

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

BETWEEN:

Canadian Merchant Service Guild

("CMSG" or the "Guild")

and

Marine Atlantic Inc.

("MAI" or the "Employer")

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**Interest Arbitration  
Hearing: December 20<sup>th</sup> & 21<sup>st</sup>, 2022  
Sydney, NS**

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**Overview:**

1. The following are the interest arbitration submissions of the Canadian Merchant Service Guild (the “Guild”) which represents the Masters, Chief Engineers, and Chief Electrical Engineers (“Masters and Chiefs”) employed on Marine Atlantic Inc.’s (“MAI”) fleet of vessels which sail between Nova Scotia and Newfoundland and Labrador.
2. The Guild and MAI have already agreed upon a number of items for the new collective agreement. This interest arbitration has been instituted to settle the remainder of the outstanding items between the parties. The matter is scheduled to be heard in Sydney, Nova Scotia on December 20<sup>th</sup> and 21<sup>st</sup>, 2022.
3. The Masters and Chiefs of MAI’s fleet of ships play a vital role in ensuring that MAI can provide a safe, environmentally responsible and reliable ferry service between Nova Scotia and Newfoundland and Labrador. They are the most senior officers employed upon MAI’s vessels, and without them MAI would not be able to provide the constitutionally-mandated ferry service between the two provinces.
4. Despite their central importance to the operation of MAI, the Masters and Chiefs’ wage position and terms and conditions of employment have been allowed to erode as against those of their comparators in the public sector and private industry. As a whole, the Guild’s proposal package seeks to stop this erosion and ensure appropriate comparability and continued ability to recruit and retain qualified officers.
5. The Guild has a number of important items outstanding in this interest arbitration. The most central of these are general economic increases and increases to the Senior Officers’ Allowance. Also outstanding are several proposals related to compensation for travel, a proposal related to vacation entitlements, and several proposals that seek to update negotiated benefits such as weekly indemnity and health/dental coverage.

## History of Bargaining

6. The Canada Industrial Relations Board (“CIRB”) certified the Guild as the exclusive bargaining agent for this bargaining unit in an order dated January 19<sup>th</sup>, 1999:

“all employees on vessels owned, operated or chartered by Marine Atlantic Inc., classified as senior master, master, senior chief engineer, chief engineer, chief electrical engineer and senior chief electrical engineer”<sup>1</sup>

7. There are no longer any “senior masters”, “senior chief engineers” or “senior chief electrical engineers” in this bargaining unit.
8. The parties’ first collective agreement was effective from January 1, 2001 to December 31, 2004<sup>2</sup>, and settled through interest arbitration.<sup>3</sup> In subsequent rounds of bargaining, the parties were often able to reach negotiated agreements.
9. For the second collective agreement, with a term of January 1, 2005 to December 31, 2008<sup>4</sup>, the parties were able to negotiate all issues except for one relating to cost-sharing for Extended Supplemental Health Insurance and Dental Care Insurance.<sup>5</sup>
10. After the expiration of the second collective agreement, the parties freely negotiated the entire third agreement, which had a term of January 1, 2009 to December 31, 2012.<sup>6</sup>

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<sup>1</sup> *Canadian Merchant Service Guild v. Marine Atlantic Inc.*, CIRB Order No. 7508-U, January 19, 1999; Guild’s Book of Documents at Tab 1.

<sup>2</sup> Collective Agreement between Marine Atlantic Inc. and the Canadian Merchant Service Guild, January 1, 2001 to December 31, 2004; Guild’s Folder of Collective Agreements.

<sup>3</sup> *Canadian Merchant Service Guild v. Marine Atlantic Inc. (Agreement “E”)*, August 19, 2002 (Ashley); Guild’s Book of Authorities at Tab 1. [2002 Ashley Award].

<sup>4</sup> Collective Agreement between Marine Atlantic Inc. and the Canadian Merchant Service Guild, January 1, 2005 to December 31, 2008; Guild’s Folder of Collective Agreements.

<sup>5</sup> *Marine Atlantic Inc. v. Canadian Merchant Service Guild*, June 4, 2007 (Ashley); Guild’s Book of Authorities at Tab 2.

<sup>6</sup> Collective Agreement between Marine Atlantic Inc. and the Canadian Merchant Service Guild, January 1, 2009 to December 31, 2012; Guild’s Folder of Collective Agreements.

11. The next agreement, which had a term of January 1, 2013 to December 31, 2016, was resolved via interest arbitration.<sup>7</sup>
12. The current collective agreement had a term of January 1<sup>st</sup>, 2017 to December 31<sup>st</sup>, 2019<sup>8</sup>, and all terms were freely negotiated between the parties.
13. In the current round of bargaining, the Guild gave Notice to Bargain on September 3<sup>rd</sup>, 2019. On September 17<sup>th</sup>, 2019, MAI signalled that it would be prepared to commence negotiations by the end of 2019, but later indicated on February 21<sup>st</sup>, 2020, that it was holding dates in May, 2020.
14. Commencement of bargaining was then delayed due to the COVID-19 pandemic and other factors. Throughout 2020, the Guild expressed eagerness to commence bargaining, and made multiple requests to conduct negotiations in a manner which would align with COVID-19 restrictions, either in person or virtually. However, the parties did not meet until the following year.
15. The parties first met for bargaining of this collective agreement on February 9<sup>th</sup>-11<sup>th</sup>, 2021. The parties exchanged proposals and commenced negotiations at this time. During this first meeting, the Guild agreed to an MAI proposal related to Article 4.1.
16. Negotiations resumed on March 11<sup>th</sup> and 12<sup>th</sup>, 2021, with Agreement “A” – the other bargaining unit represented by the Guild consisting of Licensed Officers. At this time, 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.987*<sup>9</sup>.

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<sup>7</sup> Collective Agreement between Marine Atlantic Inc. and the Canadian Merchant Service Guild, January 1, 2013 to December 31, 2016; Guild’s Folder of Collective Agreements.

<sup>8</sup> Collective Agreement between Marine Atlantic Inc. and the Canadian Merchant Service Guild, January 1, 2017 to December 31, 2019; Guild’s Folder of Collective Agreements.

<sup>9</sup> *East Coast and Great Lakes Shipping Employees Hours of Work Regulations, 1985*, Guild’s Book of Authorities, Tab 3.

17. The Guild provided detailed submissions regarding the role that this issue played during the bargaining process at paragraphs 59-61 of its October 24<sup>th</sup>, 2022 submissions for the Agreement “A” interest arbitration (“the Agreement A Submissions”).<sup>10</sup>
18. Although the rest day compensation issue remained unresolved, the parties continued negotiations in relation to the other remaining issues, and met again on March 29<sup>th</sup>-31<sup>st</sup>, 2021. At this time, there were agreements reached on the Guild’s proposals for Article 24.2 and Appendix D, and also for MAI’s proposal for Article 11.2.
19. The parties met again on May 6<sup>th</sup>, 2021, and an agreement was reached on the Guild’s proposals for Article 32.1 and 33.2, as well as on MAI’s proposal on diversity. The other outstanding proposals were not resolved following this negotiating day, and the Guild concluded that further negotiations would not result in any further agreement. The Guild advised that the parties had reached an impasse, and on May 7<sup>th</sup>, 2021, the Guild filed an application with the Federal Mediation and Conciliation Service (FMCS).
20. On July 6<sup>th</sup>, 2021, the parties met with the FMCS Conciliator, but were unable to reach agreement on the remaining issues.
21. On August 11, 2021, MAI made and Application for a Modified Work Schedule Pursuant to Section 6 of the *East Coast and Great Lakes Shipping Employees Hours of Work Regulations*, to Employment and Social Development Canada (EDSC).
22. On March 17<sup>th</sup>, 2022, the parties engaged in mediation with the FCMS Mediator to try to find a resolve to the questions related to hours of work and scheduling and their compliance with the *Canada Labour Code* and its regulations.

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<sup>10</sup> CMSG October 24 2022 Agreement A Submissions (Andy Nielsen and Grace Levy) at paragraphs 59-61; Guild’s Book of Documents at Tab 3.

23. On June 6<sup>th</sup>, 2022, the parties concluded that further discussion on outstanding proposals would not be productive, nor would further meetings with the Federal Conciliator. The parties therefore agreed to proceed with interest arbitration.
  
