

IN THE MATTER OF: An Interest Arbitration regarding Agreement "A"

BETWEEN:

Canadian Merchant Service Guild

("CMSG" or the "Guild")

and

Marine Atlantic Inc.

("MAI" or the "Employer")

Interest Arbitration
Hearing: November 28, 29, 30, 2022
Sydney, NS

Andy Nielsen and Grace Levy
Pink Larkin
Suite 201, 1463 South Park Street
Halifax, NS B3J 2S9
Counsel to the Union

Jack Graham, K. C. and Brittany Keating
McInnes Cooper
1969 Upper Water Street, Suite 1300
Halifax, NS B3J 3R7
Counsel to the Employer

CMSG Interest Arbitration – Agreement “A” 2022

Table of Contents

Overview	2
History of Bargaining.....	3
Background to the Issues	5
Principles of Interest Arbitration	9
Outstanding Guild Proposals	13
Issue for Mediation: Hours of Work, and Scheduling	14
Summary of Issue and Guild’s Related Proposals	14
The structure of work at MAI, as it relates to the present matter	15
Two aspects of the concept of averaging at MAI.....	17
The Canada Labour Code and its Regulations.....	19
Discussions at the bargaining table	21
Position of the Guild	22
Explanation of Guild proposals	25
The Economic Proposal Package	27
Overview of Guild Position	27
Economic circumstances of Marine Atlantic.....	27
Economic circumstances of the Government of Canada.....	30
Cost of living.....	30
Recruitment and retention at Marine Atlantic.....	32
Use of Contractors by MAI.....	37
Comparators	39
Summary of Guild wage proposals	44
Non-Monetary Proposals	45
Article 12.4 – Promotion and Transfer Between Groups.....	46
Article 13.5 – Bulletining and Filling Positions	48
Article 13.10(b) – Note 1.....	51
Article 17 – Reporting on Board.....	53
Article 17.7 – Travel Allowance Program.....	55
Article 17.10 – New.....	57
Article 23 – Annual Vacations	58
Article 29 – Dirty Work Bonus.....	60
Article 41 – Life Insurance Upon Retirement.....	61
Appendix N – Retroactivity Clarification	62
Appendix O – Health and Welfare – Improvements	63
Discussion of Employer Proposals.....	65
Article 10.1 – Seniority Groupings	66
Article 12 – Deletions.....	68
Article 13.10(b), Note 1 – Deletion of the “10-day Rule”	71
Article 26.2 – Rates and Methods of Pay	72
Conclusion	73

Overview

1. These are the submissions of the Canadian Merchant Service Guild (the “Guild”) with respect to the terms and conditions of employment of the bargaining unit consisting of the on-board Licensed Deck Officers, Engineering Officers, and Electrical Engineering Officers (altogether, the “Licensed Officers”) employed on Marine Atlantic Inc.’s (“MAI”) fleet of ferries sailing between Nova Scotia and Newfoundland and Labrador.
2. MAI and the Guild have already agreed on a number of articles. This interest arbitration has been instituted to settle the remainder of the outstanding items between the parties. The parties are scheduled to meet in Sydney, Nova Scotia, on November 28th, 29th, and 30th, 2022.
3. The most important issues for the Guild relate to scheduling/hours of work and wages. The parties have agreed to use the first scheduled arbitration date (November 28th) for mediation of the scheduling / hours of work proposals. The parties have agreed that if a mediated resolution is not reached on that issue, the parties will proceed to arbitrate it together with all other issues on the remaining scheduled dates (November 29th and 30th).

History of Bargaining

4. The current collective agreement had a term of January 1st, 2017 to December 31st, 2019. The terms of this agreement were determined through a June 18th, 2018, interest arbitration award by James C. Oakley, K.C.
5. In the current round of bargaining, the Guild gave Notice to Bargain on September 3rd, 2019. Commencement of bargaining was delayed in 2020 due to the COVID-19 pandemic and other factors.
6. The parties first met for bargaining of this collective agreement on February 2nd and 3rd, 2021. The parties exchanged proposals and commenced negotiations at this time. Negotiations resumed on March 11th and 12th, 2021. However, after the Guild raised the issue of rest day compensation being non-compliant with the *East Coast and Great Lakes Shipping Employees Hours of Work Regulations*, 1985 C.R.C., c.987¹, negotiations did not continue for a long time.
7. On March 16, 2022, the Guild and MAI engaged in mediation with a conciliator to try and resolve the hours of work issues. On March 24, 2022, the parties tentatively agreed on an averaging period proposal. In May 2022, MAI advised that it had submitted this proposal to Employment and Social Development Canada to ensure compliance with the *East Coast and Great Lakes Shipping Employees Hours of Work Regulations*. These events will be discussed in further detail below.
8. The parties met again to continue negotiations on June 1st, 2nd, and 3rd, 2022, however this resulted in an impasse. On June 10th, 2022, the Guild applied for the assistance of a Federal Conciliator. The parties met with the Federal Conciliator on August 3rd and 4th,

¹ *East Coast and Great Lakes Shipping Employees Hours of Work Regulations*, 1985 Guild's Book of Authorities, Tab 1

2022, however they were unable to reach a tentative agreement. At this time, both parties agreed to proceed to interest arbitration.

Background to the Issues

9. MAI is a federal Crown Corporation formed in 1986 and tasked with providing the constitutionally mandated passenger and freight marine transportation system between Nova Scotia and Newfoundland and Labrador.²
10. MAI operates terminals in Port Aux Basque and Argientia, Newfoundland and Labrador, and North Sydney, Nova Scotia. Ferry services operate on two routes in a year-round, 96 nautical mile daily ferry service between Port aux Basques and North Sydney, and a seasonal 280 nautical mile ferry service between Argientia and North Sydney.³
11. To fulfill its mandate, MAI operates a fleet of four ice-class vessels that cross the Cabot Strait between Nova Scotia and Newfoundland and Labrador. These ships have additional strengthening and specifications to enable it to navigate through sea ice: *MV Blue Puttees*, *MV Highlanders*, *MV Atlantic Vision*, and the *MV Leif Ericson*.⁴ As this service is required year round, and through harsh winter conditions, MAI requires a highly trained and skilled crew to ensure safety and reliability on the voyage.⁵
12. The Guild is the certified bargaining agent a bargaining unit described as “all licensed personnel aboard all vessels owned or operated by Marine Atlantic Inc., excluding Master, Chief Engineer, Chief Electrical Engineer, and those above.”⁶
13. The collective agreement for this bargaining unit is known as Agreement “A”, as distinguishable from the collective agreements covering the other bargaining units of this

² *Newfoundland Act* (U.K), 12 & 13 Geo. 6, c.22 (formerly *British North America Act, 1949*), s. 32, Guild’s Book of Authorities at Tab 2; *Marine Atlantic Inc. Acquisition Act*, S.C. 1986, c. 36, Guild’s Book of Authorities at Tab 3.

³ Marine Atlantic 2021-2022 Annual Report, at pg. 4; Guild’s Book of Documents at Tab 1.

⁴ *Ibid.*

⁵ *Ibid* at pg. 12.

⁶ Canada Industrial Relations Board, Order No.: 9247-U (“Certification Order”), Guild’s Book of Documents at Tab 2.

employer. These consist of Agreements “B” through “F”. In short, the other units consist of the following:

- Agreement B⁷: Agreement B covers Marine Atlantic’s unlicensed vessel personnel. These employees are represented by Unifor. The unlicensed personnel include the deck hands and cooks. The current collective agreement is expired and had a term of January 1st, 2017 – December 31st, 2019.
- Agreement C⁸: Agreement C covers Marine Atlantic’s shore-based maintenance personnel. These employees are also represented by Unifor. The current collective agreement is expired and had a term of January 1st, 2017 - December 31st, 2019.
- Agreement D⁹: Agreement D covers Marine Atlantic’s short-based clerical and terminal personnel. These employees are represented by the USW/ILA Council of Trade Unions. The Guild understands the current agreement has recently been negotiated, and may not have been compiled yet. The previous collective agreement expired and had a term of January 1st, 2017 – December 31st, 2019.
- Agreement E¹⁰: Agreement E covers Marine Atlantic’s senior personnel, the Masters, Chief Engineers and Chief Electrical Engineers. These employees are also represented by the Guild. The current collective agreement is expired, and had a term of January 1st, 2017 – December 31st, 2019. Interest arbitration dates are set for December 20th and 21st, 2022.

⁷ Collective Agreement between Marine Atlantic Inc. and Unifor (Agreement B) January 1, 2017 – December 31, 2019; Guild’s USB Folder of Collective Agreements.

⁸ Collective Agreement between Marine Atlantic Inc. and Unifor (Agreement C) January 1, 2017 – December 31, 2019; Guild’s USB Folder of Collective Agreements.

⁹ Collective Agreement between Marine Atlantic Inc. and The USW/ILA Council of Trade Unions (Agreement D) January 1, 2017 – December 31, 2019; Guild’s USB Folder of Collective Agreements.

¹⁰ Collective Agreement between Marine Atlantic Inc. and the Canadian Merchant Service Guild. (Agreement E) January 1, 2017 – December 31, 2019; Guild’s USB Folder of Collective Agreements.

- Agreement F¹¹: Agreement F covers Marine Atlantic's office personnel. These employees are represented by Public Service Alliance of Canada. The current collective agreement is expired, and had a term of January 1st, 2017 – December 31st, 2019.
14. The job descriptions for each classification can be found at Tab 3 of the Guild's Book of Documents. In very general terms, the Deck Officers are responsible for the loading and unloading of cargo and passengers, and the navigation of the vessel. Engineering Officers are responsible for operating and maintaining the electrical systems on the vessels.¹²
 15. The seniority within each job category is as follows, in descending order:
 - (i) Deck Department: Chief Officer, First Officer, Second Officer, Third Officer. The Chief Officer reports directly to the Master of the vessel. The Master is in the Agreement "E" bargaining unit.
 - (ii) Engineering Department: Second Engineer, Senior Engineer, Junior Engineer. The Second Engineer reports to the Chief Engineer, who in turn reports to the Master. The Master and Chief Engineer are in the Agreement "E" bargaining unit.
 - (iii) Electrical Engineering Department: Senior Electrical Engineer, Junior Electrical Engineer. These members report to the Chief Electrician, who reports to the Chief Engineer, who reports to the Master. The Chief Electrician, Chief Engineer, and Master are members of the Agreement "E" bargaining unit.¹³
 16. All Licensed Officers work a "two week on, two week off" schedule running from approximately the 1st to 15th of every month (Tour A) and the 16th to the end of each

¹¹ Collective Agreement between Marine Atlantic Inc. and The Public Service Alliance of Canada, Local 80180 (Agreement F); Guild's USB Folder of Collective Agreements.

¹² Marine Atlantic Job Descriptions, Guild's Book of Documents at Tab 4.

¹³ *Ibid.*

month (Tour B). For each day worked during a tour, the Licensed Officers earn an unpaid 'rest day'.

17. During each tour, regular working hours consist of 12 hours per day at regular pay, usually organized in a "six hours on, six hours off" fashion. Engineers generally work a "four and eight" system, with four hours work followed by eight hours' rest, then four-hour watches. Overtime is payable for any time worked continuous with, before, or after the regular hours of duty.

Principles of Interest Arbitration

18. The Officers represented by this bargaining unit do not presently have the ability to strike, because of previous determinations made by the Canadian Industrial Relations Board. The role of the interest arbitration board, in such cases, is to “create an agreement that serves to replicate, as much as possible, what might reasonably have been achieved through free collective bargaining with final resort to the option of strike or lockout”.¹⁴
19. As stated by the Supreme Court of Canada in *Saskatchewan Federation of Labour*, 2015 SCC 4, the role of the interest arbitrator is to provide a meaningful mechanism for resolving collective bargaining disputes when the *Charter*-protected right to strike is impaired by legislation.¹⁵
20. In the Guild’s submission the generally-accepted legal principles that apply to this interest arbitration are as follows:
 - (1) The primary consideration for the interest arbitrator is to attempt to replicate, as closely as possible, the results of free collective bargaining;
 - (2) Replication should be based on an objective analysis of relevant factors – in particular, comparability;
 - (3) Substantial wage increases may be appropriate to address recruitment and retention concerns, to address cost of living concerns, or to maintain appropriate relativity between comparators;
 - (4) The interest arbitrator should be wary of accepting “ability to pay” arguments in the context of employees in the public sector (including those in the largely publicly-funded sector, as in the present case), particularly when the bargaining unit cannot strike.
21. Interest arbitrators have developed a “catalogue of relevant criteria to ensure that the process in which they are engaged will be firmly seated on a principles and rational

¹⁴ *Canadian Merchant Service Guild v. Marine Atlantic Inc. (Re: Agreement ‘A’)*, August 24, 2015 (Ashley) at para 7. Guild’s Book of Authorities at Tab 4.

