12-27-2006

Atlantic Pilotage Authority v CMSG

Innis Christie

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

ATLANTIC PILOTAGE AUTHORITY

(The Employer)

and

CANADIAN MERCHANT SERVICE GUILD

(The Union)

RE: Collective Agreement for the term
February 1, 2004 - January 31, 2009

BEFORE: Innis Christie, Arbitrator, by written submissions only

FINAL WRITTEN SUBMISSION: November 17, 2006

FOR THE UNION: Kimberly H.W. Turner, Q.C., Counsel, Pink Breen Larkin
Gail Gatchalian, Counsel, Pink Breen Larkin
Heather Totten, Counsel, Pink Breen Larkin

FOR THE EMPLOYER: Frank Gillan, Consultant, Human Resources Associates
Peter MacArthur, Chief Financial Officer

DATE OF AWARD: 27 December 2006

Interest arbitration pursuant to the "RESOLUTION OF CONTRACT RENEWAL DISPUTES AGREEMENT" between the parties, dated April 24, 2003, in which they agreed, "If the parties are unable to reach a collective agreement, the outstanding issues that remain in dispute shall be resolved by a single arbitrator." The parties have agreed that I am seized of this matter. By agreement, they have put the issues before in writing only.

AWARD

INTRODUCTION. The "RESOLUTION OF CONTRACT RENEWAL DISPUTES AGREEMENT" of April 24, 2003 between the parties, under which I am proceeding here, provides:

> The purpose of this agreement is to establish a binding dispute resolution process to be utilized in circumstances where the parties have engaged in collective bargaining for the purpose of entering into a collective agreement but have failed to reach a settlement. Under such circumstances the following process shall be used to conclude all outstanding issues for the renewal of the collective agreement:
>
> 1. The employee pilots of the Atlantic Pilotage Authority, represented by the Canadian Merchant Service Guild as bargaining agent, hereby agree that they will not discontinue performance of compulsory pilotage duties, nor will they instigate or support any form of strike, work stoppage or suspension of pilotage services.
>
> 2. The Atlantic Pilotage Authority agrees that it will not proceed with a lock-out or otherwise refuse the services of the aforesaid employee pilots.
>
> 3. Notice to Bargain (to renew or revise the Collective Agreement between the parties) and the negotiations which follow such Notice shall be in accordance with the provisions of the Canada Labour Code.
>
> 4. The parties agree to exclude the following from their respective proposals to revise the Collective Agreement:
>
>   (a) any regulatory provision governing the Atlantic Pilotage Authority in accordance with the Pilotage Act;

(b) unless the parties agree otherwise, proposals that affect the entitlement of employees under the Public Service Superannuation Act (PSSA) and the Retirement Compensation Arrangement (RCA).
(c) any provision of this Resolution Of Contract Renewal Disputes Agreement.

5. Negotiations shall proceed until an agreement is signed by the parties or until an impasse is reached. Should the negotiations result in an impasse, the Conciliation Procedures in accordance with the Canada Labour Code shall be followed.

6. If the parties are still unable to reach a collective agreement, the outstanding issues that remain in dispute shall be resolved by a single arbitrator according to the following binding arbitration process

(a) The party referring the matter to arbitration shall give written notice of this intention to the other party and to the [named] arbitrator ... .

(e) Within 10 days of the arbitrator notifying the parties of his/here availability, the parties shall submit to the arbitrator and to each other, a copy of the existing Collective Agreement and a report on the status of the negotiations to date including any changes that have already been agreed upon and any items that remain in dispute. The parties shall not be bound by any "without prejudice" settlement offer made during the negotiating process.

(f) The parties shall have a telephone conference call with the arbitrator within 7 days after the deadline set out in section (e) above, in order to determine the procedures to be followed for the interest arbitration. Unless otherwise agreed during the conference call, the arbitration shall proceed entirely by written submissions and a hearing will not be held.

(g) Failing agreement on any other procedure, the parties will be required to provide to the arbitrator and to each other, within 15 days of the conference call, their full written submissions, which may be accompanied by material in support of their positions. Any rebuttal submissions shall be filed not more than 7 days after this deadline.

(h) Within 30 days after receiving the final submissions, the arbitrator shall issue a decision in writing, rendering a final determination on each of the items in dispute. The decision of the arbitrator shall be limited t the outstanding issues in dispute.

...

7. A "day" for the purpose of this agreement shall not include a Saturday, Sunday or Statutory Holiday.

....

I received the submissions of both parties in accordance with these time limits, including their rebuttals on November 17, 2006. This Award must be submitted by the end of the day on January 4, 2007.

In the following extended bargaining schedule the parties reduced a significant number of issues on both sides of the table to a handful of issues.

> October 23, 2003- negotiations commenced.
> December 1, 2003 to December 5, 2003- negotiations
> January 19, 2004 to January 21, 2004- negotiations. On January 21, the Canadian Merchant Service Guild advised that they would be applying for conciliation.
> March 29-30, 2004- conciliation
> April 2004 to July 2006- e-mail/ telephone communications/ negotiations
> September 2006- matter referred to arbitration by Guild.

Wages is the main outstanding issue, but there are several other significant issues before me. However, because of the order in which I have ruled on the issues, I will list wages second.

1. **Duration and Retroactivity**. The parties both made proposals on these issues. The Union proposes that the new Collective Agreement be effective from February 1, 2003 to January 31, **2008.** The Employer proposes that the new Collective Agreement "be from February 1, 2003 to January 31, **2009**".

The Union also proposes that increases to wages and the resulting increases to payment for recalls (work done on time off) be paid retroactively to the

APA Pilots to February 1, 2003. The Employer's position is that this proposal is not legitimately before me because it was not identified as an item "that remain[ed] in dispute" in accordance with paragraph 6 (e) of the Resolution Of Contract Renewal Disputes Agreement between the parties from which I draw my jurisdiction. I deal with that below as part of the "Duration and Retroactivity" issue.

The Employer proposes that unless otherwise expressly stipulated the Collective Agreement shall become effective on the date it is signed and that the Basic salary rates under Article 30.01 will be retroactive to February 1, 2003 and conditions agreed under Articles 30.02 (a), (b), (c), and (d) will come into force on February 1, 2003.

2. Wages. The Union proposes a 5% increase to the annual wages of the APA Pilots in each year of the Collective Agreement, to apply to all districts and all classes of license. The Union also proposes that the Class A Pilots in the minor districts be paid the same rate as the Class C Pilots in the major districts.

The Employer proposal for wage adjustments to the current Appendix D pay rates is:

February 1, 2003	2.25%
February 1, 2004	2.00%
February 1, 2005	2.25%
February 1, 2006	2.50%
February 1, 2007	2.50%
February 1, 2008	2.75%

The Union submission also states the following proposals:

3. **Proposals Addressing Concerns about Fatigue**. The Guild proposes an amendment to Article 27.01 of the Collective Agreement to provide for a guaranteed 9-hour uninterrupted period of rest at the end of a 15-hour period of duty.

   The Guild also proposes a new Article, Article 27.07, to allow the APA Pilots to refuse to work more than two consecutive nights.

4. **New Article providing Paid Leave for Family-Related Responsibilities**. The Guild proposes a new article, Article 14.09, to provide for a maximum of 5 days leave with pay for certain family-related responsibilities.

5. **New Article Incorporating Dispatch Procedures**. The Guild proposes to add a new paragraph to Article 27.05 to provide for the incorporation of Dispatch Procedures into the Collective Agreement, and an agreement that any disputes related to the interpretation, application or alleged violation of the Dispatch Procedures be subject to the grievance and arbitration procedure.

6. **Proposal to Amend Memorandum of Understanding re: Transportation.** The Guild proposes an increase to the amount that APA Pilots are reimbursed for transportation.

7. **Proposal to Renew Memorandum of Understanding re: Guild Legal Defence Insurance Fund**

8. The Employer submission proposes the following **changes to Article 27.05**:

27.05 (a) Subject to dispatch procedures mutually agreed to by the Authority and each Area Committee (Article 26.01), a pilot required for recall shall be given as much notice as possible. He shall be available for a period of ten (10) hours [~~from the expiry of the notice period~~] *commencing at time of dispatch.* For each such recall period, he shall be paid two (2) days pay (in accordance with Article 2.01 (l)) in addition to his regular pay.

(b) Notwithstanding any other provision of this article, dispatch time is defined as the standard time allotted to a pilot prior to arrival and departure/movage times. Dispatch time for an arrival is the time allotted to a pilot prior to a ship's confirmed scheduled arrival time at the pilot boarding

station. Dispatch time for a departure or movage is the time allotted to a pilot prior to a ship's confirmed scheduled departure time from a berth or anchorage.

Area	*Arrival*	*Departure/Movage*
Saint John, Sydney, Halifax St. John's, and Holyrood	*2 hours*	*1 hour*
Canso/ Bras D'Or	*3 hours*	*2 hours*
Placentia Bay,	*4 hours*	*2 hours*

The standard time allotted for a pilot to travel home after debarking a ship (should there be no further assignments available) will be as follows:

Area	*Arrival*	*Departure /Movage*
Saint John, Sydney, Halifax, St. John's, Holyrood	*1 hour*	*2 hours*
Canso, Bras D'Or	*2 hours*	*3 hours*
Placentia Bay	*2 hours*	*4 hours*

Both parties made extensive written submissions, which I have read in detail and considered with care. Where there are apparent discrepancies in the background facts as presented by the parties, arising, undoubtedly, from legitimate omissions and differences of emphasis, I have resolved them to the best of my ability on the basis of the material put before me. In particular, the Employer's initial submission was succinct in its statement of the context and limited to supporting its wage offer and its proposal of a new Article 27.05 dealing with the time of dispatch. It concluded:

> The APA understands that the Guild has outstanding proposals on personal leave, book-offs, dispatch procedures, and working consecutive nights. These proposals were included in the Guild's original proposals of October 2003, but with the

> exception of personal leave, were never tabled by the Guild for discussion and negotiation in the bargaining process.
>
> We therefore reserve the right to address the foregoing issues in our rebuttal submission.

