IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN

NAV CANADA (NAVCAN)
(hereinafter the "Employer")

AND

UNIFOR LOCAL 1016
(hereinafter the "Union")

ARBITRATOR: Tom Hodges

FOR THE EMPLOYER: Amanda Sarginson, Senior Legal Counsel
Elizabeth Cameron, Vice President
Stephen Green, Manager, Labour Relations

FOR THE UNION: Barry E. Wadsworth, Associate Counsel, UNIFOR
Joel Fournier, National Representative
Jim Walker, President, UNIFOR Local 1016

SUBMISSIONS: January 29th, 2018

AWARD: April 19th, 2018

AWARD

JURISDICTION

The parties agreed that I have jurisdiction pursuant to an Interest Mediation/Arbitration Agreement of November 22, 2017. Following the Mediation, the parties agreed that the issues in dispute would be resolved by a written submissions process which was concluded on February 1, 2018.

BACKGROUND

NAVCAN owns and operates Canada's civil air navigation service (ANS). It co-ordinates the movement of aircraft through Canadian domestic airspace and international airspace assigned to Canadian control. NAVCAN provides air traffic control, flight information, weather briefings, aeronautical information, airport advisory services, and electronic aids to navigation.

NAVCAN has about 5,125 employees, approximately 90% of whom are unionized, comprised of eight bargaining units. Unifor represents approximately 3000 of the employees in three Bargaining Units. The subject of this Interest Arbitration is:

- **Unifor Local 1016** comprised of 272 employees involved in providing flight planning services, simulation support for air traffic control training, aeronautical information services and design, flight data analysis for billing and publications support. The present collective agreement between NAV CANADA and Unifor1016 expired on June 30, 2017.

Unifor also represents:

- **Unifor/ Canadian Air Traffic Control Association (CATCA) Local 5454** with 2,040 employees who are engaged in the provision of air traffic services. While the majority of the employees are Air Traffic Controllers located in one of 7 area control centers, or one of 41 control towers in Canada, there are also instructors, data systems coordinators, traffic management coordinators, and specialists associated with safety and quality. The present collective agreement between NAV CANADA and Unifor/CATCA will expire on March 31, 2019.

- **Unifor / Air Traffic Specialist Association of Canada (ATSAC) Local 2245** represents 652 employees also engaged in the provision of air traffic services. The majority of these employees are Flight Service

Specialists located in one of 56 flight service stations or one of 8 Flight Information Centers. The present collective agreement between NAV CANADA and Unifor/ATSAC will expire on April 30, 2019.

The five non Unifor bargaining units are:

- **International Brotherhood of Electrical Workers (IBEW) Local 2228** is comprised of 646 employees who are responsible for the planning, installation, proof of performance on various electronic systems and equipment and who maintain progressively more complex Air Traffic Management (ATM) and Communication, Navigational Aids and Surveillance (CNS) systems. This group is comprised of electronics technologists, installation technicians, electronics maintenance specialists, technical operations coordinators, and instructors. The present collective agreement between NAV CANADA and IBEW expired on December 31, 2017 and the parties are in the process of collective bargaining.

- **Public Service Alliance of Canada (PSAC)** represents 307 employees who are involved in a wide variety of positions including clerical, secretarial, drafting and illustration, educational support, engineering and scientific support, general labour and trades, general services, information services, commercial relations, revenue collection and customer service. The collective agreement between NAV CANADA and PSAC expired on December 31, 2017 and the parties are in the process of collective bargaining.

- **Professional Institute of the Public Service of Canada (PIPSC)** represents 485 employees responsible for information management and support as well as engineering support nationwide. The present collective agreement between NAV CANADA and PIPSC will expire on April 30, 2019.

- **Canadian Federal Pilots Association (CFPA)** represents 49 pilots who are responsible for procedural issues as well as flight inspections. The collective agreement between NAV CANADA and CFPA will expire on April 30, 2019.

- **Association of Canadian Financial Officers (ACFO)** represents 25 employees responsible for financial administration within the company. The collective agreement between NAV CANADA and ACFO will expire on February 6, 2020.

In early April of 2016, the Chief Executive Officer of NAVCAN wrote to all bargaining units to advise regarding planned rate decreases for customers. In that letter, the Unions were also invited to commence negotiations in advance of the traditional bargaining timeframe. Local 1016

accepted, and met with the Employer on February 7-8, 2017 in Ottawa, approximately 5 months before the expiry of the collective agreement. Bargaining sessions were then held in Cornwall, Ontario on April 18-21and May 26-29, 2017.