¹⁵ *Saskatchewan Federation of Labour*, 2015 SCC 4 at para 94. Guild’s Book of Authorities at Tab 5.

basis”.¹⁶ As summarized in by Arbitrator Kuttner in *Halifax (Regional Municipality) v. I.A.F.F., Local 268*, 1998 CarswellNS 553, at para 27, the classic list of criteria for interest arbitrators to consider when attempting to achieve the goal of replication was developed by Arbitrator Owen Shime, as follows:

1. Public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions;
 2. Cost of living;
 3. Productivity;
 4. Comparisons - internal;
 5. Comparisons - external;
 6. Comparisons -external not in the same industry but work of a similar nature.¹⁷
22. This is not a closed list of criteria. Some criteria will be given greater weight, depending on the particular circumstances. Arbitrator Kuttner again commented on the ‘Shime Criteria’ in 2013:
- “The Shime principle undergirds the entire framework of analysis commonly employed in the arbitral forum – the two motifs of replication and comparability. Where replication and comparability fail to ameliorate substandard wage rates and working conditions, then the mode of analysis must give way to one which acknowledges and then allows for systemic rectification of the inequitable burden placed upon any group of public sector employees who are subject to them.”¹⁸
23. Finally, this replication assessment cannot be conducted “in a vacuum, or simply by pulling concepts or numbers out of the air.” It requires “objective consideration of relevant comparators to determine what would be acceptable in the particular workplace”.¹⁹

¹⁶ *Halifax (Regional Municipality) v. I.A.F.F., Local 268*, 1998 CarswellNS 553 at para 27. Guild’s Book of Authorities at Tab 6.

¹⁷ *Ibid.*

¹⁸ *In the Matter of an Interest Arbitration held Pursuant to a Collective Agreement between the Professional Association of Residents in the Maritime Provinces and various Healthcare Employers*, March 1, 2013 (Kuttner, Dunstan, Power), at para 81. Guild’s Book of Authorities at Tab 7.

¹⁹ *Seamanning Service Ltd. and CMSG (acting for and on behalf of A.P. Moller/Maersk A/S)*, Re 2009 CarswellNat 6780 at para 13. Guild’s Book of Authorities at Tab 8.

24. Comparability thus plays an essential role in achieving the goals of interest arbitration. This exercise requires the interest arbitrator to consider other relevant bargaining relationships to determine if a comparison or relativity between two or more groups of employees can be drawn. The comparison is based upon objective criteria such as the nature of the work, the skills abilities and qualifications needed to perform the work, and the circumstances in which the work is performed. As Arbitrator Kuttner described:

“30 The Board wishes to dispel a misapprehension which some may have as to the comparability factor. It is not premised upon conscious bargaining choices as is sometimes asserted. Whether in their historical bargaining relationships particular parties have articulated comparability or relativity as between themselves and other bargaining relationships is not determinative. Rather, other bargaining relationships become relevant if the empirical evidence supports the drawing of a particular comparison or relativity as between two groups of employees based upon objective criteria, including the nature of the work, skills, abilities and qualifications required and circumstances in which they are exercised. All of this is but another way of saying that the interest arbitration process takes place within the general climate of the market, in much the same way as does the collective bargaining process. But because the parties have forsworn recourse to economic sanction - a process which is rational in its own terms - to test the limits of what the market will bear vis-à-vis their particular relationship, an arbitration board must do the same by a process which is likewise rational.”²⁰

25. Although it is generally accepted that interest arbitration should be a fairly conservative process, ‘breakthrough provisions’, such as significant wage increases, will be awarded when it is just and reasonable:

“It is generally accepted that Interest Arbitration must take a fairly conservative, incremental approach because, if it did not, the temptation to resort to Interest Arbitration may operate as a disincentive to good faith bargaining. That said, Interest Arbitration must do more than merely allow the terms and conditions of employment to stagnate. Arbitrator Christie expressed this balancing of interests well in Re

²⁰ Supra, note 16 at para 30.

Canadian Merchant Service Guild and Northumberland Ferries Ltd. (2004, unreported), as follows:

“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 principle 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.”²¹

26. Interest arbitrators have also accepted that the general economic climate in which the parties operate is a relevant consideration in the replication analysis. As stated by Arbitrator Samuels in *Birchwood Terrace Nursing Home and UFCW, Local 175, Re 1996 CarswellOnt 7137*:

21 With respect to the general and local economic situation, in our view, these are critical considerations. In a free collective bargaining situation, employees who are considering going out on strike are very concerned with their job prospects elsewhere — if there's high unemployment, then there is little likelihood that employees will force a loss of jobs in the employer's enterprise, because the employees who are put on the street will have no other source of income. And the employees would be concerned with the cost to them of goods and services and the rate of inflation — if the rate of inflation is low, then there is much less incentive to strike for increases than in times when the rate of inflation is high. And in a free collective bargaining environment the level of settlements elsewhere weighs on the minds of both parties.”²²

²¹ *Supra*, note 19 at para 17.

²² *Birchwood Terrace Nursing Home and UFCW, Local 175, Re 1996 CarswellOnt 7137* at para 21. Guild's Book of Authorities at Tab 9.

Outstanding Guild Proposals

27. The following Guild proposals remain in dispute:

- **Article 19.1 (a):** Hours of Service
- **Article 20.1:** Rest Days
- **Article 26.2(a):** [NEW]
- **Article 26:** Rates and Method of Pay
- **Article 29:** Dirty Work Bonus
- **Article 12.4:** Promotion and Transfer Between Groups
- **Article 13.5:** Bulletining and Filling Positions
- **Article 13.10(b):** Note 1
- **Article 17:** Reporting on Board
- **Article 17.7:** Travel Allowance Program
- **Article 17.10:** [NEW]
- **Article 23:** Annual Vacations
- **Article 41:** Life Insurance Upon Retirement
- **Appendix N:** Retroactivity Clarification
- **Appendix O:** Health and Welfare – Improvements

Issue for Mediation: Hours of Work, and Scheduling

Summary of Issue and Guild's Related Proposals

28. The parties have agreed to begin the hearing with a mediated process to try to reach an agreement on these issues. They are complex issues that go to the heart of the collective agreement and the way work is assigned and performed at MAI. In particular, they deal with how employees should be appropriately compensated with premium pay for hours worked within their regularly-scheduled tours, and work performed in addition to their regularly-scheduled tours.
29. The issues arose at the negotiating table because the Guild and its membership have long had concerns with the “rest days” / “bank days” system as it currently exists in the collective agreement and as it has been applied at MAI.
30. Over previous rounds of bargaining between the parties, the parties and arbitrators have made small adjustments to the articles related to bank days, but these tweaks have not addressed the fundamental dissatisfaction of the membership with the system.
31. Put simply, members have been dissatisfied with the bank days system because it often results in working beyond their regularly scheduled hours without proper compensation. The tweaks to this system have sought to improve access to appropriate premium compensation for these additional days worked. They have not, however, successfully addressed the underlying problem that so many extra days are worked without appropriate compensation.
32. In this round, the Guild raised for the first time the question of whether the existing system was compliant with the employment standards contained within *Canada Labour Code*²³ and associated regulations. In response, MAI initially asserted that it had an

²³ Canada Labour Code (RSC, 1985, c. L-2). Guild's Book of Authorities at Tab 10.

authorization from the Minister. After no one was able to locate such an authorization, MAI applied for one. After a lengthy process, the Minister declined to grant it.

33. It has become clear, as will be described below, that the existing system is not compliant with the *Canada Labour Code* and the applicable regulations. The fundamental legal problem is the same issue that has caused concern with the Guild membership for years—the current system results in employees regularly working above the 40-hours per week maximum set by the legislation and regulations, without the premium pay that is required under the law.
34. The Guild’s proposals related to Articles 19, 20, and 26 which will be detailed below, are designed to preserve the current work structure and schedule as much as possible, while bringing the collective agreement into compliance with the law. In so doing, the parties will also ensure that bargaining unit members are compensated appropriately for work beyond the legislated standard hours of work, and resolve the long-standing dissatisfaction with the present system.

The structure of work at MAI, as it relates to the present matter

35. As noted, vessel-based workers at MAI follow a tour pattern. Tour A is the first half of the month, and Tour B is the second half of the month.
36. If you have a position on Tour A, you should expect to work from approximately the 1st to the 15th of each month. Likewise, if in Tour B, you would work the second half. While this tour structure is not explicitly set out in the collective agreement (as it is, for example, in Agreement “E”), it has been consistent for years and is implicit in the functioning of the hours of work articles of the agreement.
37. Article 20(a) of the collective agreement provides that “officers shall be granted 1 rest day for each day worked....” At MAI that means that when you have completed your 15

or 16 days of work in a month, you are now “on rest days” for the remainder of that month. When your rest days are completed, the cycle repeats.

38. Article 20(c) provides that if an officer either loses or gains more rest days than called for by their schedules, the rest days will be “adjusted, as required, during the averaging period.”
39. As over the years there have been problems with officers accumulating too many “rest days” (typically by working during those rest days), Article 20(e) provides for a payout. Article 20(e) has been “tweaked” over the years. The current version provides that an officer with more than 20 rest days banked at the end of each quarter “of the averaging period” shall be paid out the excess days at time and one-half. There is then a caveat that this payout only applies if MAI has required the officer to work in excess of their regular schedule, after they have accumulated 20 rest days.
40. The “averaging period” specified in this article is implicitly a full year. The import of this averaging period will be described in more detail below. However, the general purpose of an averaging period is to adjust compensation when work schedules are irregular. In a simple example, if in a month you work 20 hours one week, 60 hours the next, 15 hours the next, and zero in the last week, you have averaged 23.75 hours in a four-week period. If in this example you have a standard 40-hour week, but a four-week averaging period, you would not be entitled to premium pay during the second week, despite having worked 60 hours (which was higher than the standard 40 hours of work).
41. MAI has historically conceived of itself as having an averaging period of a full year, for the purposes of work performed on rest days. The collective agreement is built around this assumption, at least insofar as it deals with full days or weeks of extra work. This historical understanding of the averaging period has had two key impacts: (1) it has allowed MAI to allow or require employees to work significant amounts beyond their

regular tour schedule without crediting them with premium pay, and (2) the Guild membership has consistently been dissatisfied with the lack of “overtime” credit for these hours.

42. An example of how this “averaging period” can work at MAI illustrates the reason for discontent: If in a month an employee was assigned to Tour B, she would expect to work every day from the 16th to the 31st of the month. If there were an unfilled partial vacancy in Tour A the next month, she could be required to work those days as well. She would then go home for half of her regular rest period, and return for her regular tour in the second half of the next month. At MAI, those extra eight days worked outside of her regular tour pattern would not be paid; they would be “banked” at straight time. She would only ever get premium pay for them if they met the criteria of Article 20(e).
43. In many instances, employees who have worked these extra days are then “held out” of their regular bulletined positions to “liquidate” accumulated bank days before they reach the payout provisions of Article 20(e).

Two aspects of the concept of averaging at MAI

44. There are two areas in which MAI’s work structure needs to meet the requirements of the *Code* and regulations. The first is within each scheduled Tour, and the second is in instances where employees work days in addition to their scheduled Tour.

Within each scheduled Tour

45. Article 19.1 says that “the principle of the 40-hour week is recognized, and an averaging period will apply.” The remainder of Article 19.1 specifies that employees will work 12-hours per day, divided up into various watches as required. This work schedule equates to 180 hours of regularly scheduled hours of work per tour.

46. The parties have long recognized that 180 regularly-scheduled hours per tour cannot average out to a 40-hour work week. For this reason, for each tour each officer is paid 174 hours at regular time, and 6 hours of overtime.
47. Over a 13-week (i.e. quarterly) averaging period, this structure works out to 40.15 hours per week of regular pay, which is nearly compliant with the 40 hours per week averaging requirement. The Guild's understanding is that Article 19.1's reference to "an averaging period will apply" is a reference to this 13-week averaging period.
48. The Guild has less difficulty with this part of the current structure, apart from a concern about that the built-in overtime likely needs to be adjusted upwards slightly to make the structure fully compliant with legislation. It has made a proposal, in Article 26.2(a), which suggests how this should be done.

Days worked in addition to the regularly-scheduled tour

49. It is in this respect where the Guild takes issue with the present system.
50. In every month where they have worked a full tour, officers have already worked an average of a 40-hour work week, and more, simply by working their regular tour. This means that any time officers work days in a month that are in excess of the regular tour, they are well outside the 40-hour work week average.
51. In ordinary circumstances, this excess work would require premium pay. The historical practice of the "one year averaging period" at MAI has allowed it to avoid paying members this premium pay. They are compensated for the extra work, but only by having days "banked" at straight time, and with all the caveats described above.