The Union's initial submission was much more detailed, laying a broader general factual base as well as providing support for its wage demands and its other proposals listed above. The Union's Rebuttal submission was, appropriately, limited to rebutting the Employer's position on the wage increase and its demand for a new Article 27.05 with respect to dispatch times. The Employer's Rebuttal, on the other hand, was twice as long as its initial submission. In it the Employer, just as appropriately, took issue with many of the statements in the Union's submission, by elaborating on them or taking a different perspective, but it also introduced new facts and arguments relating to the matters which it had "reserved the right to address". In the process established by the parties, this "splitting of the Employer's case" left the Union with no opportunity to respond to several new points made by the Employer. I trust I have taken this concern duly into account, but I suggest that if, in the future, the parties proceed by written argument only there be an opportunity for the party making a proposal on an issue which is not addressed in the other party's initial submission to rebut the other's response to the proposal.

I will first set out the relevant context; the identity and nature of the parties, that is the Employer, the Atlantic Pilotage Authority, and the Union, the Canadian Merchant Service Guild, and of the pilots, including what they do and where they work. I will next briefly state the general principles that I will apply in deciding on the proposals before me, addressing the submissions of the parties with respect

to the application of these principles to the Employer as a public employer. Then I will give my conclusions on each of the proposals listed above, with my reasons.

CONTEXT.

The Atlantic Pilotage Authority. The Employer here, the Atlantic Pilotage Authority, is one of four Pilotage Authorities established by the *Pilotage Act*, R.S.C. 1985, c. P-14, "... to establish, operate, maintain and administer in the interests of safety an efficient pilotage service within the region ..." *Pilotage Act*, s.18. The APA was created in 1972.

The four Pilotage Authorities and their corresponding regions are:

> 1. Atlantic Pilotage Authority. Region: All Canadian waters in and around the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, including the waters of Chaleur Bay in the province of Quebec, south of Cap d'Espoir in latitude 48 degrees 25 minutes 08 seconds N., longitude 64 degrees 19 minutes 06 seconds W.
>
> 2. Pacific Pilotage Authority. Region: All Canadian waters in and around the Province of British Columbia
>
> 3. Great Lakes Pilotage Authority. Region: All Canadian waters in the Province of Quebec, south of the northern entrance to St. Lambert Lock, and all Canadian waters in and around the Provinces of Ontario and Manitoba.
>
> 4. Laurentian Pilotage Authority. Region: All Canadian waters in and around the Province of Quebec, north of the northern entrance to St. Lambert Lock, except the waters of Chaleur Bay, south of Cap d'Espoir in latitude 48 degrees 25 minutes 08 seconds N., longitude 64 degrees 19 minutes 06 seconds W.

The Pilotage Authorities are Crown Corporations, answer to the Minister of Transport, and are ultimately accountable to Parliament for the conduct of their

affairs. *Financial Administration Act*, R.S. 1985, c.F-11, s.88 and Schedule III. According to the *Pilotage Act*, ss.3(2), 3(3), 10, 14(1), 14(2) and 33(1), each Pilotage Authority is controlled by the Minister of Transport and Parliament in the following ways:

1. The Minister recommends the appointment of the Chair of each Authority, and the Governor in Council appoints the Chair.
2. The Governor in Council appoints the Vice-Chairman of each Authority from the members of the Authority.
3. The Minister, with the approval of the Governor in Council, appoints the other members of the Authorities.
4. The Governor in Council fixes the remuneration of the Chairman, Vice-Chairman and other members of each Authority.
5. Each Authority requires the approval of the Governor in Council to make regulations prescribing tariffs of pilotage charges to be paid to the Authority for pilotage.

By s.16(1) of the *Pilotage Act*, each Pilotage Authority is "deemed to be a Public Service corporation for the purpose of section 37 of the *Public Service Superannuation Act*." That is, pilotage authorities conform to the Public Service Superannuation Act. By s.16(2) the officers and employees of each Pilotage Authority are "deemed to be persons employed in the federal public administration for the purposes of the *Government Employees Compensation Act*, which provides workers compensation coverage in terms of adjudication of claims. The APA is, in fact, self-funded for worker's compensation. More significantly, as a Crown Corporation under the *Financial Administration Act*,

according to ss.122(1), 122(5), 123(1), 124(1), 138(1), 138(2), and 150(1) of that *Act*, each Pilotage Authority must, among other things:

1. annually submit a corporate plan to the Minister of Transport for the approval of the Governor in Council;
2. carry on business in a manner that is consistent with the last corporate plan;
3. annually submit an operating budget and a capital budget for the next financial year to the Minister of Transport for the approval of the Treasury Board;
4. at least every five years have a special examination carried out to determine if its financial and management control and information systems and management practices were maintained in a manner that provided reasonable assurance that its assets were safeguarded and controlled and its resources were managed economically and efficiently and its operations were carried out effectively; and
5. submit, after the termination of each financial year, an annual report on its operations to the Minister of Transport and the President of the Treasury Board.

By s.20(a),(b),(e) & (f) of the *Pilotage Act*, each Pilotage Authority is empowered to make regulations that:

1. establish compulsory pilotage areas;
2. establish the ships or classes of ships that are subject to compulsory pilotage;

3. prescribe classes of licences and pilotage certificates that may be issued; and
4. prescribe the qualifications that a holder of any class of license shall meet, including the degree of local knowledge, skill, and experience required.

"Compulsory pilotage area" means an area of water in which ships must be under the conduct of a Pilot. The *Atlantic Pilotage Authority Regulations,* C.R.C., c.1264, establish fourteen compulsory pilotage areas in the four Atlantic provinces:

New Brunswick; 1. Miramichi, 2. Restigouch, 3. Saint John

Newfoundland and Labrador: 4. Bay of Exploits, 5. Holyrood, 6. Humber Arm, 7. Placentia Bay, 8. St. John's, 9. Stephenville

Nova Scotia: 10. Cape Breton, 11. Halifax, 12. Pugwash

Prince Edward Island: 13. Charlottetown, 14. Confederation Bridge

The APA Pilots are responsible for the navigation of the following ships within the compulsory pilotage areas:

1. Canadian-registered ships over 1500 gross tons;
2. ships not registered in Canada, including floating cranes;
3. oil rigs;
4. any combination of tug and tow, if more than one unit is being towed, without regard to gross tons;
5. pleasure craft over 500 gross tons; and

6. ferries that are entering or leaving a port that is not one of their regularly scheduled terminals.

There are some exceptions to the above:

1. Canadian-government ships;
2. Canadian-registered ships that are employed in catching or processing fish or other living resources of the sea;
3. Canadian-registered offshore supply vessels of 5000 gross tons or less that have an operations base in a port located within one of the areas;
4. ferries operating on a regular schedule between two terminals that are crewed by masters and officers of the deck watch who are regular members of their ferry's complement and hold certificates of competency under the Marine Certification Regulations;
5. pleasure craft of 500 gross tons or less not registered in Canada; and
6. tugs of 500 gross tons or less not registered in Canada that are crewed by masters and officers in charge of the deck watch who are regular members of their tug's complement, and hold certificates of competency under the Marine Certification Regulations.

Ships referred to above in paragraph (2) to (6) must be piloted by an APA Pilot if there is a risk to navigational safety because of (a) the seaworthiness of the ship, (b) unusual conditions on board the ship, or (c) weather conditions, tides, currents, or ice. The types of ships that APA Pilots typically handle include tugboats; flat deck barges carrying gravel, wood or oil; ships carrying bulk cargoes such as gypsum, aggregates and salt; oil tankers; VLCCs ("Very Large

Crude Carriers"); and large cruise ships. APA Pilots are also responsible for the pilotage of ships or vessels of war, except for such ships that are under operational command of the Commander, Maritime Command in the Halifax compulsory pilotage area, or ships that have a Pilot employed by the Department of National Defence on board and that are manoeuvred solely by tugs owned by the Government of Canada.

The Canadian Merchant Service Guild. The Union here, the Canadian Merchant Service Guild, is the bargaining agent for the pilots employed by the Employer. They have been represented by the Guild since 1972. Their terms and conditions of work are governed by the Collective Agreement between the parties effective from February 1, 1999, to January 31, 2003. This is the 11th Collective Agreement between these parties. The Collective Agreement groups the compulsory pilotage areas covered by the Collective Agreement into four major districts:

1. Cape Breton (consisting of Canso Strait, Sydney and the Bras D'or Lakes)
2. Halifax
3. Saint John
4. Saint John's/Hollyrood/Pacentia Bay (Eastern Newfoundland)

and three minor districts:

1. Restigouche
2. Humber Arm and Stephenville (West Coast Newfoundland)
3. Bay of Exploits (Northeast Newfoundland)

In addition to its Collective Agreement here under consideration the Employer has a collective agreement which it has negotiated with the Union for its launchmasters and collective agreements with the Public Service Alliance of Canada for its Pilot Boat Deckhands and its Dispatchers.

The Union does not represent the contract pilots who provide all pilotage in the Charlottetown, Confederation Bridge, Mirimichi and Pugwash compulsory pilotage areas.

In the compulsory pilotage areas under the Pacific Pilotage Authority the Union represents only eight pilots. In the compulsory pilotage areas under the Great Lakes Pilotage Authority the Union represents sixty pilots. In the compulsory pilotage areas under the Laurentian Pilotage Authority the Union represents eight pilots.

The Pilots. Pilots are an elite group of experienced and skilled professionals responsible for the safe navigation of ships in the compulsory pilotage areas of Canadian waters. The statutory mandate of Pilots is set out in s.25(2) of the *Pilotage Act*:

> A licensed pilot who has the conduct of a ship is responsible to the master for the safe navigation of the ship.

The *Pilotage Act* prohibits a person from having the conduct of a ship within a compulsory pilotage area unless that person is a licensed Pilot (or a regular member of the complement of the ship who is a holder of a pilotage certificate for that area). There are 45 Pilots employed by the Employer:

Area	Number of Pilots
Halifax	12
Cape Breton	9
Restigouche	2
Saint John	6
St. John's/Holyrood/Placentia Bay	12
Botwood/Bay of Exploits	2
Humber Arm/Stephenville	2

The minimum certification and experience required of a person to be eligible to become a Pilot in the major districts, i.e. all except Restigouche, Humber Arm and Stephenville (West Coast Newfoundland) and Bay of Exploits (Northeast Newfoundland) is as follows:

1. a certificate of competency not lower than master, intermediate voyage, that is unlimited as to tonnage, and
2. service within the 5-year period immediately preceding the date of application on voyages in the relevant compulsory pilotage area for a period of at least: (a) 18 months as master, (b) one year as deck watch officer and at least one year as master, or (c) three years as deck watch officer. Typically they have 20 years experience.