On September 25-27, 2017 the parties met again, back in Ottawa, and the Employer was presented with a comprehensive offer for settlement from the Union. Management responded with a counter on September 27, 2017. The parties were however unable to reach agreement during that session of bargaining, and took the opportunity over the following month to reflect upon and review their respective positions.

In early November, the Employer and Union determined that outstanding issues should be referred to me for mediation, and if necessary, interest arbitration. Mediation was subsequently conducted with the parties on December 7, 2017, but was not successful in reaching a settlement. The parties then moved forward to interest arbitration. The following is a summary of the outstanding issues between the parties:

EMPLOYER	UNION
Wages • Effective July 1, 2017- 4.0% • Effective July 1, 2018- 2.25%	Wages • Effective July 1, 2017 — 4% • Effective July 1, 2018 — 4%
Overtime • Double time in the year effective July 1, 2018 • straight time rate of pay Paid out at 2.0 times the employee's • If banked, banking @ 1.5 times the employee's straight time rate of pay	Overtime • All overtime at a rate of double time • Retroactive to July 1, 2017
Premiums • Status quo	Premiums • Change the Evening Premium to 4 % of the hourly wage • Change the Midnight Premium to 9 % of the hourly wage

	• Weekend premium (Article 31.03). To be paid for every hour worked from 2200 on Friday to 0600 on Monday at a rate of 6 % of the hourly rate. The premium will be paid on weekend travel required by NAV CANADA.
Staffing • status quo except suspension of transfers for duration of the agreement (relocations in general) • establish a committee to review the staffing article and make recommendations during	Staffing • The last staffing offer proposed by the union and is attached for consideration
Hours of work • Status Quo	Hours of Work Reduction in work week - Retroactive to July 1, 2017
Outstanding Grievances • All outstanding grievances withdrawn	
Retroactivity • Retroactive payments will be made only to current employees as of the date of ratification of the new collective agreement, and former employees who have retired or died since July 1, 2017. No retroactive payments will be made to former employees who have resigned or who have been terminated between July 1, 2017 and the ratification of a new collective agreement.	Retroactivity All retroactive to July 1, 2017
2 Increments added to the left of each level	
Training Rates The Company has proposed the Training Rate of Pay be applicable for first 90 days for OTS and AIM employees	Training Rate The Union has proposed an [OJI] rate of $8.50/hour for all groups, since all groups are involved in On the Job Training oversight.

INTEREST ARBITRATION

Both parties provided extensive review of case law on the established principles of Interest Arbitration. It is a well-established arbitral tenet that the role of an interest arbitrator is to strive to replicate what the parties to the dispute might have accomplished had they continued to

engage in open collective bargaining. That process is by nature largely comparative in that it is reasonable to assume that the parties, if left to their own devices, would conclude a new collective agreement with terms and conditions of employment indicative of those prevailing in the relevant labour environment. The Union relied on *Durham Regional Police Assn. v. Durham Regional Police Services Board (Collective Agreement Grievance),* [2007] O.L.A.A. No. 52. Arbitrator Paula Knopf, recognized as a leading authority in Ontario on Interest Arbitration noted:

> The replication principle requires the [arbitration] panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award. In other words, to adjudicatively replicate a likely "bargained" result, the panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain. ...

NAVCAN and Unifor relied on *Re Beacon Hill Lodges of Canada and Hospital Employees Union* [1985] 19 L.A.C. (3d) 288. In that decision, Arbitrator Hope, Western Canada's often quoted authority reasoned that:

> ... [I]t is essential to realize that a board of arbitration is not expected to embark upon a subjective or speculative process for divining what might have happened if collective bargaining had run its full course. Arbitrators are expected to achieve replication through an analysis of objective data from which conclusions are drawn with respect to the terms and conditions of employment prevailing in the relevant labour market for work similar to the work in issue.
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> Interest arbitration awards should reflect the standard received by employees performing similar work in the relevant labour market. When arbitrators speak of replicating the result of collective bargaining that is the context in which they speak...
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> The replication approach relies on a market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions. The terms and conditions of employment thus derived are, as stated referred to as the prevailing approach or prevailing rate.
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> In some circumstances that standard can be elusive; it is dependent upon finding adequate market data reflective of similar work performed in

> similar relationships and similar circumstances. It is, at best an imperfect process and a poor substitute for free collective bargaining...

