in full or nearly in full. There has not been an increase since 2008.

MGEU tabled a cross-section of rate increases for various classifications ranging from dietitians to pharmacists to surveyors. Increases range from 42% to 100%.

MGEU said eighteen classifications are eligible and only one has been less than \$500.00 and only three have fees that are covered or nearly covered. Eleven classifications have fees exceeding \$900.00 annually.

MGEU submitted that the proposed increase would assist Provincial employees in paying their professional fees.

Submission of the Province

The Province opposes the proposal. It involves a 50% increase. The intent of the reimbursement was to affect some of the costs of professional fees. There was no indication of substantial or complete reimbursement.

The Province noted that seven classifications have annual fees of less than \$800.00 a year.

Decision on Professional Fees

While it has been many years since there was an increase, MGEU's proposal is denied. Other proposals have priority over this proposal.

Article 63 – Standby Pay

Submission of MGEU

MGEU proposes amendments to Article 63.01 and 63.02 of GEMA in that the standby payment would be increased from \$20.00 (for each eight hour shift), to two times the employee's regular hourly rate of pay per eight hour shift or portion thereof.

MGEU argued that the current pay is insufficient and the rates have been unchanged since 2007. Both parties recognize the inconvenience of being on standby. MGEU pointed to a number of agreements which recognize this premium, including MNU, MAHCP, and CUPE, Local 500.

MGEU stated that MGEU members should not receive lower standby pay than members of other public sector bargaining units. Two hours of basic pay is appropriate recognition.

Submission of the Province

The Province opposes the proposal. The Province reminded the Board that standby pay is to reimburse for inconvenience and the payment is appropriate.

The Province indicated that in 2019/20, 1,508 employees worked standby for a total payment of \$12,697.

In the alternative, the Province submits that any increase should be awarded as a flat rate and not on an hourly basis.

Decision on Standby Pay

Standby rates have not changed since 2007. On that basis alone, some adjustment is warranted and would likely have been agreed to in bargaining based on the number of years since the last change.

We are not prepared to award the amounts proposed by MGEU but believe an increase to \$30.00 is appropriate and we so award.

Remoteness Allowance – Appendix “B”

Submission of MGEU

MGEU proposed an increase to the remoteness allowance rates set out in Appendix “B” of GEMA equal to the same general increase awarded by the Board for each year of the agreement. This has been done since at least the 2010 – 2014 GEMA.

MGEU noted that the remoteness allowance has not kept up with cost of living increases since 2018.

Submission of the Province

The Province agreed that remoteness allowance should be equal to the general wage increase.

Decision on Remoteness Allowance

Based on the agreement as set out in their submission, the Board awards an increase in the remoteness allowance equal to the general wage increases awarded by the Board:

- March 30, 2019 1.4%
- March 28, 2020 0.5%
- March 27, 2021 1.65%
- March 26, 2022 2.0%

Northern Premium – Memorandum of Agreement #12

The parties both proposed that the increase in the Northern Premium (for employees maintaining a home) be equal to any general wage increase.

Decision on Northern Premium – Memorandum of Agreement #12

Based on the agreement of the parties, the Board awards an increase in the Northern Premium equal to the general wage increase award, being:

- March 30, 2019 1.4%
- March 28, 2020 0.5%
- March 27, 2021 1.65%
- March 26, 2022 2.0%

Meals and Miscellaneous Expenses – Appendix “F”

Submission of MGEU

MGEU proposes increases in the meal allowance rates for travel within the province and areas covered by the remoteness allowance.

The current rates are:

Travel Within the Province

	Breakfast	Lunch	Dinner	Total per Diem
Manitoba	\$7.85	\$9.85	\$16.70	\$34.40

The proposed rates are:

Travel Within the Province

<u>Breakfast</u>	<u>Lunch</u>	<u>Dinner</u>	<u>Total</u>
\$10.49	\$14.21	\$22.94	\$47.64

Areas Covered by the Remoteness Allowance

<u>Breakfast</u>	<u>Lunch</u>	<u>Dinner</u>	<u>Total</u>
\$10.99	\$14.71	\$23.44	\$49.14

MGEU says the rates are the second lowest in the country. They attached the chart below to so illustrate. There have been no increases since 2013. Since 2007 there has been a \$1.00 increase. Since 2016 meal costs have increased 13.2%.

Province	Breakfast	Lunch	Dinner	Total Per Diem	Total Difference (\$)	Effective date
BC (BCGEU)	\$12.75	\$14.75	\$25.50	\$53.00	\$18.60	April 2021
Alberta (AUPE)	\$9.20	\$11.60	\$20.75	\$41.55	\$7.55	April 2021
Saskatchewan (SGEU)	\$10.00	\$18.00	\$23.00	\$51.00	\$16.60	October 2016
Manitoba	\$7.85	\$9.85	\$16.70	\$34.40	--	April 2013
Ontario (OPSEU)	\$10.00	\$12.50	\$22.50	\$45.00	\$10.60	January 2015
Newfoundland (NAPE)	\$8.00	\$14.00	\$21.70	\$43.70	\$9.30	March 31, 2018
Nova Scotia (NSGEU)	\$8.00	\$15.00	\$20.00	\$43.00	\$8.60	April 2015
New Brunswick (NBUPPE)	\$7.50	\$10.50	\$19.50	\$37.50	\$3.10	April 2010
Prince Edward Island	\$8.00	\$10.00	\$16.00	\$34.00	(\$0.40)	April 2018
Yukon	\$23.05	\$21.15	\$61.00	\$105.20	\$70.80	April 2021
Northwest Territories	\$22.85	\$25.50	\$57.35	\$105.70	\$71.30	April 2016

In formulating its proposed Meal Allowance rates, MGEU calculated the average total meal allowance rates for each type of meal (breakfast, lunch and dinner) for Ontario and the western provinces (Saskatchewan, Alberta and British Columbia). These comparators are traditionally seen as more appropriate than the eastern provinces or the territories and provide the best comparison, taken together, for Manitoba (they also do not skew the average, which would occur if one included the territories in the analysis).

MGEU also proposed a meal allowance increase for overtime work and field operations. The proposal for the overtime meal rate is to increase the rate by \$4.41 for a total of \$10.21 under Article 3.01 of Appendix "F".

MGEU proposes the following rate increase for field operations:

Areas Covered by Remoteness Allowance

	Breakfast	Lunch	Dinner	Per Diem
Manitoba	\$9.64	\$12.01	\$16.69	\$38.34

All Other Areas

	Breakfast	Lunch	Dinner	Per Diem
Manitoba	\$9.39	\$11.66	\$16.79	\$37.84

Submission of the Province

The Province is opposed to any increases under any circumstances. The Province argued that Ontario, British Columbia and Alberta are not proper comparators. Manitoba is currently in the middle of the pack across the country and that is appropriate. The Province stated that any significant increase is not consistent with the parties' bargaining history which included a \$1.00 increase in the past.

Decision on Meals and Miscellaneous Expenses – Appendix “F”

We are mindful that there have been no increases since 2013 and it cannot be disputed that during that time meal costs have risen. We accept that an increase in the rates would have been the outcome of reasonable collective bargaining under the principle of replication.

The appropriate provincial comparators are Saskatchewan, New Brunswick and Nova Scotia.

We believe a 10% increase for all meals will bridge the gap with those provinces and take into account cost increases over the years. We so award.

Component Specific Issues

(a) Physical Sciences Component

Add Biologists and Foresters to qualification pay for wildfire suppression.

Submission of MGEU

MGEU seeks to extend qualification pay to Biologists and Foresters for time spent engaged in wildfire suppression. It would be payable if the employees were actively engaged in firefighting.

Article 5.03 of the Physical Sciences Component would be amended to reflect this.

Submission of the Province

The Province opposes MGEU's proposal. The Province maintains that they are not actively engaged in wildfire suppression as outlined in the department's guidelines. Therefore there is no need to include this in the Memorandum of Agreement.

Decision on adding Biologists and Foresters to Qualification Pay for Wildfire Suppression

We do not see any need for the change proposed. MGEU's proposal is denied.

(b) Tool Allowance**Submission of MGEU**

MGEU proposes that the tool allowance be increased from \$350.00 to \$500.00 for employees who are required as a condition of employment to provide tools to be used in the performance of their duties.

The existing rates have been in place since 2013. They were increased to \$300.00 in 2012 and \$350.00 in 2013.

MGEU acknowledges that the tool allowance rates are intended to offset a portion of the costs. The costs of the required tools exceed the amount of the existing allowance and costs for essential tools have increased anywhere from 25% to 100%.

Submission of the Province

The Province opposes any increase in the tool allowance. The allowance is a contribution to the costs of tools. Employees are required to supply their own tools. Further apprentice technicians are able to claim tax relief by way of deductions for the purchase of tools.

Decision on Tool Allowance

It is not disputed that the intent of this allowance is to offset the costs of tools. Over time, costs for tools increase and the value of the allowance is eroded.