24. On August 10, 2022, EDSC rejected MAI's Application for a Modified Work Schedule.

## Background to the Issues

25. The Guild's October 24<sup>th</sup> Agreement "A" Submissions provide a detailed summary of MAI's operations and the structure of MAI's various bargaining units "A" through "F" at paragraphs 9-17. (Please note that, where information is common to the interest arbitrations related to Agreement "A" *and* Agreement "E," the Guild will refer out to—and rely upon—its previous submissions in order to avoid unnecessary duplication).
26. The collective agreement for this bargaining unit is known as Agreement "E". This bargaining unit is comprised of the most senior officers aboard MAI's vessels: the Masters, Chief Engineers, and Chief Electrical Engineers. These employees are at the pinnacle of their careers, and have very significant responsibilities to ensure the welfare of all passenger and crew members on each voyage.
27. As with the Licensed Officers in Agreement A, the Masters and Chiefs work a "two week on, two week off" schedule, with each "two week" period being 15 days in total: see Article 16.2, which describes this schedule. The schedule creates two tours each month, with Tour A operating from approximately the 1<sup>st</sup> to the 15<sup>th</sup> of every month, and Tour B operating from approximately the 16<sup>th</sup> to the end of every month. For each day worked, Masters and Chiefs earn a day off. They are compensated for 180 hours per month, despite often working substantially more hours than this (the Senior Officers' Allowance, about which more will be said below, is designed to partially compensate for these extra hours of work).
28. The specific duties for each position are as follows:

## **Masters**

29. The Master is the most senior officer on board MAI's fleet of vessels, and is directly responsible to the Director of Fleet Operations.<sup>11</sup> Masters are trusted with the overriding responsibility and authority for all matters related to the operation of the vessel, environmental protection, and, most importantly, ensuring the safety of passengers and crew—duties which cannot be delegated.<sup>12</sup>
  
30. MAI Masters are responsible for the safe, efficient, and on-time navigation of the ship, in what has been recognized as one of the “most challenging nautical routes in the world”.<sup>13</sup> This requires the use of sophisticated navigational aids and equipment, frequently under adverse sea and weather conditions.<sup>14</sup> In the course of a single day, a Master must dock and undock their vessel several times in restricted harbours, often while contending with reduced visibility and high winds. Masters also must conduct regular inspections of all vessel spaces, facilities, and services, and also ensure that all documentation, logs, records, and required forms are completed in accordance with policies and guidelines on a timely basis. The Master's responsibility is so immense that the *Canada Shipping Act* states that a Master is “justified in using as much force as the master believes on reasonable grounds is necessary for the purpose of maintaining good order and discipline on the vessel”<sup>15</sup>.
  
31. Beyond these everyday responsibilities, a Master also must administer the on-board budget, ensure that the ship's certificates are renewed, set up watches, and address any issues arising out of Occupational Health and Safety meetings and changes in safety regulations.

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<sup>11</sup> Marine Atlantic “Fleet Operations Manual: Marine Operations, Volume 1” at 3.1; Guild's Book of Documents at Tab 4.

<sup>12</sup> *Ibid* at 2.2.

<sup>13</sup> Marine Atlantic 2013-2014 Annual Report at page 4; Guild's Book of Documents at Tab 5.

<sup>14</sup> Marine Atlantic Master Job Posting; Guild's Book of Documents at Tab 6.

<sup>15</sup> *Canada Shipping Act*, S.C. 2001, c. 26, at Section 83(3). Guild's Book of Authorities at Tab 4.

32. A Master must hold several advanced certifications and qualifications<sup>16</sup> and, in practice, it takes most individuals more than ten years of training and experience to become qualified as a Master.

### ***Chief Engineer***

33. The Chief Engineer is the head of the vessel's engineering department, and is directly responsible to the Master, by advising them on all engineering matters, and also to MAI's Technical Superintendent.<sup>17</sup> The Chief Engineer's primary responsibility is to ensure the safe operation of all machinery, the safety of the vessel, and safe-working practices within the engineering department. They must ensure that all the responsibilities within the engineering department are correctly discharged and that all department personnel comply with procedures and instructions concerning safety and environmental protection.
34. Beyond these everyday responsibilities, a Chief Engineer also has the heightened responsibility of administering the engineering budget, establishing safe re-fueling procedures and other safety training, drafting specifications for a major overhaul or re-fit, and supervising the computerized maintenance system.
35. Like the Master, a Chief Engineer must also hold several advanced certifications and qualifications.<sup>18</sup>

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<sup>16</sup> *Supra*, note 14.

<sup>17</sup> Marine Atlantic "Fleet Operations Manual: Technical Operations, Volume 2" at 2.1; Guild's Book of Documents at Tab 7.

<sup>18</sup> Marine Atlantic Chief Engineer Job Posting; Guild's Book of Documents at Tab 8.

### ***Chief Electrical Engineer***

36. The Chief Electrical Engineer is responsible to the Chief Engineer for the management of the electrical sub-department.<sup>19</sup> Chief Electrical Engineers must ensure the safe and efficient repair, maintenance, testing, and operation of all electrical and electronic equipment on board MAI's vessels. They also have the responsibility of overseeing the day-to-day discipline and control of electrical staff.
  
37. In addition, Chief Electrical Engineers have responsibilities relating to the monitoring, budgeting, operation, maintenance, overhaul and modification of electrical equipment, generators, wiring, electrical safety, alarms and other aspects of the electrical department, including training personnel.
  
38. The Chief Electrical Engineer must also hold several advanced certifications and qualifications.<sup>20</sup>

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<sup>19</sup> *Supra*, note 17 at 2.3.

<sup>20</sup> Marine Atlantic Chief Electrical Engineer (Journeyperson Electrician) (2019); Guild's Book of Documents at Tab 9.

## Principles of Interest Arbitration

39. The Guild provided and discussed several authorities which set out the well-established principles of interest arbitration at paragraphs 18-26 of the Guild's Agreement "A" Submissions. The Guild relies upon those Submissions in this matter as well. To summarize, the Guild submits that the following legal principles apply to this interest arbitration:
- a. The primary consideration for the interest arbitrator is to attempt to replicate, as closely as possible, the results of free collective bargaining;
  - b. Replication should be based on an objective analysis of relevant factors – in particular, comparability;
  - c. 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;
  - d. 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.

## **Guild Proposals: The Guild's Economic Proposal Package**

### **Overview of the Guild's Position**

40. There are three elements to the Guild's economic proposals:
- 1) An amendment to Article 22 to provide wage increases of 3 percent for each year of the proposed collective agreement (January 1<sup>st</sup>, 2020; January 1<sup>st</sup>, 2021; January 1<sup>st</sup>, 2022; and January 1<sup>st</sup>, 2023)
  - 2) An amendment to Article 17 to provide 3 percent increases to the Senior Officers Allowance for each year of the proposed collective agreement (January 1<sup>st</sup>, 2020; January 1<sup>st</sup>, 2021; January 1<sup>st</sup>, 2022; and January 1<sup>st</sup>, 2023)
  - 3) A restructuring of the wage grid in Article 22, to provide a "stepped" wage system rather than one wage rate per year. In the Guild's proposal, each step represents a wage increase of 3.5%.
41. The Guild's monetary proposals are intended to address the undervaluing of the work done by Masters and Chiefs. Further, these increases are designed to reduce the growing wage differential between the Masters and Chiefs and their external comparators. The Guild seeks to prevent the wage position of MAI Masters and Chiefs from continuing to erode in relation to its comparators, and in particular to other federally-funded marine services operating in Atlantic Canada: the Coast Guard and the Atlantic Pilotage Authority.
42. The widening wage differential between MAI Masters and Chiefs and their relevant comparators must be addressed, so that MAI can ensure that it is able to recruit qualified senior officers from outside of MAI, as well as retain its existing employees and be able to promote new Masters and Chiefs from within its ranks – in particular from the Licensed Officers Group represented by Agreement "A".
43. The need for MAI to offer competitive wages for its Masters and Chiefs is increasingly important in light of an well-documented worldwide shortage of shipping officers. For details regarding the shortage in shipping officers, and the difficulties that this presents for MAI, please refer to the Guild's October 24 Agreement A Submissions at paragraphs 95 – 111.

44. The Guild submits that its proposals for increases to both Article 22 - Rate of Pay and Article 17 – the Senior Officers Allowance are supported by the following:
- 1) MAI’s ability to afford such increases;
  - 2) MAI’s pre-pandemic economic situation is on track to surpass pre-pandemic levels;
  - 3) Increased wages are necessary in light of inflationary pressures and the rising cost of living;
  - 4) The Guild’s proposals are consistent with historical wage settlements and awards in previous rounds of bargaining;
  - 5) The wages of MAI Masters and Chiefs are falling behind in relation to its public and private industry comparators; and
  - 6) The Guild’s proposals are reasonable in light of overall labour market trends;
45. Overall, the Guild’s monetary proposals are balanced and reasonable and consistent with the principle of replication – the objective of this interest arbitration.