52. The fundamental problem with this system, which the Guild identified to MAI at the bargaining table in this round, is that *the Canada Labour Code and associated regulations do not allow a year-long averaging period at this employer.*

The Canada Labour Code and its Regulations

53. Subsection 169(1)(a) of the *Canada Labour Code* requires that the standard hours of work: “shall not exceed eight hours in a day and forty hours in a week.”
54. There are regulations under the Canada Labour Code that deal specifically with hours of work, and related issues, in the marine industry: the *East Coast and Great Lakes Shipping Employees Hours of Work Regulations*, 1985 (C.R.C., c. 987)²⁴ (“the Regulations”). These Regulations also specify that: “Except as otherwise provided in these Regulations, the standard hours of work of an employee shall not exceed eight hours in a day and 40 hours in a week”: at subsection 4(1).
55. The Regulations go on to set out some modifications to the strict rule in subsection 4(1). These sections are central to the present dispute between the Guild and MAI. They are as follows:

Modified Work Schedule

6 (1) Subject to subsections (2) and (3), on the application of an employer or an employers' organization, the Head of Compliance and Enforcement, subject to such conditions as he may impose, may authorize the alteration of the standard hours of work for any period specified by him.

(2) No authorization referred to in subsection (1) shall be made unless the applicant has satisfied the Head of Compliance and Enforcement that it is justified by reason of the operational requirements of the undertaking and, in the opinion of the Head of Compliance and Enforcement, is not detrimental to the welfare of the employees.

²⁴ *Supra*, note 1.

(3) An authorization referred to in subsection (1) shall not authorize hours of work exceeding 40 hours in a week on an average for any period specified in the authorization.

Averaging

7 (1) Where the nature of the work necessitates irregular distribution of hours of work of any class of employees, with the result that the employees within that class have no regularly scheduled daily or weekly hours of work, the hours of work in a day and the hours of work in a week of an employee may be calculated as an average for a period not exceeding 13 consecutive weeks.

(2) The standard hours of work (being the hours for which the regular rate of pay may be paid) of an employee within a class shall be 520 hours where the averaging period is 13 weeks or where the averaging period selected by the employer is less than 13 weeks, the number of hours that equals the product obtained by multiplying the number of weeks so selected by 40.

(3) Where an employer adopts an averaging period under this section, he shall forthwith notify the Head of Compliance and Enforcement indicating the class and the number of employees to which it applies and the period for which he is averaging.

56. In essence, section 6 of the Regulations says that the Head of Compliance and Enforcement may authorize deviations from the standard hours of work set out in the regulations so long as certain conditions are met: (1) the employer must apply, (2) the alternation is justified by the operational requirements of the business, (3) it is not detrimental to the welfare of employees, and (4) work does not exceed an average of 40 hours per week within any period specified.
57. Section 7 says that the hours of work of employees may be averaged across a period of not more than 13 weeks when "the nature of the work necessitates irregular distribution of hours of work of any class of employees, with the result that the employees within that class have no regularly scheduled daily or weekly hours of work."

58. In sum, the starting point is 40 hours of work in each week. That can be deviated from with a modified schedule only if there is authorization from the Minister, or if you are in the type of operation to which section 7 applies and your averaging period does not exceed 13 weeks. Neither of these conditions exists at MAI presently.

Discussions at the bargaining table

59. On March 11-12th, 2021, the third and fourth days of negotiations, the Guild raised at the table its view that the compensation for officers who are required to work on their days of rest is not compliant the Regulations unless MAI had approval of the Head of Compliance and Enforcement. In response, MAI said that it did have such an approval. Negotiations were paused, while MAI sought documentation of that approval.
60. In about August 2021, MAI advised that it was unable to provide a documented authorization. MAI then made application to the Minister of Transport for an authorization pursuant to subsection 6 of the Regulations. From August 11, 2021, when the application was made, to March 15, 2022, there was no ruling from the Minister. On March 15 and 16, 2022, the parties returned to the negotiating table, and with the aid of a conciliator discussed the hours of work issues. They engaged in additional negotiations on March 23 and 24, and on March 24 agreed on a tentative resolution of the hours of work issues.
61. In May 2022, MAI advised the Guild that it had submitted the tentative resolution to the Minister to ensure compliance with section 6 of the Regulations. The parties continued to negotiate on other issues, but reached impasse on June 3, 2022. During that time both parties had correspondence with the Minister's office about the tentative resolution and the issues more broadly. On July 29, MAI requested a ruling from the Minister on its original application for a modified work schedule under section 6 of the Regulations.

62. By August 4, the parties had met again with a conciliator, but agreed they were at impasse and that they should proceed to interest arbitration. On August 10, the Minister ruled that MAI's application under subsection 6 was denied.²⁵

Position of the Guild

63. It has become clear to the Guild that the present work system is not compliant with the relevant law, because it improperly compensates employees who work on their days of rest. These employees end up working well outside the standard weekly hours. Working in excess of the standard weekly hours is acceptable under the *Code* and the Regulations, but only to the extent that the extra hours are compensated by appropriate premium pay.²⁶
64. Section 174 of the *Code* provides for this premium pay as follows:
- 174 (1) Subject to any regulations made under section 175, when an employee is required or permitted to work overtime, they are entitled to
- (a) be paid for the overtime at a rate of wages not less than one and one-half times their regular rate of wages; or
- (b) be granted not less than one and one-half hours of time off with pay for each hour of overtime worked, subject to subsections (2) to (5).
65. Put simply, the employees are entitled to 1.5 pay or banked time for each hour they work beyond the standard hours of work. By definition, this would include all hours worked on their rest days.
66. The conditions in the Regulations for an exemption to these requirements do not exist. MAI does not have an authorization under subsection 6 of the Regulations, and its recent application for one was denied.

²⁵ Decision from Director General dated August 10, 2022. Guild's Book of Documents at Tab 19.

²⁶ Note: Subsection 166 defines "overtime" as "hours of work in excess of standard hours of work."

67. The work schedule also does not meet the conditions for application of the averaging period in Subsection 7 of the Regulations.²⁷ In order to qualify for an averaging period, a workplace must have an irregular distribution of hours such that there are “no regularly scheduled daily or weekly hours of work.” That is not the case at MAI, where the hours of work are clearly set out in Article 19 of the collective agreement.
68. Given that the current system violates the law, and has long been unfair to employees besides, the Guild has proposed changes to Articles 19 and 20 that would address these problems.

Table of Guild Proposals Related to Hours of Work

Existing Language	Guild Proposal
<p>19.1(a) – Hours of Service</p> <p>19.1 (a)</p> <p>The principle of the 40-hour week is recognized and an averaging period will apply.</p>	<p>19.1(a) – Hours of Service</p> <p>19.1(a)</p> <p>The principle of the 40-hour week is recognized and an averaging period will apply of a 40-hour week in accordance with the Modified Work Schedule pursuant to Section 6 of the East Coast and Great Lakes Shipping Employees Hours of Work Regulations shall apply.</p>
<p>20.1 – Rest Days</p> <p>(a) Officers shall be granted 1 rest day for each day worked; such rest days to be taken according to the schedule laid down for each vessel.</p> <p>(b) Officers who cannot be regularly relieved shall be treated no less favourably than other</p>	<p>20.1 – Rest Days</p> <p>(a) Officers shall be granted 1 rest day for each day worked; such rest days to be taken according to the schedule laid down for each vessel.</p> <p>(b) In accordance with the Canada Labour Code, Officers who cannot be regularly</p>

²⁷ Note that Subsection 7 of the Regulations applies, rather than section 169 of the *Code*, which normally deals with averaging, by virtue of Subsection 3 of the Regulations, which reads: “The provisions of section 169 of the Act are modified to the extent set out in these Regulations for the purpose of the application of Division I of Part III of the Act to any class of employees employed on a ship that is operated by an undertaking or a business that comes within the legislative authority of Parliament and that is engaged in shipping from any East Coast or Great Lakes Port.”

<p>officers but must take their rest periods at times convenient to the Company.</p> <p>(c) Officers who lose rest days and officers who acquire more rest days than called for by their schedules, shall have their rest days adjusted, as required, during the averaging period.</p> <p>(d) Rest days shall be granted at terminal ports.</p> <p>(e) An officer, who has in excess of twenty (20) rest days banked at the end of the first quarter, second quarter or third quarter of the averaging period, shall be paid for such days at time and one-half their regular rate of pay for each day worked in excess of twenty (20) rest days. This provision only applies to the extent that the Employer has required an officer to work in excess of their regular schedule after they have accumulated twenty (20) rest days.</p>	<p>relieved shall be compensated for all hours worked at the rate of one-and-one-half times the officer's regular rate of pay.</p> <p>(c) Officers who lose rest days and officers who acquire more rest days than called for by their schedules, shall have their rest days adjusted, as required, during the averaging period.</p> <p>(d) Rest days shall be granted at terminal ports.</p> <p>(e) In accordance with the Canada Labour Code, all hours worked by an officer on a rest day, or outside their assigned or bulletined schedule, shall be banked at the rate of one-and-one-half times the officer's regular hourly rate of pay.</p> <p>An officer who does not request bank time off after a full shift has been accumulated may be scheduled off subject to operational requirements. Officers shall normally be scheduled off on bank time in order of the officer with the least seniority, unless a senior officer has accumulated more than fifteen (15) days in banked time in which case the officer with the least seniority who has accumulated at least fifteen (15) days in banked time will be scheduled off. Officers off work on banked time will be paid at the rate of one-and-one-half times the officer's regular rate of pay.</p> <p>When an officer provides the Company with written notice, they shall be provided the opportunity four times per calendar year to cash in a maximum of fifteen (15) bank days per notice at the rate of one-and-one-half times the officer's regular rate of pay.</p>
<p>26.2(a)</p>	<p>26.2(a) New addition:</p>

	<p>To ensure compliance with the Modified Work Schedule pursuant to Section 6 of the East Coast and Great Lakes Shipping Employees Hours of Work Regulations the workday shall consist of 11.25 hours at the regular rate of pay plus .75 hours at the overtime rate of pay. Any additional hours worked in the workday shall be paid at the overtime rate of pay.</p>
--	--

Explanation of Guild proposals

69. The Guild's proposals related to Articles 19 and 20 evolved throughout the course of bargaining, as the Guild learned the factual and legal background to the issue. The present proposals are those presented to MAI during the conciliation session in August 2022.
70. The proposal related to Article 19.1(a) relates to the overtime inherent in the regular tour schedule (as opposed to work performed while on scheduled days of rest).
71. It has become clear that while the regular tour structure may be nearly compliant with the Regulations, it is not exactly compliant. It will likely be necessary to recognize some amount of additional overtime hours inherent in that schedule, and build them into the compensation structure. The Guild's proposal for how to accomplish that is set out in the suggested addition to Article 26.2(a). It would increase the daily built-in overtime to 0.75 hours, with 11.25 hours paid at the regular rate.
72. The Article 20 proposals make the parties compliant with the law by building in recognition of the fundamental requirement that premium compensation (whether paid or banked) is required at all times when work is performed outside the *Code's* standard hours of work. By definition, work performed on "Rest Days" must be compensated at time and one-half, as required by legislation.

73. The proposals in Article 20.1(e) represent practical ideas to administer “banked time” more effectively. They recognize that as long as extra work is compensated at the appropriate premium, the parties have some flexibility to negotiate the administration of the resulting banks.
74. These proposals are based on similar provisions within Agreement “E,” at Article 16. The proposed article would create a structure for allowing MAI to schedule employees off once they had accumulated at least a full tour of banked days, and some practical seniority-based requirements for how that would be administered. It would also provide officers the opportunity to “cash out” banked time, four times per year.
75. Both measures are designed to give MAI and the officers themselves the ability to control the accumulation of banked time by officers.
76. It is the Guild’s submission that, in totality, these proposals: bring the parties into compliance with the law, remedy a long-standing unfairness and source of dissatisfaction among employees, and provide the means to sensibly administer “banked time.”
77. Finally, the Guild notes that often the requirement for employees to perform additional work, on what would otherwise be their rest days, often arises because of a shortage of officers. The Guild’s monetary proposals seek to make MAI’s compensation more competitive with comparators. It is hoped that would go some way toward remedying chronic recruitment and retention difficulties, and in turn drastically reduce the need for employees to work outside of their schedule tour patterns.