Also, in *Halifax Regional Municipality and Halifax Regional Professional Fire Fighters Association I.A.F.F., Local 26* [1998], 71 L.A.C. (4th) 129, Arbitrator Kuttner cited *Re Regina (City) and Regina Professional Fire Fighters Assn., I.A.F.F., Loc. 181,*[1991] unreported as follows:

> An interest arbitration board's impression of what the parties might have eventually settled for, must of necessity depend in large part on the evidence presented in the hearing. With respect to that evidence, the Board must take into account not only the "power" position of the parties and attempt to determine who might prevail if an unrestricted economic warfare was permitted, but must be guided in large part by the "reasonableness" of the respective positions of the parties. Reasonableness is to be determined in the overall context and economic climate that prevails at the time the dispute is determined. Because a request is reasonable does not mean that an interest Arbitration Board must grant the same. Reasonableness as to any one demand is not to be looked at in isolation, but rather in the context of the aggregate of demands being advanced. Successful collective bargaining depends on compromise, and the role of the interest arbitration board is to attempt on the basis of the evidence heard to arrive at something close to the type of compromise that would have been achieved by the parties if left to their own devices.

And further, at paragraph 21 of *Halifax Regional, supra*:

> ... [T]he task of an interest arbitrator is to simulate or attempt to replicate what might have been agreed to by the parties in a free collective bargaining environment where there may be the threat and the resort to a work stoppage in an effort to obtain demands ... an arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities.

As well, Arbitrator Sims concluded the following in *Canadian National Railway Co. and Teamsters Canada Rail Conference* [2010] 101 C.L.A.S. 145:

> The interest arbitration process, with its goal of replication, is unlikely to produce "breakthrough" provisions the parties themselves would have been unlikely to agree to. It is not a scientific process capable of being reduced to a formula, but neither is it arbitrary. There are well established indicia of what would influence parties negotiating freely. Many of those indicia can be found in the objective evidence of existing internal and external comparators, economic trends, the economic viability of the enterprise and so on. Such factors are in a state of constant flux. The arbitrator's task is to try to replicate what the parties could have been expected to do in the prevailing environment.

It must be stated at this point that interest arbitration is generally viewed as a conservative and somewhat understated process, within which the parties should not expect to achieve any so-called "breakthrough" amendments to their collective agreement. While deciding a Public Sector dispute in *Halifax Regional, supra*, Arbitrator Kuttner spoke to the recognized criteria and general approach for both Private and Public Sector that should be brought to bear:

> Over the years, interest arbitrators throughout Canada have developed a catalogue of relevant criteria to ensure that the process in which they are engaged will be firmly seated on a principled and rational basis. All of these, in one formulation or another can be said to be but variations of a set of criteria first articulated by arbitrator Shime almost a quarter of a century ago in *General Truck Drivers and Helpers Union, Loc. 31 and British Columbia Railway Co.* (1 June 1976), a decision which surprisingly, given its influential stature, has never been fully reported. An expansive discussion of the case is found in the Award of Chief Justice Richard of the New Brunswick Court of Queens Bench acting as Arbitrator in *Re C.U.P.E. and New Brunswick* (1982), 49 N.B.R. (2d) 31. It reiterates the Shime criteria and gives excerpts from the Shime Award justifying their relevance (pp. 38-41). These are:
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> 1. Public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions;
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> 2. Cost of living;
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> 3. Productivity;
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> 4. Comparisons - internal;
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> 5. Comparisons - external;
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> 6. Comparisons - external not in the same industry but work of a similar nature.

To hopefully arrive at the collective agreement terms and conditions that the parties on their own might have settled on, the vigilant interest arbitrator must consider what has been agreed to by the parties to other collective agreements, whose employees perform similar service. The companion principle of comparability thus enters prominently into the equation. As clarified by Arbitrator Kuttner in *Halifax Regional, supra*:

> ...[O]ther bargaining relationships become relevant if the empirical evidence supports the drawing of a particular comparison or relativity as between two groups of employees based on objective criteria, including the nature of the work, skills, abilities and qualifications required and circumstances in which they are exercised. All of this is but another way of saying that the interest arbitration process takes place within the general climate of the market in much the same way as does the collective bargaining process.