**Proposal: Article 22 – Rates and Method of Pay**

46. The Guild’s proposal produces the following monetary amendments to Article 22.1:

<b>Master</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
Rate December 2019	60.923			
Pay Increase Jan 1st, 2020	3.0%			
Rate January 1st, 2020	62.75			
Pay Increase Jan 1st, 2021	3.0%			
Rate January 1st, 2021	64.63	66.89		
Pay Increase Jan 1st, 2022	3.0%			
Rate January 1st, 2022	66.57	68.90	71.31	
Pay Increase Jan 1st, 2023	3.0%			
Rate January 1st, 2023	68.57	70.97	73.44	76.02

<b>Chief Engineer</b>	Year 1	Year 2	Year 3	Year 4
Rate December 2019	54.603			
Pay Increase Jan 1st, 2020	3.0%			
Rate January 1st, 2020	56.24			
Pay Increase Jan 1st, 2021	3.0%			
Rate January 1st, 2021	57.93	59.95		
Pay Increase Jan 1st, 2022	3.0%			
Rate January 1st, 2022	59.66	61.75	63.91	
Pay Increase Jan 1 <sup>st</sup> , 2023	3.0%			
Rate January 1,2023	61.45	63.60	65.83	68.13

<b>Chief Electrical Engineer</b>	Year 1	Year 2	Year 3	Year 4
Rate December 2019	43.514			
Pay Increase Jan 1st, 2020	3.0%			
Rate January 1st, 2020	44.81			
Pay Increase Jan 1st, 2021	3.0%			
Rate January 1st, 2021	46.16	47.77		
Pay Increase Jan 1st, 2022	3.0%			
Rate January 1st, 2022	47.55	49.21	50.93	
Pay Increase Jan 1 <sup>st</sup> , 2023	3.0%			
Rate January 1 <sup>st</sup> , 2023	48.97	50.68	52.46	54.29

***\*Proposed grid is representative of a 3% annual wage rate increase and 3.5% increment for each year***

47. The proposed addition of a wage grid, as opposed to the current singular wage rates, are intended to replicate at some level the GSO wage structure, which uses a grid system. This will assist with recruitment and retention as against the GSO as a comparator, as well as providing a measured, incremental system for phasing in wage increases that will make up the lost wage relativity between the MAI officers and GSO officers.
  
48. The Guild's proposal would phase in four increments, one per year. Each increment is has a proposed value of approximately 3.5%, which is consistent with the value of increments in the GSO collective agreement.

**Proposal: Article 17 – Senior Officers Allowance**

49. The Guild’s proposal produces the following monetary amendments to Article 17.1:

<b>Guild Proposals – Senior Officers Allowance</b>				
Date	% Increase	Masters – Annual Amount	Chief Engineers - Annual Amount	Chief Electrical Engineers - Annual Amount
2020	3%	\$19,609	\$17,972	\$16,211
2021	3%	\$20,197	\$18,512	\$16,697
2022	3%	\$20,803	\$37,579	\$17,198
2023	3%	\$21,427	\$38,706	\$17,713

**Economic Circumstances of Marine Atlantic**

50. The Guild anticipates that MAI will argue that its ability to afford the proposed wage increases has been impacted by the COVID-19 pandemic. In both the Guild’s October 24<sup>th</sup> Agreement A Submissions<sup>21</sup> and the Guild’s Agreement A Rebuttal Submissions filed on November 14<sup>th</sup>, 2022<sup>22</sup> (the “Guild’s November 14<sup>th</sup> Agreement A Rebuttal Submissions”), the Guild acknowledged the strains that COVID-19 had on MAI’s operations, but provided sufficient evidence to prove that MAI has recovered financially, and is on track to surpass pre-pandemic levels.

51. The relevant points made in both the Guild’s October 24<sup>th</sup> Agreement A Submissions and the Guild’s November 14<sup>th</sup> Agreement A Rebuttal Submissions in relation to MAI’s ability to afford the Guild’s monetary proposals are summarized below:

- a. MAI, as a federal Crown corporation, receives an annual subsidy from the Government of Canada as it delivers a constitutionally-mandated public service.

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<sup>21</sup> *Supra*, note 10: Guild’s October 24<sup>th</sup> Agreement A Submissions at paragraphs 81-88.

<sup>22</sup> Guild’s November 14<sup>th</sup> Agreement A Rebuttal Submissions (Andy Nielsen and Grace Levy), dated November 14<sup>th</sup>, 2022 at paragraphs 28 – 35; Guild’s Book of Documents at Tab 9.

As such, the Government of Canada covers costs in operations which MAI does not receive from commercial revenue;

- b. Although passenger traffic was reduced during the COVID-19 pandemic, factors such as the 'Atlantic Bubble' eased travel restrictions between Nova Scotia and Newfoundland, allowing ticket sales to be closer to normal than originally anticipated;
  - c. A recent partnership between MAI and the Government of Newfoundland and Labrador called "Come Home 2022", has caused a drastic increase in passenger traffic in 2022.
  - d. The Guild provided Weekly Traffic Reports and other various financial and corporate documentation which show that passenger traffic in 2022 will far exceed pre-pandemic levels;
  - e. Although MAI reported reduced revenue from ticket sales due to the COVID-19 pandemic, it in turn also reported far less spending on other factors such as wages and benefits for its employees due to ongoing layoffs and huge cuts in fuel costs due to fewer sailings – resulting in reduced net losses;
  - f. MAI has the ability to increase passenger fares to offset rising costs, as it has done in the past.
52. The Guild further submits that interest arbitrators have consistently rejected "Ability to Pay" arguments – particularly in the public sector. The Guild provided and discussed an award by Arbitrator Christie which established this principle at paragraphs 30 – 31 of the Guild's November 14th Agreement A Rebuttal Submissions<sup>23</sup>, which the Guild relies upon in the present case. In short, Arbitrator Christie concluded that to allow government underfunding to justify substandard wages is to "ask public sector employees to subsidize

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<sup>23</sup> *Supra*, note 22: Guild's November 14<sup>th</sup> Agreement A Rebuttal Submissions paragraphs 30-31.

the community”<sup>24</sup>, and that he “did not accept that in interest arbitration the arbitrator can be constrained by the employer’s budget”.

53. Arbitrator Kuttner recently reiterated this point in his 2021 interest arbitration award between the Guild and the Atlantic Pilotage Authority<sup>25</sup>:

“40. Much of the material put before me by both parties for consideration, at least implicitly, if not explicitly, addresses the issue of the APA’s ability to pay the increase of wage rates sought by the Guild. In *Public Service Alliance of Canada v Burnt Church First Nation*, (unreported, issued on March 6, 2006) I addressed the issue as follows:

36. The concept of ability to pay in the arbitral jurisprudence is always viewed within the universe of relevant criteria for third party setting of wage rates – never in isolation. Pre-eminent among these is the comparability factor...

37. However, in the public sector, where the employer is not engaged in the market for the services it provides to the citizenry, the thirst to uniformity or comparability of wage rate structures is driven by the political control which it has over the public fisc. It is this distinguishing feature which gives support to the oft-stated arbitral principle that ‘public sector employees ought not to be required to subsidize the community by accepting sub-standard wages, or other working conditions’. See *CUPE and New Brunswick* (1982), 49 NBR (2d) 31 at 38-9, citing the unreported decision of Arbitrator Shime in *General Truck Drivers and Helpers Union, Local 31 and British Columbia Railway Co.* (1 June 1976), an award frequently referred to by interest arbitrators. It is because in the public sector the ability to pay is directly linked to the ability to tax, that one can speak of it as a factor anchored in the political rather than the economic realm. In *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto: Carswell, 1980), Paul Weller put it this way:

“Certainly Canadian arbitrators do *not* accept the principle that an award which seems merited by normal comparisons should

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<sup>24</sup> In the Matter of an Interest Arbitration between Atlantic Pilotage Authority and the Canadian Merchant Service Guild, Collective Agreement for the term February 1, 2003 – January 31, 2009, 2006 CarswellNat 6909 (Christie) at para 42; Guild’s Book of Authorities at Tab 5.

<sup>25</sup> *Canadian Merchant Service Guild v. The Atlantic Pilotage Authority*, May 25, 2021 (Kuttner) at para 40; Guild’s Book of Authorities at Tab 6. [2021 Kuttner APA Award]

be cut back because the public employer does not have the wherewithal in its current treasury to pay for it. With considerable force arbitrators say that the public will have to choose between raising its taxes or reducing its services” [at p. 251]

In his 2006 interest arbitrator award between these same two parties, Arbitrator Christie acknowledged that “it seems likely that the Employer will have to seek an increase in tariffs to pay for any shortfall and the 4% increase I have ordered effective February 1, 2008...”