An applicant to become a Pilot in the other compulsory pilotage areas must:

1. hold a certificate of competency as master, of a ship of not more than 350 tons, gross tonnage, or tug, local voyage, or the equivalent, and

2. undergo further training in order to ensure competency in the performance of pilotage duties in that area

Every APA Pilot must "have local knowledge of the pilotage area in which the holder is to perform pilotage duties, including knowledge of the tides, currents, depths of water, anchorages and aids-to-navigation." Apart from holding a minimum class of license and having a minimum period of experience as a master or deck watch officer, an applicant for employment as an APA Pilot must successfully complete an extensive written and oral examination conducted by the APA which addresses all aspects of these qualifications. APA Pilots continue to build on their extensive experience and expertise by participating in on-going professional development.

The Employer's Pilots hold one of a class A, class B, or class C licence or an apprentice permit. Once an applicant is taken on staff as an apprentice pilot, it usually takes between two and two and a half years for that apprentice Pilot to obtain a license to pilot ships of unlimited gross tonnage. A pilot with a class C licence can only undertake pilotage of a ship not exceeding 10,000 gross tons. A pilot with a class B licence may undertake pilotage of ships not exceeding 40,000 gross tons. Class A and B licences may be graduated to allow for tonnage limitations. While a pilot may require two years or more to become a Class A pilot licenced to undertake pilotage of ships of any size, pilots typically advance to a Class A limited licence in much less time.

GENERAL PRINCIPLES. In the telephone conference mandated by paragraph 6(f) of the "Resolution Of Contract Renewal Disputes Agreement" of April 24, 2003, set out above, I advised the parties that, with appropriate modifications, my

general approach in this matter would be the one I described in the interest arbitration Award in *Capital District Health Authority And Nova Scotia Government And General Employees* of September 27, 2005, at pp. 5 ff. as "applying the standards normally applied by Canadian interest arbitrators in the public sector." There, as here, the parties agreed that I should, as far as possible attempt to replicate the likely outcome of free collective bargaining, had the parties been able to come to agreement. While they are not in quotation marks, the following seven paragraphs essentially reiterate what the majority award in *CDHA and NSGEU* stated.

This concept of "replication" was usefully stated by Arbitrator Bruce Outhouse in his unreported May 31, 2004 award in *Miramichi Association of Police Professionals and City of Miramichi*, at pp.5-6;

> The principle of arbitration ... widely accepted by interest arbitrators ... requires interest arbitrators to produce a collective agreement which replicates as closely as possible the agreement the parties would have reached if they had engaged in free collective bargaining with the right to engage in a work stoppage. Replication is not an exact science but neither is it a subjective exercise. As stated by arbitrator Hope in *RE: Beacon Hill Lodges of Canada and Hospital Employees Union* (1985), 19 L.A.C. (3d) 288, at pp. 304 and 305:
>
> > 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.

To the same effect see the recent award of Arbitrator Outhouse in *NSGEU (Local 480) and Nova Scotia Department of Justice*, April 15, 2005, which settled the collective agreement for Corrections employees in Nova Scotia, at pp. 3-5, where

he adds that in "mak[ing] the rules by which the relationship of the parties is to be governed during the term of the contract" it is "the board's duty to impose a just and reasonable settlement".

The objective data to which interest arbitrators mainly refer in attempting to ensure that the settlement imposed both replicates free collective bargaining and is just and reasonable are described in the well known criteria for interest arbitrations adopted by Arbitrator Owen Shime in *British Columbia Railway Co. and General Truck Drivers and Helpers Union, Local 31* (unreported) (June 1, 1979):

> 1. public sector employees should not be required to subsidize the community by accepting substandard wages and working condtions;
> 2. cost of living;
> 3. productivity;
> 4.comparisons
> (a) internal comparisons
> (b) (i) external comparisons - within the same industry
> (ii) external comparisons - not in the same industry, but similar work.

In an early interest award (*University of Toronto*, unreported, February 13, 1981) I said:

> Interest arbitrators in the Canadian public sector have, apparently, universally rejected the legitimacy of the "ability to pay argument". They have not allowed governments as employers to hide behind their own skirts, in their roles as the source of funds, to escape pay increases indicated by other criteria. This has been so even where, as in the Ontario Hospital Sector, the employing body and funding body are legally and formally different. The accepted view is that to allow government underfunding to justify the payment of substandard wages is to ask public sector employees to subsidize the rest of the community.

The Shime Award similarly rejects "ability to pay" as a criterion, at p. 7, but adds, at p. 8;

> This position should not be considered as suggesting that the source of funds from the community is inexhaustible or that there are not political realities to be considered prior to the taxing power being exercised.

In a 2004 interest arbitration between *The Saint John Board of Police Commissioners and the Saint John Police Protective Association, CUPE, Local 61* (June 9, 2004, unreported) the I stated:

> I continue to adhere to the views of interest arbitrators as I saw them in the *University of Toronto* Award with respect to a "pure" ability to pay argument by an employer in an interest arbitration. By this I mean the argument that a public employer lacks "ability to pay" because there is no money allocated in its budget, or in the budget of the employer's governmental funding body. On the other hand, I accept that what constitutes an appropriate wage settlement may well be affected by the economic circumstances in which a public employer finds itself. I also recognize that these two concepts may be very closely related.

Thus, while a public sector employer's budget, whether self-imposed or struck by another government funding agency, cannot be accepted as a simple proxy for economic circumstances, what constitutes an appropriate wage settlement may well be affected by economic circumstances.

The Union here submits that this is the proper approach because the pilots employed by the Employer are in the public service of Canada; the Employer being a Federal Crown corporation that is directly regulated by the Minister of Transport, Treasury Board and ultimately Parliament, and the pilots carrying out the statutory mandate with respect to compulsory pilotage. The real question, of course, is not "public service" or "not public service" but how large a role "ability to pay" should play in my rulings, principally on the issue of wages, but also on the others, because all involve cost to the Employer.

The Employer here submits the "Shime criteria" ought not to apply because it has to rely on the tariffs it charges to its customers as its sole source of revenue. It receives no funding whatsoever from any government, and is required to be self-sufficient by statute. In June 1998, this principle was enacted into law with the following amendment to the *Pilotage Act*:

> 36.01 No payment to an Authority may be made under an appropriation by Parliament to enable the Authority to discharge an obligation or liability. This section applies notwithstanding any authority given under any other Act, other than an authority given under the Emergencies Act or any other Act in respect of emergencies.

Further, the Employer submits, due to the regulatory process to which it is subject, there is no assurance that an increase in tariffs will be allowed to offset increased pilot salaries. The shipping industry, it asserts, is a highly competitive, price-sensitive market. Increasing pilotage fees may contribute to a port losing in competition with others. The loss in business would then lead to a loss in revenues and could place the authority in grave financial straits.

The Union in turn points out that under the *Pilotage Act*, the Employer may, with the approval of the Governor in Council, raise tariff charges. If there is an objection to the proposed increase in tariff charges, the Canadian Transportation Agency ("CTA") investigates the proposed increase. If the CTA approves the proposed increase, the new tariffs are implemented as amendments to the *Atlantic Pilotage Tariff Regulations, 1996*. It appears, however, that such approval is far from automatic.

In reaching my conclusions here I have attempted to "impose a just and reasonable settlement" by applying the "Shime criteria" of cost of living, productivity and, particularly, comparisons that are realistic, bearing in mind the parties' submissions with respect to the different or special circumstances of pilots employed by the Employer, and the political and economic constraints on the Employer itself. In thus bringing these factors to bear I have tried to replicate the agreement the parties would have reached if they had engaged in free collective bargaining with the right to engage in a work stoppage.

Before turning to my rulings on the issues I must add, with respect to the non-wage issues, what I said as final offer selector in my award (January 4, 2004) on the Deck Officers' Collective Agreement, January 1, 2003-December 31, 2004, between Northumberland Ferries Limited and this Union:

> In any form of interest arbitration the arbitrator is poorly equipped, compared to the parties themselves, to fundamentally refashion the collective agreement or to introduce radical changes in the way the parties have done things. This, in my opinion, is why the conservative principal of replication has been generally accepted. Where, as in some parts of the public sector, interest arbitration is always the means of settling the collective agreement, this conservative approach, can, if carried too far, stifle desirable development and renewal in collectively bargained relationships. In those contexts replication may have to be largely submerged in reasonableness. On the other hand, where, as here, interest arbitration is an *ad hoc*, perhaps one time only, solution to a bargaining impasse, the interest arbitrator should be cautious about making fundamental changes to the relationship that the parties themselves could not agree on.

1. DURATION AND RETROACTIVITY.

Duration. The Union proposes that the new Collective Agreement be effective from February 1, 2003 to January 31, 2008. The Employer proposes that the new Collective Agreement "be from February 1, 2003 to January 31, 2009". The

Union makes the point that the parties have never entered into a Collective Agreement with a term longer than three years. The Union recognizes that the parties should have some time to operate under the new Collective Agreement before its expiry but submits that "over a year to do so, which the Guild proposes is a reasonable length of time." It also points out that the Employer's proposal for a six year Collective Agreement is longer than that in any other collective agreement with pilots in Canada.

I have decided that the duration of the new Collective Agreement in Article 31.01 is to "be from February 1, 2003 to January 31, 2009", as proposed by the Employer. The parties will have two years from the issue of this Award to operate under the new agreement. If, because of this Award, the Employer needs to seek an increase in tariffs to meet its statutory obligation to be self-sustaining it will have some opportunity to establish the new tariff environment before the parties are again at the bargaining table. It makes little sense that having just come out of three and a half years of collective bargaining the parties should immediately re-enter that regime.