For greater clarity, the interest arbitration process should seek to replicate the settlement outcome that might have been reached had the parties concluded negotiations without the intervention of a

third party. In so doing, the interest arbitrator should rely on a number of factors in support of an eventual decision. These include:

- Replication
- Other settlements with the same employer
- The economic situation
- The total compensation package; not isolated provisions
- Demonstrated need
- Wage expectations and settlements in the community
- Comparability with other employers
- The employer's ability to attract and retain qualified employees

It is yet another long-standing principle that the interest arbitrator must consider total compensation when dealing with the overarching matter of the final disposal of the parties' bargaining interests. For example, wage rate increases are but one element of that eventual package. NAVCAN relied on arbitrator R. Hornung in *NAV CANADA and Canadian Auto Workers, Local 1016*, [2010] quote of Arbitrator Sims that:

> Comparability is not just an item by item look at who else has what benefit. An arbitrator cannot treat bargaining demands like a holiday buffet, where everyone can pick whatever they want from the vast range of possible benefits. Rather, comparability has to recognize that employees and unions make choices in their bargaining, and ultimately, comparability must recognize the value of the overall package, and the limiting effect the overall cost brings to particular bargaining demands.

Further, in that same award, the Chair quoted *The Sixty-Five Participating Hospitals v. CUPE* [1981] observations of the eminent Professor Weiler:

> I have always thought it essential not to look at any such item in isolation. With rare exceptions any such proposed improvement looks plausible on its face. The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. But, cumulatively, these changes can mount up substantially. Thus sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements that year are costed out and fitted within the global percentage increase which is deemed to be fair to the employees and sound for their employer that year. In fact, the general wage hike itself generates corresponding increases in the vast bulk of the compensation package represented by the wages, since it increases the regular hourly rate upon which holidays, vacations, overtime and other premiums depend. This means that in any one negotiating round only limited room is left available for improvements in the scope and number of these contract revisions, and the Union must establish its own priorities among these various fringe items.

As mentioned above, interest arbitration is a conservative process in that it tends to not stray too far from the status quo. In the matter which is presently before the Interest Arbitrator, one of the determinative questions to be asked, with regard to the outstanding issues, is whether or not a clear, demonstrated need has been produced in support of any proposed change. Further, any such result must be guided by a thorough analysis of relevant objective data, as stated by Arbitrator MacDowell in *Beaver Wood Fibre Co. and Independent Paperworkers* [1995]:

> … Returning to the concept process of replication, it is essential to realize that a board of arbitration is not expected to embark upon a subjective or speculative process for divining what might have happened if collective bargaining had run its full course. Arbitrators are expected to achieve replication through an analysis of objective data from which conclusions are drawn with respect to the terms and conditions of employment prevailing in the relevant labour market for work similar to the work in issue.

NAVCAN argues that interest arbitration awards support the notion that the bargaining units within NAVCAN are the most appropriate comparators. It relies on *NAV CANADA and Canadian Federal Pilots Association* [2006], in which Arbitrator Picher noted the following:

> With respect to the issue of compensation, this Board considers that it is appropriate to award compensation which falls generally within the pattern of agreements arbitrated and negotiated among the other bargaining units of the Company.

Furthermore, Arbitrator Keller, in *NAV CANADA and PIPSC,* [2012] commented as follows:

> In determining the weight to be given to each of the criteria, the Board looks at, among other factors, internal historical relationships as well as bargaining history between the employer and its various bargaining units. In the instant case at this time, of the various criteria considered, the Board has given the greatest weight to the internal comparators and relationships. That is, the Board has paid specific attention to what has taken place in recent bargaining between the Employer and its other bargaining agents. It has done so because, to some extent at least, there had traditionally been "linkage" between what has taken place at the bargaining table among all the bargaining units.

Moreover, with the parties to the instant dispute, in *NAV CANADA and CAW Local 1016* [2013] (Hornung), the Board confirmed the well established role of an interest arbitration as replication to the degree possible – through an analysis of objective data – of what the parties might have accomplished had they continued to engage in free collective bargaining, with major emphasis on the comparative nature of that task. The Board in that circumstance then noted that it was very much indebted to two other awards that provided valuable guidance with respect to other units of NAVCAN that had already concluded their bargaining – either by agreement or through interest arbitration. That Board had the advantage of a recent interest arbitration decision of Arbitrator Keller with respect to the Air Traffic Specialists, as well as that of Arbitrator Picher dealing with the Canadian Air Traffic Controllers Association:

> In each instance where the issues to be determined by this Board overlap with those dealt with in the Picher and Keller awards, the Board found the rationale of those Boards compelling with respect to the issues at stake in this arbitration. While this award relies liberally on the language and conclusion reached by them, it is not to say we simply replicated the determinations arrived at earlier by the Picher and Keller awards. In our view, each of those Boards arrived at a reasonable determination of the similar issues which, in our view, applied to this bargaining unit.