### **Impact of the Rising Cost of Living**

54. The general economic climate in which the parties function is a relevant consideration for interest arbitrators in conducting the replication analysis.
55. The Guild addressed the rising cost of living in the Guild’s October 24<sup>th</sup> Agreement A Submissions at paragraphs 90 to 95<sup>26</sup>, and relies upon those Submissions in the present case as well. In its Submissions, the Guild provided the annual Consumer Price Index (CPI) data for Canada, Nova Scotia, and Newfoundland and Labrador for each of the years following the expiration of the current collective agreement – 2019, 2020, 2021, and 2022 (up until September, 2022). In sum, as of 2022, the cost of living has increased at its fastest pace in decades – both at the national and provincial levels.
56. In the Guild’s November 14<sup>th</sup> Agreement A Rebuttal Submissions at paragraphs 36 to 47<sup>27</sup>, it provided and discussed further support for its position that inflation is a relevant consideration in this interest arbitration, as it would factor into the decision of what wage settlement would have been agreed upon in free collective bargaining. The Guild repeats and relies upon those Submissions as well.

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<sup>26</sup> *Supra*, note 10: Guild’s October 24<sup>th</sup> Agreement A Submissions at paragraphs 90-95;

<sup>27</sup> *Supra*, note 22: Guild’s November 14<sup>th</sup> Agreement A Submissions at paragraphs 36-47;

57. To summarize its previous Submissions, in the most recent interest arbitration cases—those which have been decided in 2022 when inflation has been at its highest—interest arbitrators have crafted awards that recognize that this period of high inflation is a reality, and that resulting wage increases should account for the drastic increase in cost of living. In particular, the Guild relies, once again, on the following authorities<sup>28</sup>: *Homewood Health Centre Inc. and UFCW, Local 75* (June 2, 2022) 2022 CarswellOnt 7634 (James Hayes [Chair], Paul Young, Harold Caley); *Participating Nursing Homes v Service Employees' International Union Local 1, Canada*, 2022 CanLII 90597 (ON LA); *CUPE, Local 5428 and Esterhazy (Town), Re*, 2022 CarswellSask 472 (July 12, 2022); *Strathcona (Regional District) v. United Steelworkers, Local 1-1937* (Collective Agreement Grievance) [2022] B.C.C.A.A.A. No. 36 (April 13, 2022).<sup>29</sup>
58. The Guild should not be expected to accept a wage settlement which does not recognize the rapidly increasing cost of living.

### **Historical Bargaining Patterns Between the Parties**

59. As stated above, the parties have successfully negotiated monetary proposals in multiple rounds of collective bargaining. The Guild's proposals—both in relation to Rate of Pay as well as for the Senior Officers Allowance—are in line with historical bargaining patterns which have either been freely bargained or awarded via interest arbitration. This is highly persuasive, as the primary goal of interest arbitration is that of replication.

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<sup>28</sup> *Homewood Health Centre Inc. and UFCW, Local 75* (June 2, 2022) 2022 CarswellOnt 7634 (James Hayes [Chair], Paul Young, Harold Caley). Guild's Book of Authorities at Tab 7.; *Participating Nursing Homes v Service Employees' International Union Local 1, Canada* 2022 CanLII 90597 (ON LA); Guild's Book of Authorities at Tab 8; *CUPE, Local 5428 and Esterhazy (Town), Re*, 2022 CarswellSask 472. Guild's Book of Authorities at Tab 9; *Strathcona (Regional District) v. United Steelworkers, Local 1-1937* (Collective Agreement Grievance) 2022 CarswellBC 1162. Guild's Book of Authorities at Tab 10.

<sup>29</sup> There are also cases from 2021 which consider the impact of inflation, in particular, see: *Pembina Trails School Division*, 2021 CarswellMan 81. Guild's Book of Authorities at Tab 11; and *Vancouver Police Board*, 2021 CarswellBC 4229; Guild's Book of Authorities at Tab 12.

60. The following Table shows the Rate of Pay increases for each year since the beginning of the bargaining relationship:

<b>MAI Rate of Pay Increases - Year over Year</b>	
<b>Date</b>	<b>Year over Year Increase</b>
2001	4.00%
2002	3.00%
2003	3.00%
2004	2.00% or CPI
2005	2.00%
2006	2.50%
2007	2.50%
2008	2.50% or CPI
2009	2.80%
2010	2.80%
2011	2.00%
2012	2.00%
2013	2.50%
2014	1.75%
2015	1.75%
2016	1.75%
2017	1.75%
2018	1.75%
2019	1.75%

61. As the above Table shows, the Guild’s proposal to increase the Rate of Pay by 3 percent each year is within the range of what the parties have bargained in the past. The Guild’s proposals are further justified in light of current inflationary pressures, and the rising cost of living. As shown above, the parties explicitly accounted for possible Cost of Living (or CPI) increases in both 2004 and 2008.

62. Also, as discussed below, Agreement “E” wages have continually eroded as against important comparator groups, and increases on the higher end of the spectrum are required in order to make up lost ground on wage relativity. The recent relatively

conservative series of economic increases have created substantial loss of wage position against comparators.

63. The parties have also often freely bargained substantial increases to the Senior Officers Allowance. In many cases, these increases have been greater than what the Guild currently proposes. The Table below highlights the year over year increases in the Senior Officers Allowance for Masters, Chief Engineers, and Chief Electrical Engineers:

<b>Year over Year Increases in Senior Officers Allowance (SOA) - Masters</b>			
Date	SOA - Masters (\$)	SOA - Masters %	SOA – Masters (\$)
<b>2002</b>	<b>\$ 10,000.00</b>		
<b>2003</b>	<b>\$ 10,000.00</b>	0.0%	\$ -
<b>2004</b>	<b>\$ 10,000.00</b>	0.0%	\$ -
<b>2005</b>	<b>\$ 11,565.76</b>	13.5%	\$ 1,565.76
<b>2006</b>	<b>\$ 11,854.90</b>	2.4%	\$ 289.14
<b>2007</b>	<b>\$ 12,151.28</b>	2.4%	\$ 296.38
<b>2008</b>	<b>\$ 12,455.06</b>	2.4%	\$ 303.78
<b>2009</b>	<b>\$ 13,300.00</b>	6.4%	\$ 844.94
<b>2010</b>	<b>\$ 13,675.00</b>	2.7%	\$ 375.00
<b>2011</b>	<b>\$ 14,450.00</b>	5.4%	\$ 775.00
<b>2012</b>	<b>\$ 14,750.00</b>	2.0%	\$ 300.00
<b>2013</b>	<b>\$ 15,119.00</b>	2.4%	\$ 369.00
<b>2014</b>	<b>\$ 15,383.00</b>	1.7%	\$ 264.00
<b>2015</b>	<b>\$ 16,403.00</b>	6.2%	\$ 1,020.00
<b>2016</b>	<b>\$ 16,940.00</b>	3.2%	\$ 537.00
<b>2017</b>	<b>\$ 17,236.00</b>	1.7%	\$ 296.00
<b>2018</b>	<b>\$ 17,538.00</b>	1.7%	\$ 302.00
<b>2019</b>	<b>\$ 19,038.00</b>	7.9%	\$ 1,500.00

<b>Year over Year Increases in Senior Officers Allowance (SOA) – Chief Electrical Engineers</b>			
Date	SOA - Chief Engineers (\$)	SOA - Chief Engineers (%)	SOA - Chief Engineers (\$)
<b>2002</b>	<b>\$ 8,000.00</b>		
<b>2003</b>	<b>\$ 8,000.00</b>	0.0%	\$ -

2004	\$ 8,000.00	0.0%	\$ -
2005	\$ 10,409.19	15.7%	\$ 1,409.19
2006	\$ 10,669.42	2.5%	\$ 260.23
2007	\$ 10,936.16	2.5%	\$ 266.74
2008	\$ 11,209.56	2.5%	\$ 273.40
2009	\$ 11,975.00	6.8%	\$ 765.44
2010	\$ 12,325.00	2.9%	\$ 350.00
2011	\$ 13,025.00	5.7%	\$ 700.00
2012	\$ 13,330.00	2.3%	\$ 305.00
2013	\$ 13,663.00	2.5%	\$ 333.00
2014	\$ 13,902.00	1.7%	\$ 239.00
2015	\$ 14,896.00	7.2%	\$ 994.00
2016	\$ 15,406.00	3.4%	\$ 510.00
2017	\$ 15,675.00	1.7%	\$ 269.00
2018	\$ 15,949.00	1.7%	\$ 274.00
2019	\$ 17,449.00	9.4%	\$ 1,500.00

<b>Year over Year Increases in Senior Officers Allowance (SOA) – Chief Electrical Engineers</b>			
Date	SOA - Chief Electrical Engineers (\$)	SOA - Chief Electrical Engineers (%)	SOA - Chief Electrical Engineers (\$)
2002	\$8,000.00		
2003	\$8,000.00	0.00%	\$0.00
2004	\$8,000.00	0.00%	\$0.00
2005	\$9,202.03	13.06%	\$1,202.03
2006	\$9,432.08	2.44%	\$230.05
2007	\$9,667.88	2.44%	\$235.80
2008	\$9,909.58	2.44%	\$241.70
2009	\$10,650.00	6.95%	\$740.42
2010	\$10,950.00	2.74%	\$300.00
2011	\$11,575.00	5.40%	\$625.00
2012	\$11,800.00	1.91%	\$225.00
2013	\$12,095.00	2.44%	\$295.00
2014	\$12,307.00	1.72%	\$212.00
2015	\$13,272.00	7.27%	\$965.00
2016	\$13,754.00	3.50%	\$482.00
2017	\$13,994.00	1.72%	\$240.00
2018	\$14,239.00	1.72%	\$245.00
2019	\$15,739.00	9.53%	\$1,500.00