Therefore, to maintain the value of the allowance, a modest increase would be the result of reasonable collective bargaining.

In the circumstances, we award an increase of \$50.00 effective April 1, 2022.

Proposals by the Province

Article 17 - Disciplinary Action

Submission of the Province

The Province proposes an amendment to this article which obligates the Province to provide an employee with reasonable notice of an investigative or disciplinary meeting.

The Province proposed the addition of a new Article 17.04 with necessary renumbering to require MGEU to make a representative available for the meetings at the times scheduled by the Province.

The Province stated that the purpose of this amendment was to avoid delay due to scheduling conflict.

The Province said that MGEU was aware of the concerns, and attempts were made to resolve the issue. Clearly the parties recognize that it is an important issue. The Province stated that their proposal was reasonable.

Submission of MGEU

MGEU opposes the proposal. The current system is workable and in practice the MGEU representative and the Employer schedule the meeting and inform the employee.

MGEU stated that the proposal is based on an alleged problem which does not exist. MGEU submitted that the proposed language does not provide flexibility or allow for cooperation in arranging times.

Decision on Article 17 – Disciplinary Action

This proposal involves an operational issue. We are not satisfied, on balance, based on the information before us, that a change is warranted as the Province has not established a persuasive reason for the amendment.

This issue is best left to the parties to sort out if issues arise in the future.

The Province's proposal is therefore denied.

Reduction of Notice Periods

- (a) Article 19 – Contracting Out
- (b) Article 20 – Devolution and Transfer of Services
- (c) Article 21 – Technological Change

Submission of the Province

(a) Article 19 – Contracting Out

Under the current agreement the Province must provide four months' notice in advance of contracting out, and engage in discussions to explore alternatives and redeployment opportunities for affected employees.

The Province seeks to reduce the notice period to two months because the current four months' notice is "overly onerous" and prevents it from exercising its management rights, and four months is normally not necessary to ensure that the purpose of the Article is met.

The Province stressed that with this proposal and the two that follow, they were not seeking to undermine substantive rights, but only seeking to make a difference in procedure.

Submission of MGEU

MGEU opposes the proposal. The notice period has been in the agreement since at least the 1984-87 GEMA. MGEU argued that the Province has not offered any compelling support for its proposal.

MGEU submitted that two months was not a sufficient time to host discussions, meaningfully consider options and consider redeployment and retraining alternatives.

MGEU emphasized the importance of the issue at stake and stated no bargaining had taken place regarding this issue.

(b) Article 20 – Devolution and Transfer of Services

Submission of the Province

This situation arises when the Province transfers work or services done by the bargaining unit to another entity established by Government.

The Province argued that the four month period is too long and an obstacle to its management functions. Two months is adequate notice. The Province reiterated its earlier submissions regarding Article 19.

Submission of MGEU

MGEU opposes the proposal.

MGEU stated that this provision has been in place since at least the 2000-2003 agreement. No discussion of this proposal occurred at bargaining.

MGEU said that where a devolution or transfer of services has been planned, the parties usually enter into a transition agreement on a wide range of issues, which can take up to a year to conduct.

MGEU argued that a minimum of four months' notice is necessary and that the Province had not provided an adequate reason for change.

(c) Article 21 – Technological Change

Submission of the Province

The Province proposes to reduce the six month notice for a technological change to two months. The Province states that there is no reason why the process set out in Article 21.04 cannot be completed in two months. A change will enhance the Province's flexibility and operational efficiency.

Submission of MGEU

MGEU opposes this operational change. No bargaining occurred respecting this issue. The notice period allows sufficient time to take all the necessary steps to assist employees affected by a change. Two months' notice is inadequate.

Decision on Articles 19, 20 and 21

All of the above three proposals involve operational changes. In each, the Province seeks to reduce the notice period to effect significant changes which have a profound impact on members of the bargaining unit.

These issues have not been discussed at the bargaining table and should be thoroughly canvassed there if there is to be a change.

The parties have agreed on the proper and reasonable notice and we have not been provided any convincing reasons to award operational changes in these circumstances. The Province has not shown that the current notice periods create problems for the parties. We do not find that these changes would have been agreed to in reasonable collective bargaining.

All three proposals are denied.

Article 28 – Sick Leave

Submission of the Province

The Province proposes to amend Article 28.11 by eliminating the use of a statutory declaration as a proof of illness after an absence of more than three consecutive working days.

The Province argues that a sworn statutory declaration does not meet the purpose of the provision and should be deleted from the Article.

Submission of MGEU

MGEU opposes the proposal. This proposal was tabled by the Province in the 2014-2019 bargaining and withdrawn. It was referenced in the Province's initial principles but was not discussed in bargaining.

MGEU noted that the existing provision has been in place since at least the 1984-1987 GEMA. MGEU said that the Province has not provided a reasonable basis for their proposal.

MGEU argued that the requirement to attend a physician's office is in contrast to the prevailing view of physicians that people not be putting a burden on the system by having to attend a doctor's office to obtain a note.

MGEU submitted that now is not the time to put additional stress on the health care system.

Decision on Article 28 – Sick Leave

This proposal involves an operational change. We find that this is not a change that would have been agreed to during reasonable collective bargaining. It is an issue best left to the parties to bargain. Certainly at this time, it is not an appropriate change due to demands on the health care system.

The Province's proposal is denied.

Article 45 – Union Business

Submission of the Province

The Province proposes to amend this Article in order to require reimbursement by MGEU of 10% of an employee's salary and benefits while the employee attends to Union business. Currently the Article requires reimbursement of wages. This would add benefits which are estimated to be equal to 23.04% of payroll.

The Province maintained that it is improper for taxpayers to be responsible for this payment, especially in difficult economic times, and it is therefore appropriate to eliminate the benefit.

Submission of MGEU

MGEU opposes the proposal and confirmed that this Article has been included in every agreement since at least the 1973 – 1975 agreement. In the absence of bargaining, MGEU argued that there have to be compelling reasons for such a change and none have been provided. The quantum of the costs and how they are calculated, are not known.

MGEU noted that in the MACA arbitration, the Province proposed reimbursement of wages, not benefits. Arbitrator Peltz stated that the Province had not raised concerns for nearly 43 years and he denied the proposal. MGEU said the same should be done here.

Decision on Article 45 – Union Business

The Province seeks to amend a benefit of almost 50 years standing. In making their proposal, the Province emphasizes the current economic conditions.

Based on the principle of replication, we find that this change would not have been agreed to as a result of a reasonable bargaining process.

We are not prepared to make this fundamental change in the agreement and the proposal is denied.

Memorandum of Agreement #13 – Joint Committee to Optimize the Public Service

Submission of the Province

The Memorandum states that a Joint Labour Management Consultation Committee is established to discuss and make recommendations regarding the delivery of public services to Manitobans.

The Province proposes that it be deleted. It has been in place since 2016. The Province says that has not served any meaningful purpose and has not been formed. Its work can be done by the Joint Committee provided for in MOA #3.

Submission of MGEU

MGEU opposes the proposal. It acknowledges that the Committee has not been struck, but reserves its right to do so. While there are other joint committees, they focus on departmental issues. The mandate of this committee is broad.

MGEU referenced the recent MACA decision in which the Province's proposal to delete a joint committee on legal education was denied even though it had not met. It was stated that the committee "may yet be activated and may assist the parties".

MGEU argued that the same reasoning should be applied in the instant case.

Decision on Memorandum of Agreement #13

The Province seeks to delete a joint committee which was agreed to in the 2014 – 2019 GEMA.

We are not prepared to agree to this proposal.

We endorse the reasoning in the MACA decision that the Committee may be activated in the future. As well, on its face, this Committee has the potential to be useful to the parties.

The Province's proposal is denied.

Memorandum of Agreement #14 – Enhancing Public Service

Submission of the Province

In its written brief, the Province sets out its rationale for proposing the deletion of the MOA as follows:

154. MOA #14 requires the Province to provide notice to the MGEU prior to any proposals being acted on that would involve the transfer, conveyance, disposition or sale of an undertaking, all or part of a business, enterprise, institution, program or project currently being carried out by the civil service. The Companion Agreement then details the Province's disclosure obligations and describes the MGEU's opportunity to provide an alternative to the Province's plans to transfer or dispose of work as described.

155. In the Province's submission, MOA #14 and the Companion Agreement are a considerable limitation on the Province's management rights to reasonably direct and organize its workforce. The Province submits that it should have greater flexibility and discretion to determine whether it will carry out the actions contemplated by MOA #14. For this reason, it proposes the deletion of MOA #14 and the accompanying Companion Agreement.

Submission of MGEU

MGEU opposes the proposal., MGEU stated MOA #14 was first negotiated in the 2014 – 2019 GEMA and the Companion Agreement was negotiated on December 4,

2020. MGEU emphasized that the deletion would amount to a considerable concession on their part.

MGEU responded to the Province's justification for the deletion and insisted that there was no legitimate reason put forward by the Province.