The Economic Proposal Package

Overview of Guild Position

78. The Guild proposes that Article 26 be amended to provide wage increases of 5 percent for each year of the Collective Agreement (January 1, 2020; January 1, 2021; and January 1, 2022). The Guild also proposes an immediate market adjustment of 9% upon signing of the new Collective Agreement.
79. The Guild's proposal for a significant wage increase over the term of this Collective Agreement is supported by the following:
 - a. Marine Atlantic's ability to afford such an increase;
 - b. The fact that Marine Atlantic's pre-pandemic economic situation is likely to be realized throughout the term of the contract;
 - c. The cost of living/inflation;
 - d. Marine Atlantic's recruitment and retention issues; and
 - e. The gap between wages for MAI Licensed Officers when compared to their public and private industry counterparts.
80. The Guild's position is that it must achieve substantial wage increases for all members of the bargaining unit, as they have not kept pace with wages for comparable employees within the public and private sectors. This declining wage position of MAI's Licensed Officers has had a negative effect on employee morale, recruitment and retention, quality of work life, and the ability to staff vessels appropriately.

Economic circumstances of Marine Atlantic

81. One factor in most interest arbitrations is the extent to which an arbitration board should consider claims by an Employer that it cannot afford to pay wage increases that would otherwise be reasonable. In the present matter, reasonable wage increases are those that would restore the historic relativity between the bargaining unit and its appropriate

comparators, particularly the GSO, and also to address the recruitment and retention issues impacting MAI's ability to appropriately staff its vessels.

82. It is important to note that MAI, as a federal Crown Corporation, receives an annual subsidy from the Government of Canada as it delivers a constitutionally mandated public service. Each year, this subsidy constitutes the majority of MAI's revenue. In addition to this, revenue is generated from its operations, including customer ticket fares and other ancillary revenue.²⁸

(a) In 2019-2020, Marine Atlantic spent \$242.5 million dollars. It generated \$104.5 million through customer tariffs and other ancillary revenue. It received \$135.3 million dollars via the annual subsidy from the Government of Canada.²⁹

(b) In 2020-2021, Marine Atlantic spent \$219 million dollars. It generated \$83 million dollars through customer tariffs and other ancillary revenue. It received \$135.6 million dollars via the annual Government of Canada subsidy.³⁰

(c) In 2021-2022, Marine Atlantic spent \$239.9 million dollars. It generated \$108.2 million dollars through customer tariffs and other ancillary revenue. It received \$131.4 million dollars via the annual Government of Canada subsidy.³¹

83. The Guild anticipates that MAI will argue that its ability to afford wage increases has been severely impacted by the COVID-19 pandemic. The Guild does acknowledge that the pandemic resulted in a decrease in revenue during recent years, in particular the 2020/2021 year. However, as shown above, and in greater detail within the 2021-2022 Annual Report and other quarterly financial statements, MAI did not suffer as much as it

²⁸ Marine Atlantic 2019/2020 Annual Report; Guild's Book of Documents at Tab 4

²⁹ *Ibid.*

³⁰ Marine Atlantic 2020/2021 Annual Report, Guild's Book of Documents at Tab 5.

³¹ *Supra*, note 3.

initially expected at the outset of the pandemic, and is well on its way to resume its pre-pandemic projected growth.

84. For example, MAI was required to release an addendum to its 2020/21-2024/25 Corporate Plan when its 2020/2021 year to date traffic results were far higher than originally forecasted at the outset of the pandemic. Notably, as the addendum states, factors such as the 'Atlantic Bubble' allowed greater passenger levels than projected, and commercial traffic to be "much closer to normal traffic volumes than expected". (pg 2)
85. Although passenger traffic was down during the 2020/2021 year, the number of commercial vehicles grew by roughly 9%. This surge in commercial traffic was driven largely by a shift to online shopping, propane shipments, government stimulus, and a spike in the shipment of building materials due to a surge in home renovation projects. Further, during this same period, MAI also reduced spending on wages and benefits of employees by \$11 million dollars due to temporary layoffs, and fuel spending was reduced \$14 million dollars due to fewer sailings and historically low fuel prices.³²
86. As can be expected, MAI reported significant increases in revenue for the 2021/2022 year as COVID-19 restrictions eased. For example, in the Quarterly Financial Report dated June 30, 2022 (covering the three month period ending June 30, 2022) MAI's Financial Performance Snapshot shows saw a substantial 32% increase in revenue compared to the prior year.³³ During this same period, MAI reported a 186% increase in passengers and a 270% increase in passenger units compared to the prior year.³⁴
87. Thanks to a recent partnership between MAI and the Government of Newfoundland and Labrador called "Come Home 2022", ticket sales for the 2022 summer season saw a

³² CBC News, "Spike in Commercial Traffic Helped Marine Atlantic Endure Pandemic Upheaval" (December 14, 2021); Guild's Book of Documents at Tab 6.

³³ Marine Atlantic Inc. *Quarterly Financial Report June 30, 2022* at pg. 4; *Guild's Book of Documents* at Tab 7.

³⁴ *Ibid.*

drastic increase. MAI spokesperson Darrell Mercer stated that they've seen "approximately 8,000 reservations made between January 1 and March 7 for summer travel. That compares to just over 600 for the same period last year and is more than double the 3,300 books made during the same period in 2019 before the COVID pandemic struck."³⁵

88. The Guild submits that MAI is therefore still in a financial position to afford the proposed wage increases. Even after the losses of the 2020-2021 year, the data shows that MAI has recovered a large portion of these losses in 2021-2022 year, and a positive economic future is forecasted.

Economic circumstances of the Government of Canada

89. It is important to note that the Government of Canada, as the provider of the majority of MAI's operating budget, is also rebounding from the COVID-19 pandemic. As highlighted in the 2022 Federal Budget, the Canadian economy returned to its pre-pandemic level of activity in the fourth quarter of 2021.³⁶ Canada's real gross domestic product (GDP) saw a strong rebound of 4.6 percent in 2021, and is expected to grow by a still solid 3.9 percent in 2022 and by another 3.1 percent in 2023.³⁷ As noted by the Honourable Chrystia Freeland, "After a devastating recession—after wave after wave and lockdown after lockdown—our economy has not just recovered. It is booming."³⁸

Cost of living

90. As noted above, interest arbitrators have accepted that they are to take note of the general economic climate in which the parties function.

³⁵ VOCM News, "Marine Atlantic Bookings Surpass Pre-Pandemic Levels" (March 11, 2022) Guild's Book of Documents at Tab 8.

³⁶ Government of Canada, "A Plan to Grow Our Economy and Make Life More Affordable: 2022 Budget" (2022), at pg. 4, Guild's USB of Collective Agreements > Extra.

³⁷ *Ibid.* at pg. 14.

³⁸ *Ibid.* at pg. v (Forward).

91. Several recent arbitration awards also demonstrate that interest arbitrators have been willing to make awards that recognize the need for wage increases that take into account the rapidly-increasing cost of living.³⁹
92. Like all residents of Nova Scotia and Newfoundland and Labrador, the employees of MAI have seen the purchasing power of their wages diminish substantially over the past several years. As of 2022, the cost of living has increased at its fastest pace in decades, both at the national and provincial levels, and employee wages need to increase in response in order to alleviate some of this financial stress.
93. Nationally, the Consumer Price Index (CPI) in Canada, Nova Scotia, and Newfoundland and Labrador has increased considerably over in recent years with the Bank of Canada projecting that these inflation rates will not return to the normal 2 percent range before 2024⁴⁰:

Year	Canada: All-items CPI, Year-Over-Year ⁴¹	NFLD: All-items CPI, Year-Over-Year	NS: All-items CPI, Year-Over-Year
2019	1.9%	1.0%	1.6%
2020	0.7%	0.2%	0.3%
2021	3.4%	3.6%	3.6%
2022*	5.1%	4.5%	5.4%

*January-September 2022

94. The most alarming data, however, reflects the fact that the cost of living has taken the greatest jump when looking at just the past year. Between September 2021 and

³⁹ See, for example, *Pembina Trails School Division*, 2021 CarswellMAN 81 (Guild's Book of Authorities at Tab 11); *Vancouver Police Board*, 2021 CarswellBC 4229 (Guild Book of Authorities at Tab 12)

⁴⁰ Globe and Mail, "Inflation rate shatters expectations, hits 31-year high" (April 20, 2022). Guild's Book of Documents at Tab 9.

⁴¹ Statistics Canada, "Consumer Price Index by Reference Group" 2019-2022 (multiple documents); Guild's Book of Documents at Tab 10.

September 2022, for example, the national CPI grew a total of 6.9 percent⁴², Newfoundland and Labrador's CPI grew by 6.1 percent⁴³, while Nova Scotia's CPI grew by 7.3 per cent⁴⁴ – being the second highest in the country after Prince Edward Island. During the summer of 2022, the country reported the fastest annual increase in cost of living in almost 40 years when CPI reached a high of 9.1 percent.⁴⁵

Recruitment and retention at Marine Atlantic

95. Employers that do not offer competitive wages run a greater risk of losing valued employees, and being unable to attract new hires. This is particularly true with organizations that must retain and recruit highly specialized employees, such as the Licensed Officers represented within this bargaining unit.
96. Throughout the past decade, it has been widely reported that there is a worldwide shortage in qualified mariners. According to a 2016 industry report, and summarized in a recent article by the Washington Post, "the shortages were projected to be most acute for officers and other skilled labour such as mechanical engineers who are more likely to have landbound career options that don't require months away from home."⁴⁶ The report further warned that without greater recruitment and retention efforts, the shipping industry could face a labour shortfall– and particularly, a potential shortage of 150,000 shipping officers by 2025.⁴⁷ Practically, this worldwide shortage means that MAI must provide competitive rates if it is to compete globally for the limited number of qualified officers.

⁴² Statistics Canada, "Consumer Price Index by Reference Group" 2021-2022 (multiple documents) Guild's Book of Documents at Tab 11.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ CBC News, "Inflation rises again, to new 39-year high of 8.1%" (July 20, 2022); Guild's Book of Documents at Tab 12.

⁴⁶ Adam Minter, "The Next Shipping Crisis: A Maritime Labour Shortage", The Washington Post (November 6, 2021); Guild's Book of Documents at Tab 13.

⁴⁷ BIMCO, "BIMCO/ICS Manpower Report Predicts Potential Shortage of Almost 150,000 Officers by 2025" (May 17, 2016); Guild's Book of Documents at Tab 14.

97. In *Seamanning Service Ltd. and CMSG (acting for and on behalf of A.P. Moller/Maersk A/S)*⁴⁸, the interest arbitration board considered this worldwide shortage of mariners in its decision to award significant wage increases for Masters and Chief Engineers:

“60 It is worth noting that the Guild in its written submission referred to a world-wide shortage of qualified senior officers. While the Employer indicated that recruitment and retention has not been a problem with this Employer, and in fact there has been very little turnover in the group, it would be foolhardy to ignore these global trends altogether. In a climate in which particular work is valued, the wages of those doing that work must keep apace. To allow them to lag behind may in fact invite a retention problem, and would represent a false economy.

61 Looking at these comparators for the 2007 and 2008 year, and taking into consideration the Employer's acknowledgement that its wages must be in an acceptable range, we are able to conclude easily that this bargaining unit deserves a significant increase as of January 1, 2008 to bring it at least up to the prevailing standard. Not to do so would mean that they would simply not be competitive.”

98. In a 2010 interest arbitration award regarding the present parties, Arbitrator Ashley warned that “if recruitment and retention of employees is a real concern for an employer, it is essential that the terms and conditions of employment are sufficiently generous to attract new employees, and to retain existing employees”⁴⁹.
99. The Guild’s position is that this is precisely the case at this time. It has become increasingly difficult for MAI to recruit Licensed Officers over recent years. This is supported by the fact that MAI has consistently had vacant positions that it cannot fill. This trend is continuing, and becoming progressively worse due to the rate in which Licensed Officers are retiring and leaving MAI for other employment.

⁴⁸ *Supra*, note 19 at para 60.

⁴⁹ *Marine Atlantic Inc. v. Canadian Merchant Service Guild (Agreement “A”)*, August 5, 2010 (Ashley) at para 51; Guild Book of Authorities at Tab 13.

100. The Guild understands there are long-term and ongoing unfilled vacancies at MAI. These are posted on the MAI website, as well as “bulletined” to the membership. The Guild observes that there are at least five current open postings for positions within this bargaining unit, although there are likely more vacancies than are presently posted.
101. MAI has recognized the acute difficulties with hiring Licensed Officers, evidenced by its recent decision to offer \$5,000.00 signing incentives for successful applicants in multiple bargaining unit positions – namely, Third Officer, Junior Engineers, Watchkeeping Engineers, and Chief Officer.⁵⁰ Of the open positions available on the MAI website, it is only those that fall within this bargaining unit that are offered signing incentives.
102. Simultaneously, MAI is having trouble keeping the officers once they become employed. This is particularly true for short-service employees who often leave for opportunities elsewhere in the Atlantic Provinces, Canada, and beyond.
103. The retention issue is further compounded by the fact that mariners are recognized as be an ‘aging workforce’. A recent Canadian Marine Industry Foundation report highlighted this issue in great detail, and emphasized the need to drive more youth into the marine sector to address the existing labour shortage:

“According to Transport Canada estimates, there were more than 1,200 job vacancies in 2020 onboard commercial vessels and ferries, and many of these were in the most critical areas to keep ships operating such as deck officers and engineers. In recent years, shortages like these have led to Canadian vessels being pulled out of service for periods of time, resulting in real economic losses.