NAV CANADA relied *NAVCAN and PIPSC* [2012], in which Arbitrator Keller captured the dynamic of the back and forth of the mutual gain and total compensation approach to collective bargaining:

> In its examination of recent settlements of other bargaining agents with the Employer, the Board has satisfied itself that, where other bargaining units were able to attain a 3% wage increase per year, there has been some offsetting savings for the Employer. In some cases, this has been modifications to the Severance provisions and in other cases, other savings. In the instant case, the Union has emphasized the importance for their members of retaining the existing Severance entitlements as well as the Departure Incentive Program. The Board recognizes that importance to the members, but further recognizes that the maintenance of those provisions must come at a cost.
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> Consequently, while the Board is prepared to maintain those provisions for this round of bargaining it is of the view that there must be a corresponding cost-saving for the employer. That is, the members of this bargaining unit cannot expect both to maintain their existing entitlements and at the same time receive wage increases the same as other employees who were prepared to, and did, trade off certain of their entitlements for larger wage increases.

ANALYSIS AND DECISION

It is often noted that the fundamental assumption of free collective bargaining is that conditions of employment should be settled by the mutual agreement of the parties through a process of negotiation that may involve a strike or lockout. The imposition of an agreement by arbitration is normally found only in situations such as this where there is significant public or government interest involved that makes a strike undesirable. Employers and Unions normally make their own bargain and decide for themselves what proposals to pursue or what concessions to make.

In cases such as this in which the parties have been unable to resolve a significant number of key issues, considering the principles for resolution and finding standard can be difficult if not

elusive. It is requires finding adequate data reflective of similar work performed in similar relationships and similar circumstances. The arbitration decision making process is often thought of as an imperfect process and a poor substitute for free collective bargaining.

This decision is unique to the specific and large number of outstanding issues contained herein. However, given the unique industry within which NAVCAN operates, it is the various bargaining units that comprise its operations, which I turn to as the foundation for resolution, keeping in mind the underlying principles of replication, total compensation, demonstrated need and comparability. Several of these bargaining units have recently concluded agreements that were thoroughly reviewed by this Interest Arbitrator as potential indication of, or contribution toward, the likely bargaining outcome that might have been reached by the Employer and Local 1016, if left to their own devices.

The settlements already reached within NAVCAN revealed a range of outcomes that demonstrated the bargaining spectrum within which the Employer decided to operate during the current round of negotiations. For example, at one end of the range, where the parties were either unable or unwilling to explore productivity gains, the settlement reflected wage increases of just 3% per year. In other contracts, where the parties were indeed able and willing to negotiate productivity gains for the Employer, that added value was used to fund wage increases of up to 4% per year, along with improvements to other terms and conditions of the respective collective agreements.

The following settlement summaries are drawn directly from the submissions, and provide an overview of the varied Employer and Union outcomes realized at the respective bargaining tables:

CATCA

SUMMARY OF MAJOR ELEMENTS:

- A two year contract at 4% and 4% each year, April 1, 2017 and April 1, 2018;
- Increases to various premiums (as fixed dollar amounts, not percentage of wages);
- Hour of work reduced from 36 to 34 hours per week, which will lead to a significant reduction in overtime costs for the company
  - Voluntary elimination of severance pay on retirement for all current and future employees.Seniority Bid Moratorium (for 2 years):
  - Provides an opportunity to quickly increase capacity in the system which will give a jump start to improving our staffing levels.

- Will provide significant reductions in overtime spent to backfill controllers in training and relocation costs.
- Will significantly improve the productivity of current controllers in their operating roles, since many more will be working, rather than training.
- In short, this moratorium is a significant planning tool and will help operational managers manage their training units more effectively.

- Time Off In-Lieu of Payment (TOIL) Savings:
  - A restriction on the accumulation and use of TOIL in the summer months allows NAV CANADA to save on overtime and will increase the ability to cover shifts during the busiest period.

ATSAC

SUMMARY OF MAJOR ELEMENTS:

- A two year contract at 4% and 4% each year, May 1, 2017 and May 1, 2018;
- Double-time overtime;
- Increases to various premiums;
- Voluntary elimination of severance pay on retirement for all current and future employees;
- Permanent changes to the seniority bid program provisions, providing significant cost savings associated with relocation and training and allowing the Employer much greater ability to improve staffing levels on an ongoing basis.