Decision on Memorandum of Agreement #14

We see no basis for awarding the Province's proposal.

These provisions were recently agreed to by the parties. There have not been any developments since that time to justify a deletion at this time.

The Province's proposal is denied.

Jurisdiction

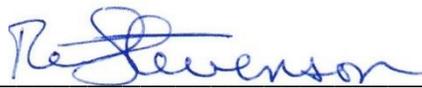
Jurisdiction is retained to clarify or implement the award as may be necessary, on application by either party, or on the arbitrator's own motion.

We wish to thank the parties for their comprehensive and helpful presentation of the evidence and the arguments in this case.

This Award is signed by all members of the Board. Although unanimous, it is not the decision that would have been delivered by any member of the Board acting as the sole member. Rather, it is a collective decision reached through much discussion and some compromise. In the end, all three members of the Board felt we had achieved a sufficient level of concurrence that a single Report was warranted.

DATED at the City of Winnipeg, in Manitoba, this 18th day of May, 2022.


MICHAEL D. WERIER, Q.C.


RICK STEVENSON


TONY MARQUES

APPENDIX "A"

AGREED TO ITEMS – November 5 2021

Article 12- Medical Fitness

12:01 A physical examination by a duly qualified medical practitioner acceptable to the **Commission Treasury Board** is required:

- (a) for all employees in provincial institutions;
- (b) for any employee in respect of whom the employing authority, in writing, requires a physical examination; and
- (c) for any employee who, in the opinion of the Commission Treasury Board, should be given a physical examination.

12:02 The **Commission Treasury Board** may, on the recommendation of the employing authority, or on its own initiative, require an employee to have a psychiatric examination and/or a physical examination.

...

12:05 The provisions of Article 12 are not for the purposes of general medical information to access sick leave provisions in accordance with Article 28.

Article 13 – Probation and Assessment

13:01 ~~Subject to Section :08, E~~every person appointed to a position **newly hired employee** shall be on probation for a period of six (6) months.

13:02 An employee's probation period may be extended by the deputy minister or designate. Such extension may be for a maximum period of six (6) months. In the event of a lengthy absence due to illness or injury during the probation period, the employing authority may extend the probation period for longer than twelve (12) consecutive months, subject to the agreement of the Union. The total time spent on probation while at work, however, shall in no instance exceed twelve (12) months.

- 13:03 An employee shall be notified in writing of any extension of the probation period under Section :02 prior to the expiry of the probation period. A meeting may be held with the employee to discuss the extension. The employee has the option to have a representative present.
- 13:04 An employee's probation period of six (6) months plus any extension shall be considered the ~~initial~~ probation period. This ~~initial~~ probation period shall not exceed twelve (12) months except as outlined in 13:02.
- 13:05 An employee who is rejected during the ~~initial~~ probation period may grieve the rejection at Step 2 of the grievance procedure within fifteen (15) working days from the date the employee received notice of the rejection. The deputy minister or designate shall hold a hearing to discuss the grievance with the employee and the employee's representative. The decision at Step 2 shall be final for such grievances.
- 13:06 An employee who is being rejected during the employee's probation period shall be provided with two (2) weeks' notice or payment in lieu thereof.
- 13:07 ~~Subject to Section :07, T~~the rejection of an employee on probation ~~or assessment period~~ is neither appealable nor arbitrable.

Assessment Period

- 13:08 Subject to :08, Every employee appointed, promoted, or transferred to a position within Government shall complete a assessment period of 6 months. The purpose of the assessment period is to assess whether the employee is able to perform the duties and functions of the position.**
- 13:09 An employee's assessment period may be extended by the Deputy Minister or designate. Such extension may be for a maximum of six (6) months.**
- 13:10 An employee shall be notified in writing of any extension of the assessment period under 13:09 prior to the expiry of the assessment period. A meeting shall be held with the employee to discuss the extension at the request of the employee. The employee has the option to have a representative present.**
- 13:11 In the event of a lengthy absence due to illness or injury during the assessment period, the Employing Authority may extend the assessment period for longer than twelve (12) consecutive months. The total time spent in the assessment period while at work, however, shall in no instance exceed twelve (12) months. This will allow the full period in which to evaluate the employee.**

13:1206 Where an employee has been rejected during ~~probation~~ **the assessment period** following a promotion within a department, upon such rejection the employing authority will relocate the employee to the employee's former position or to a position comparable to the former position.

13:1307 Where an employee has been rejected during ~~probation~~ **the assessment period** following a promotion to another department, then:

- (a) the Commission will place the employee on an employment availability list at the employee's previous classification for a period of one (1) year from the date of rejection;
- (b) during this period the Commission will endeavour to relocate the employee to the employee's former position or to a position comparable to the former position;
- (c) the employee may only grieve the rejection if the employee has not been relocated to the former position or offered a comparable position prior to the effective date of rejection. The grievance shall be initiated at Step 2 of the grievance procedure within twenty-five (25) working days from the effective date of rejection.

13:1408 An employee shall not be required to serve a further ~~probation~~ **or assessment** period when:

- (a) the employee is promoted without competition as a result of reclassification of the employee's position;
- (b) the employee initiates a transfer to a position in the same classification involving similar duties and responsibilities;
- (c) the employer initiates the transfer or demotion of an employee from one (1) position to another for any reason.

13:15 Subject to :13, the rejection of an employee from an assessment period is neither appealable nor arbitrable.

13:16 An employee who is temporarily appointed to another position on an acting basis is not considered to be on **an assessment period**. If the employee is subsequently promoted to that position, the period during which the employee was in acting status does not count towards the employee's ~~probation~~ **assessment period**.

Article 16 – Merit Increases

16:02 Subject to Section: 03, ~~the anniversary date of an employee is the first of the month which follows the date on which the employee is employed in a position in the civil service.~~ **anniversary dates for employees will be as follows:**

- a) **Employees hired on or after the 2nd of a month will have their anniversary date on the first of the month which follows the date on which the employee is employed in a position in the civil service.**
- b) **Employees hired on the 1st day of a month will have their anniversary date as the 1st day of their month of hire, except where the 1st is a statutory holiday, in which case their anniversary date will be on the first of the month which follows.**

Article 22 – Work at Home

- 22:01 Work at home arrangements shall be voluntary and may be terminated by either party with thirty (30) days notice. **Such notice is not required by the employer if the employer has just cause to terminate based on disciplinary concerns.**
- 22:02 Government shall supply the necessary equipment and supplies to employees working at home and shall be responsible for the insurance and maintenance costs of such equipment.
- 22:03 Working at home shall not affect the employment status of any employee. A person who would not otherwise be an employee will not become one because they are performing work from an off-site location. Similarly, it will not prevent a person from remaining or becoming an employee if they otherwise would be an employee.
- 22:04 All provisions of the Agreement apply to work at home arrangements except as otherwise agreed by the parties.
- 22:05 Work at home arrangements refers to work performed at an employee's home during regular work hours. The provisions of this Article refer to long term arrangements only.
- 22:06 Government reserves the right to attend at the employee's home/**alternate work location** with reasonable notice **including but not limited to: inspecting and repairing** its equipment as necessary.

Article 27 - Vacation

- 27:02** Vacation leave credits are calculated based on accumulated service. In addition, for purposes of calculation of vacation credits only, an employee shall be considered to have earned accumulated service in accordance with the following:

- (a) where an employee is absent due to injuries or disabilities for which compensation is paid under The Workers Compensation Act, vacation leave shall accumulate as if the employee were not absent, but the extent of such accumulation shall not continue beyond twelve (12) consecutive calendar months from the ~~date the injury or disability occurred~~ **date the absence, related to the injury or disability, commenced;**

Article 30 – Workers Compensation

Delete the current 30:01 and 30:02 and replace with the following:

- 30:01 For employees who are on Workers Compensation and who have sufficient sick leave, it is the intention of the parties that the employee's net salary will be maintained as if they were in receipt of regular sick leave. If an employee is absent from work as a result of an injury for which a Worker's Compensation claim has been filed **arising from employment with the Province**, the following shall apply:
- (a) **the employee will be paid as though on sick leave;**
 - (b) **if the employee's Workers Compensation claim is approved:**
 - (i) **the employee will be re-credited with ninety percent (90%) of the sick leave granted while awaiting approval;**
 - (ii) **any amounts payable to the employee from Workers Compensation shall be remitted directly to the government;**
 - (iii) **the employee will remain in receipt of regular sick leave, and ten percent (10%) of the employee's absence period shall be chargeable to the employee's sick leave credits for the duration of the Worker's Compensation claim or until the employee's accrued sick leave credits have been exhausted;**
 - (c) **if the employee's Workers Compensation claim is not approved, then 100% of the absences shall be charged to the employee's accumulated sick leave credits and, if the amount of salary paid exceeds the sick leave credits, resulting in an overpayment, the employing authority can recover that overpayment through payroll deductions, and will provide the employee with a written statement indicating the amount of the overpayment and details**

regarding recovery options. Other means of repayment may be agreed upon between the employer and the employee.