Labour shortages have also hit agencies like pilotage authorities and the Canadian Coast Guard, with the public sector often competing for skilled employees from the same, small talent pool. There’s also a wide variety of career opportunities in ports and other shore-based marine operations.

⁵⁰ Recruiting Web Postings – Various Positions (multiple documents); Guild’s Book of Documents at Tab 15.

The same estimates by Transport Canada found that 43% of the marine transportation workforce is expected to retire over the next 10 years. There is also the need to replace workers who voluntarily leave the marine sector or who move to shore-based positions. It is projected that there will be a need to hire approximately 19,000 new seafarers over the next 10 years.”⁵¹

104. Anecdotally, the Guild has been able to identify twenty-nine Licenced Officers who have left MAI from 2019 to present (October 2022). This is the best information available to the Guild at this time, based upon what the Guild has been able to learn from its membership, membership data it has on file, and any resignation letters on which the Guild was copied.⁵²
105. Of the twenty-nine Licensed Officers who left or retired from MAI in that period, twenty were Engineers, eight were Mates/Officers, and one was an Electrical Engineer. These employees have gone to a variety of other employers, including the GSO, Secunda/Maersk, Newfoundland Ferries, Bay Ferries, and Algoma.
106. In addition to the twenty-nine bargaining unit employees who have left or retired since 2019, the Guild is aware of four Agreement “B” employees in the Engine Room Assistant classification who had achieved the necessary certification to be Engineers within the “A” bargaining unit, but left for other employment rather than continue with MAI. This MAI even has difficulty promoting from within its own ranks.
107. The Guild reviewed its bargaining unit numbers from 2019 through 2022, and has observed that, particularly within engineering classifications, there are fewer employees now than in 2019. In this table, the black figures represent total officers employed within the category, and the red figures represent *available* officers within the category (who

⁵¹ Canadian Marine Industry Foundation, “Imagine Marine: National Youth Survey” (2022), pg. 4; Guild’s Book of Documents at Tab 16.

⁵² The spreadsheet containing the gathered information is attached within the Guild’s USB of Collective Agreements > Extra.

were not, for example, actively employed in another bargaining unit and therefore unavailable to work in Agreement “A” positions):

	2019	2019	2020	2020	2021	2021	2022	2022
Engineers	81	75	82	76	78	75	79	64
Electricians	29	22	28	20	26	20	25	20
Chief Officers	18	9	17	9	19	10	21	12
1 st Officers	25	15	23	14	27	18	27	18
2 nd Officers	41	32	40	31	42	33	42	33
3 rd Officers	46	37	43	34	44	35	47	37

108. To summarize, by the Guild’s count the engineers and electricians are down substantially in available positions, while the deck side is up very slightly from 2019 (which in itself does not tell the complete story because, as the Guild has understood it, the 2019 numbers already did not reflect a full complement). The differentials are summarized here:

2022 vs. 2019	Differential	Differential
Engineers	-2	-11
Electricians	-4	-2
Chief Officers	3	3
1 st Officers	2	3
2 nd Officers	1	2
3 rd Officers	1	0

109. It is additionally noteworthy that the Guild has observed that the “spare board” numbers are very low. MAI typically maintains a spare board of qualified officers who do not yet have bulletined position. These spares are used to backfill bulletined officers who are on leave, and for other purposes. At present, the spare list is low because there are open bulletined positions for qualified officers to occupy. One consequence of low spare board numbers is difficulty in officers getting leaves granted because of inability to backfill their positions.

110. Similarly, the Guild is aware of officers from Agreement “A” who have been promoted to Agreement “E,” but who have not been able to complete that transition because sufficient officers are not available to backfill their positions in Agreement “A.”
111. These trends are likely to get progressively worse in the coming years in light of the global shortage in Licensed Officers. The Guild submits that the evidence is clear and convincing that if the recruitment and retention issues are not addressed, MAI will continue to be unable to adequately staff its operations, and the problem will only become more acute.

Use of Contractors by MAI

112. In the spring of this year, amid ongoing recruitment and retention difficulties, the Guild became aware that MAI planned to employ external contractors to staff vacant bulletined positions.
113. This type of intended use was, to the Guild’s knowledge, a first for MAI—while MAI has used contractors in the past, the typical use is for a short-term sharp increase in work volume related to a particular project or installation, or to provide specialized skills related to a particular piece of equipment.
114. The Guild’s understanding was that in this case, the contractors would to be used to “work a regular tour,” because there were insufficient available members of the bargaining unit to fill all positions.
115. The Guild’s membership was deeply concerned about MAI using contractors in this way, and particularly so once it became known that MAI was paying the contractors substantially more than it paid Guild members to work in the same positions.

116. From May through September 2022, the Guild is aware of four contract employees who were employed on MAI vessels. Each was signed on to the vessel as a Watch-Keeping Engineer, although the Guild is aware of only one of them actually holding a watch.

117. The Guild was able to gather information about the rates of pay received by these workers.⁵³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

118. In addition to this, the contractors were paid overtime when applicable, and were compensated for travel, both on a per-kilometre basis for kilometers driven *and* a day's pay for days spent traveling. Neither of these benefits are available to MAI employees.

119. It is the Guild's submission that the use of contractors for this purpose by MAI is indicative of two things: First, it demonstrates that there is a very real recruitment and retention problem—MAI did not have the ability to perform available work with the existing employee complement. Second, the levels of pay that MAI paid to these contractors demonstrates that MAI pay levels are not sufficient when competing with other employers—in order to get these workers “in the door,” MAI needed to pay them approximately 1.6 times more than its own employees are paid.

120. Given these current recruitment and retention issues, the Guild's position is that significant wage increases are warranted. MAI can no longer afford to lose existing or potential qualified officers to its industry competitors in anticipation of an growing labour shortage. If the current issues are not addressed, MAI risks being unable to fulfill

⁵³ Summary document prepared by negotiating committee; Guild's Book of Documents at Tab 18.

its constitutional mandate of offering freight and passenger service between Nova Scotia and Newfoundland and Labrador.

Comparators

Government Ships' Officers (GSO)

121. The Guild's position is that the Government Ships' Officers group, employed by the Federal Government (the "GSO") represents the most appropriate comparator against which MAI should be measured. The federal government group has been able to recruit Licensed Officers away from MAI, as it offers significantly higher wages for work that is substantially similar in nature. Further, the GSO, like MAI, operates within the context of the federal public sector. For these reasons, the GSO is the closest external comparator to the ship-based personnel of MAI.
122. Historically, GSO Licensed Officers have enjoyed higher salaries than those employed with MAI, despite the fact that MAI's fleet consists of vessels that are much larger, powerful, and more complex. The pattern illustrates that whenever MAI begins to narrow the gap between itself and the GSO, the GSO employees enjoy these market adjustments, which in turn, causes MAI to fall behind once again.
123. The most recent GSO interest arbitration award (the "GSO award") resulted in a 17% wage increase/market adjustment over the term of the collective agreement.⁵⁴ The Board awarded the following increases:

- | | |
|--------------------|------------------------------------|
| (a) April 1, 2014: | Increase all rates of pay by 1.25% |
| (b) April 1, 2015 | Increase all rates of pay by 1.25% |
| (c) April 1, 2016 | Increase all rates of pay by 1.25% |
| (d) April 1, 2017 | Increase all rates of pay by 1.25% |
| (e) April 1, 2017 | A market adjustment of 12% |

⁵⁴ *Canadian Merchant Service Guild and the Treasury Board (Ships' Officer Group)*, October 2, 2018 (Baxter, Herbert, Boettger); Guild's Book of Authorities at Tab 14.

124. The Board was persuaded to award this increase following consideration of the danger and importance of the Officers' work, the employer's difficulties with recruiting and retaining new Officers, the widening gap between GSO' salaries and its comparators, and the fact that some of the other employees in the crew had recently had a wage increase which, in some cases, elevated the crew members' wages above those of their supervising Officers.⁵⁵
125. It is important to note that this GSO award was only released on October 2nd, 2018. The current (expiring) Agreement "A" was signed on July 23rd, 2018. Therefore, this round of bargaining represents the Guild's first opportunity since the release of the GSO award to restore the historical relativity between the two groups.
126. As stated above, Licensed Officers at MAI have consistently been forced to play catch up with its GSO colleagues. Taking as an example the MAI Junior Engineer/3rd Officer position, when compared to its GSO counterpart – a 4th Engineer/3rd Officer (MAO-3), is clear that applying a pattern increase of 2.0% will not narrow the gap at all – instead, by the end of the a three year agreement (assuming a modest 1.5% increase for GSO Officers with a new collective agreement), the wage discrepancy would be at historic highs and almost completely out of reach:

MAI Officers vs. Equivalent GSO Officers (EMPLOYER WAGE PROPOSAL)							
MAI Junior Engineers & 3rd Officers vs. GSO 4th Engineers & 3rd Officers (MAO-3):							
MAI projected at 2.0% and GSO projected at 1.5%							
Date	MAI	Annual Increase		GSO	Annual Increase	\$ Differential	% Differential
2006	\$23.72			\$24.68		\$0.96	4%
2007	\$24.25	2.23%		\$25.18	2.03%	\$0.93	4%
2008	\$25.04	3.26%		\$25.68	1.99%	\$0.64	3%
2009	\$25.74	2.80%		\$29.53	14.99%	\$3.79	15%
2010	\$26.47	2.84%		\$30.12	2.00%	\$3.65	14%
2011	\$27.12	2.46%		\$30.35	0.76%	\$3.23	12%

⁵⁵ Collective Agreement between the Canadian Merchant Service Guild and the Treasury Board, Ships' Officers Group, 2018, at pages 11-16. Guild's Book of Documents at Tab 26.

2012	\$27.80	2.51%	\$30.81	1.52%	\$3.01	11%
2013	\$28.50	2.52%	\$31.43	2.01%	\$2.93	10%
2014	\$29.00	1.75%	\$31.82	1.24%	\$2.82	10%
2015	\$29.51	1.76%	\$32.22	1.26%	\$2.71	9%
2016	\$30.02	1.73%	\$32.62	1.24%	\$2.60	9%
2017	\$30.55	1.77%	\$36.99	13.40%	\$6.44	21%
2018	\$31.08	1.73%	\$37.54	1.49%	\$6.46	21%
2019	\$31.63	1.77%	\$38.10	1.49%	\$6.47	20%
2020	\$32.26	1.99%	\$38.67	1.50%	\$6.41	20%
2021	\$32.91	2.01%	\$39.25	1.50%	\$6.34	19%
2022	\$33.56	1.98%	\$39.83	1.48%	\$6.27	19%

*Note: MAI rates are effective January 1 of each listed year. GSO rates effective April 1 of each listed year.

127. The Employer's proposal, as evidenced by the above table, is insufficient, and will result in Officers continuing to leave MAI for the higher paying GSO positions. The Guild's proposal, on the other hand, seeks to restore a sense of parity with its GSO counterparts, and will make significant progress to closing this gap.

MAI Officers vs. Equivalent GSO Officers [GUILD WAGE PROPOSAL]						
MAI Junior Engineers & 3 rd Officers vs. GSO 4 th Engineers & 3 rd Officers (MAO-3): MAI projected at 5.0% (with 9% market adjustment) and GSO projected at 1.5%						
Date	MAI	Annual Increase	GSO	Annual Increase	\$ Differential	% Differential
2006	\$23.72		\$24.68		\$0.96	4%
2007	\$24.25	2.23%	\$25.18	2.03%	\$0.93	4%
2008	\$25.04	3.26%	\$25.68	1.99%	\$0.64	3%
2009	\$25.74	2.80%	\$29.53	14.99%	\$3.79	15%
2010	\$26.47	2.84%	\$30.12	2.00%	\$3.65	14%
2011	\$27.12	2.46%	\$30.35	0.76%	\$3.23	12%
2012	\$27.80	2.51%	\$30.81	1.52%	\$3.01	11%
2013	\$28.50	2.52%	\$31.43	2.01%	\$2.93	10%
2014	\$29.00	1.75%	\$31.82	1.24%	\$2.82	10%
2015	\$29.51	1.76%	\$32.22	1.26%	\$2.71	9%
2016	\$30.02	1.73%	\$32.62	1.24%	\$2.60	9%
2017	\$30.55	1.77%	\$36.99	13.40%	\$6.44	21%
2018	\$31.08	1.73%	\$37.54	1.49%	\$6.46	21%
2019	\$31.63	1.77%	\$38.10	1.49%	\$6.47	20%
2020	\$36.20	14.45%	\$38.67	1.50%	\$2.47	7%
2021	\$38.00	4.97%	\$39.25	1.50%	\$1.25	3%
2022	\$39.91	5.03%	\$39.83	1.48%	-\$0.08	0%

*Note: MAI rates are effective January 1 of each listed year. GSO rates effective April 1 of each listed year.