PIPSC

SUMMARY OF MAJOR ELEMENTS:

- A two year contract at 4% on May 1, 2017 and 3.25% on May 1, 2018;
- Improvements to language surrounding certain types of leave with and without pay to bring PIPSC in-line with other NAV CANADA bargaining agents;
- Enhancements to language on flexible work arrangements;
- Vacation paid out at current rate (previously at rate earned);
- Reduction in the entitlement for Departure Payments (DIPs) for junior employees
- Mandatory elimination of severance pay on retirement for all current and future employees, which provides long-term savings for the company.

Note that during the negotiations with PIPSC, the parties were not able to collectively identify sufficient productivity gains and as a result, this was reflected in the lower percentage increase to the wages in the second year of the contract.

CFPA

SUMMARY OF MAJOR ELEMENTS:

- A two year contract at 4% and 4% each year, May 1, 2017 and May 1, 2018;
- Pilots at the FIP-3 level reclassified upwards to an FIP-4 level.
- Professional Recognition Leave (PRL):
- Introduction of a Commercial Pilot License (CPL) hiring standard for our Procedure Design positions, which is a lower standard than the current one requiring an Airline Transport Pilots Licence (ATPL). This opens up the pool of potential candidates and significantly reduces the annual salary costs of future hires.
- Agreement to jointly update the classification system with implementation during next round of bargaining

ACFO
SUMMARY OF MAJOR ELEMENTS:

- A two year contract at 3% and 3% each year, February 7, 2018 and February 7, 2019;
- Improvements to language surrounding certain types of leave with and without pay to bring ACFO in-line with our other bargaining agents;
- Enhancements to compensatory leave with pay for employees who hold a professional accounting designation.

Note that during the negotiations with ACFO, the parties were not able to collectively identify sufficient productivity gains and as a result, this was reflected in the lower percentage increase to the wages in the both years of the contract

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WAGES

Of primary importance, within the context of the cost of this renewed collective agreement, the Union proposed general wage increases of 4% in each of the two years of the contract. The Employer countered with adjustments of 4% and 2.25%. The associated productivity gains sought by NAVCAN throughout the process represented a 0.99% annual saving that, for the Employer, supported its ability to offer a 4% wage increase in year one of the contract, as well as double time payment for overtime in year two. The Employer submits that other bargaining units within NAVCAN reached settlements that involved similar concessions on their part, in order to realize elevated wage increases.

I will not replicate the extensive review of the CATCA, ATSAC and CFPA agreements and the concessions or productivity gains argued by Nav Can as uniquely required in exchange for higher wage increases, now being sought by Local 1016.

Similarly, the Employer argues that neither PIPSC nor AFCO were able to identify the productivity gains necessary to warrant similar wage increases, and the parties settled on lower adjustments to wages. The Employer argued that any proposal for productivity gains tabled thus far by Local 1016 was of insufficient substance for NAVCAN to offer up the higher wage increase in the second year of the contract.

The Union meanwhile countered that its members of Local 1016 have experienced wage growth virtually equal to sister Locals 5454 (ATSAC) and 2245 (CATCA). In this round of bargaining with Local 1016, the Union believed that the Employer attempted to significantly deviate from the historical pattern of comparative wage settlements with Locals 5454 and 2245. Moreover, the Union contended that, although the Employer claimed that the annual 4% wage increases for other bargaining units within NAVCAN were justified, based on certain costs savings negotiated with those groups, it has not provided any documentation that might firmly support that assertion.

Given all of this, the Union believed that there was no justification for the Employer to deviate from the wage improvements (4% in both years) that were concluded with Locals 5454 and 2245 during this current round of collective bargaining. Local 1016 was also adamant that it would never have agreed to a second year wage increase for its members that was 1.5% lower than some of its sister Locals within NAVCAN, even under an imminent threat of work stoppage.

Decision: After a comprehensive review of all of the parties' submissions and arguments, including the highly relevant case law provided, and remaining mindful of the recent settlements with other bargaining units within NAVCAN, I am satisfied that a wage adjustment of 4% in the first year of the contract and 3% in the second year, will most accurately reflect where I believe the parties to the instant dispute would have ultimately arrived on their own. Retroactive payments will be made only to current employees as of the date of ratification of the new collective agreement, and former employees who have retired or died since July 1, 2017. No retroactive payments will be made to former employees who have resigned or who have been terminated between July 1, 2017 and the date of the award. All of which I so order.