30:02 Upon being advised that a Workers Compensation claim has been filed, the employing authority shall provide the employee a written notice containing the following information:

- (a) advising the employee of the provisions of Article 30:01;
- (b) the amount of accumulated sick leave credits that the employee has in their sick leave bank at the time of the injury;
- (c) advising the employee that if the Worker's Compensation claim is not approved, that an overpayment may occur, which will be recovered by the employing authority in accordance with the Financial Administration Manual directives;
- (d) advising the employee of the Long Term Disability Income Plan, and the claim procedure for eligibility thereof;
- (e) advising the employee of the Employment Insurance (EI) sickness benefit and the contact information of Service Canada Employment and Social Development Canada (ESDC).

Article 34- Maternity Leave

PLAN A:

...

34:04 Effective January 3, 2021, An employee who has been granted maternity leave shall be permitted to apply up to a maximum of ~~ten (10)~~ **five (5)** days of her accumulated sick leave against the Employment Insurance waiting period.

An employee who has been granted maternity leave shall also be permitted to apply up to an additional five (5) days of her accumulated sick leave:

- (a) in the week immediately following the discontinuation of payments of Employment Insurance Maternity

benefits if the employee does not receive Employment Insurance Parental Benefits; or

- (b) in the week immediately following the discontinuation of payments of Employment Insurance Parental benefits, if the employee receives Employment Insurance Parental benefits immediately following the discontinuation of Employment Insurance Maternity benefits.**

Should an employee not be required to serve any waiting period before the commencement of Employment Insurance benefits, she will be permitted to apply up to ten 10 days of her accumulated sick leave as in paragraph (a) or (b) above.

PLAN B

34:05 In order to qualify for Plan B a pregnant employee must:

- (a) have completed seven (7) continuous months of employment for or with the government;
- (b) submit to the employing authority an application in writing, for leave under Plan B at least four (4) weeks before the day specified by her in the application as the day on which she intends to commence such leave;
- (c) provide the employing authority with a certificate of a duly qualified medical practitioner certifying that she is pregnant and specifying the estimated date of her delivery;
- (d) provide the employing authority with proof that she has applied for Employment Insurance benefits and that ~~The Department of Human Resources and Skills Development Canada (HRSDC)~~ **Service Canada** has agreed that the employee has qualified for and is entitled to such Employment Insurance benefits pursuant to Section 22, Employment Insurance Act.

...

34:09 Effective January 3, 2021, During the period of maternity leave, an employee who qualifies is entitled to a Supplement to Employment Insurance (EI) Maternity benefits as follows:

- ~~(a) for the first two (2) weeks an employee shall receive ninety-three percent (93%) of her weekly rate of pay;~~
- (a) An employee shall receive ninety-three percent (93%) of her weekly rate of pay during the one week Employment Insurance waiting period;**
- (b) For up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the Employment Insurance benefits the employee is eligible to receive and ninety-three percent (93%) of her weekly rate of pay;
- (c) For the week immediately following the discontinuation of payments of Employment Insurance Maternity benefits, an employee shall receive ninety-three percent (93%) of her weekly rate of pay provided the employee does not receive Employment Insurance Parental Benefits immediately following the exhaustion of the Employment Insurance Maternity Benefits.**

If the employee receives Employment Insurance Parental Benefits immediately following the exhaustion of Employment Insurance Maternity Benefits, the employee shall receive ninety-three percent (93%) of her weekly rate of pay for the week immediately following the discontinuation of payments of Employment Insurance Parental Benefits.

Should an employee not be required to serve any waiting period before the commencement of Employment Insurance benefits, the benefits under paragraph (a) above will be paid in the week following payment in paragraph (c).

- (d) all other time as may be provided under Section :08 shall be on a leave without pay basis.**

Article 36 – Parental Leave

36:01 In order to qualify for parental leave, an employee must:

- (a) be the natural mother of a child; or

- (b) be the natural father of a child; or
- (c) adopt a child under the law of a province.

36:02 An employee who qualifies under Section :01 must:

- (a) have completed seven (7) continuous months of employment and
- (b) submit to the employing authority an application in writing for parental leave at least four (4) weeks before the day specified in the application as the day on which the employee intends to commence the leave

36:03 An employee who qualifies in accordance with Sections :01 and :02 is entitled to parental leave without pay for a continuous period of up to ~~thirty-seven (37)~~ **sixty-three (63)** weeks.

36:04 Subject to Section :05, parental leave must commence no later than ~~the first anniversary~~ **seventy-eight (78) weeks after the** date of the birth or adoption of the child or the date on which the child comes into the actual care and custody of the employee.

36:05 Where an employee takes parental leave in addition to maternity leave, the employee must commence the parental leave immediately on expiry of the maternity leave without a return to work unless otherwise approved by the employing authority.

Memorandum of Agreement #6 — Employment Equity

SUBJECT: EMPLOYMENT EQUITY

The parties acknowledge and endorse the principle of Employment Equity in the civil service.

In factoring Employment Equity into the Recruitment and Appointment process, the following principles shall apply:

1. Employment Equity shall be applied as a factor in competitions for which there is inadequate representation of one or more of the four under represented groups or for which there is a bona fide organizational need.
2. The weighting afforded Employment Equity shall be no greater than that applied to the highest weighted essential selection criterion.

3. The rating applied to Equity candidates shall be the same as that applied to the "meets standard" rating for the essential selection criteria.
4. Employment Equity candidates must be qualified in all other essential selection criteria.
5. The rating for Employment Equity shall be applied only once in the selection process.

The Employer and the Union agree to establish an "Employment Equity Task Force", consisting of an equal number of representatives appointed by the Employer and by the Union, to discuss issues of diversity and employment equity.

NEW - Memorandum of Agreement - Selection Appeals

The parties have agreed that should the *The Public Service Act* be proclaimed, selection grievances will be referred to arbitration rather than appealed to the Civil Service Commission Appeal Board.

To provide clarity:

- 1) **Article 11 selection grievances shall be filed following the Grievance Procedure outlined in Article 49:19(a) through (d) of the General Employees Master Agreement (GEMA).**
- 2) **Article 49:19(e) shall no longer be applicable to selection grievances.**
- 3) **Unresolved selection grievances shall be submitted to arbitration before a single arbitrator in accordance with applicable provisions of Article 50.**

MEMORANDUM OF AGREEMENT- Joint Employee Assistance Program

The employer representatives on the Joint Employee Assistance Program Committee will be Karen Ingram, Erin Polcyn-Sailer, and Lori Stokell. Union representatives will be Blaine Duncan, Charlotte McWilliams and Cris Quon.

The committee shall meet to explore opportunities and provide recommendations for considerations prior to October 31, 2021.

NEW- Classification Disputes

The Employer is proposing a new process for classification disputes as outlined below. This is intended to become the framework for a Memorandum of Agreement contained in the collective agreement and will replace all references,

including but not limited to Article 51 and 53, to classifications disputes contained within the agreement.

0. Clarification of the classification decision

- Employee directly contacts the CSO to request clarification or to better understand the rationale for the classification decision
- CSO responds verbally or in writing. The CSO may share additional detail and disclose supporting material where applicable.

1. Dispute Resolution Process Initiated – First Stage Review

- The classification decision is disputed in writing by the MGEU within 20 days of the classification decision being rendered. Where possible, the reason the decision is disputed is provided. The time limits may be extended by mutual agreement.
- The CSO, employee, and union meet within a reasonable and mutually agreeable timeframe to discuss the disputed classification decision.
- The CSO shares information, analysis, rationale used to support the classification decision.
- The employee and union put forward the rationale for why the classification decision was incorrect.
- The parties may agree to gather additional information or otherwise follow up before reconvening to continue the discussion.
- When the discussion is concluded, if the parties do not agree that the matter was resolved, the issue may be escalated to the next stage.

2. Second stage – Joint Classification Review Panel

- The classification decision is disputed in writing with the rationale specified, and references the unsuccessful resolution at the first stage.
- The matter is heard by a panel consisting of a union representative and an employer representative, both trained in job evaluation.
- The employee and union put forward rationale for why the classification decision was incorrect.
- The CSO shares information, analysis, rationale used to support the classification decision.
- The panel may direct the parties to gather additional information or otherwise follow up before the panel concludes its assessment.
- The panel will provide a written response summarizing their decision and rationale.
- If the panel's assessment is unanimous, the decision is final. If the panel cannot agree, the dispute can be escalated to the final stage

3. Final stage – Independent External Review

- **Independent 3rd party reviewer proficient in job evaluation reviews the matter (procedures TBD) and makes a binding determination on the classification decision**
- **Should the decision appear to both parties as fundamentally flawed, the reviewer will be required to re-evaluate or refer the matter to an alternate 3rd party for review.**
- **The employer and the union will share the costs of any matter referred for external review.**

Housekeeping Items:

Memorandum of Agreement #3 — Joint Labour Management Consultation Committee

1:06 The Committees will refer any issues which would involve changes to the Agreement to the Union and the Labour Relations Division of the **Civil Service Commission Treasury Board Secretariat**.