128. These figures demonstrate that a departure from the current pattern of economic increases is warranted for the Licensed Officers. Without such a departure, Officers will continue to leave MAI to work with the higher paying GSO, and MAI will exacerbate the already serious recruitment and retention problems. This need to achieve greater parity with its direct competition is even more acute in the context of a worldwide shortage of shipping officers and the rapidly increasing cost of living.

Comparator - Private Industry

129. MAI is also competing with companies in the private sector. The below table sets out the annual salaries that equivalent classifications are paid in the private industry – namely Teekay Atlantic Inc., Oceanex, and Maersk. Licensed Officers at each of these employers are also represented by the Guild.
130. As the table shows, Licensed Officers employed within private industry earn significantly higher salaries than those employed at MAI.⁵⁶ The Guild's position is that wages at MAI must rise to be more competitive with these private industry comparators if it is to be successful in recruiting and retaining employees.⁵⁷

⁵⁶ Note this comparison is based on Chief Officers, as this classification is present at each comparator. Differentials for other classifications are generally similar.

⁵⁷ Note that work systems vary somewhat between employers. Private industry often operates on a longer tour with a lay-day system, which builds overtime compensation pay into the annual pay to a greater extent than MAI.

Chief Officer Annual Salary – MAI vs. Private Industry Comparators				
DATE	MAI ⁵⁸	Teekay ⁵⁹	Maersk ⁶⁰	Oceanex ⁶¹
2018	\$85,584	\$146,457	\$133,646	\$95,918
2019	\$87,082	\$150,119	\$133,646	\$97,598
2020		\$153,873	\$133,646	\$99,306
2021			\$134,982	\$101,044
2022				

Internal MAI Comparators

131. There is not yet an established wage pattern among internal comparators at MAI. Of the six bargaining units, only one has settled a collective agreement for the relevant years. Agreement “D”, representing the shore-based clerical and terminal personnel, negotiated an agreement that the Guild understands provided two percent per year in each year of a three-year term.
132. Several considerations that highlight the need for more substantial increases for Agreement “A” were are present in relation to Agreement “D”. In particular, there is no suggestion of a recruitment and retention issue among that bargaining unit, and there is no distortion of historical relatively vs. comparator groups as is the case between MAI and the GSO bargaining unit.

⁵⁸ Note: the calculation for MAI is the hourly rate multiplied by 174 plus the hourly rate multiplied by 1.5 x 6. That total is then multiplied by 12 months to show the annual salary.

⁵⁹ *Teekay Agreement* (Guild’s USB of Collective Agreements) *6% Vacation Pay taken out of 2017 wage rates and then the the new collective agreement wage increases were added, 2.5% per year which would be the minimum amount of increase

⁶⁰ *Maersk Collective Agreement* (Guild’s USB of Collective Agreements)

⁶¹ *Oceanex Agreement* (Guild’s USB of Collective Agreements) NOTE: *In this case, the Guild has taken the basic daily rate (not consolidated rate) and multiplied by 365 to get to calculate an annual equivalent for MAI (as close as possible) as the officers are paid while at work and while at home based on consolidated daily rate. Even taking out the Holiday rate of pay built into the Consolidated Daily rate this comparator is paid more across all classifications.

Summary of Guild wage proposals

133. The Guild's wage proposals are justified, and will restore the historical relativity with the GSO group comparator, and ensure MAI wages remain competitive with private industry. In doing so, the proposal will assist in addressing the ongoing recruitment and retention concerns.

Non-Monetary Proposals

134. In addition to its position in relation to the economic package, and the averaging issues described above, the Guild advanced during negotiations a number of non-monetary proposals. During bargaining the parties were able to reach agreement on some proposals and the Guild has chosen not to pursue some others in this interest arbitration.
135. As a collective, the non-monetary proposal package seeks modest, incremental improvements to a number of areas of importance to the bargaining unit. It includes proposals to improve the way work is assigned, compensate employees more fairly for travel and "dirty work," and improve vacation and health plan entitlements.
136. These proposals will be described in more detail below.

Article 12.4 – Promotion and Transfer Between Groups

Existing Language	Guild Proposal
<p>12.4 "Promotion Lists" will be established for officers who indicate readiness to accept promotions to temporary assignments within their seniority group, and a copy of such lists will be provided to the appropriate representative of the Union.</p> <p>a) Officers who wish to have their names added to the "Promotion Lists" must register with the Crew Calling Department in January and indicate whether they wish to protect assignments on all vessels or on board the vessel where they hold regular assignment, and the classifications they wish to protect.</p> <p>(b) Officers who decline to accept promotion in accordance with Article 13.10 (b) (i) shall be removed from the "Promotion List" for a period of twelve (12) months and the appropriate representative of the Union will be advised of deletions monthly. Such officers can be reinstated on the "Promotion List" in accordance with Item a) above.</p>	<p>12.4 "Promotion Lists" will be established for officers who indicate readiness to accept promotions to temporary assignments within their seniority group, and a copy of such lists will be provided to the appropriate representative of the Union. The lists shall be in order of seniority. They will be posted onboard vessels.</p> <p>a) Officers who wish to have their names added to the "Promotion Lists" must register with the Crew Calling Department in January and indicate whether they wish to protect assignments on all vessels or on board the vessel where they hold regular assignment, and the classifications they wish to protect.</p> <p>(b) Officers who decline to accept promotion in accordance with Article 13.10 (b) (i) shall be removed from the "Promotion List" for a period of twelve (12) months and the appropriate representative of the Union will be advised of deletions monthly. Such officers can be reinstated on the "Promotion List" in accordance with Item a) above.</p>

137. The Guild proposed this change in order to clarify the process of administering the "promotion lists" described in Article 12.4. The way MAI has applied this language has been inconsistent, which has resulted in grievances. Note that this proposal is related to the Guild's proposals in Article 13.5, which will be discussed next.

138. The "promotions" within this article occur most frequently (although not exclusively) between the classifications of Junior Engineer and Senior Engineer. At MAI, the Transport Canada qualification for a Junior Engineer Position is a Marine Engineer Officer Certificate

of Competency, Fourth Class (usually described as a “ticket” or “certificate”). The qualification for a Senior Engineer Position is a third-class certificate.

139. There has been a longstanding shortage of MAI employees with third-class certificates at MAI, and therefore ongoing vacancies in Senior Engineer positions. Typically, MAI promotes Junior Engineers to fill these vacancies, which are in the same “seniority group” as that term is used in Article 12.4.
140. Difficulties have arisen with respect to the application of the current language of Article 12.4. While the Guild understands that MAI says it follows seniority order in promotion under this article, the Guild cannot be sure this is the case. That is because in practice MAI does not provide the promotion list to the Guild, and the Guild has no means of evaluating whether the most senior candidate was chosen.
141. The intention of this change is clarity. It is to reinforce that the selection should be done in seniority order, from a list that is provided to the Guild and posted to ensure all members have access to it.
142. It is also related to the Article 13.5 proposal, immediately below, which addresses the converse situation: *i.e.* when no one volunteers for the vacancy and a member must be “forced” to take that position.

Article 13.5 – Bulletining and Filling Positions

Existing Language	Guild Proposal
<p>13.5 In the event there is a vacancy which cannot be filled immediately under the process described in this Article, the junior assigned officer within the seniority group who is qualified and immediately available shall be required to fill the vacancy temporarily until a more junior qualified officer is assigned. In such cases the Company will arrange for the engagement or training of another officer for the vacancy, so that the officer required to fill the assignment may be returned to their regular assignment as soon as is practicable.</p>	<p>13.5 In the event there is a vacancy which cannot be filled immediately under the process described in this Article, the junior assigned officer within the seniority group who is qualified and immediately available shall be required to fill the vacancy temporarily until a more junior qualified officer is assigned. In such cases the Company will arrange for the engagement or training of another officer for the vacancy, so that the officer required to fill the assignment may be returned to their regular assignment as soon as is practicable.</p> <p>(a) The junior assigned officer within the seniority group who is qualified is defined as the officer with the least seniority within the seniority group who has the appropriate training/familiarization. Immediately available is defined as not currently performing work in an equal or higher rated classification, on vacation, or leave of absence. Being scheduled to work on another tour doesn't render an officer unavailable.</p> <p>(b) Qualifications and vessel familiarization for each officer will be listed on crew competency reports.</p> <p>(c) In the event a bulletined officer becomes junior qualified and is required to join a vessel other than the vessel on which they hold regular assignment, they will be given appropriate paid time to collect their Personal Protective Equipment (PPE) or be assigned new PPE.</p>

	<p>(d) Engineering officers that hold a fourth-class ticket may be promoted to senior engineers on a temporary/annual basis. Senior engineer bulletins not held by a senior engineer with a third-class ticket, or that are otherwise vacant, shall be re-bulletined annually in December, to be awarded in January, and take effect in February.</p> <p>(e) Officers that hold a third-class ticket will be awarded senior engineer bulletin positions regardless of vacancies or bulletins prior to officers that hold a fourth-class ticket.</p> <p>(f) Should a senior engineer vacancy arise within the one-year bulletin period and be awarded to an officer that holds a fourth-class ticket, that senior engineer bulletin shall be re-bulletined annually, starting in December.</p>
--	---

143. This proposal was introduced by the Guild during the course of bargaining, as opposed to at the outset of bargaining. It arose out of discussions at the negotiating table, and seeks to address several concerns related to the administration of Article 13.5.

144. The proposal has six sub-parts. The first three are related to one another, and the second three are related to one another. Subsection (a) to (c) seek to clarify the administration of the existing language of Article 13.5. That existing language describes the process of requiring the "junior qualified" officer to work in the vacancy. However, in practice disputes have arisen about who is junior, and who is qualified. Subsection (a) seeks to explicitly define what "junior qualified" means in this context, and thus avoid such disputes in future.

145. Subsection (b) would require that the details of this qualification will be recorded on the crew competency reports that are already sent to the Guild as a matter of routine. These competency reports describe the identities and classifications of every vessel-based employee assigned to a vessel at any time. They are frequently updated and are provided to the Guild. Adding the qualifications and familiarization data to these existing documents would be the best way to allow member and the Guild to monitor the administration of these provisions.
146. Subsection (c) addresses another practical implication of forcing an officer to work in such a vacancy. That is, when this assignment is made, the officer often expends their personal time attending their regular vessel to collect belongings and Personal Protective Equipment from their lockers, before they are able to join their required assignment on a different vessel. Given the circumstances, it would be equitable for the employer to bear the cost of this time, rather than the employee.
147. The final three subsections seek to codify what the Guild understands to be existing practices of the parties in relation to particular applications of Article 13.5.
148. Subsection (d) and (e) would codify the existing practice that when there is a vacancy in a Senior Engineer position, a holder of a fourth-class certificate may be promoted into it for a temporary term of one full year. Subsection (f) would codify the existing practice that, even if a fourth-class ticket holder already occupies a Senior Engineer position, a third-class ticket holder may bulletin in to that position at any point during the year.

Article 13.10(b) – Note 1

Existing Language	Guild Proposal
<p>13.10(b)</p> <p>NOTES: (1) Exception to the above shall apply in that the vacancy may be claimed within ten (10) calendar days prior to the beginning of the month in which the tour commences by a senior qualified officer assigned to an equal or higher classification in the group within the same tour pattern or from tour B to tour A, provided qualified relief is available. Such officer, however, shall not be entitled to occupy the vacancy until the first day of the first full tour following acceptance of application.</p>	<p>13.10(b)</p> <p>NOTES: (1) Exception to the above shall apply in that the vacancy may be claimed within ten (10) calendar days prior to the beginning of the month in which the tour commences by a senior qualified officer assigned to an equal or higher classification in the group within the same tour pattern or from tour B to tour A one tour to the other, provided qualified relief is available. Such officer, however, shall not be entitled to occupy the vacancy until the first day of the first full tour following acceptance of application.</p>

149. The existing language of Article 13.10(b), Note 1, is known by the parties as “the 10-day rule.” This proposal seeks to make access to the 10-day rule more equitable as between employees assigned to A Tour and those assigned to B Tour.

150. Article 13.10(b), as a whole, prescribes how a vacancy of one or two full tours will be filled. It sets out a prescribed order of categories of employees from which the vacancy must be filled. In the ordinary application of Article 13.10(b), the Employer would move through steps (i) through (iv), in sequence, until the vacancy was filled.