Retroactivity. There is no dispute that by Article 31.03 in the new Collective Agreement the basic salary rates under Article 30.01 will be retroactive to February 1, 2003 and that the conditions agreed under Articles 30.02 (a), (b), (c), and (d) will come into force on February 1, 2003. Apart from that, unless otherwise expressly stipulated the Collective Agreement shall become effective on the date it is signed.

Retroactivity on increases to payment for recalls. The Union also proposed that not only increases to wages but also the resulting increases to payment for

recalls (work done on time off) be paid retroactively to the Pilots to February 1, 2003. Employer's pilots are paid an extra two days pay for each recall that they perform, pursuant to Article 27.05.

In the Union's submission equity and fairness demand that the Employer's pilots be paid a fair wage for the substantial amount of work that they performed for the Employer on their off-duty time over the past three years. It claims the Employer could not operate if it were not for the Employer's pilots volunteering their off-duty time to perform assignments. The Union also claims that this is largely because the Employer has refused to hire a sufficient number of pilots. It asserts that if the Employer is permitted to avoid paying retroactivity on recalls, the Employer pilots will feel that a great injustice has been done, and that the Employer will have gained a substantial economic advantage at the expense of the pilots, since close to one-third of all assignments in the last three years will have been performed at the unadjusted recall rate. Should the Employer be permitted to avoid paying retroactive recalls, the Union fears this will constitute an incentive for the Employer to delay negotiations in the future.

The Union also based its proposal on the fact that in their last collective agreement, the Launchmasters', which is the only internal comparator bargained by the parties, received retroactive pay for both basic salary and overtime.

The Employer's position is that this proposal is not legitimately before me because it was not identified as an item "that remain[ed] in dispute" in accordance with paragraph 6 (e) of the Resolution Of Contract Renewal Disputes Agreement between the parties from which I draw my jurisdiction. Its submission is a follows:

On September 29, 2006, and pursuant to paragraph 6(e) of the "Resolution of Contract Renewal Disputes Agreement", the Guild filed with the arbitrator several documents, including the list of outstanding items. In the Guild's cover letter to the arbitrator, that document was described as '"Outstanding Summary" – a summary of the outstanding articles between the Guild and the employer, which will be the subject of this interest arbitration.'

The "Outstanding Summary" document identified only a housekeeping change to Article 31.03 on retroactivity:

> 31.03 – **Duration – Renegotiations** – Dates to be changed to commencement of new arrangement.

There is no reference in the "Outstanding Summary" document to amending Article 31.03 to provide for retroactivity on recalls.

The Guild also filed with the arbitrator the "Update Index Summary" dated September 8, 2006 and that document confirms that the only outstanding issue is the reference to the start date of the new agreement:

> Article 31 - Duration – Renegotiations –
> 31.03 – **Dates to be changed to commencement of new agreement**

In its submission to the arbitrator the Guild not only proposes amending the start date, but requests a further amendment by adding "and the resulting increase to pay for recalls under Article 27.05." The effect of this amendment is to have retroactivity applied to recalls, whereas in the current agreement it applies to only basic pay rates.

APA was not copied on the above documents filed, as counsel for the Guild indicated in her covering letter that the documents were drafted by the employer and therefore in our possession.

On October 13, 2006 APA filed with the arbitrator its documents on the status of negotiations – one being the "Update Index Summary"; the other the "Outstanding Summary". Guild Counsel was copied on the filing. There was no dispute as to the accuracy of those documents nor to the outstanding matter in Article 31.03.

The "Resolution of Contract Renewal Disputes Agreement" states, in part, in the opening paragraph that:

> ... the following process shall be used to conclude all outstanding issues for the renewal of the collective agreement.

And at paragraph 6 (e):

> ... the parties shall submit to the arbitrator, and to each other, the items that remain in dispute.
>
> It is not now open to the Guild to advance proposals to the arbitrator on items that were not identified as being in dispute, and it is not within the jurisdiction of the arbitrator to consider them.

These arguments seem to me to be valid. However, rather than determining this issue on the basis of a jurisdictional argument, I have decided, simply, not to grant retroactivity on increases to payment for recalls. There is not a sufficient parallel between overtime pay for pilots and launchmasters, who only receive 1½ times regular pay for regularly scheduled overtime, for that comparison to be persuasive. Moreover, in the last collective agreement between these parties there was no provision for retroactive payment of increases to payment for recalls. Presumably, the Employer had had the same economic advantage at the expense of the pilots, with many assignments, probably close to one third then as well, having been performed at the unadjusted recall rate for the over 20 months between the effective date of that Collective Agreement and its date of signing.

Any incentive this may give the Employer to delay negotiations the future can be offset by a clear Union demand from the outset that retroactivity be paid on recalls. In the present context, I will bear this substantial economic advantage to the Employer in mind in balancing the parties' arguments on wages.

2. WAGES. The Union proposes a 5% increase to the annual wages of the employer's pilots in each year of the Collective Agreement, to apply to all districts and all classes of license. The annual wages sought by the Union for a Class A Pilot in the major districts are therefore as follows:

	2003	2004	2005	2006	2007
Wages	$97,844	$102,736	$107,873	$113,267	$118,930

The Union also proposes that the Class A Pilots in the minor districts be paid the same rate as the Class C Pilots in the major districts.

The Employer proposal for wage adjustments to the current pay rates is:

February 1, 2003 2.25%
February 1, 2004 2.00%
February 1, 2005 2.25%
February 1, 2006 2.50%
February 1, 2007 2.50%
February 1, 2008 2.75%

The Salaries paid under the expired Collective Agreement from 1st February, 2002, to 31st January, 2003 were:

	Class A Licence	Class B Licence	Class C Licence	Apprentice Permit
		85%	75%	60%
Halifax/Saint John, Cape Breton/St. John's/Holyrood/Placentia Bay	$93,185	$79,207	$69,889	$55,911
Restigouche, Humber Arm/Stephenville, Bay of Exploits	$65,230	$55,446	$48,923	$39,138

Overall Pay Increases. In deciding on the pay increases to be granted I have focused my attention on the cost of living, as represented by the national cost of

living index, on an internal comparison with the Employer's negotiated agreement with its launchmasters and on external comparisons with pay increases negotiated by other pilotage authorities.

Consumer Price Index (Canada, all items)

2003	2.8%
2004	1.9%
2005	2.2%
2006	2.2% (first nine months)

The Employer made the point that it had retention issue with respect to the launchmasters, although the Union challenged that assertion as being unsupported by the evidence. The Union also asserted that the table of percentage increases to launchmasters in the Employers submission represented only the increases paid to launchmasters with less than five years of employment with the Employer.

The Employer made the point that the cost of what it pays launchmasters is a tiny proportion of is total budget, while the pay of pilots is much its largest cost.

Nevertheless, for what they are worth, the following are the numbers for launchmasters put before me by the parties:

According to the Employer the average salary for a launchmaster in 2006 is $54,330, and the increases granted in their current Collective Agreement are:

Effective Date	Percentage Increase
July 1, 2003 to June 30, 2004	3.00%
July 1, 2004 to June 30, 2005	3.00%
July 1, 2005 to June 30, 2006	2.75%
July 1, 2006 to June 30, 2007	2.75%
July 1, 2007 to June 30, 2008	2.50%

According to the Union the wage tables found in the APA-CMSG Launchmasters Collective Agreement reveals that the Employer granted higher wage adjustments for launchmasters with more than five years seniority, specifically; 15.57% for those with over five years seniority, 17.05% for those with over ten years seniority, 18.6% for those with over fifteen years seniority, and 20.13% for those with over twenty years seniority. Because I have before me, in the Union's documents, only the current Collective Agreement for the launchmasters, which states annual salaries, not percentage increases, I have not been able to independently calculate the total percentage increases to launchmasters across the range of seniorities over the life of their current Collective Agreement.

In their submissions the parties presented widely varying views on the demands made on pilots employed by the pilotage authorities across Canada. I accept that GLPA is the Authority that is closest in structure to the APA, certainly in terms of the number of pilots it employs. The Pacific Pilotage Authority, like the Laurentian Pilotage Authority, has few employee pilots, with most of their pilots being contract pilots. According to their 2005 Annual Reports, the Pacific Pilotage Authority has 8 employee pilots and 106 contract pilots, and the Laurentian Pilotage has 8 employees, and 166 contract pilots. The pilots for the

APA and the Great Lakes Pilotage Authority (GLPA) are predominately employees. The GLPA have 60 employee pilots, and the APA has 45 employee pilots.

The work of these two groups of pilots is quite different. It is apparent that the demands on them are quite different, in terms, for example, of size of ship, ice conditions, bridge time and pilotage in locks. The parties' submissions have left me convinced of nothing other than that I cannot knowledgably compare the work of the two. I have not, therefore, based my salary increase recommendations on any assumption other than that both groups of pilots are highly skilled and do work that carries with it grave responsibilities under often demanding conditions.

The parties have also presented me with widely varying ways of converting the less than full year salaries of Great Lakes pilots, who do not work in the winter season, to full year salary equivalents that can be compared to the salaries of the Employer's pilots. My concern has therefore been with percentage increase paid to the Great Lakes pilots. The GLPA and the CMSG finalized a contract in December, 2004 that covers the period from April 1, 2002 through March 31, 2007.

Collective Agreement between Great Lakes Pilotage Authority and Canadian Merchant Service Guild (Employee Pilots) Signed December 2004	
Effective Date	Percentage Increase
April 1, 2002 to March 31, 2003	2.00%
April 1, 2003 to March 31, 2004	3.00% [1]
April 1, 2004 to March 31, 2005	2.25%
April 1, 2005 to March 31, 2006	2.25%
April 1, 2006 to March 31, 2007	2.31% [2]

[1] Original agreement was 2.25%. Percentage increased to 3% because of COLA.

[2] Original agreement was 2.25%. Percentage increased to 2.31% because of COLA.

I recognize that the dates of the Lauchmasters' and Great Lakes Pilots' salary increases, and the CPI, do not correspond exactly with the dates of the Collective Agreement here. I also recognize that the simple total of annual increases does not state the compound increase in salary over six years. It is adequate, nevertheless, for the purposes of the comparisons I have made.