Memorandum of Intent #1

SUBJECT: JOB SHARING

Job sharing is an alternative work arrangement whereby the duties and responsibilities of a full-time position may be restructured in a manner that would accommodate the employment of two (2) or more employees on a part-time basis.

The Civil Service Commission Treasury Board Secretariat will endeavour to inform the Union of existing job share situations within the bargaining unit within sixty (60) days of the signing of this Agreement.

The Civil Service Commission Treasury Board Secretariat will inform the Union of new job share arrangements within the bargaining unit as they are brought to its attention.

It is also agreed that **The Civil Service Commission Treasury Board Secretariat** will consult with the Union during the life of this collective agreement on the subject of job sharing and its impact on the bargaining unit.

Appendix “C”

5:06 Maternity Leave

- (a) Regular part-time employees are eligible for maternity leave Plan A or Plan B;
- (b) to qualify for maternity leave, calendar service is used, i.e. seven (7) months;
- (c) an employee who qualifies is eligible for the full calendar time leave provided under the Agreement, i.e. seventeen (17) weeks;
- (d) for Plan A, the application of up to ten (10) days sick leave towards the Employment Insurance waiting period will be calculated by multiplying the number of days accumulated sick leave the employee has (up to ten (10) days) by the pro-rating factor;
- (e) for Plan B, government payments will be based on the difference between the percentage of weekly earnings covered by Employment Insurance and ninety three percent (93%) of the weekly earnings. Weekly earnings will be as determined by **Service Canada** ~~The Department of Human Resources and Skills Development Canada (HRSDC)~~ and will be ~~subject to the Employment Insurance maximum.~~

Appendix “D” – Casual Employees

1:01 The only provisions of this Agreement which apply to casual employees are as follows: Article 1 - Interpretation

Article 4 - Application

Article 7 - No Discrimination

Article 8 - Management Rights

Article 10 - Retroactive Wages

Article 14 - Conduct of Employees

Article 17 - Disciplinary Action

Article 26 - Holidays

- provisions respecting 1½x for time worked on the listed holidays only
- all other provisions in accordance with Employment Standards Code

Article 38 - Loss or Damage to Personal Effects

Article 44 - Uniforms and Protective Clothing

- Sections :01, :02 and :07 only Article 48 - Union Security

Article 50 - Grievance Procedure - limited to the provisions in this Article

Article 51 - Grievance-Arbitration Procedure – limited to the provisions of this Article

Article 53 - Sexual Harassment

Article 55 - Civil Liability

Article 56 - Employee Files

Article 62 - Shift Premium

Article 63 - Weekend Premium

Health Component – Section 7 – Responsibility Allowance

Appendix B – Remoteness Allowance – 1:08 **Hourly Rated Personnel & Employees Hired on an "If, As and When" Basis**

Trades, Operations and Services Component

The pay schedules contained within the Trades, Operations & Services Component will be amended as follows:

Labourer (LAB) **or Maintenance Worker 1 (MW1)**

Operator 1 (OR1) **or Maintenance Worker 2 (MW2)**

Operator 2 (OR2) **or Maintenance Worker 2 (MW2)**

Operator 3 (OR3) **or Maintenance Worker 3 (MW3)**

Operator 4 (OR4) **or Maintenance Worker 3 (MW3)**

The following amendments stem from revisions made to the 2014-2019 GEMA through negotiations that occurred prior to bargaining for a revised GEMA, i.e., during the life of the now expired GEMA. Nonetheless, they will form part of the new collective agreement and are therefore cited below.

Social Sciences Component – Appendix “B” Overtime Schedule

Amend to include Translator 3

*Chief Photographer 2, 3	Media Technician 1,
*Consultant Visual Hearing Education 1 Economic Research Analyst 1 Analyst 1	Photographer 1, 2 Planning & Program
Educational Assistant 1, 2, 3 3	Probation Officer 1, 2,
Field Worker 1, 2, 3 3	Recreation Consultant 1, 2,
Health & Social Development Specialist 1, 2, 3, 4 1, 2	Research Assistant Residence
Heritage Resource Officer 1, 2 Counsellor	Resource Extension Officer
Home Advisor 1, 2 1, 2	Social Services Worker 1, 2,
Home Economist 1 3, 4	Statistical Analyst 1 *Teacher Institutional 1, 2
Illustrator 1, 2, 3 Informational Writer 1, 2	Tourist Development
*Language Specialist 1 Officer 1, 2	Tourist Marketing
*Librarian 1, 2 Officer 1, 2	Translator 1, 2, 3
*Library Technician 1, 2, 3	

NOTE: the inclusion of Translator 3 was simply to repair an omission from the previous 2014-2019 GEMA. They were already in receipt of overtime in accordance with Appendix "B" but this was not reflected in the GEMA.

Legal, Inspection and Regulatory Component

2:02 All employees within this Component shall come within Category (A) except those employees in the following classes who shall be categorized as Category (B) employees:

Resource Officers

Inspector Mechanical, Codes and Standards

Safety Health Officers

An employee in a classification identified as Category (B) may, if required to perform duties in an office, work seven and one-quarter (7¼) hours per day, thirty-six and one-quarter (36¼) hours per week while the employee is assigned to the office. For purposes of overtime determination, normal hours of work for such an employee shall be as specified in Section :04.

- 6:03 Resource Officers, who are assigned by the employer the responsibility to carry a firearm, shall be granted, in addition to their normal salary, twenty-three dollars (\$23.00) bi-weekly.**

Trades, Operations and Services Component

- 6:07 Employees within Manitoba Infrastructure, specifically within the division of Engineering and Operations, who have been assigned the working title of Maintenance Worker 1, Maintenance Worker 2, or Maintenance Worker 3 shall receive, in addition to their normal salary, qualification pay as follows:**

Maintenance Worker 1 (classified and paid as a Labourer) - \$0.20 per hour
Maintenance Worker 2 (classified and paid as an Operator 2) - \$0.25 per hour
Maintenance Worker 3 (classified and paid as an Operator 4) - \$0.30 per hour

Memorandum of Agreement #12 – Northern Premium

SUBJECT: NORTHERN PREMIUM

1. Northern Premium shall be paid to employees subject to the eligibility criteria and conditions outlined in this Article.
2. Northern Premium will be paid to employees that have established a residence and maintain a home in a location designated as a remote location as outlined in Appendix 'B', remoteness allowance and who are eligible for the payment of a remoteness allowance.
3. The Northern Premium is applicable only to the following classifications and at the following rates per hour:

	Effective
	2018-09-29
CC3/4 Clerk of the Court	\$ 1.55
CHN - Chaplain	\$ 1.99
CWC - Community Corrections Worker	\$ 1.33
EO1 - Environmental Officer 1	\$ 2.18
EO2 - Environmental Officer 2	\$ 2.51
EO3 - Environmental Officer 3	\$ 2.96
EO4 - Environmental Officer 4	\$ 3.07
EO5 - Environment Officer 5	\$ 2.45
M2S - Mechanical Equipment Mechanic 2	\$ 1.54
SRT	
MC - Machinist	\$ 1.47
ME2 - Mechanical Equipment Mechanic 2	\$ 1.47
PB1 - Probation Officer 1	\$ 1.58
PB2 - Probation Officer 2	\$ 1.83
PB3 - Probation Officer 3	\$ 2.10
SH1 - Sheriff 1	\$ 2.34
SH2 - Sheriff 2	\$ 2.44
SH3 - Sheriff 3	\$ 2.64
SMC - Machinist SRT	\$ 1.54
SO1 - Sheriffs Officer 1	\$ 1.67
SO2 - Sheriffs Officer 2	\$ 1.96
SO3 - Sheriffs Officer 3	\$ 2.19
SO4 - Sheriffs Officer 4	\$ 2.32
SP1 - Social Service Worker 1	\$ 1.39
SP2 - Social Service Worker 2	\$ 1.49
SP3 - Social Service Worker 3	\$ 1.77
SP4 - Social Service Worker 4	\$ 2.10
SP5 - Social Service Worker 5	\$ 2.37
SP6 - Social Service Worker 5	\$ 2.57
SWL - Welder SRT	\$ 1.54
WL - Welder	\$ 1.47

4. Temporary Northern Assignment / Accommodations

- a) where employees are to be stationed in a remote location on a semi permanent basis, i.e. for a period of three (3) months or more, they shall receive the applicable northern premium noted in this memorandum;
- b) employees stationed in a remote area who are provided with room and board shall not receive any form of northern premium;
- c) this section does not apply to employees who are eligible for Remoteness Allowance or Northern Premium.