## **Comparators**

64. As stated above, and set forth in detail in the Guild's October 24<sup>th</sup> Agreement A Submissions<sup>30</sup>, the object of an interest arbitrator is to replicate, as closely as possible, the agreement that the parties would have reached in free collective bargaining with the right to strike or lock-out. In conducting this exercise, the interest arbitrator must consider the appropriate comparators.
65. In cases involving MAI, interest arbitrators have found that there are "no comparators that are so similar as to provide a precise template"<sup>31</sup> on which to base new collective agreement provisions. However, information regarding compensation within the relevant labour market still provides a "useful background to show how the proposals of both the Guild and Employer compare within a broader context."<sup>32</sup> Interest arbitrators have therefore relied upon a range of public and private employers, in various industries, with varying sizes of vessels, to inform their comparative analysis.
66. The external comparators which are relevant to the current circumstances of this bargaining unit include:
- a. The Coast Guard (federal government employer);
  - b. The Atlantic Pilotage Authority (federal Crown corporation); and
  - c. Private commercial marine operators on the East Coast – primarily Maersk and Teekay Atlantic (now "Altera Atlantic").

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<sup>30</sup> *Supra*, note 10: Guild's October 24<sup>th</sup> Agreement A Submissions at paragraphs 18-26;

<sup>31</sup> *Supra*, note 3 [2002 Ashley Award] at para 19.

<sup>32</sup> *Ibid.* at para 19.

## Government Ships' Officers

67. The Guild submits that the Government Ships Officers group, employed by the Federal Government of Canada (the "GSO"), is the most appropriate comparator against which MAI Masters and Chiefs should be measured.<sup>33</sup> The Guild's position is supported by a number of similarities between the operations of MAI and the Coast Guard, including:
- a. Both operations are funded by the federal government.
  - b. Both groups have similar working conditions, including hours of work and time off.
  - c. Both groups require similar certifications to perform their duties.
68. The fleet of vessels that MAI Masters and Chiefs operate are larger, more powerful, and more complex than those operated by officers employed in the GSO group. Further, MAI Masters and Chiefs carry the heightened responsibility of ensuring the lives and safety of many passengers. Despite this, MAI Masters and Chiefs have struggled to keep pace with their GSO counterparts, and the difference in wages continues to grow.
69. A 2002 interest arbitration award between the parties had intended to address the wage disparity between MAI Masters and Chiefs and the equivalent classifications at the GSO. While Arbitrator Ashley recognized that the GSO—like the other available comparators—was not an "optimal comparator"<sup>34</sup>, she nonetheless determined that incremental progress should be made to narrow the gap in wages.
70. Arbitrator Ashley relied upon this wage disparity, in part, to justify the implementation of the Senior Officers Allowance for MAI Masters and Chiefs in 2002. She concluded that although the Senior Officers Allowance would not close the gap between MAI and the GSO entirely, it would "address the wage gap in a significant way".<sup>35</sup>

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<sup>33</sup> The Guild also cited the GSO as the most relevant comparator in relation to Licensed Officers represented by Agreement A. See the Guild's October 24<sup>th</sup> Agreement A Submissions at paragraphs 121 to 128.

<sup>34</sup> *Supra*, note 3 [2002 Ashley Award] at para 41.

<sup>35</sup> *Supra*, note 3 [2002 Ashley Award] at para 46.

71. Unfortunately, the parties have not achieved this desired result. Significant wage gains achieved by the GSO through interest arbitration awards over the past decade have deteriorated MAI’s relative position. In particular, the most recent GSO interest arbitration award (the “2018 GSO award”<sup>36</sup>) resulted in a 17 percent wage increase/market adjustment over the term of the resulting collective agreement with a term of April 1<sup>st</sup>, 2014 to March 31<sup>st</sup>, 2018.

**Base Salary Improvements are Required to Address the Wage Disparity with the GSO**

72. The following Table compares the base salary of MAI Masters with the base salary of its equivalent MAO-12 classification at the GSO<sup>37</sup>:

Coast Guard MAO-12 and Masters					
Date <sup>38</sup>	MAI Hourly Wage	MAI Annual Salary (2160 <sup>39</sup> hours/year)	GSO Hourly Wage	Coast Guard Annual Salary (2184 <sup>40</sup> hours/year)	% Difference in Annual Rate
2010	\$51.48	\$111,196.80	\$53.83	\$117,564.72	-5.73%
2011	\$52.51	\$113,421.60	\$54.77	\$119,617.68	-5.46%
2012	\$53.56	\$115,689.60	\$55.59	\$121,408.56	-4.94%
2013	\$54.90	\$118,584.00	\$56.70	\$123,832.80	-4.43%
2014	\$55.86	\$120,657.60	\$57.41	\$125,383.44	-3.92%
2015	\$56.84	\$122,774.40	\$58.13	\$126,955.92	-3.41%
2016	\$57.84	\$124,934.40	\$58.86	\$128,550.24	-2.89%
2017	\$58.88	\$127,180.80	\$59.60	\$130,166.40	-2.35%
2018	\$59.86	\$129,297.60	\$66.75	\$145,782.00	-12.75%
2019	\$60.92	\$131,587.20			

<sup>36</sup> *Canadian Merchant Service Guild and the Treasury Board (Ships’ Officer Group)*, October 2, 2018 (Baxter, Herbert, Boettger); Guild’s Book of Authorities at Tab 13 [2018 GSO Award].

<sup>37</sup> Based on the size of vessels operated by MAI Masters, MAI Masters are actually more comparable to members of the more highly paid “MAO-13” classification at the GSO, however, this group is excluded from the bargaining unit and therefore the Guild does not have historic wage data for the MAO-13 group.

<sup>38</sup> Note, MAI rates are effective January 1<sup>st</sup> of each year, whereas GSO rates are effective April 1<sup>st</sup> of each year.

<sup>39</sup> Based on 12, 15-day tours of duty per year, compensated at 12 hours per day (12 months x 15 days x 12 hours = 2160 hours).

<sup>40</sup> Senior Officers in the GSO work 13 cycles per year of 28-days on, 28-days off. They are compensated for 42 hours per week or 6 hours per day (42 hours x 52 weeks = 2184); Collective Agreement between the Treasury Board and the Canadian Merchant Service Guild (Ship Officers’ Group) April 1, 2014 to March 31, 2018 at Article 30.; Guild’s Folder of Collective Agreements; Note: All historical referenced Collective Agreements for the GSO are found within the Guild’s Folder of Collective Agreements.

73. The following Table compares the base salary of MAI Chief Engineers with the base salary of its equivalent MAO-11 classification at the GSO<sup>41</sup>:

Coast Guard MAO-11 and MAI Chief Engineers					
Date <sup>42</sup>	MAI Hourly Wage	MAI Annual Salary (2160 <sup>43</sup> hours/year)	GSO Hourly Wage	Coast Guard Annual Salary (2184 <sup>44</sup> hours/year)	% Difference in Annual Rate
2010	<b>\$46.14</b>	\$99,662.40	<b>\$49.39</b>	\$107,867.76	-8.23%
2011	<b>\$47.06</b>	\$101,649.60	<b>\$50.25</b>	\$109,746.00	-7.97%
2012	<b>\$48.01</b>	\$103,701.60	<b>\$51.00</b>	\$111,384.00	-7.41%
2013	<b>\$49.21</b>	\$106,293.60	<b>\$52.02</b>	\$113,611.68	-6.88%
2014	<b>\$50.07</b>	\$108,151.20	<b>\$52.67</b>	\$115,031.28	-6.36%
2015	<b>\$50.94</b>	\$110,030.40	<b>\$53.33</b>	\$116,472.72	-5.86%
2016	<b>\$51.83</b>	\$111,952.80	<b>\$54.00</b>	\$117,936.00	-5.34%
2017	<b>\$52.74</b>	\$113,918.40	<b>\$54.68</b>	\$119,421.12	-4.83%
2018	<b>\$53.66</b>	\$115,905.60	<b>\$61.24</b>	\$133,748.16	-15.39%
2019	<b>\$54.60</b>	\$117,936.00			

74. As the Tables show, MAI Masters and Chief Engineers made incremental progress towards wage parity with the GSO over the past decade. For MAI Masters, the wage differential shrunk from 5.73% in 2010 to 2.35% in 2017, but now, following the 2018 GSO award, MAI Masters are 12.75% behind their GSO counterparts. Similarly for Chief Engineers, the wage differential fell from 8.23% in 2010 to 4.83% in 2017, but has since grown to 15.39% as of 2018.
75. The parties cannot let this gap in wages continue to grow. The Guild's proposal is necessary in order to restore MAI's position relative to the GSO—especially following the significant gains achieved in the 2018 GSO award.