The following is a table of the factors I have treated as, to some extent, relevant in ordering annual increases in the base salary of the pilots subject to this Arbitration. I note that in ordering 3% increases in each of the first two years of this new Collective Agreement (particularly on February 1, 2004, a year in which the increase in the CPI was only 1.9%), I have borne in mind "the substantial

economic advantage to the Employer" arising from the fact that there is no retroactive increase to payment for recalls, referred to above.

Date effective	Union proposal	Employer proposal	C.P.I.	Launchmasters	Great Lakes Pilots	Ordered here
Feb. 1, 03	5.00%	2.25%	2.8%	3.00%	3.00%	3.00%
Feb. 1, 04	5.00%	2.00%	1.9%	3.00%	2.25%	3.00%
Feb. 1, 05	5.00%	2.25%	2.2%	2.75%	2.25%	2.50%
Feb. 1, 06	5.00%	2.50%	2.2%(1st9mons)	2.75%	2.31	2.50%
Feb. 1, 07	5.00%	2.50%				3.00%
Feb. 1, 08		2.75%				4.00%

Union total: 15% over 5 years. Average 5% per year

Employer total: 14.25% over 6 years. Average 2.375%

C.P.I. total: 9.1% over 4 years. Average 2.275%

Launchmasters total: 11.5% over 4 years. Average 2.875%

Great Lakes pilots total: 9.81% over 4 years. Average 2.45%

Ordered total: 18% over 6 years. Average 3% per year

(11% over first 4 years. Average 2.75%)

While I do not accept that in interest arbitration the arbitrator can be constrained by the Employer's budget, I am satisfied that the Employer will be well able to pay the 14% total of annual increases I have ordered for the first five years of the new Collective Agreement. I note that the Employer states that it has planned a budgeted total salary increase of 13.05% for the 2003 to 2008 period. That budget is obviously for the compound change contemplated, but the difference should not shock the system. It seems likely that the Employer will have to seek an increase in tariffs to pay for any shortfall and the 4% increase I have ordered effective February 1, 2008, but giving some catch-up increase at that point seems to me to be the best way to balance the claims of the two parties.

I therefore order that the salaries of pilots subject to this Arbitration award be increased effective February 1, 2003, by 3%, effective February 1, 2004 by 3%, effective February 1, 2005 by 2.5%, effective February 1, 2006 by 2.5%, effective February 1, 2007 by 3% and, effective February 1, 2008 by 4%.

The Union proposal that the Class A Pilots in the minor districts be paid the same rate as the Class C Pilots in the major districts. The salary level depends on a Pilot's Class of Licence and whether he operates in a major district or a minor district, as is demonstrated by the table in Appendix D of the current Collective Agreement, which I have already set out above:

Salaries Payable from 1st February, 2002, to 31st January, 2003

	Class A Licence	Class B Licence	Class C Licence	Apprentice Permit
		85%	75%	60%
Halifax/Saint John, Cape Breton/St. John's/Holyrood/Placentia Bay	$93,185	$79,207	$69,889	$55,911
Restigouche, Humber Arm/Stephenville, Bay of Exploits	$65,230	$55,446	$48,923	$39,138

The Union proposes a change to the rates of Class A pilots in the minor districts because those Pilots are now regularly handling Class C and B size vessels, but are currently being paid less than Class C Pilots in the major districts. Class A Pilots in the minor districts are paid 70% of the salary of a Class A Pilot in the major districts. Class C Pilots in the major districts are paid 75% of the salary of a Class A Pilot in the major districts. In the Union's submission this constitutes an

internal inequity that must be rectified, as a large portion of the work of Class A Pilots in the minor districts now includes Class B vessels.

Class B vessels are up to 40,000 gross tons, and Class C size vessels are up to 10,000 gross tons. Yet, those Class A pilots in the minor districts are being paid less than Class C Pilots in the major districts, who are not permitted to handle vessels exceeding 10,000 gross tons. The Union asserts that this internal inequity has arisen gradually since approximately the year 2000. It states that, for example, the three pilots who handle the minor ports in Newfoundland of Botwood, Cornerbrook, Lewisport and Stevenville have seen a dramatic change in vessel size since 2000. In 2000, a port like Botwood might only experience a ship over 10,000 gross tons once or twice per year. Currently, approximately 75% of the work in Botwood and Cornerbrook involves Class B size ships, that is, ships over 40,000 gross tons. They have also had cruise ships of up to 140,000 gross tons. A similar situation has occurred in recent years for the pilots in the minor ports of New Brunswick. More and more of their work involves Class B size ships.

The unrebutted facts and argument put forward by the Union are powerful enough to persuade me from to change this minor relativity. In the new Collective Agreement the salary of pilots holding a Class A license in the minor ports of Restigouche, Humber Arm/Stephenville and Bay of Exploits is to be the same as the salary of a pilot holding a Class C license in the major ports. Any pilot in those minor ports holding a license other than a class A license is to be paid the established percentage of the Class A pilots in those minor ports, i.e. 85%, 75% or 60% of the Class A pilot's pay, as the case may be.

3. UNION PROPOSALS ABOUT FATIGUE.

According to the Union fatigue is one of the most pressing concerns of the Employer Pilots. The Union therefore proposes an amendment to Article 27.01 of the Collective Agreement to provide for a guaranteed 9-hour uninterrupted period of rest at the end of a 15-hour period of duty. The Union also proposes a new Article, Article 27.07, to allow the APA Pilots to refuse to work more than two consecutive nights.

For the four reasons that follow my general comments on this issue, I have decided that the amendment of Article 27.01, as a response to pilot burn-out caused by consecutive hours worked, is a matter better left for the next round of collective bargaining.

I have, however, decided that pilot fatigue is a sufficiently serious problem that there will be a new Article 27.07, although not in the terms proposed by the Union, to allow the APA Pilots to refuse to work more than two consecutive nights, except in the Port of Saint John, N.B.. This new Article 27.07 is the main departure in this Award from the conservative stance I quoted at the end of my statement of "General Principles" above.

General Comments. Obviously, pilot fatigue is a serious issue because of the potentially significant consequences of pilot error. Indeed, each pilot has a professional responsibility, and a statutory duty, to ensure that he is not impaired by fatigue. A Memorandum of Understanding concerning pilot fatigue and sleep deprivation, at page 34 of the current Collective Agreement, provides as follows:

> Within ninety (90) days of the signing of this agreement, the parties agree to convene a meeting of the Atlantic Region Pilot's Committee, Guild representatives and the APA negotiating committee (APA/CMSG Review Group) to study and attempt to resolve the issues of fatigue and sleep deprivation. This committee will be kept abreast of, and work in conjunction with Transport Canada's working group on this issue.
>
> The APA/CMSG working group will undertake to arrive at their own recommendations regarding this issue within a six (6) month time frame. It is understood should subsequent regulations be forthcoming from Transport Canada, they may supersede any agreements made on this subject.

According to the Union this APA/CMSG Review Group "did not materialize". According to the Employer the role of the Review Group, as envisaged in the MOU was taken over by the joint "Resource Committee ... originally created to address problems of mutual concern between the APA and the pilots." The Employer submitted minutes from the meetings of the Resource Committee which suggest that its concerns, like those of Transport Canada, have been with educating pilots to recognize the dangers of fatigue, rather than regulating further the hours they can, or must, work. Certainly, from the Union's point of view the Resource Committee has not resolved the issues of pilot fatigue and sleep deprivation, which arise because, while they are on duty, pilots can be called upon to work at any hour of the day or night.

When pilots are on duty varies from district to district. Article 27.02 of the Collective Agreement provides that Pilots in the major districts (Saint John's/Holyrood/Placentia Bay, Halifax, Cape Breton and Saint John) work a schedule of seven days on and seven days off "or some other mutually agreed equivalent schedule". According to the Employer, pilots in Eastern Newfoundland and Saint John in fact work a schedule of 14 days on, 14 days off. By Article 27.03, pilots in the minor districts of Humber Arm/Stevenville/Bay of

Exploits work a schedule of 21 days on and seven days off. By Article 27.04 pilots in all other compulsory areas "shall be available as required", which apparently applies to the employed Pilots at Restigouche.

By Article 26.01, the Director of Operations of the Employer, or his representative, draws up mutually acceptable duty rosters for each pilotage area, after consultation with each Area Committee. By Article 26.03, pilots on the duty roster must keep the Director of Operations informed of their whereabouts and by Article 26.04. "Pilots shall normally be assigned for duty as their names appear on the duty rosters taking into account the class of license held."

Halifax pilots work a schedule of seven days on and seven days off. Each seven-day watch begins at 10 a.m. on Tuesday, the pilot's first day on. The Pilots' Halifax Area Committee provides a current Duty Roster to the Director of Operations every Tuesday morning. There are currently 12 Halifax pilots on strength, so normally there would be six pilots on each seven-day watch, with one swing shift pilot among the six pilots who starts his watch at 0400 hours on Friday. However, there are actually 11 pilots actively working as one has been on extended sick leave since April and is not expected not to return, so there are five on each watch and one swing pilot who covers a portion of each watch.

Amendment of Article 27.01

1. My first reason for deciding that the amendment of Article 27.01 is a matter better left for the next round of collective bargaining is the effect of the provision as presently written. During their days on, pilots may work continuous consecutive 15 hour periods if they have had six hours in the first fifteen hour period without an assignment.

Article 27.01 provides:

> To ensure that pilots are not fatigued when on assignment(s), at the end of a fifteen (15) hour period where rest between assignments is less that six (6) consecutive hours a pilot shall **"book off"** for a nine (9) hour uninterrupted period of rest. If a pilot books-off before the end of the fifteen hour period, for example by informing the dispatch that he is no longer available for assignment, his period of rest will commence at the time he so books off.

This appears to apply, as the Employer submitted, whether pilots are on duty or on recall. On the face of it, it *requires* a pilot to book off at the end of fifteen hours, when there has been no rest of six consecutive hours between assignments, to prevent fatigue. I appreciate that six hours hours between assignments, which may well not be undisturbed rest time, would be unlikely to prepare a person for a further fifteen hours of highly responsible performance. However, this Article also *allows* a pilot to book off prior to the end of one of the fifteen hour periods by informing dispatch that he is no longer available for an assignment.