5. An employee shall receive Northern Premium for all regular hours of work. Northern Premium shall not be included in the calculation of overtime payments, superannuation, group life insurance, sick leave payments, vacation pay, or any other employee benefits.

APPENDIX “B”**Agreed to Items on the basis of the Repeal of *The Civil Service Act* and proclamation
of *The Public Service Act*****May 9, 2022**

The following is an addendum to the lists of Agreed to Items that the parties provided previously to the Board on November 5, 2021. These new agreed to items relate to changes required by the repeal of *The Civil Service Act* and the proclamation of *The Public Service Act*.

We note that there are two instances where provisions cited as agreed upon in the November 5, 2021 Agreed to Item have since been replaced with new agreements between the parties, which is reflected in the information below. Those are as follows:

- **Item K** below at pages 13-14 (Article 49- Grievance Procedure) replaces the previous agreement for a new “Memorandum of Agreement – Selection Appeals” previously contained on page 10 of the November 5, 2021 Agreed to Items document.
- **Item V** below starting at page 25 (Reclassification Memorandum of Agreement) replaces the agreement regarding “Classification Disputes” contained on page 10 of the November 5, 2021 Agreed to Items document.

Outside of these exceptions, all other agreed items set forth below have not been previously agreed to between the parties and are additional agreements from the Agreed to Items list submitted on November 5, 2021.

A. Article 1.08 – Definition “Civil Service”

1:08 "civil service" or "service" means the employees of the government in positions, appointments, or employments, now existing or hereinafter created excluding the members of any agency of the government and the employees of any agency of the government and also excluding:

(a) officers of elections and election employees employed in that capacity only, other than the Chief Electoral Officer;

(b) the Sergeant-at-Arms of the Legislative Assembly, page boys, ushers, such temporary and clerical assistance as may be provided for members of the Assembly, and clerical employees of the Assembly, other than the Clerk of the Legislative Assembly;

(c) persons employed to make or conduct a temporary and special inquiry, investigation or examination, on behalf of the Assembly or the government;

(d) persons who are patients or inmates in a provincial institution and who help in the work of the institution;

(e) any person paid by fees or hired on a special contractual basis or as an independent contractor; and

(f) secretaries of ministers, other than any person designated as a member of the civil service pursuant to Subsection 18(1) of The Civil Service Act **while that Act was in force** and other than any person who is a member of the civil service at the time of the employee's appointment as a secretary of a minister

B. Article 1.10 - Definition "Commission"

1:10 "Commission" means the ~~Civil~~ **Public** Service Commission, constituted under The ~~Civil~~ **Public** Service Act or **designate** ~~any person designated as a Commission Officer.~~

C. Article 1.26 - Definition "regulation"

1:26 "regulation" means a regulation under The ~~Civil~~ **Public** Service Act which apply to employees covered by this Agreement

D. Article 4:01- Application of Agreement

4:01 The terms of this Agreement shall apply as herein stated to:

- (a) persons in the civil service appointed in virtue of and under Sections 15 and 16 of **the former** ~~The Civil Service Act~~;
- (b) departmental employees;
- (c) term employees to whom Subsection 2(5) of The Civil Service Superannuation Act applies;
- (d) full-time term and temporary employees hired under the authority of **The Public Service Act or the former** ~~The Civil Service Act~~ for a period in excess of two (2) months service;
- (e) part-time employees who have been hired under the authority of **The Public Service Act or the former** ~~The Civil Service Act~~. The Agreement shall apply effective the start of the bi-weekly pay period following the attainment of three hundred and thirty-six (336) hours of accumulated service for employees in an eight (8) hour per day classification, or three hundred and twenty-five and one-half (325½) hours of accumulated service for employees in a seven and three-quarter (7¾) hour per day classification or three hundred and four and one half (304½) hours of accumulated service for employees in a seven and one-quarter (7¼) hour per day classification.
- (f) casual employees who have been hired under the authority of **The Public Service Act or the former** ~~The Civil Service Act~~. The Agreement shall apply effective the start of the bi-weekly pay period following the attainment of one hundred and sixty (160) hours of accumulated service. The only provisions of the Agreement which apply to casual employees are those listed in Appendix D – Casual Employees.

E. Article 11.01 - Recruitment and Appointment

11:01 Subject to ~~Section 14 of The Civil Service Act~~, **11:01.1 and 11:02.1**, vacant or new positions in the bargaining unit shall be filled in accordance with the following:

- (a) whenever possible and in the public interest, by promotion within the civil service;
- (b) when in the public interest, by recruiting from without the civil service

11:01.1 Where more than one of the candidates for a position have, in the opinion of the Commission, the standard of qualification required for the position, the Commission, in selecting the person to be appointed to the position, and subject to due consideration of the interests of the public and the requirements of the employer, shall give a preference as prescribed in subsection 11.01.2.

11:01.2 Preference shall be given to any person who

- (a) was on active service in the naval, army or air forces of Canada, or of any allies of Her Majesty,

- (i) during any period in which a state of war existed between Canada and any other country, or

- (ii) with any special force outside of Canada, during any period in which such force is established for emergency action, or in consequence of any action, taken by Canada under the United Nations Charter, the North Atlantic Treaty, or any other similar instrument for collective defence that may be entered into by Canada,

and who

- (iii) has left that service with an honourable record or has been honourably discharged from the service,

- (iv) continues to serve as a member of the reserve force of the Canadian Forces, or

- (v) in the case of a member of a First Nation or a person who is a citizen of Canada and the United States of America, continues to serve as a member of the reserve force of the Canadian Forces or a reserve component of the United States Armed Forces;

- (b) during any of the periods mentioned in sub-clause (a)(i) or (ii), served outside Canada in a theatre of action as a member of the Canadian Legion War Service Incorporated, the Canadian Council for the Young Men's Christian Association of Canada, the Knights of Columbus Canadian Army Huts, the Salvation Army Canadian War Services, or any other such institution authorized to serve in similar manner by the appropriate naval, army, or air force authority and who at the commencement of that service was domiciled in Canada, or Newfoundland, and who left the service in good standing and with an honourable record; or

- (c) was a merchant seaman on the high seas in one of Her Majesty's ships authorized to fly the white ensign and pennant and commanded by a commissioned officer of the Naval Forces of Her Majesty when that ship served

- in a theatre of war during any of the periods mentioned in sub-clause (a)(i) or (ii) and who left such service in good standing and with an honourable record; or
- (d) is a Canadian citizen and is a surviving spouse or surviving common-law partner of a person who died from causes arising during service as described in clause (a), (b), or (c) and who was domiciled in Canada at the time of the death of his or her spouse or common-law partner.

F. Article 12.03 – Medical Fitness

12:03 A duly qualified medical practitioner giving a psychiatric or physical examination shall complete ~~the~~ **medical forms or respond to requests for medical information** required by the **Commission Regulations**.

G. Article 16.03 – Merit Increase

16:03 The anniversary date for an employee **receiving a promotion or a transfer resulting in a pay increase equivalent to two or more merit increases** ~~affected by the provision of Section 11(4) of The Civil Service Act~~ shall become the first day of the month that falls on or after the effective date of the promotion or transfer of the employee and the employee shall be eligible for the employee's next merit increase twelve (12) months from the anniversary date established in accordance with this Section.

H. Article 20.01 – Devolution/Transfer Services

20:01 In the event of the devolution and transfer of government services provided by employees covered by this Agreement to a Crown Corporation, Board, Agency, Commission or other entity established by government, the Union shall be notified no less than four (4) months prior to the transfer of employees. The parties will establish a joint committee to facilitate the orderly transfer of employees who are impacted.

I. Article 24.02 – Layoff

24:20 The ~~Civil Service~~ Commission shall maintain a re-employment list for all employees covered by this Article who are laid-off on other than a temporary basis. A copy will be provided to the Union on request.

J. Article 24.26 – Lay-off

24:26 An employee who accepts another position may be placed on a trial period of not more than six (6) months duration. An employee who is found to be unsuitable during this trial period will be returned to the appropriate re-employment list for the greater of six (6) months or the remainder of the employee's twenty-four (24) month period on the re-employment list. An employee found to be unsuitable may grieve the decision commencing at Step 2 of the grievance procedure. ~~The decision at Step 2 may be appealed to the Civil Service Commission. The decision of the Commission is final for such grievances.~~

K. Article 49- Grievance Procedure

49:02 A “grievance” is defined as a complaint in writing concerning:

- (a) the application, interpretation, or alleged violation of an Article of this Agreement or The ~~Civil~~ **Public** Service Act or a signed Memorandum of Understanding or a signed Memorandum of Agreement between the parties;
- (b) the dismissal, suspension, demotion, or written reprimand of an employee. The above categories of grievances can be processed up to and including Step 3 of the grievance procedure.