<sup>41</sup> Based on the size of vessels operated by MAI Chief Engineers, MAO-11 is the equivalent GSO classification level.

<sup>42</sup> See note 38 above.

<sup>43</sup> See note 39 above.

<sup>44</sup> See note 40 above.

**Senior Officers Allowance Improvements Required to Address the Coast Guard Wage Gap**

76. The Guild has also proposed that, in addition to the increase in wages, the Senior Officers Allowance also increase by 3 percent each year of the new collective agreement. These increases will work together to restore the relative position between MAI and the GSO, and will be consistent with the negotiating history between the parties.

77. The following Tables illustrate the significant gaps in wages that remain between MAI Masters and Chiefs and GSO classifications MAO-11 and MAO-12, even when the MAI Senior Officers Allowance and the GSO Extra Responsibility Allowances<sup>45</sup> are included in the comparison.

<b>MASTERS vs. GSO MAO-12</b>					
<b>Date<sup>46</sup></b>	<b>MAI Allowance</b>	<b>MAI Annual rate (2160 hours/year<sup>47</sup>) including Allowance</b>	<b>Coast Guard Extra Responsibility Allowance</b>	<b>Coast Guard Annual Rate (2184 hours/year<sup>48</sup>) including ERA</b>	<b>Difference in Annual Pay Inclusive of Allowances (%)</b>
<b>2010</b>	\$ 13,675.00	\$ 124,873.96	\$ 16,819.00	\$ 134,383.72	-7.6%
<b>2011</b>	\$ 14,450.00	\$ 127,873.76	\$ 16,819.00	\$ 136,436.68	-6.7%
<b>2012</b>	\$ 14,750.00	\$ 130,441.76	\$ 16,819.00	\$ 138,227.56	-6.0%
<b>2013</b>	\$ 15,119.00	\$ 133,703.00	\$ 17,587.00	\$ 141,419.80	-5.8%
<b>2014</b>	\$ 15,383.00	\$ 136,040.00	\$ 17,587.00	\$ 142,970.44	-5.1%
<b>2015</b>	\$ 16,403.00	\$ 139,117.40	\$ 17,587.00	\$ 144,542.92	-3.9%
<b>2016</b>	\$ 16,940.00	\$ 141,874.40	\$ 17,587.00	\$ 146,137.24	-3.0%
<b>2017</b>	\$ 17,236.00	\$ 144,416.80	\$ 17,587.00	\$ 147,753.40	-2.3%
<b>2018</b>	\$ 17,538.00	\$ 146,835.60	\$ 17,587.00	\$ 163,369.00	-11.3%
<b>2019</b>	\$ 19,038.00	\$ 150,625.20			

<sup>45</sup> Collective Agreement between the Treasury Board and the Canadian Merchant Service Guild (Ship Officers' Group) April 1, 2014 to March 31, 2018 at Appendix "H"; Guild's Folder of Collective Agreements;

<sup>46</sup> See note 38 above.

<sup>47</sup> See note 39 above.

<sup>48</sup> See note 40 above.

Chief Engineers v. Coast Guard MAO-11					
Date <sup>49</sup>	MAI Allowance	MAI Annual rate (2160 hours/year <sup>50</sup> ) including Allowance	Coast Guard Extra Responsibility Allowance	Coast Guard Annual Rate (2184 hours/year <sup>51</sup> ) including ERA	Difference in Annual Pay Inclusive of Allowances (%)
2010	\$ 12,325.00	\$ 111,989.56	\$ 15,431.00	\$ 123,298.76	-10%
2011	\$ 13,025.00	\$ 114,683.24	\$ 15,431.00	\$ 125,177.00	-9%
2012	\$ 13,330.00	\$ 117,020.80	\$ 15,431.00	\$ 126,815.00	-8%
2013	\$ 13,663.00	\$ 119,956.60	\$ 16,135.00	\$ 129,746.68	-8%
2014	\$ 13,902.00	\$ 122,053.20	\$ 16,135.00	\$ 131,166.28	-7%
2015	\$ 14,896.00	\$ 124,926.40	\$ 16,135.00	\$ 132,607.72	-6%
2016	\$ 15,406.00	\$ 127,358.80	\$ 16,135.00	\$ 134,071.00	-5%
2017	\$ 15,675.00	\$ 129,593.40	\$ 16,135.00	\$ 135,556.12	-5%
2018	\$ 15,949.00	\$ 131,854.60	\$ 16,135.00	\$ 149,883.16	-14%
2019	\$ 17,449.00	\$ 135,385.00			

78. Combined with the proposed economic increases of 3 percent per year, and the proposed step additions to the wage grid, the Guild’s proposed improvements to the Senior Officers Allowance represent a fair and reasonable means to reduce the wage discrepancy between MAI and the GSO in terms of overall compensation.

79. The Tables below show that by 2023, the Guild’s proposals will reduce the total pay differential with the GSO by 3.4 percent for Masters (relative to the MAO-12 classification) and to 6 percent for Chief Engineers (relative to the MAO-11 classification). For the purposes of these projections, the Guild assumes a modest 1.5 percent increase in base salary for the GSO for each of the relevant years, and a 4 percent increase in the Extra Responsibility Allowance in 2019.

<sup>49</sup> See note 38 above.

<sup>50</sup> See note 39 above.

<sup>51</sup> See note 40 above.

<b>MAI Masters vs. Coast Guard MAO-12 (PROJECTED)</b>					
<b>Date<sup>52</sup></b>	<b>MAI Allowance</b>	<b>MAI Annual rate (2160<sup>53</sup> hours/year) including Allowance</b>	<b>Coast Guard Extra Responsibility Allowance</b>	<b>Coast Guard Annual Rate (2184<sup>54</sup> hours/year) including ERA</b>	<b>Difference in Annual Pay Inclusive of Allowances (%)</b>
<b>2019</b>	\$ 19,038.00	\$ 150,625.20	\$ 18,290.48	\$ 168,483.68	-11.9%
<b>2020</b>	\$ 19,609.14	\$ 155,149.14	\$ 18,290.48	\$ 170,733.68	-10.0%
<b>2021</b>	\$ 20,197.41	\$ 159,798.21	\$ 18,290.48	\$ 171,363.20	-7.2%
<b>2022</b>	\$ 20,803.34	\$ 164,594.54	\$ 18,290.48	\$ 173,026.40	-5.1%
<b>2023</b>	\$ 21,427.45	\$ 169,538.65	\$ 18,290.48	\$ 175,341.44	-3.4%

<b>Chief Engineers v. Coast Guard MAO-11 (PROJECTED)</b>					
<b>Date<sup>55</sup></b>	<b>MAI Allowance</b>	<b>MAI Annual rate (2160<sup>56</sup> hours/year) including Allowance</b>	<b>Coast Guard Extra Responsibility Allowance</b>	<b>Coast Guard Annual Rate (2184<sup>57</sup> hours/year) including ERA</b>	<b>Difference in Annual Pay Inclusive of Allowances (%)</b>
<b>2019</b>	\$ 17,449.00	\$ 135,385.00	\$ 16,780.00	\$ 152,537.44	-13%
<b>2020</b>	\$ 17,972.47	\$ 139,450.87	\$ 16,780.00	\$ 154,568.56	-11%
<b>2021</b>	\$ 18,511.64	\$ 143,640.44	\$ 16,780.00	\$ 156,643.36	-9%
<b>2022</b>	\$ 19,066.99	\$ 147,932.59	\$ 16,780.00	\$ 158,740.00	-7%
<b>2023</b>	\$ 19,639.00	\$ 152,371.00	\$ 16,780.00	\$ 160,858.48	-6%

<sup>52</sup> See note 38 above.

<sup>53</sup> See note 39 above.

<sup>54</sup> See note 40 above.

<sup>55</sup> See note 38 above.

<sup>56</sup> See note 39 above.

<sup>57</sup> See note 40 above.