OVERTIME

With respect to the overtime provisions of the collective agreement, the Union proposed that all overtime hours be compensated at double time, retroactive to July 1, 2017. The Employer countered with double time payment for overtime, effective July 1, 2018, at the start of the second

year of the contract. And if banked, overtime compensation would be credited at only the time-and-one-half rate.

The Employer argued that in this bargaining unit, the Union demand would result in an additional cost of 1.17% per year. This of course would be offset by delaying the introduction of this improvement until the second year of the contract. The Employer further maintained that the Union had not established demonstrated need in this regard, nor had they offered any productivity gains in exchange.

In this regard in *NAV CAN v. ATSAC supra*, Arbitrator Keller, in denying the Union request for double time payment for overtime, noted that:

> … before a board awards a proposal such as this, which is a costly monetary item, compelling reasons must be put forward. An arbitration board is not likely, and we are not, going to award this proposal on the basis only that employees in another bargaining unit enjoy this benefit.

A number of bargaining units at NAVCAN submitted demands for double-time payment for overtime, and NAVCAN either successfully argued against it, or if introduced, negotiated accompanying productivity gains. Local 1016, from the Employer's standpoint, offered no such relief in exchange for its request for all encompassing double-time payment for overtime.

As an example, the CATCA collective agreement provides for double-time payment for overtime. This provision for operating controllers within that group was introduced for operational safety reasons, some years ago. The recent movement to double-time for the non-operating controllers was granted in exchange for increased latitude in hours of work scheduling.

NAVCAN and the IBEW agreed to double-time, for all overtime hours over and above the first 50 such hours paid at time and one-half. This was part of a total compensation arrangement that included a cap on the amount of compensatory time off that an employee could accumulate in a

leave year. The employee use of that benefit was evidently excessively high, and adversely impacted operations. The introduction of the cap increased the productivity of the Employer.

NAVCAN and ATSAC agreed to double-time payment for all overtime. This was also made within a total compensation arrangement that included changes to the seniority bid process (mentioned earlier), which apparently resulted in significant savings for the Employer.

The Union submitted that the Employer had already agreed to a 2.25 overtime rate for the CATCA bargaining unit, with a banked rate of double time, as well as double time for the ATSAC unit, either banked or paid, with full retroactivity to the commencement of the collective agreements. The Union believed that Locals 5454 and 2245 should be the primary comparators for Local 1016, and yet the Employer offered Local 1016 just double time paid or time and one half banked, effective beginning July 1, 2018, the second year of the renewal collective agreement.

Decision: The Arbitrator is satisfied that double time payment be introduced for all overtime hours worked, effective in the second year of the renewed agreement, is the closest representation of where the parties would have collectively landed by themselves. It will apply to all overtime hours, whether paid or banked.

PREMIUMS

The applicable provisions of the collective agreement with respect to premiums read as follows:

> 28.09 **OJI Pay**
> When an AFTN, ATOS or NOTAM Office employee is assigned to provide on the job training in accordance with the Unit Qualification Training Program (UQTP), the trainer shall be paid a premium of eight dollars and fifty cents ($8.50) for each hour so assigned (pro-rated for partial hours).
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> When a TSS, OTS, AIS or SIM Centre employee is assigned to provide on the job training in accordance with the Unit Qualification Training Program, the trainer shall be paid a premium of four dollars and twenty-five cents ($4.25) for each hour so assigned (pro-rated for partial hours).
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> 31.01 **Evening Shift Premium**
> An employee who is required to work a shift which ends after 6:00 P.M shall receive a premium of one dollar and fifty cents ($1.50) per hour for all hours worked between 4:00 P.M. and midnight.

31.02 **Midnight Shift Premiums**

(a) An employee who is required to work a shift which starts before 6:00 A.M. shall receive a premium of two dollars and thirty six cents ($2.36) per hour for all hours worked between midnight and 08:00 A.M.

(b) If an employee works in excess of 45 shifts as described in 31.02 (a) in the 12 month period from April 1- March 30th, the premium shall be payable at 1.25 times the regular rate or two dollars and ninety five cents ($2.95) per hour for all such shifts in excess of 45 shifts.

31.03 **Weekend Premium**

(a) Employees shall receive an additional premium of one dollar and seventy five cents ($1.75) per hour for work on a Saturday and/or Sunday for hours worked as stipulated in (b) below;

(b) Weekend premium shall be payable in respect of all regularly scheduled hours at straight-time rates worked on Saturday and/or Sunday.