151. The existing version of the 10-day rule prescribes an exception to that prescribed order. Specifically, it provides that, as long as the right is exercised at least 10 days before the start of month in which the vacancy falls, a senior officer in the same or higher-rated classification can “claim” that vacancy. Once claimed, the senior officer would work in that vacancy rather than in their regular assignment.

152. There are a variety of reasons that an employee might want to exercise this option. It may be that temporarily moving from one tour to another facilitates family commitments

without having to take leave, for example. Or, it may give the officer a chance to gain work experience on a different vessel.

153. Currently, in order to use the 10-day rule an employee must be either on the same tour pattern or moving from B Tour to A Tour. But, the rule does not allow an employee to use the rule to move from a position in A Tour to a position in B Tour.

Illustration: Impact of Current Language

A Tour to A Tour	Allowed
B Tour to B Tour	Allowed
A Tour to B Tour	Not Allowed
B Tour to A Tour	Allowed

154. The result of this discrepancy is that employees who happen to be bulletined in A Tour do not enjoy the benefit of the 10-day rule, while employees who are bulletined in B Tour do. This is an inequitable situation as between two segments of the membership.
155. The Guild's proposal would eliminate this inequity by applying the 10-day rule equally to all bargaining unit members.

Article 17 – Reporting on Board

Existing Language	Guild Proposal
<p>Article 17.6:</p> <p>When officers report to join a vessel and the vessel is late, such officers shall not suffer loss of regular wages for any missed assigned hours due to the late arrival of the vessel. Officers will be provided with meals and lodging or reasonable expenses for same upon production of receipts, if:</p> <p>(a) It is reasonable that the officer should arrive the night before the date required for duty and</p> <p>(b) There was good reason to expect the vessel would be there for their accommodation and</p> <p>(c) it is necessary to incur the expenses.</p> <p>The company will undertake where an officer has been advised to join a vessel and the vessel is delayed, to give notification to the officer prior to them leaving home whenever possible.</p>	<p>Article 17.6:</p> <p>When officers report to join a vessel and the vessel is late, such officers shall not suffer loss of regular wages for any missed assigned hours due to the late arrival of the vessel. Officers will be provided with meals and lodging or reasonable expenses for same upon production of receipts, if:</p> <p>(a) It is reasonable that the officer should arrive the night before the date required for duty and/or</p> <p>(b) There was good reason to expect the vessel would be there for their accommodation and</p> <p>(c) it is necessary to incur the expenses.</p> <p>The company will undertake where an officer has been advised to join a vessel and the vessel is delayed, to give notification to the officer prior to them leaving home whenever possible.</p>

156. The intention of this proposal is to remove barriers to Guild members accessing compensation under this Article when it is fair that they should do so.

157. In most cases, when employees of this bargaining unit report to work, their worksite is a ferry that is in regular operation. Crew change must happen when a vessel is in port. The existing language recognizes that it may happen that the vessel is not in port when expected (for example, because of bad weather or maintenance issues), and provides that employees shall not lose wages.

158. The part of the article in dispute references additional expenses of meals and lodging that may be incurred in this circumstance, and provides criteria for their payment.

However, it has been the Guild's experience that the present criteria can be too restrictive, and may result in unfairness.

159. For example, if the officer arrives in the morning or afternoon and the vessel does not arrive, resulting in them needing accommodation that night, the Guild's position is fairness requires lodging and meals be provided by the company. But on a strict reading of the existing language, those would not be provided. In addition, the existing language includes subsection (c), which gives the employer discretion not to pay the expenses if they were "not necessary," even where the criteria in (a) and (b) exist.
160. The Guild's proposal suggests deletion of (c), and changing the linking words between (a) and (b) to "and/or," in order to make it clear that expenses must be paid in all circumstances where late arrival of a vessel necessitates meals and lodging.

Article 17.7 – Travel Allowance Program

Existing Language	Guild Proposal
17.7 RE: TRAVEL ALLOWANCE PROGRAM	17.7 RE: TRAVEL ALLOWANCE PROGRAM
When an officer is to be provided financial assistance towards the travel costs of reporting to and from work, the officer will be paid in accordance with the Travel Allowance Program.	When an officer is to be provided financial assistance towards the travel costs of reporting to and from work, the officer will be paid in accordance with the Travel Allowance Program.
	<u>Add to Article 17.7</u>
	Travel Program
	Zone 1 151 km to 300 km \$ 62.00
	Zone 2 301 km to 450 km \$ 83.00
	Zone 3 451 km to 601 km \$ 111.00
	Zone 4 601 km to 750 km \$ 129.00
	Zone 5 751 km to 900 km \$ 148.00
	Zone 6 901 km and over \$158.00

161. This proposal brings the table from the Travel Allowance Program, referenced in the existing language, directly into the collective agreement. It also increases the amounts payable to reflect the cost of taking a DHL bus from the various zones to the workplace.
162. The Travel Allowance Program is an employer policy. It specifies that “provides assistance to eligible employees towards their travel costs in the form of a travel allowance.”⁶² The amounts provided for in the policy scale upwards on the basis of how far the employee must travel to the workplace. However, the amounts paid are rarely updated, and are not reflective of current travel costs.
163. Typically, employees travel to the work place either by personal car, or by bus. Travelling by personal car tends to be more expensive, once gas and depreciation are factored in. The present policy amounts do not come close to compensating an employee who travels by personal car, and they are also insufficient for those who travel by bus

⁶² Travel Allowance Program, page 1. Guild’s USB of Collective Agreements > Extra.

164. The Guild's proposal would bring the amounts within the collective agreement, so that they could be negotiated and kept more current. It also would increase the amounts by an amount that would make them equal to the cost of travelling by bus from each zone to the workplace.⁶³

⁶³ Bus fare amounts as per DHL far schedules, available at <http://www.drl-lr.com/>

Article 17.10 – New

Existing Language	Guild Proposal
n/a	17.10 When crew members are relieved on a vessel, but the ship is delayed arriving to the crew member's terminal port, they will be paid until their port is reached or given the opportunity to complete paid work or training.

165. This new article proposed by the Guild addresses a recurrent situation that is unfair to employees. As per the tour schedule, employees work one 15- or 16-day tour, and then are “off duty” for an equal number of rest days.
166. However, it is not uncommon for vessel delays to result in a member being unable to return to their home port after being relieved.
167. For example, if the member's tour ends while the vessel is in North Sydney, but the terminal port is Port Aux Basques, and weather holds the vessel in North Sydney for 36 hours following changeover, the member has now lost a portion of their off-duty time. They are captive to the vessel, in the sense that they have no other way home. On the other hand, they are not being paid for this time.
168. The Guild's proposal would continue member's pay in these circumstances, while providing MAI the option (but not the obligation) to obtain productive output from the member in the form of either work or training.

Article 23 – Annual Vacations

Existing Language	Guild Proposal
23.1	[Increase vacation entitlement to 180 hours for employees with greater than 4 years company service.]

169. The Guild’s Article 23.1 proposal seeks to increase the vacation entitlement of less senior officers, to provide for at least one full tour’s vacation leave in each year.
170. The vacation entitlement structure in the present Article 23.1 is articulated in a table, which allots vacation entitlement to officers based on a formula that takes into account years of service, cumulative days of actual service during those years, and other factors.
171. The difficulty the Guild has identified, and which it seeks to remedy, is that based on the current table formula, employees must have both 15 years of service, and the necessary cumulative service, in order to be entitled to 180 hours of vacation.
172. The 180 hours figure is significant, as that is the number of hours in a full Tour at MAI. An entitlement to 180 hours of vacation allows an employee to have one full tour of paid vacation in a calendar year.
173. The Guild’s proposal seeks to amend the table at Article 23.1 sufficiently to ensure that all employees with at least four years’ service are entitled to at least one full Tour’s vacation. It would not modify the entitlement for employees with less than four years’ service, nor employees with 15 years or more.
174. This “full Tour of entitlement” would make Agreement “A” more consistent with Agreement “E,” which has a simpler calculation of vacation entitlement that provides 120

hours of vacation entitlement for employees with one to four years, 180 hours for four to ten years, 200 for ten to 27 years, and 240 hours for 27 years and above.⁶⁴

175. Lastly, the Guild anticipates that its proposal will provide some help in scheduling. It is the Guild's understanding the full tour vacancies are easier to plan for, and fill, than partial tour vacancies.

⁶⁴ Excerpt of Collective Agreement between MAI and CMSG (Agreement "E"), 2017-2019, at Article 19.1. Guild's USB of Collective Agreements.

Article 29 – Dirty Work Bonus

Current Language	Guild Proposal
<p>29. 1 Applicable to Engineer Officers: Officers required to perform the following duties;</p> <p>(1) enter and clean boilers, fuel oil tanks, air tanks and double-bottom water tanks; (2) clean boiler tubes; (3) working below engine room floor or boiler room plates; (4) working on clearing major sewage blockages or equipment within the sewage system, where officers come into direct contact with raw sewage.</p> <p>shall be paid a bonus of \$2.00 per hour effective the first day of the month following the date the arbitrator's award is received by the parties, for actual time so occupied with a minimum payment of one hour, which shall cover all work performed within the hour.</p>	<p>29.1 Applicable to Engineer Officers: Officers required to perform the following duties;</p> <p>(1) enter and clean boilers, fuel oil tanks, air tanks and double-bottom water tanks; (2) clean boiler tubes; (3) working below engine room floor or boiler room plates; (4) working on clearing major sewage blockages or equipment within the sewage system, where officers come into direct contact with raw sewage black or grey water</p> <p>shall be paid overtime rates for all such work, or any work deals with sewage, under deck plates, fuel and lube oil purifiers or any other dirtier than normal work.</p>

176. The Guild proposals in respect of Article 29.1 seek to fairly compensate officers for “dirty work,” by making more specific the language that triggers payment, and by bringing compensation closer to the industry standard.
177. It is the Guild’s understanding that industry standard involves overtime pay rather than the modest premium described in the current language. In the GSO collective agreement, for example, Article 40 provides for dirty work pay in similar circumstances (set out in Article 40.1) and compensates as follows: “In addition to the appropriate rate of pay, an additional one half (1/2) the officer’s straight time rate for every fifteen (15) minute period, or part thereof worked.”

Article 41 – Life Insurance Upon Retirement

Existing Language	Guild Proposal
41.1 An officer who retires from the service of the Company will, provided they are fifty-five years of age or over and has not less than ten years' cumulative compensated service, be entitled, upon retirement, to a \$7,500 life insurance policy. The premium is to be paid by the Company.	41.1 An officer who retires from the service of the Company will, provided they are fifty-five years of age or over and has not less than ten years' cumulative compensated service, be entitled, upon retirement, to a \$7,500 \$12,000 life insurance policy. The premium is to be paid by the Company.

178. This Guild proposal suggests a reasonable increase to this benefit provided in this article. This benefit has been set at \$7500 at least since the 2001-2004 collective agreement between MAI and the former bargaining agent.⁶⁵

179. According to the Bank of Canada's inflation calculator there has been a 54.87 percent increase in the cost of goods and services within that time frame.⁶⁶

⁶⁵ Excerpt of 2001-2004 collective agreement between Canadian Marine Officers' Union and MAI; Guild's USB of Collective Agreements.

⁶⁶ Bank of Canada Inflation Calculator, Guild's Book of Documents at Tab 18.

Appendix N – Retroactivity Clarification

Existing Language	Guild Proposal
<p>Appendix N – Retroactivity Clarification</p> <p>Employees who are in the service on the first day of the month following the date the notice of the arbitrator’s award is received by the Company, shall be entitled to any amount of compensation that may be due them for time worked subsequent to that date, retroactive to 1 January 2017.</p> <p>Employees who were in the service on 1 January 2017 and subsequently terminated prior to the first day of the month following the date notice of the arbitrator’s award is received by the Company, shall be entitled to any amount of compensation that may be due them for time worked during that period. For this group any retroactive adjustment will not result in a recalculation or adjustment to vacation payout, or pension payments.</p> <p>Except as otherwise indicated herein the terms of agreement shall be effective on the first of the month following the date notice of the arbitrator’s award is received by the Company.</p>	<p>Appendix N – Retroactivity Clarification</p> <p>Employees who are in the service on the first day of the month following ratification/the date the notice of the arbitrator’s award is received by the Company, shall be entitled to any amount of compensation that may be due them for time worked subsequent to that date, retroactive to 1 January 2020.</p> <p>Employees who were in the service on 1 January 2020 and subsequently terminated prior to the first day of the month following ratification/the date notice of the arbitrator’s award is received by the Company, shall be entitled to any amount of compensation that may be due them for time worked during that period. For this group any retroactive adjustment will not result in a recalculation or adjustment to vacation payout, or pension payments.</p> <p>Except as otherwise indicated herein the terms of agreement shall be effective on the first of the month following ratification/the date notice of the arbitrator’s award is received by the Company.</p>

180. This proposal is a suggested administrative change that would update the specified date in this Appendix for the purposes of this new agreement, and specify that it also applies in circumstances where the parties ratify and agreement made at the negotiating table.