## **Atlantic Pilotage Authority**

80. The Guild submits that the Class A Unlimited Pilots employed by the Atlantic Pilotage Authority (“APA Pilots”) are another useful comparator to the Masters employed by MAI.
81. MAI and the APA are both federal Crown corporations operating in the marine industry in Atlantic Canada.<sup>58</sup> Like MAI Masters, Pilots are an elite group of experienced and skilled professionals responsible for the safe navigation of ships. Both groups share a similar level of responsibility and status within their organizations, and their positions require similar certification. Unlike the MAI Masters, who must navigate the open seas, the work of Pilots is limited to designated areas such as the Halifax and Sydney harbours.
82. In 2002, Arbitrator Ashley considered the levels of APA Pilots remuneration when she awarded the breakthrough Senior Officers Allowance to MAI Masters and Chiefs. She noted, in particular, that APA Pilots “have the opportunity to enhance their earnings through call-back allowances and productivity bonuses,” which supported her conclusion that some kind of supplemental allowance was also required for MAI Masters and Chiefs.<sup>59</sup>
83. The APA Pilots, like the GSO, recently achieved a significant monetary award through interest arbitration, which has caused MAI’s relative position to fall drastically behind. In 2021, Arbitrator Kuttner awarded the APA Pilots a 17.5 percent increase over the course of the five-year collective agreement with a term of 2020-2024.<sup>60</sup>

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<sup>58</sup> Collective Agreement between the Atlantic Pilotage Authority and the Canadian Merchant Service Guild, January 1, 2020 – December 31, 2024. Guild’s Folder of Collective Agreements.

<sup>59</sup> *Supra*, note 3 [2002 Ashley Award] at para 36 and 40;

<sup>60</sup> *Supra*, note 25 [2021 Kuttner APA Award];

84. The APA Pilot wage increases exceed what the Guild is proposing for its MAI Masters and Chiefs, as seen in the Table below:

Year	APA Pilots Award	Guild's Proposal
2020	3.5%	3.0%
2021	3.5%	3.0%
2022	3.5%	3.0%
2023	3.5%	3.0%
2024	3.5%	

85. The Guild's wage proposal of 3 percent increases in each year of a four-year collective agreement is fair and reasonable in light of the economic increases that the APA Pilots were awarded in this round of bargaining. These increases by a federally-funded Crown corporation operating in the marine industry should be very influential in assessing the proper increases for MAI Masters and Chiefs during the same term.

86. In terms of absolute wages, the Guild's 3 percent economic proposal would maintain approximately the current position between MAI Masters relative to APA Pilots over the course of the collective agreement. As illustrated in the Table below, MAI's position has lagged drastically over the years – from only 2.96 percent in 2002 to 16.35 percent in 2019:

MAI Masters v. APA Pilots – Base Salary Comparison				
Date	Hourly Rate MAI (Actual)	Annual Rate MAI (2160 hours/year)	Annual Rate APA Class A Pilots	% Difference in Annual Rate
2002	<b>\$41.90</b>	\$90,504.00	\$93,185.00	-2.96%
2003	<b>\$43.16</b>	\$93,225.60	\$95,981.00	-2.96%
2004	<b>\$44.35</b>	\$95,796.00	\$98,860.00	-3.20%
2005	<b>\$45.24</b>	\$97,718.40	\$101,332.00	-3.70%
2006	<b>\$46.37</b>	\$100,159.20	\$103,865.00	-3.70%
2007	<b>\$47.53</b>	\$102,664.80	\$106,981.00	-4.20%
2008	<b>\$48.72</b>	\$105,235.20	\$111,260.00	-5.73%

2009	<b>\$50.08</b>	\$108,172.80	\$114,620.00	-5.96%
2010	<b>\$51.48</b>	\$111,196.80	\$118,958.00	-6.98%
2011	<b>\$52.51</b>	\$113,421.60	\$123,764.00	-9.12%
2012	<b>\$53.56</b>	\$115,689.60	\$125,002.00	-8.05%
2013	<b>\$54.90</b>	\$118,584.00	\$127,830.00	-7.80%
2014	<b>\$55.86</b>	\$120,657.60	\$131,046.00	-8.61%
2015	<b>\$56.84</b>	\$122,774.40	\$136,694.00	-11.34%
2016	<b>\$57.84</b>	\$124,934.40	\$140,453.00	-12.42%
2017	<b>\$58.88</b>	\$127,180.80	\$144,316.00	-13.47%
2018	<b>\$59.86</b>	\$129,297.60	\$148,645.00	-14.96%
2019	<b>\$60.92</b>	\$131,587.20	\$153,104.00	-16.35%

87. The widening wage gap in base salary is not justified by any change to the relative skill or responsibility of the Pilots and MAI bargaining unit members. The Guild's proposal is required simply to maintain the current position of MAI officers in relation to the APA Pilots, and ensure that the MAI officers do not fall even farther behind their APA Pilot comparators.

## **Offshore Marine Industry on the East Coast**

88. The Guild also offers as comparators private employers operating in the offshore marine industry on the East Coast – particularly Maersk Supply Services Ltd. (“Maersk”) and Altera (Atlantic) (formerly “Teekay (Atlantic)”) – as relevant comparators for the purposes of this interest arbitration.
89. The private offshore industry on the East Coast informs what a reasonable wage settlement would be in the present case. The Guild submits that its proposed Rate of Pay and Senior Officers Allowance increases are fair and reasonable, to ensure that MAI can keep pace with wages offered within the private sector.
90. Maersk is a private shipping company which operates supply ships off the coast of Newfoundland. Maersk Masters and Chiefs share similar terms of employment in that they both work a time-on, time-off basis, earning a day off for each day worked. Moreover, the certification required of the Masters and Chiefs at Maersk is equivalent to that required of the Masters and Chiefs in this bargaining unit. Maersk Masters and Chiefs operate vessels which are smaller in comparison with MAI in terms of size and crew complement, and they are also not responsible for the lives and safety of passengers. Like MAI Masters and Chiefs, their Maersk counterparts also receive an officers’ allowance.
91. Altera (Atlantic) is also a private shipping company which operates off the coast of Newfoundland and Labrador. It was, until recently, known as Teekay Offshore Partners. Altera/Teekay vessels shuttle crude oil from Hibernia to Newfoundland. Terms and conditions of employment are similar to Maersk, and Altera officers are also employed under Guild collective agreements.
92. The Guild expects that MAI will argue that Maersk and Altera are not comparable to MAI due to the fact that they are in the private, rather than the public industry, or the fact that MAI carries passengers, while the others do not. However, the reality is, if MAI needs

to recruit a Master or Chief Engineer from outside MAI, a Master from either of these companies would be a qualified candidate, and thus a competitive salary must be maintained in order to attract new employees when the need arises. Similarly, a MAI Master or Chief Engineer at MAI is qualified to work on either of these vessels, should they decide to leave MAI. Therefore, MAI's wages must be reasonably competitive, so as to be able to compete within the labour market.

93. The financial compensation of a Master or Chief Engineer at Maersk consists of a base salary, which is inclusive of its overtime, statutory holiday pay, vacation and leave day premium.<sup>61</sup> Maersk Masters and Chiefs also enjoy generous seniority bonuses<sup>62</sup> - for example, for Masters and Chiefs with over fifteen years' experience, the seniority bonus was \$22,281.73 in 2020, \$22,838.77 in 2021, and \$23,683.80 in 2022.<sup>63</sup>
94. The financial compensation of a Master or Chief Engineer at Altera (Atlantic) consists of a base salary which is inclusive of overtime, sick leave, statutory holiday pay, vacation, and leave day premiums.<sup>64</sup> Altera Masters and Chiefs also earn seniority bonuses of \$1500.00 per year of service, to a maximum of \$15,000.00.<sup>65</sup>
95. One-to-one comparisons between MAI, Maersk, and Altera are complicated, because of their differing compensation structures. In these submissions, the Guild has attempted to present an "apples to apples" comparison by backing out aspects of the private industry comparator wage packages that are not comparable with MAI. The below tables illustrate

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<sup>61</sup> Collective Agreement between Maersk and the Canadian Merchant Service Guild (January 1, 2018- December 1, 2022), Article 27 and Appendix A1 & A2.; Guild's Folder of Collective Agreements. Note: Historical Collective Agreements between Altera and CMSG are within the Guild's Folder of Collective Agreements.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Collective Agreement between Altera (Atlantic) and the Canadian Merchant Service Guild (January 1, 2021 – December 31, 2023) at Article 28; Guild's Folder of Collective Agreements. Note: Historical Collective Agreements between Altera and CMSG are within the Guild's Folder of Collective Agreements.