This final sentence of Article 27.01 first appeared in the 1993-1996 Collective Agreement. Prior to this amendment, pilots were obliged to work to the end of the fifteen hour period before they booked off if no six hour rest period had occurred. With this amendment, if a pilot becomes fatigued at any time during the fifteen

hour period, he may book off by informing the dispatch that he is no longer available for assignment. The pilot must evaluate his level of alertness and fatigue, and judge accordingly whether he is fit to continue.

It must be borne in mind that recall is voluntary although, undoubtedly, as the Union asserts, pilots do feel a professional obligation to ensure that an effective pilotage service is provided, with as few delays as possible, even on their days off.

Recall work is, of course, paid at a premium and there are also productivity allowances, which would appear to benefit both the Employer and the Union's members. I am not persuaded that these provisions were negotiated to resolve the fatigue problem.

2. The numbers presented by the Employer make it apparent that, except in Canso, the amount of pilotage to be done is in something of a decline. An, at least partial, explanation for this, according to the Employer, is:

> One of the major causes of the decline in assignments is the change in regulation in May which exempted supply ships of less than 5,000 gross tons. In 2005, St. John's had over 1100 assignments on supply ships, representing over 70% of its business. Halifax had 547 supply ship assignments, or about 14 % of its business. The year 2006 is a transition year, as the regulation was changed mid-year. However, 2007 is expected to suffer the full brunt of the decrease in supply ship assignments.

The Employer's statistics show, as it states in its submission, "While the overall number of pilots has been increasing since 2000, the number of assignments overall has been declining since 2003. The rapid decline in 2006 is widespread- the traffic is down in every compulsory area served by employee pilots except for

Canso and Restigouche." The Employer recently hired two pilots for Cape Breton. The Employer further asserts; "The only area in which the pilots have requested additional help and the APA has expressed caution in hiring is in Halifax. This is primarily because of the precipitous decline in assignments in Halifax over the last few years, a decline that will continue in 2007."

3. The Employer submitted that the removal of the reference to rest between assignments would create havoc in Saint John, Halifax, and other ports as well. Specifically with respect to Saint John the Employer stated:

> In Saint John, most of the vessels move on high tide. Tides are approximately 12 hours apart. When the port is reasonably busy, every available pilot will work a tide. A pilot is dispatched for a vessel arriving at the port at least two hours before the boarding time at the pilot station. If the ship is to leave on the tide later that day, the pilot will not be in a book off situation even though he did not work at all since the arrival of the ship. He will not have enough time within the fifteen hours of his first dispatch to complete the second assignment and drive home. Therefore, the pilot would have worked approximately 4 hours, including the time it took him to drive to the assignment and drive back home, and 11 hours after completing that assignment, he would book off to rest. Not only would that pilot book off, but every available pilot in the port would be in the same position.

In respect of Halifax the Employer submitted:

> For a port like Halifax, the removal of the rest period clause would cause equal hardship. Halifax's most important customers are container ships. They operate on a tight schedule, and generally arrive at the port early in the morning in order to be at their berths by about 0800. In order to achieve this, pilots are dispatched at approximately 0400. A second peak in traffic in Halifax occurs in the late afternoon and early evening as the container ships leave.

4. I have also had to struggle with is the balance between the Union's assertion that pilot fatigue is a very serious problem when a port is busy and the Employer's argument based on averages. The Employer submitted:

> On average, a pilot in Halifax has worked approximately 930 hours in the ten month period ending October 31, 2006. Of these working hours, the largest component is the travel to and from the assignment, which accounts for approximately 412 hours (please note that pilots are allotted a standard amount of time to get to and from an assignment. In Halifax, the pilot is allotted 1 hour on a departure and two hours on an arrival. His actual travel time may vary from this allotment. In fact, a pilot may stay in the APA supplied office or apartment and not travel at all, and still be allotted the travel time for the assignment). The average pilot has spent 147 hours on a pilot boat, and 372 hours on the bridge of a ship. On average, a Halifax Class A pilot works approximately 6 hours per day when on duty week, of which approximately 2.5 hours per day are spent on a ship. During his week off duty, the average Halifax pilot has been recalled for a little less than 8 hours, of which 3 is spent piloting a ship. Because of the volume of traffic in Halifax allows for some efficiency of scale, the Halifax pilots tend to work more duty hours than any other area. Overall, the Halifax pilots work approximately 43 hours (including travel time) during their week on duty. During their week off duty, they have worked an average of less than 8 hours. The workload of pilots in other areas while on duty has varied from approximately 28 to 37 hours [per week] during 2006.

The averages suggest that long-term burn-out may not be as serious as suggested but they do not satisfy me that in a particularly busy period the system in place does not result in fatigue that calls for a response. The Employer stated in its submission: "The APA is well aware that the pilot will be called to work at irregular hours and is available for duty for extensive periods. However, it is difficult to reconcile the statements about burnout with the actual hours currently being worked by the pilots." I therefore turn to the Union's proposed new Article 27.07.

New Article 27.07.

The Union proposed a new provision, as follows:

> 27.07 When a Pilot has worked two (2) consecutive nights, he may ask not to be dispatched before 0600 the following morning. The Pilot would keep his position on the tour-de-role. If his services are required before the end of his rest, the next

> rested Pilot would then be dispatched. For the understanding of this Article, working nights means to be ordered for a vessel or transfer between 1600 or 0600 or an assignment ending between 0001 and 0800.

The Union supported this proposal with a reference to the well known differences between night sleep and day sleep as explained by the Transportations Safety Board of Canada in its report on the "Grounding of the Bulk Carrier "Raven Arrow" (24 September 1997) at p. 28:

> ... Many studies of shift workers link sleep loss with the time of day that sleep is taken. Sleep taken during the day is shorter and of poorer quality than sleep taken at night. Studies have shown that pilots who conduct pilotage around midnight produce high levels of adrenaline (up to seven times that of a normal person, sleeping) and it can take as long as two days for adrenaline levels to return to normal. For such a pilot, sleep will be very difficult. Hence, working at night cannot be taken as equivalent to working during the day. Sleep is poor if it is taken at times of day when the body is physiologically alert, and sleep loss exacerbates the normal drop in alertness and performance found at circadian low points in the day.

The Union also quoted, among other authorities, the *Fatigue Management Guide for Canadian Marine Pilots* (November 2002) prepared for the Marine Safety Directorate and Transportation Development Centre of Transport Canada by Rhodes and Associates Inc. to the same effect. The Union provided me with the following table;

Number of Periods of Consecutive Nights Worked (Defined as Hours Worked between 1800 and 0600 Hours) of Three or More Nights

	Ian Swan	**George Hilchie**	**Shaun Dauphinee**	**John Bell**	**Ken Raisbeck**
2003	9	17	18	12	20

2004	21	17	19	16	15
2005	14	9	17	12	15
Total	**44**	**43**	**54**	**40**	**50**

The Employer responded to this specifically with respect to Halifax:

> Quite frankly, the APA is not surprised by this [table]. The proposed article 27.07 is so broadly worded that it would undoubtedly capture a very large percentage of the APA's assignments in Halifax. It is a certainty that for virtually all of the busy morning peak period, the pilot would have been ordered before 0600. The APA is aware that this language has been borrowed in its entirety from the Upper St. Lawrence Pilots Collective Agreement with the Great Lakes Pilotage Authority. However, type of pilotage being performed by the Upper Great Lakes Pilots (UGL Pilots) can not be compared to APA pilots in any of its districts. Each assignment performed by the UGL Pilots has a bridge time of 10 hours. The bridge time for Halifax pilots is approximately 1.75 hours. ... The proposal that has been submitted was designed to deal with the situation in the Upper St. Lawrence area. In this area, pilots are spending extensive periods of time on the bridge of a ship, docking and undocking a single ship as many as ten times as it proceeds through the St. Lawrence locks. The APA pilots are primarily harbour pilots, who spend a relatively short period of time on a ship on each assignment.

The Employer also responded specifically with respect to Saint John:

> The impact of the proposed clause 27.07 on Saint John would be even more profound. As mentioned earlier, Saint John is a tidal port. The tide changes by an incremental amount each day. ... If a pilot is working ships on the tide, as they do in Saint John, he may work many "nights" under the definition offered by the Guild in their proposed clause. He may have little or no other work during the day, but will be in a position to request not to be dispatched on the third day. The average bridge time for a Saint John Pilot in 2006 is 1.6 hours.

Having considered as carefully as I could the submissions of both parties on this issue, and drawing to some extent upon *Lake Ontario Pilots Collective Agreement*, I have concluded that the following new Article 27.07 is to be included in the Collective Agreement:

> 27.07 Except in the Saint John pilotage area, when a Pilot has worked two consecutive nights, he/she may ask not to be dispatched before 0600 the following morning. The Pilot will keep his/her position on the tour-de-role. If his/her services are required before the end of his/her rest, the next rested Pilot will be dispatched. In this paragraph "worked two consecutive nights" means that on two consecutive nights the Pilot was ordered for a vessel or transfer between 1600 and 0400 or an assignment ending between 0001 and 0800. A pilot must declare his/her intentions after debarking the second of the two consecutive assignments.

Like Article 27.01, this puts the onus on pilots, as professionals, to avoid fatigue. The Employer should, of course, provide training and information on this subject, as recommended by the Transportation Safety Board.

I note that my substitution of "0400" for the Union's proposed "0600" is not accidental. It is based on the Employer's submission specifically with respect to Halifax but applies generally. The exclusion of the Saint John pilotage area is based on the Employer's submission specifically with respect to Saint John.

4. UNION PROPOSAL RE PAID LEAVE FOR FAMILY-RELATED RESPONSIBILITIES.

The Union proposes a new article, Article 14.09, to provide for a maximum of five days leave with pay for certain family-related responsibilities.

The Union proposed the following language for the new article:

> 14.09(a) For the purpose of this clause, family is defined as spouse, dependent children, parents, or any relative permanently resident in the Pilot's household or with whom the Pilot resides.
>
> 14.09(b) A Pilot shall be granted leave with pay, for a maximum of five days per year, for any of the following: doctors/specialist appointments; providing

> immediate and temporary care for a sick member of the Pilot's family and time to arrange alternate care where necessary; adoption, or needs related to the birth of a child.