Appendix O – Health and Welfare – Improvements

Existing Language	Guild Proposal
<p>Appendix O – Health and Welfare – Improvements</p> <p>For claims resulting from illnesses commencing on or after the first of the month following the date notice of the arbitrator’s award is received by the Company, the weekly indemnity cap will be increased from \$800 to \$900 weekly. Officers who are protecting spare and not holding bulletined assignment will only be subject to the \$900 weekly cap if the preponderance of their time worked for the six months prior to their date of application is in a classification(s) covered by Agreement A.</p>	<p>Appendix O – Health and Welfare – Improvements</p> <p>For claims resulting from illnesses commencing on or after the first of the month following ratification/the date notice of the arbitrator’s award is received by the Company, the weekly indemnity cap will be increased from \$800 to \$900 to \$1000 weekly. Officers who are protecting spare and not holding bulletined assignment will only be subject to the \$900 \$1000 weekly cap if the preponderance of their time worked for the six months prior to their date of application is in a classification(s) covered by Agreement A.</p> <p>Dental Benefit</p> <ul style="list-style-type: none"> ➤ Increase annual limit from \$1,200 to \$1,500 ➤ Increase orthodontic lifetime limit from \$1,100 to \$1,500

181. These Guild proposals seek modest increases to particular health and welfare benefits.

182. Members of this bargaining unit do not have negotiated paid sick leave, and they do not have access to a group Long Term Disability plan. Members who become ill for an extended period only have recourse to these weekly indemnity benefits, which in most cases provide substantially lower income than their regular wages.

183. Given the wage increases over time, and in particular the rapidly-increasing cost of living, it is necessary to update the weekly indemnity provisions to ensure they provide a livable benefit level.

184. Like the weekly indemnity benefits, the dental benefits listed in this Guild proposal are not spelled out within the collective agreement, but are rather set out in the separate health and welfare plans referenced in Article 40 of the agreement. The Guild's proposal on dental benefits seeks to have the terms of those plans improved, to increase the annual and lifetime limits for coverage in an incremental way.

Discussion of Employer Proposals

185. What follows is a summary discussion of the MAI proposals that the Guild understands have been maintained for this interest arbitration. The Guild's positions in this section are based on its understanding, gained at the negotiating table, about the rationale for these proposals. The Guild expects to respond to these proposals in greater detail in its reply submissions.

Article 10.1 – Seniority Groupings

Existing Language	MAI Proposal
10.1 For the purpose of promotion and seniority, officers shall be grouped as follows: A. Deck Officers: 1. Chief Officers 2. 1st Officers 3. 2nd Officers 4. 3rd Officers B. Engineer Officers: 1. Marine Engineers 2. Electrical Engineers	10.1 For the purpose of promotion and seniority, officers shall be grouped as follows: A. Deck Officers: 1. Chief Officers 2. 1st Officers (Grandfathered Only) 3. 2nd Officers 4. 3rd Officers B. Engineer Officers: 1. Second Engineers 2. Marine Engineers 3. Electrical Engineers

186. The Guild understands this proposal as representing MAI's wish to remove the category of Second Engineers from the same seniority grouping as the other engineers, and place them in a separate seniority list. The Guild does not agree with this proposal.

187. Second Engineers are the highest-classified engineering-side employees in the bargaining unit. Among other qualifications, they must possess a second-class marine engineering certificate from Transport Canada.

188. Traditionally, at MAI, the Second Engineers have always been part of what the parties describe as the "common seniority list," with Senior Engineers (who require a third-class ticket) and Junior Engineers (who require a fourth-class ticket).

189. The common seniority list benefits the membership, and promotes internal upgrading of skills, by providing that if a Senior or Junior engineer was able to obtain his second-class

certificate, they would be able to exercise their seniority to obtain a position as a Second Engineer.

190. There are fewer Second Engineer positions than Senior and Junior Engineer positions. Without the common seniority list, an MAI employee who successfully completed the education to obtain a second-class ticket could very well be waiting indefinitely to obtain a position that would use those skills. That could be the case even if the positions were occupied by members with much less seniority than they.
191. This would not promote retention of employees, and would not encourage employees to seek additional qualifications.
192. The Guild requests that the long-standing common seniority list be left intact.

Article 12 – Deletions

Existing Language	MAI Proposal
<p>ARTICLE 12 PROMOTION AND TRANSFER BETWEEN GROUPS</p> <p>12.1 Officers shall be encouraged to learn the duties of other positions and every opportunity shall be afforded to learn the work of such positions in their own time, and during regular working hours when it will not unduly interfere with the performance of their assigned duties. The supervisory officer may arrange with the interested officers to exchange positions for short temporary periods without affecting the classifications, rates or seniority of the officers concerned.</p> <p>12.2 Officers who wish to transfer to another seniority group under this agreement or the other vessel agreement, and who so register with the appropriate Company officer prior to November 15th of each year, shall be listed for each seniority group desired. Officers from within the agreement by which the desired group is covered shall be listed first in the order of their best seniority date within the agreement. Officers from other groups or Agreements shall be listed secondly in the order of their best seniority date within such agreements. Such listings (which shall be identified as "Preferential Lists") shall be posted to all seniority groups on or before December 1st. Omissions shall be corrected providing that protest, accompanied by evidence that the application for transfer was properly submitted, is made within 30 days of posting.</p> <p>12.3 In the event that additional officers are required within a seniority group in the following calendar year, persons shown on the preferential list shall be afforded opportunity to transfer, provided</p>	<p>ARTICLE 12 PROMOTION AND TRANSFER BETWEEN GROUPS</p> <p>12.1 Officers shall be encouraged to learn the duties of other positions and every opportunity shall be afforded to learn the work of such positions in their own time, and during regular working hours when it will not unduly interfere with the performance of their assigned duties. The supervisory officer may arrange with the interested officers to exchange positions for short temporary periods without affecting the classifications, rates or seniority of the officers concerned.</p> <p>12.2 Officers who wish to transfer to another seniority group under this agreement or the other vessel agreement, and who so register with the appropriate Company officer prior to November 15th of each year, shall be listed for each seniority group desired. Officers from within the agreement by which the desired group is covered shall be listed first in the order of their best seniority date within the agreement. Officers from other groups or Agreements shall be listed secondly in the order of their best seniority date within such agreements. Such listings (which shall be identified as "Preferential Lists") shall be posted to all seniority groups on or before December 1st. Omissions shall be corrected providing that protest, accompanied by evidence that the application for transfer was properly submitted, is made within 30 days of posting.</p> <p>12.3 In the event that additional officers are required within a seniority group in the following calendar year, persons shown on the preferential list shall be afforded opportunity to transfer, provided</p>

<p>they have the requisite qualifications, in accordance with their standing on the preferential list. Persons who choose to decline transfer when offered shall be removed from the listing.</p> <p>12.4 "Promotion Lists" will be established for officers who indicate readiness to accept promotions to temporary assignments within their seniority group, and a copy of such lists will be provided to the appropriate representative of the Union.</p> <p>a) Officers who wish to have their names added to the "Promotion Lists" must register with the Crew Calling Department in January and indicate whether they wish to protect assignments on all vessels or on board the vessel where they hold regular assignment, and the classifications they wish to protect.</p> <p>b) Officers who decline to accept promotion in accordance with Article 13.10 (b) (i) shall be removed from the "Promotion List" for a period of twelve (12) months and the appropriate representative of the Union will be advised of deletions monthly. Such officers can be reinstated on the "Promotion List" in accordance with Item a) above.</p>	<p>they have the requisite qualifications, in accordance with their standing on the preferential list. Persons who choose to decline transfer when offered shall be removed from the listing.</p> <p>12.4 "Promotion Lists" will be established for officers who indicate readiness to accept promotions to temporary assignments within their seniority group, and a copy of such lists will be provided to the appropriate representative of the Union.</p> <p>a) Officers who wish to have their names added to the "Promotion Lists" must register with the Crew Calling Department in January and indicate whether they wish to protect assignments on all vessels or on board the vessel where they hold regular assignment, and the classifications they wish to protect.</p> <p>b) Officers who advise the Crew Calling Department they no longer wish to be contacted for promotions to a classification decline to accept promotion in accordance with Article 13.10 (b) (i) shall no longer be contacted for such promotions, unless they become junior qualified under Article 13.5 be removed from the "Promotion List" for a period of twelve (12) months and the appropriate representative of the Union will be advised of deletions monthly. Such officers can be reinstated on the "Promotion List" in accordance with Item a) above.</p>
--	---

193. The Guild does not agree that these provisions should be deleted or altered. During negotiations, the Guild understood MAI to be effectively saying that the provisions should be deleted because MAI did not use the preferential lists described in the Article.

194. The Guild's view, as represented by its own proposals related to Articles 12.4 and 13.5, described above, is that the language should be used as written, with small necessary amendments for clarity.
195. The Guild's concern with the deletions proposed by MAI is that they remove clarity from the process rather than adding it. The result would be that the process governing the filling of positions under Articles 12 and 13 would be less clear, and therefore more subject to inconsistent application. In contrast, Guild's goal is to have a clearly-articulated process that is agreed to, or awarded, between the parties—which can then be followed consistently in each application.

Article 13.10(b), Note 1 – Deletion of the “10-day Rule”

Existing Language	MAI Proposal
13.10(b) Notes: (1) Exception to the above shall apply in that the vacancy may be claimed within ten (10) calendar days prior to the beginning of the month in which the tour commences by a senior qualified officer assigned to an equal or higher classification in the group within the same tour pattern or from tour B to tour A, provided qualified relief is available. Such officer, however, shall not be entitled to occupy the vacancy until the first day of the first full tour following acceptance of application.	13.10(b) Notes: (1) Exception to the above shall apply in that the vacancy may be claimed within ten (10) calendar days prior to the beginning of the month in which the tour commences by a senior qualified officer assigned to an equal or higher classification in the group within the same tour pattern or from tour B to tour A, provided qualified relief is available. Such officer, however, shall not be entitled to occupy the vacancy until the first day of the first full tour following acceptance of application.

196. In large part, the Guild relies on its comments above, in relation to its own proposal respecting this article. Note 1 provides a beneficial flexibility for employees, without imposing an unreasonable burden on MAI. The Guild agrees that its benefit applies unequally among the membership, but the solution is not to delete the provision altogether. Rather this can be addressed, as proposed by the Guild, by extending the option to employees on both tours.

Article 26.2 – Rates and Methods of Pay

Existing Language	MAI Proposal
<p>26.2</p> <p>Consumer Price Index (CPI) is defined as the percentage change in the index published by Statistics Canada for the 12 month period ending 31 December 2006 in accordance with Arbitrator Ashley's decision dated 17 December 2004 for 26.2 (iii) (b).</p>	<p>26.2</p> <p>Consumer Price Index (CPI) is defined as the percentage change in the index published by Statistics Canada for the 12 month period ending 31 December 2006 in accordance with Arbitrator Ashley's decision dated 17 December 2004 for 26.2 (iii) (b).</p>
<p>26.2(a)*</p> <p>The hourly rate of pay for the classification of Safety Officer is the midpoint between the Chief Officer/Second Engineer and the First Officer hourly rate.</p>	<p>26.2(a)*</p> <p>The hourly rate of pay for the classification of Safety Officer is the midpoint between the Chief Officer/Second Engineer and the First Officer hourly rate.</p>

197. The Guild is opposed to MAI's proposed deletion of the reference to calculation of CPI. While the Guild accepts that there is no present reference to CPI in the wage scales, and nor is one sought, that has been the case for several successive collective agreements. The inclusion of the CPI calculation has not caused any confusion or administrative difficulty.
198. The Guild maintains that the reference to CPI calculation is helpful, so that it will not need to be determined again if a subsequent agreement contains a CPI reference. The Guild has found that in other units it represents, the calculation of CPI has been the subject of controversy. As the matter has been resolved at MAI, the Guild suggests it should remain resolved.

Conclusion

199. The Guild submits that its proposals, collectively, represent a fair and reasonable result that replicates an agreement that would have been reached in free collective bargaining. The Guild requests that the Arbitrator award a new collective agreement incorporating both the Guild's proposed language and the provisions already agreed upon by the parties.

200. The Guild also requests that all other items that form part of the collective agreement between the parties which expired on December 31, 2019 and are not mentioned in the award remain unaltered and are included in the renewed collective agreement.

All of which is respectfully submitted, this 24th day of October, 2022.


Andrew R. Nielsen


Grace C. Levy

Counsel for the Canadian Merchant Service Guild

Pink Larkin
Suite 201-1463 South Park St.
Halifax, NS B3J 3S9
Tel: (902) 423-7777
Fax: (902) 423-9588