...

49:05 Where either party to this Agreement disputes the general application, interpretation or alleged violation of an Article of this Agreement or of The ~~Civil~~ **Public** Service Act or a signed Memorandum of Understanding or a signed Memorandum of Agreement between the parties, either party may initiate a policy grievance. Where such a grievance is initiated by the Union and involves employees in more than one (1) department it shall be presented to the assistant deputy minister of Labour Relations, and where it involves employees in one (1) department it shall be presented to the deputy minister of the department. Where such a grievance is initiated by the government it shall be presented to the President of the Manitoba Government and General Employees' Union. In all cases the grievance shall be presented within twenty (20) working days from the date of the action giving rise to the grievance.

49:14 Step 3: A decision of the deputy minister or designate may be ~~appealed to the Civil Service Commission in accordance with Article 52 — Appeals to the Commission or~~ submitted to arbitration in accordance with Article 50 – Grievance Arbitration Procedure, ~~depending upon the nature of the grievance and providing the category of the grievance is such as is defined in Section :02.~~ The decision of the ~~Commission or the~~ single arbitrator shall be final and binding for all such grievances. Union approval is required to submit any grievance to arbitration ~~or any appeal to the Commission.~~

49:15 Grievances concerning demotion, suspension, ~~or~~ dismissal **or the selection of an employee for a position within the bargaining unit** shall be initiated at Step 2 of the grievance procedure within twenty (20) working days of the date that the employee became aware of the action.

~~49:19 Disputes concerning the selection of an employee for a position within the bargaining unit may be grieved at Step 2 to the Civil Service Commissioner or designate in accordance with the following:~~

- ~~(a) within twenty (20) working days after the date upon which the employee was notified orally or in writing, or on which the employee first became aware of the action or circumstances giving rise to the selection dispute, the employee shall present the grievance with the redress requested to the Civil Service Commissioner or designate;~~
- ~~(b) the Civil Service Commissioner or designate shall sign for receipt of the grievance and if the nature of the grievance is such that Civil Service Commissioner or designate is~~

- ~~authorized to deal with it, the Civil Service Commissioner or designate shall issue a decision in writing to the employee and to the Union within fifteen (15) working days;~~
- ~~(c) the Civil Service Commissioner or designate may discuss the grievance with the employee and the employee's representative before giving a decision on the grievance;~~
- ~~(d) all time limits referred to in this Section may be extended by mutual agreement;~~
- ~~(e) a decision of the Civil Service Commissioner or designate may be appealed to the Civil Service Commission in accordance with Article 52— Appeals to the Commission. The decision of the Commission shall be final and binding for all such grievances. Union approval is required to submit any appeal to the Commission.~~

NOTE: The above provisions replace the previously agreed upon Memorandum of Agreement on Selection Appeals cited on page 10 of the list submitted on November 5, 2021. For ease of reference, we reproduce that previous agreement in full below, with strikethrough:

~~NEW – Memorandum of Agreement – Selection Appeals~~

~~The parties have agreed that should the *The Public Service Act* be proclaimed, selection grievances will be referred to arbitration rather than appealed to the Civil Service Commission Appeal Board.~~

~~To provide clarity:~~

- ~~1) Article 11 selection grievances shall be filed following the Grievance Procedure outlined in Article 49:19(a) through (d) of the General Employees Master Agreement (GEMA).~~
- ~~2) Article 49:19(e) shall no longer be applicable to selection grievances.~~
- ~~3) Unresolved selection grievances shall be submitted to arbitration before a single arbitrator in accordance with applicable provisions of Article 50.~~

L. Article 50.01 and 50.02 - Grievance Arbitration Procedure

50:01 Unresolved grievances or disputes concerning only those matters set forth below shall be submitted to arbitration in accordance with the procedure set forth in this Article:

- (a) grievances concerning the application, interpretation or alleged violation of an Article of this Agreement;
- (b) grievances concerning the application, interpretation or alleged violation of a signed Memorandum of Understanding or a signed Memorandum of Agreement between the parties;
- (c) grievances concerning dismissal, suspension, demotion or a written reprimand of an employee.
- ~~(d) disputes as to whether a specific grievance is to be appealed to the Civil Service Commission or referred to arbitration.~~

~~50:02 It is agreed and understood that any grievance submitted to arbitration shall not subsequently be appealed to the Civil Service Commission and conversely an appeal to the Commission shall not subsequently be referred to arbitration including referral for a decision as to whether or not the matter is appealable or arbitrable.~~

M. Article 51- Appeals to the Commission

~~51:01 Subject to Section :03, every appeal shall be commenced by written notice of appeal to the Secretary, Civil Service Commission, setting out the decision against which the appeal is taken and the basis of the appeal.~~

~~51:02 An appeal shall be commenced within twenty (20) working days of the date on which the appellant became aware of the decision.~~

~~51:03 It is agreed and understood that the Civil Service Commission shall hear appeals on grievances concerning:~~

~~(a) the application, interpretation or alleged violation of an Article or provision of The Civil Service Act;~~

~~(b) the application, interpretation or alleged violation of a regulation under The Civil Service Act where there is no provision dealing with the subject of the Regulation in the collective agreement or in a signed Memorandum of Understanding or signed Memorandum of Agreement between the parties;~~

~~(c) disputes concerning reclassification of employees;~~

~~(d) grievances as outlined in Article 13:07 and Article 24:26;~~

~~(e) disputes concerning the selection of an employee for a position within the bargaining unit. The Appeal Board shall consider all issues in dispute within its jurisdiction including the relative merits of the successful candidate(s) and appellant(s). Such appeals shall only be initiated after the employee has exhausted the applicable provisions referred to in this Agreement for the settlement of grievances or in the case of reclassification disputes, the procedures respecting "Employee Originated Requests for Reclassification".~~

~~51:04 Where an appeal is taken to the Civil Service Commission, the Commission shall hold a hearing or direct a hearing to be held and such hearing shall be held within twenty (20) working days of the date the appeal is commenced, to ascertain the facts relating to the subject matter of the appeal. The Commission shall render its decision on any appeal within twenty (20) working days of the end of the hearing and shall deliver a copy of its decision to the parties concerned. All time limits referred to in this Section may be extended by mutual agreement.~~

N. Article 52.02 – Sexual Harassment

52:02 Where an employee is of the opinion that the employee has been or is being sexually harassed by another employee, the employee may forward a written complaint directly to the deputy minister or human resources director of the department concerned. Where this is not possible, the complaint may be forwarded to the ~~Civil~~ **Public** Service Commission. The complaint shall be marked "Personal and Confidential".

O. Article 53- Reclassification Procedure

~~53:01 An employee who is of the opinion that their position is improperly classified may submit an "Employee Originated Request for Reclassification" on a form designated by the Treasury Board Secretariat for such purposes.~~

~~53:02 Step 1:~~

~~The employee will submit the request to the Compensation Services Branch, Labour Relations Division of Treasury Board Secretariat together with the following: (a) a current position description approved by the direct manager; (b) the job classification being requested and reasons why that classification is appropriate; (c) any other information in support of the request. Compensation Services will respond to the employee within sixty (60) working days following receipt of the request. Should the request be denied, reasons will be provided.~~

~~53:03 Step 2: Where no reply is received or where the employee considers the response unsatisfactory, the employee may appeal to the Civil Service Commission within twenty (20) working days upon expiry of the time limits prescribed or on receipt of the decision from Compensation Services.~~

~~53:04 The time limits prescribed in this Article may be extended by mutual agreement of the employee and the party designated to respond.~~

P. Appendix "B"- Remoteness Allowance

1:05 Where both marital partners are employees of the Government of Manitoba in any department, board, agency or commission to which this Agreement **applies** ~~or the Civil Service Regulations covering remoteness allowances apply~~, but subject to Section :06 that follows, the dependent rate shall be paid to one (1) partner only and the other partner will not receive either the dependent or single rate of remoteness allowance.

1:06 Where both marital partners are employees of the Government of Manitoba in any department, board, agency or commission to which this Agreement **applies** ~~or the Civil Service Regulations covering remoteness allowances apply~~, the dependent rate will be paid to the permanent employee, if the other partner is temporary or departmental, or the first employee to be hired on a permanent basis, otherwise to the first employee hired. Where specially requested by both employees in writing, the dependant's rate may be divided and equal amounts (to the nearest cent) paid to each employee.

Q. Appendix “C”- Part-Time Employees

2:01 The Master Agreement applies only to part-time **and term** employees who **fall within the scope of this collective agreement as outlined in Article 4:01.**÷

R. Memorandum of Agreement #14

5.01 The parties recognize the desirability of ongoing staff development; and educational leave practices shall be as set forth from time to time in ~~policy~~**the Regulations under the Civil Service Act with respect thereto.** **Revisions to education leave policy shall occur with thirty (30) days' written notice to the Union.**

S. Memorandum of Agreement 3 – Corrections Interest Arbitration

As this Memorandum references provisions of *The Civil Service Act*, which Act has now been repealed, the parties discussed revisions to Memorandum of Agreement 3 at the separate Corrections bargaining table. The parties have agreed that the parties' proposals regarding this Memorandum will be placed before the Board presiding over the Corrections Component interest arbitration, which is scheduled to conduct its hearing in November 2022. The parties have agreed that the Corrections Component Interest Arbitration Board's decision will determine the language of Memorandum of Agreement 3.