The Union based this proposal on the claim that:

> The current Collective Agreement between the Guild and the APA governing the Launchmasters provides leave with pay for one shift for needs directly related to the birth of a child and for one shift for needs directly related to the adoption of a child, and discretionary leave with pay when circumstances not directly attributable to the launchmaster, including illness in his immediate family, prevent his reporting for duty.

The Union submitted that it would be "inequitable for the APA to provide one group of its employees with leave with pay for birth, adoption, and circumstances not directly attributable to the employee such as illness of a family member, and not to provide the Pilots with similar types of leave." The Union also referred to the Great Lakes Pilots Collective Agreement, Upper St. Lawrence Pilots Collective Agreement and the Lake Ontario Pilots Collective Agreement, as external comparators.

In fact Article 17.03 of the Launchmaster's Collective Agreement provides leave with pay for the birth or adoption of a child "at the discretion of the Employer", just as Article17.04 does in circumstances not directly attributable to the employee such as illness of a family member. The three Pilots' Collective Agreements referred to provide for leave with pay on the birth, or marriage (which has not been requested here), of a son or daughter and discretionary leave with pay in other family circumstances.

Given the apparent, but to me somewhat unclear, differences between the circumstances of the Employer's pilots and its launch masters, and my uncertainty about whether the Union here has any interest in *discretionary* leave with pay for these family situations, I have decided not to accept this proposal by the Union.

5. UNION PROPOSAL TO INCORPORATE DISPATCH PROCEDURES INTO THE COLLECTIVE AGREEMENT

The Union proposed that a new paragraph be added to Article 27.05 to provide for the incorporation of Dispatch Procedures into the Collective Agreement, and an agreement that any disputes related to the interpretation, application or alleged violation of the Dispatch Procedures be subject to the grievance and arbitration procedure. The Employer strongly opposes this.

Articles 26.01 and 27.05 currently read as follows:

> ARTICLE 26
>
> DUTY ROSTERS
>
> 26.01 Following consultation with each Area Committee, the Director shall draw up mutually acceptable duty rosters for each Pilotage Area covered by this Agreement, taking into account the number of pilots available for each area and all other circumstances prevailing.
>
> ...
>
> ARTICLE 27
>
> DUTY SCHEDULES AND RECALL PROCEDURES
>
> ...
>
> 27.05 Subject to dispatch procedures mutually agreed to by the Authority and each Area Committee (Article 26.01), a pilot required for recall shall be given as much notice as possible. He shall be available for a period of ten (10) hours from

> the expiry of the notice period. For each such recall he shall be two (2) days pay (in accordance with Article 2.01(l)) in addition to his regular pay.

The Union proposes to add a new paragraph to Article 27.05 that would read as follows:

> The parties agree that the dispatch procedures mutually agreed to by the Authority and each Area Committee are hereby incorporated into the Collective Agreement and that any dispute concerning the interpretation, application or alleged violation of the dispatch procedures is subject to the grievance and arbitration procedure under the Collective Agreement. The dispatch procedures may be amended by mutual consent of the parties.

The Union's position is that the dispatch procedures are already incorporated in the Collective Agreement pursuant to Articles 26.01 and 27.05. However, the Union wants specific language incorporating the dispatch procedures into the Collective Agreement and subjecting them to the grievance and arbitration procedure to ensure that the Employer cannot dispute in the future that the dispatch procedures are arbitrable.

The Employer holds a very strong view that the Dispatch Procedures should remain a local matter between the APA and the Local Area Pilot Committees. It submitted:

> The Authority and the local pilots have over the years agreed to develop the procedures and, as circumstances change in the various ports, the pilots have brought their concerns to the Authority to discuss amendments to the procedures to reflect either the change of the traffic or a change to the process to enhance their work day and generally streamline things for the Authority. ... The proposal to enshrine the Dispatch procedures in the Collective Agreement, negotiable between the parties as opposed to local agreements, is troublesome given the history of protracted collective bargaining. Dispatch procedures are a fluid

document that require change more frequently more than the term of a Collective Agreement.

I do not think this interest arbitration is the appropriate forum for the resolution of the issue of whether the dispatch procedures are incorporated into the Collective Agreement, whether they should be or how such incorporation should work. Therefore, I do not accept this proposal by the Union.

6. UNION PROPOSAL TO AMEND THE MEMORANDUM OF UNDERSTANDING RE TRANSPORTATION ALLOWANCE

The Union proposed an amendment to the Memorandum of Understanding concerning reimbursement for transportation to increase "Transport allowance within a port" from $12.50 to $25.00. Paragraph 1 of the Memorandum of Understanding currently reads as follows;

> 1. Transport allowance within a port will be fixed at $12.50 per round trip on which a pilot uses his automobile for the duration of the Agreement.
>
> A round trip commences at the pilot's home and is completed only on return to home. Should a pilot be dispatched directly from one assignment to another, the pilot may use his automobile to get him from one assignment to the other for which mileage at current rates will be paid.
>
> Taxis may be used for traveling in addition to private automobiles when necessary. Where provisions have been made by the Atlantic Pilotage Authority through a contract or other arrangement, for a taxi company to submit bills for services, receipts will not be required. The contract taxi company must be used under normal circumstances. Where no provision has been made for contract taxi service, the pilot will be responsible for paying the taxi fare and claiming the amount on expense claim forms. All taxi fares in these instances must be supported by receipt.

This proposal is based on the fact that the current amount does not reflect the cost of transportation. The Union also presented figures to show that $12.50 per round trip is far below the transportation allowances provided for in the comparator Collective Agreements. The Employer's position is that none of its other employees are compensated at all for travel on their regularly scheduled workdays, and that the comparative numbers presented by the Union relate to travel allowance in the other Authorities for long distance travel.

First, the fact that the Employer's other employees are not compensated for travel on their regularly scheduled workdays is irrelevant at this juncture. The parties have collectively bargained a different and quite special treatment for pilots. Second, I agree that comparing the allowances in other Authorities is comparing apples and oranges, but I am not prepared to proceed on the Employer's conclusion that, "there is no evidence before this board that the amount of $12.50 is insufficient to cover the cost of the pilot's vehicle for local travel." A travel allowance set for 1999-2003 cannot be assumed to be appropriate for a Collective Agreement ending in 2009.

I note that the travel allowance pilots under the Great Lakes and the Upper St. Lawrence Collective Agreements increased by 9% over the 2002-2006 period covered by those Collective Agreements, and the travel allowance pilots under the Fraser River pilots increased by 1.7% over the 2005-7 period of their Collective Agreement. I have also borne in mind that under the retroactivity provisions discussed above, any increase in the "transport allowance within a port" will not, and cannot practically, be made retroactive. Bearing these considerations in mind I direct that the Memorandum of Understanding

concerning reimbursement for transportation be amended to increase "Transport allowance within a port" from $12.50 to $17.50.

7. UNION PROPOSAL TO RENEW THE MEMORANDUM OF UNDERSTANDING RE THE LEGAL DEFENCE INSURANCE FUND

On the date of signing of the last two Collective Agreements the parties signed a Memorandum of Understanding, which appears at p.33 of the printed 1999-2003 Collective Agreement, in which the Employer agreed to make an annual contribution of $6500 annually for a five year period to the Legal Defence Insurance Fund of the Canadian Merchant Service Guild. The Legal Defence Insurance Fund provides legal assistance to officers involved in marine occurrences that result in investigations by the Transportation Safety Board, federal or local Police Forces, the Coast Guard, or similar authorities from the United States. The Union seeks to renew the Memorandum of Understanding for a further five years, with the first payment being made within 30 days of this Award.

The Memorandum of Understanding in the 1999-2000 Collective Agreement provides as follows:

MEMORANDUM OF UNDERSTANDING

BETWEEN
CANADIAN MERCHANT SERVICE GUILD (CMSG)
AND
ATLANTIC PILOTAGE AUTHORITY (APA)

1. The Atlantic Pilotage Authority agrees to make a contribution to the Legal Defence Insurance Fund of the Canadian Merchant Service Guild on behalf of Pilots and Launchmasters.

2. The contribution will be $6,500 annually for a five (5) year period. The first payment will be made on the date of signing the 1999-2003 Pilots' Collective Agreement and the remaining payments on the anniversaries of this date.

3. The amount of the contribution will remain the same over the five payments, irrespective of any increase or decrease in the numbers of pilots and launchmasters in the respective bargaining units.

Dated at Halifax, N.S., this 16th day of October 2000.

I note that, although the "Legal Defence Insurance Fund of the Canadian Merchant Service Guild" is "on behalf of Pilots and Launchmasters" the Memorandum of Understanding just quoted was an agreement between the parties to this interest arbitration, and the launchmasters were not a party to it. That is what the Union here seeks to have renewed. I mention this because the Employer stressed in its rebuttal submission that "Launchmasters are not included in the collective agreement under dispute." In my opinion, that fact does not make the Union proposal somehow illegitimate.

I note too that by this Memorandum of Understanding the Employer promised five contributions annually, starting on the date of signing of the 1999 - 2003 Collective Agreement, which was October 16, 2000, the same day the Memorandum of Agreement was signed. According to its terms, the last contribution would have been in October 16, 2004, although the Employer stated in its submission that the last contribution was due in October of 2005.

The annual contribution of $6500 per year proposed by the Union amounts to $144 per APA Pilot per year, because there are 45 APA Pilots. The Union is not seeking an increase in this amount and submitted that the Employer should not be

permitted to roll back a benefit that it has agreed to provide in two successive Collective Agreements.

In its Rebuttal the Employer claimed that there was no Memorandum of Understanding negotiated by the parties in the 1996-1999 Collective Agreement, but this is incorrect. The copy of the February 1, 1996 – January 31, 1999 Collective Agreement, signed May 29, 1997, submitted to me in the Union's documents, contains a Memorandum of Understanding signed May 29, 1997, which, except for the dates, is identical to the Memorandum of Understanding set out above. On this apparently mistaken basis the Employer submitted that it had had great reluctance to enter into this Memorandum, and did so on the understanding that it was to be a one time issue.