The Union proposed the following amendments to the collective agreement:

- Change the Evening Premium to 4 % of the hourly wage
- Change the Midnight Premium to 9 % of the hourly wage
- Weekend premium (Article 31.03). To be paid for every hour worked from 2200 on Friday to 0600 on Monday at a rate of 6 % of the hourly rate. The premium will be paid on weekend travel required by NAV CANADA.
- OJI premium increases to the rate of $8.50/hour for all groups
- Retroactive to July 1, 2017

Decision: The Union requested that shift premiums, going forward, be reflected as a percentage of wages. I could not however discern within the material submitted adequate justification for such an improvement. Notwithstanding the Union's proposal, I will instead award an increase to the respective premiums by replicating those agreed to by the parties to the ATSAC agreement.

Retroactive to July 1, 2017, the following premiums will be modified. The OJI premium will increase for AFTN, ATOS, and NOTAM employees to $12 per hour and to $7.75 per hour for TSS, OTS, AIS and Sim Centre employees (Article 28.09). The evening premium will be

increased to $1.82 per hour for all hours worked, including overtime hours, during the period between 16:00 and 23:59 local time (Article 31.01). The midnight premium will change to one premium of $3.75 per hour for all hours worked, including overtime hours, for employees who are required to work a shift which starts before 6:00 A.M. for all hours worked between midnight and 08:00 A.M. (Article 31.02). The weekend premium will increase to $2.50 per hour for all regularly scheduled straight time hours worked between 22:00 Friday to 06:00 Monday (Article 31.03). Full retroactivity will apply to both current and former employees.

STAFFING

The Employer proposed a moratorium on staff relocations for the balance of the term of the renewal contract. The Union was willing to agree to the establishment of a joint committee to review the collective agreement staffing language, which would then make recommendations to Local 1016 and management during the closed period of the collective agreement.

Decision: Transfers (relocations) within the bargaining unit will be suspended for the duration of the term of the collective agreement, effective from the date of this award.

RETROACTIVITY

Decision: Full retroactivity will apply on all monetary issues. As previously noted retroactive payments will be made only to current employees as of the date of the award, and former employees who have retired or died since July1, 2017. No retroactive payments will be made to former employees who have resigned or who have been terminated between July 1, 2017 and the date of the award.

PAY SCALE

Decision: Consistent with the foregoing reasoning the current Steps 1 to 5 will become Steps 3 to 7. The new Step 2 will be established at 3% below Step 3, and the new Step 1 will be set at 3% below the new Step 2.

TRAINING RATES

Decision: The employer's proposal for the addition of a new training rate of pay (ATT0- $35, 512) for new hires will apply for the first 90 days for OTS and AIM employees.

Summary

The parties will meet within 30 days of this award to conclude any necessary contract language necessary. Issues not addressed above will remain status quo. Issues previously resolved as attached Appendix "A" become part of this award.

I am grateful to the parties for their excellent submissions, as well as their ongoing and productive assistance in bringing this matter to satisfactory conclusion.

I remain seized should there be any dispute with respect to the interpretation, enforcement, implementation or rectification of this decision.

Dated this 19th, day of April, 2018.

Tom Hodges
Arbitrator

APPENDIX "A'

Note: Attached below is a list of items previously agreed to by the parties.

UNIFOR LOCAL 1016 – NAV CANADA NEGOTIATIONS

Items Previously Agreed Between the Parties

- Article 23 General Holidays
- Article 26 Career Development Leave
- Article 27.03 Maternity Leave without Pay
- Article 27.06 Leave with Pay for Personal and Family Related Responsibilities
- Article 27.09 Leave with or without Pay for Other Reasons
- Article 30.03(a) and (b) Overtime Compensation Delete
- Article 34 * Call Back and Reporting Pay
- Article 36 Reporting Pay - Delete
- Article 38.07 General Holidays Part-Time Employees
- Article 47 Pension Plan
- Appendix B Articles Not Applicable to Temporary Employees (Note: need to retain Article 40 exceptions)
- LOU 12 Group RRSP - Delete
- Duration July 1, 2017— June 30, 2019
- Classification Scope Document
- ATOS Supervision
- Electronic Pay Statement
- Wage Reopener

  In the event that OSFI approves the proposed change in Nav Canada's Part A to remove CPI protection to pension plan benefits.

  If the parties cannot agree on a resolution the matter may be submitted to mediation arbitration at the request of either party
- Closed period discussion to discuss and explore the possibility of a gains sharing model