T. Letter of Understanding – Staff Development

10:02 Educational leave policy shall be as set forth from time to time in ~~policy~~the Regulations under the Civil Service Act. **Revisions to education leave policy shall occur with thirty (30) days' written notice to the Union.**

U. Physical Sciences Component – Professional Development

8:02 Educational leave policies and practices shall be as set forth from time to time in ~~policy~~~~the Regulations under the Civil Service Act~~. **Revisions to education leave policy shall occur with thirty (30) days' written notice to the Union.**

V. Reclassification Memorandum of Agreement

Exclusivity of Process

- 1. While this Memorandum of Agreement (the “Agreement”) is in effect, all disputes pertaining to the classification of an employee’s position shall be commenced under, and resolved by, the process outlined in this Agreement rather than the grievance and arbitration process set forth in the collective agreement.**
- 2. This Agreement shall become effective on the date of execution and shall continue in effect up to and including the expiry date of the collective agreement set forth in Article 2.01 and shall remain in force and effect from year to year thereafter unless written notice to negotiate a renewal, or revision and renewal of the collective agreement is given by either party at least forty-five (45) days prior to but not more than one hundred and eighty (180) days prior to the expiry date of the collective agreement. During the period required to negotiate a renewal, or revision and renewal of the collective agreement, this Agreement shall remain in full force and effect without change.**

Reclassification Request and Decision

- 3. An employee who is of the opinion that their position is improperly classified, may submit a request for re-classification to the Compensation Services Branch, Labour Relations Division of the Public Service Commission (“Compensation Services”), along with (a) a current position description with the corresponding organization chart approved by the manager with employing authority; (b) the job classification being requested and reasons why that classification is appropriate; (c) any other information the employee wishes Compensation Services to consider in support of the request.**
- 4. Compensation Services will provide the requesting employee a written response to that request will be provided to the employee within sixty (60) working days (the “Decision”) from date of receipt of the information required in Point 3.**
- 5. Within thirty (30) working days of receiving the Decision, the requesting employee may directly contact a Compensation Services to better understand the rationale for the Decision. Within thirty (30) working days of receiving that request, Compensation Services shall respond to the employee verbally or in writing and may share additional detail and disclose supporting material where applicable.**

Disputing the Decision – First Stage Review

- 6. Within twenty (20) working days of the Decision being communicated to the employee, the Union may dispute it by providing Compensation Services with a written statement indicating the Decision is being disputed and the reason(s) for not accepting the Decision.**

7. Compensation Services, the employee, and the Union shall meet within a reasonable and mutually agreeable timeframe to discuss the disputed Decision. During this meeting, Compensation Services shall share with the Union the rationale used to support the Decision and the employee and Union shall put forward the rationale for disputing the Decision.

8. The parties may agree to further meetings to further discuss the Decision and they may gather and present additional information in support of their respective positions.

9. The dispute may be advanced to the Second Stage at the union's request by providing Compensation Services with written notice indicating resolution at this First Stage is not possible and setting forth the remaining reason(s) that the employee and/or union is continuing to challenge or support the Decision (the "Second Stage Notice").

Joint Review Panel - Second Stage Review

10. Within a reasonable time period following receipt of the Second Stage Notice, the parties shall convene the two-person panel consisting of a Union representative and an Employer representative, both of whom shall be previously trained in job evaluation (the "Panel"). The Union and Compensation Services shall present the Panel with the rationale they rely upon to support or challenge the Decision.

11. The Panel may, if both the Union and Employer representative agree, compel the parties to appear in front of them on another occasion(s) for the purposes of presenting rationale relied upon to support or challenge the Decision.

12. If either member of the Panel notifies the parties, and the other Panel member, that no further appearances before the Panel will assist in resolving the Dispute, the Panel members shall, within a reasonable time period, provide the parties with a written statement of their conclusions and the rationale. If the Panel members' conclusion(s) are unanimous, the parties shall be bound by those conclusions.

13. If the Panel members' conclusions are not unanimous, either party may refer the dispute to the Final Stage by providing the other party and the Panel Members with notice of their decision to do so within fourteen (14) days of receiving the Panel members' conclusions (the "Final Stage Notice").

Independent External Review - Final Stage

14. Within a reasonable time period of receiving the Final Stage Notice, the parties shall retain an independent third party proficient in point rated, factor comparison, grade description and whole job comparison job evaluation tool(s) used by the Province of Manitoba (the "Third Party") for the purposes of resolving the dispute in accordance with the process outlined in the following paragraphs.

15. The Third Party shall determine the dispute in the manner set forth in the parties' retainer letter, or in the absence of such a process, in the manner the Third Party deems most appropriate in the circumstances as they develop. Should the Third Party ask either party to provide further information or rationale, that party shall make its best efforts to provide such information in an efficient manner.

16. Within a reasonable period of time, the Third Party shall provide the parties with a written decision settling the dispute. That written decision shall be final and binding on the parties unless both parties agree that it is fundamentally flawed in which case the parties may, by agreement, within twenty (20) days of receiving the Third Party's decision, either remit the matter to the Third Party for re-evaluation, or refer the matter to an alternate third party for review (either option hereinafter referred to as the "Reassessment Request").

17. Should the Reassessment Request take the form of a referral to an alternate third party, paragraph 15 shall apply equally to the retention of that alternate third party.

18. The person receiving the Reassessment Request shall provide the parties with a decision within a reasonable time. That decision shall be final and binding on the parties and shall not be subject to any further appeal or review.

Extension of Timelines and Costs

19. All timelines contemplated in this Memorandum of Agreement may be extended by agreement of the parties.

20. The Union and the Employer will each be responsible for fifty percent (50%) of any invoice(s) tendered by the Third Party, or a person hired to respond to a Reassessment Request, that was retained pursuant to this Agreement.

NOTE: The above language replaces the previous agreement of the parties regarding Classification Disputes contained at page 10 of the previous Agreed to Items document. For ease of reference, we reproduce that previous agreement language, in strikethrough form:

~~NEW- Classification Disputes~~

~~The Employer is proposing a new process for classification disputes as outlined below. This is intended to become the framework for a Memorandum of Agreement contained in the collective agreement and will replace all references, including but not limited to Article 51 and 53, to classifications disputes contained within the agreement.~~

~~0. Clarification of the classification decision~~

- ~~o Employee directly contacts the CSO to request clarification or to better understand the rationale for the classification decision.~~
- ~~o CSO responds verbally or in writing. The CSO may share additional detail and disclose supporting material where applicable.~~

~~1. Dispute Resolution Process Initiated – First Stage Review~~

- ~~o The classification decision is disputed in writing by the MGEU within 20 days of the classification decision being rendered. Where possible, the reason the decision is disputed is provided. The time limits may be extended by mutual agreement.~~
- ~~o The CSO, employee, and union meet within a reasonable and mutually agreeable timeframe to discuss the disputed classification decision.~~
- ~~o The CSO shares information, analysis, rationale used to support the classification decision.~~
- ~~o The employee and union put forward the rationale for why the classification decision was incorrect.~~
- ~~o The parties may agree to gather additional information or otherwise follow up before reconvening to continue the discussion.~~
- ~~o When the discussion is concluded, if the parties do not agree that the matter was resolved, the issue may be escalated to the next stage.~~

~~2. Second stage – Joint Classification Review Panel~~

- ~~o The classification decision is disputed in writing with the rationale specified, and references the unsuccessful resolution at the first stage.~~
- ~~o The matter is heard by a panel consisting of a union representative and an employer representative, both trained in job evaluation.~~
- ~~o The employee and union put forward rationale for why the classification decision was incorrect.~~
- ~~o The CSO shares information, analysis, rationale used to support the classification decision.~~
- ~~o The panel may direct the parties to gather additional information or otherwise follow up before the panel concludes its assessment.~~
- ~~o The panel will provide a written response summarizing their decision and rationale.~~
- ~~o If the panel's assessment is unanimous, the decision is final. If the panel cannot agree, the dispute can be escalated to the final stage.~~

~~3. Final stage – Independent External Review~~

- ~~o Independent 3rd party reviewer proficient in job evaluation reviews the matter (procedures TBD) and makes a binding determination on the classification decision~~

~~o Should the decision appear to both parties as fundamentally flawed, the reviewer will be required to re-evaluate or refer the matter to an alternate 3rd party for review.~~

~~o The employer and the union will share the costs of any matter referred for external review.~~