The Union also submitted that provisions for employer contributions to the Union's Legal Defence Insurance Fund are a standard feature of collective agreements to which the Union is a party, including the Collective Agreements of the comparator Pilot groups. The obligation of the Great Lakes Pilotage Authority to make contributions to the Legal Defence Insurance Fund has been in place for at least three Great Lakes Pilots Collective Agreements, two Upper St. Lawrence Pilots Collective Agreements and two Lake Ontario Pilots Collective Agreements. The Great Lakes Pilotage Authority is obligated to pay $220 per year per Pilot in all three of the Collective Agreements it has with its three employee Pilot groups.

The Employer states in its Rebuttal submission:

> We requested from the Guild a financial accounting of this fund. Our concern was that we could be providing funds to the Guild that could be used for purposes other than stipulated in the MOU. We have never been provided with any financial information regarding this fund.

There may be a basis for the suggestion that the Union has an obligation to provide such an accounting, but there is nothing before me to that effect.

The disputed Memorandum of Understanding is to be renewed. As proposed by the Union, it will read as follows:

> 1. The Atlantic Pilotage Authority agrees to make a contribution to the Legal Defence Insurance Fund of the Canadian Merchant Service Guild on behalf of Pilots and Launchmasters.
>
> 2. The contribution will be $6500 annually for a five (5) year period. The first payment will be made within 30 days of the date of the interest arbitration award of Arbitrator Christie and the remaining payments on the anniversaries of this date.
>
> 3. The amount of the contribution will remain the same over the five payments, irrespective of any increase or decrease in the numbers of pilots and launchmasters in the respective bargaining units.

7. EMPLOYER PROPOSAL RE DUTY SCHEDULES AND RECALL PROCEDURES - ARTICLE 27.05

The Employer submitted that the current language in Article 27.05 on recalls does not define when a recall begins and that this lack of clarity has resulted in conflict between the parties. Having been the Grievance Arbitrator on grievances resulting from one of those disagreements, I have no doubt that such has been the case. Article 27.05 as now written provides:

> 27.05 Subject to dispatch procedures mutually agreed to by the Authority and each Area Committee (Article 26.01), a pilot required for recall shall be given as much notice as possible. He shall be available for a period of ten (10) hours from the expiry of the notice period. For each such recall he shall be paid two (2) days pay (in accordance with Article 2.01(l)) in addition to his regular pay

In the Employer's submission, for many years, this section was administered to mean that the notice period expired when the pilot was dispatched for an assignment. There was near certainty that a pilot would perform an assignment when recalled. In recent years, pilots and the Union have put forward interpretations of the phrase "expiry of the notice period" that differed for the Employer's.

The Employer stated in its submission that it has learned of instances of pilots "negotiating" with the dispatcher the time that the notice period will expire, which has had the effect of creating a shorter period of pilot availability or potentially creating a second recall payment for the same pilotage assignment. The Employer stated that in order to give pilots as much notice as possible, dispatchers are notifying pilots of recalls well before they have a firm order from a ship. This has caused an increase in "non-working recalls" because the pilots have treated the notice as firm commitment for a recall not merely a "heads-up" to the pilot. The "consent award" in the grievances on which I was the arbitrator (which the Union has put before me here) involved "non-working recalls".

The Employer has, therefore proposed the following amendments:

> 27.05 (a) Subject to dispatch procedures mutually agreed to by the Authority and each Area Committee (Article 26.01), a pilot required for recall shall be given as much notice as possible. He shall be available for a period of

ten (10) hours [~~from the expiry of the notice period~~] *commencing at time of dispatch.* For each such recall period, he shall be paid two (2) days pay (in accordance with Article 2.01 (l)) in addition to his regular pay.

(c) Notwithstanding any other provision of this article, dispatch time is defined as the standard time allotted to a pilot prior to arrival and departure/movage times. Dispatch time for an arrival is the time allotted to a pilot prior to a ship's confirmed scheduled arrival time at the pilot boarding station. Dispatch time for a departure or movage is the time allotted to a pilot prior to a ship's confirmed scheduled departure time from a berth or anchorage.

Area	*Arrival*	*Departure/Movage*
Saint John, Sydney, Halifax St. John's, and Holyrood	*2 hours*	*1 hour*
Canso/ Bras D'Or	*3 hours*	*2 hours*
Placentia Bay,	*4 hours*	*2 hours*

The standard time allotted for a pilot to travel home after debarking a ship (should there be no further assignments available) will be as follows:

Area	*Arrival*	*Departure /Movage*
Saint John, Sydney, Halifax, St. John's, Holyrood	*1 hour*	*2 hours*
Canso, Bras D'Or	*2 hours*	*3 hours*
Placentia Bay	*2 hours*	*4 hours*

According to the Employer, this proposal is intended to restore certainty to the commencement of a recall period. It also has the benefit of allowing the dispatcher to give a pilot as much notice as possible without triggering the commencement of a recall. The Employer also asserted in its submission that in previous years, it was not unusual for a pilot to do more than one assignment in the ten hour recall period. In fact, on average, for every 100 recall periods paid,

there would be approximately 130 assignments performed by the pilots. So far in 2006, according to the Employer, for every 100 recall periods, there are less than 100 pilotage assignments performed. The Employer attributes this decline to "non-working recalls", and to the fact that, because the ten hour recall period starts prior to dispatch, pilots have less time to do more than one assignment, or may need two recalls to do a single assignment.

The Union is strongly opposed to the Employer's proposed change to Article 27.05. It submitted that Employer's proposal should be rejected for three principle reasons:

1. The language that the APA wishes to change has been feature of the Collective Agreements between the parties since it first appeared in the 1975-78 Collective Agreement, although there have been negotiated changes to the amount of notice, the required amount of availability and the amount of the premium. Since the 1978-79 Collective Agreement the period of availability has started "from the expiry of the notice period". According to the Union the Employer and the pilots in each area have a long-standing agreement as to when the expiry of the notice period is, and when the 10-hour period of availability commences.

2. The change that the Employer requests has the potential to alter long-standing agreements between the parties as to how the recall procedure operates in each of the districts. If the language of Article 27.05 is fundamentally altered as requested by the Employer, the Union fears that it would no longer be entitled to rely on the decades-long practice of paying for recalls, whether or not a pilot actually performs an assignment during the recall. This, it seems to me, is a well founded

fear, because the Employer has given the reduction of "no assignment recalls" as one of the reasons for its proposed changes to Article 27.05.

3. The Employer's rationale for the proposed change arises from problems in its own administration of the recall procedure, not from the language of the recall procedure. In the Union's submission it is up to the Employer to put an end to dispatchers "negotiating" with pilots "the time that the notice period will expire" and to dispatchers "giv[ing] pilots as much notice as possible" by "notifying pilots of recalls well before they have a firm order from a ship." If these changes in what the Employer says have become undesirable practices result in a disputes about the proper interpretation of Article 27.05 those disputes should, in the Union's submission, be settled by a rights arbitrator, because a rights arbitrator would adjudicate a specific fact situation, having heard *viva voce* evidence and full argument on the issue.

While I appreciate the rationale, and the rationality, of the Employer's proposal, I do not think it conceivable that the Union would have agreed to it in free collective bargaining, at least without exacting a very steep wage concession from the Employer in return. How steep that concession would have to be may require further clarification through grievance arbitration. I do not think this interest arbitration, in this round of bargaining, is the best forum for resolution of this issue. Therefore, I do not accept this proposal by the Employer.

CONCLUSION AND ORDER.

With respect to the issues put before me by the parties in this matter, for all of the foregoing reasons I have reached the following conclusions and hereby make the following orders:

1. **Duration and Retroactivity**. The new Collective Agreement shall "be from February 1, 2003 to January 31, **2009**".

Unless otherwise expressly stipulated the Collective Agreement shall become effective on the date it is signed. The Basic salary rates under Article 30.01 will be retroactive to February 1, 2003 and conditions agreed under Articles 30.02 (a), (b), (c), and (d) will come into force on February 1, 2003.

I reject the proposal by the Union that increases to payment for recalls be paid retroactively.

2. **Wages.** The salaries of pilots subject to this Arbitration award shall be increased effective February 1, 2003, by 3%; effective February 1, 2004 by 3%; effective February 1, 2005 by 2.5%; effective February 1, 2006 by 2.5%; effective February 1, 2007 by 3% and, effective February 1, 2008 by 4%.

In addition, in the new Collective Agreement the salary of pilots holding a Class A license in the minor ports of Restigouche, Humber Arm/Stephenville and Bay of Exploits is to be the same as the salary of a pilot holding a Class C license in the major ports. Any pilot in those minor ports holding a license other than a class A license is to be paid the established percentage of the Class A pilots in those minor ports, i.e. 85%, 75% or 60% of the Class A pilot's pay, as the case may be.

3. Proposals Addressing Concerns about Fatigue. I reject the Union's proposal that Article 27.01 be amended, but I order the inclusion of a new Article 27.07, which differs somewhat from the Union's proposal, as follows:

> 27.07 Except in the Saint John pilotage area, when a Pilot has worked two consecutive nights, he/she may ask not to be dispatched before 0600 the following morning. The Pilot will keep his/her position on the tour-de-role. If his/her services are required before the end of his/her rest, the next rested Pilot will be dispatched. In this paragraph "worked two consecutive nights" means that on two consecutive nights the Pilot was ordered for a vessel or transfer between 1600 and 0400 or an assignment ending between 0001 and 0800. A pilot must declare his/her intentions after debarking the second of the two consecutive assignments.

4. **New Article providing Paid Leave for Family-Related Responsibilities.** I reject this proposal by the Union.

5. **New Article Incorporating Dispatch Procedures**. I reject this proposal by the Union.

6. **Proposal to Amend Memorandum of Understanding re: Transportation.** I direct that the Memorandum of Understanding concerning reimbursement for transportation be amended to increase "Transport allowance within a port" from $12.50 to $17.50.

7. **Union Proposal to Renew Memorandum of Understanding re: Guild Legal Defence Insurance Fund.** I direct that this MOU be renewed as proposed by the Union

8. Employer Proposal of Changes to Article 27.05. I reject this proposal by the Employer.

Innis Christie
Arbitrator