<sup>65</sup> *Ibid.*

MAI's position relative to Maersk and Altera in terms of base salary for both Masters and Chief Engineers:

<b>MAI Masters vs. Private Industry Comparators – Base Salary</b>					
Date	MAI Annual Salary (2160 hours/year) <sup>66</sup>	% Difference with Altera	Altera Base Salary	% Difference with Maersk	Maersk Base Salary
2013	\$117,936.00			-22.09%	\$143,991.72
2014	\$120,657.60			-22.92%	\$148,311.47
2015	\$122,774.40	-62.48%	\$199,486.39	-24.42%	\$152,760.81
2016	\$124,934.40	-59.63%	\$199,436.39	-26.05%	\$157,485.36
2017	\$127,095.20	-60.10%	\$203,476.20	-27.74%	\$162,356.05
2018	\$129,330.00	-61.66%	\$208,563.10	-25.54%	\$162,356.05
2019	\$131,593.68	-62.45%	\$213,777.20	-23.38%	\$162,356.05

<b>MAI Chief Engineers vs. Private Industry Comparators – Base Salary</b>					
Date	MAI Annual Salary (2160 hours/year) <sup>67</sup>	% Difference with Altera	Altera Base Salary	% Difference with Maersk	Maersk Base Salary
2013	\$106,293.60			-32.02%	\$140,329.16
2014	\$108,151.20			-33.65%	\$144,539.04
2015	\$110,030.40	-74.93%	\$192,480.95	-35.30%	\$148,875.21
2016	\$111,952.80	-71.93%	\$192,480.95	-36.97%	\$153,341.46
2017	\$113,920.56	-72.34%	\$196,330.57	-38.64%	\$157,941.71
2018	\$115,914.24	-73.61%	\$201,238.83	-36.26%	\$157,941.71
2019	\$117,942.48	-74.89%	\$206,269.80	-33.91%	\$157,941.71

96. Below are Tables which show how MAI would compare if the Guild's proposals are accepted. The Tables illustrate that the Guild's proposals will ensure MAI is able to maintain its position against its private industry comparators, and restore its historical position relative to Maersk.

<sup>66</sup> See note 38 above.

<sup>67</sup> See note 38 above.

MAI Masters vs. Private Industry Comparators – Base Salary PROJECTED with Guild’s Proposals					
Date	MAI Annual Salary (2160 hours/year) <sup>68</sup>	% Difference with Altera	Altera Base Salary	% Difference with Maersk	Maersk Base Salary
2013	\$117,936.00			-22.09%	\$143,991.72
2014	\$120,657.60			-22.92%	\$148,311.47
2015	\$122,774.40	-62.48%	\$199,486.39	-24.42%	\$152,760.81
2016	\$124,934.40	-59.63%	\$199,436.39	-26.05%	\$157,485.36
2017	\$127,095.20	-60.10%	\$203,476.20	-27.74%	\$162,356.05
2018	\$129,330.00	-61.66%	\$208,563.10	-25.54%	\$162,356.05
2019	\$131,593.68	-62.45%	\$213,777.20	-23.38%	\$162,356.05
2020	\$135,541.49	-61.66%	\$219,121.63	-19.78%	\$162,356.05
2021	\$139,607.74	-60.88%	\$224,599.30	-19.20%	\$166,414.95
2022	\$143,795.97	-57.75%	\$226,845.30	-20.01%	\$172,572.30
2023	\$148,109.85	-55.46%	\$230,247.98		

MAI Chief Engineers vs. Private Industry Comparators – Base Salary PROJECTED with Guild’s Proposals					
Date	MAI	% Difference with Altera	Altera Base Salary	% Difference with Maersk	Maersk Base Salary
2013	\$106,293.60			-32.02%	\$140,329.16
2014	\$108,151.20			-33.65%	\$144,539.04
2015	\$110,030.40	-74.93%	\$192,480.95	-35.30%	\$148,875.21
2016	\$111,952.80	-71.93%	\$192,480.95	-36.97%	\$153,341.46
2017	\$113,920.56	-72.34%	\$196,330.57	-38.64%	\$157,941.71
2018	\$115,914.24	-73.61%	\$201,238.83	-36.26%	\$157,941.71
2019	\$117,942.48	-74.89%	\$206,269.80	-33.91%	\$157,941.71
2020	\$121,480.75	-74.04%	\$211,426.55	-30.00%	\$157,941.71
2021	\$125,125.18	-73.20%	\$216,714.99	-29.40%	\$161,890.26
2022	\$128,878.93	-69.84%	\$218,882.14	-30.30%	\$167,880.20
2023	\$132,745.30	-67.36%	\$222,165.37		

<sup>68</sup> See note 38 above.

## The Guild's Non-Monetary Proposals

### Article 16 – Rest Days

97. The Guild did not make specific proposals in bargaining related to hours of work or rest days. However, once the issues related to modified work, scheduling and averaging were raised at the Agreement “A” negotiating table, these parties engaged with it as well, albeit to a lesser extent.
98. The issue was the subject of a day of mediation by FMCS on March 17, 2022. The Guild asserts, for the purposes of this interest arbitration, that the current Agreement “E” agreement and practices violate the *Canada Labour Code* and the *East Coast and Great Lakes Shipping Employees Hours of Work Regulations, 1985* (C.R.C./ c. 987) in the same manner as described in the Agreement A Submissions at paragraphs 49 through 598.
99. In particular, the Guild submits that Agreement “E” members who work days in excess of their standard tour pattern should either be paid or credited bank time at the rate of “time and one-half.” That they are presently only credited at “straight time” violates the *Code* and regulations.
100. The Guild may make additional submissions about any resolution reached on this issue in the Agreement “A” mediation/arbitration, and on how it could or should apply to the Agreement “E” bargaining unit.

**Article 15 – Transportation, and Letter of Understanding – Travel (Appendix E)**

101. The Guild has proposed changes to Article 15 and the Letter of Understanding on Travel (Appendix E) that are intended to make compensation for travel at MAI closer to compensation for travel at industry comparators:

Current Language	Guild Proposal
<p>15.1</p> <p>When an Officer who has to travel to meet a vessel is unable to join the vessel due to lateness of the vessel, or the vessel not being available, he shall be paid for the time spent waiting as if he had joined on time. Reasonable expenses incurred by the Officer as a result of the delay shall be reimbursed by the Company in accordance with Company Policy.</p>	<p>15.1</p> <p>When an Officer who has to travel to meet a vessel is unable to join the vessel due to lateness of the vessel, or the vessel not being available, <del>he</del> <b>he/she</b> shall be paid for the time spent waiting as if <del>he</del> <b>he/she</b> had joined on time. <del>Reasonable</del> <b>Any</b> expenses incurred by the Officer as a result of the delay shall be reimbursed by the Company in accordance with Company Policy.</p>
<p>15.2</p> <p>If an Officer is not on a tour of duty, when travel time is incurred that is additional to that which the Officer would normally incur given his assignment or spare status, time reasonably spent travelling from and to their home or terminal port will be compensated at the employee's regular rate of pay, subject to one day for each day combined with travel and time required in training, meetings, courses, court or other functions required by the employer.</p>	<p><b>15.2</b></p> <p><b>Replace existing with the following:</b></p> <p><b>Officers travelling to and from their home to work, including time spent deadheading, will be compensated at the employee's regular rate of pay, combined with travel and time required in training, meetings, courses, court, tours of duty or other functions required by the employer.</b></p>
<p><b>Letter of Understanding: Appendix E Travel</b></p> <p>1. For the purposes of this letter understanding, Officers shall be assigned a home port of Port aux Basques NL, North Sydney NS or Argentia NL depending on which port is closer to their homes.</p>	<p><b>Letter of Understanding: Appendix E Travel</b></p> <p>Delete paragraphs 1 – 4 and replace as follows:</p> <p><b>All officers will be compensated for all travel to and from home to work in accordance with the Travel Directive of the National</b></p>

<p>2. At 31 December of each year, the Company shall pay a total amount of travel allowance of \$2100 to an Officer who resides 150 kilometers (one way) from their assigned home port. Officers residing 600 or more kilometers (one way) from their assigned home port will be provided an additional allowance of \$400. Officers residing 600 or more kilometers (one way) from their assigned home ports who are required to travel more than 12 times (return) per year for the purposes of providing relief to a regularly assigned Officer will be provided an allowance of \$150 per return trip for each trip in excess of 12.</p> <p>3. Officers who are provided transportation to and from work by the Company during the year, absent from the workplace or not required to travel shall have the annual amount in 2 above adjusted accordingly, on a per trip basis.</p> <p>4. An Officer may request to be paid the annual amount on a prorated monthly basis.</p> <p>5. This letter of understanding will commence effective the first of the month following notice of ratification. The annual amount shall be prorated for any part year.</p>	<p><b>Joint Counsel agreement of the federal public service.</b></p>
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102. In general terms, the proposed changes are intended to address two aspects of travel: hourly pay for the time spent travelling to and from the workplace, and reimbursement for the expenses associated with travelling to and from the workplace.

103. Presently at MAI, officers are not paid for their travel time to and from the vessel. Article 15.1 can allow officers to be paid for “waiting time” if they are unable to join the vessel because it is late or unavailable, but that is not the same as being paid for the time spent travelling from home to work, or work to home.

104. Also presently, Article 15.2 pays for actual travel time, but only if the travel time occurs when an Officer is not on a tour of duty and is “additional to that which the Officer would normally incur.”
105. The present structure has created a level of uncertainty and confusion about when waiting or travel time should be paid. There can be disagreements about whether the conditions of Article 15.1 and 15.2 have been met, and therefore about whether time should be paid by MAI or just accepted by the Officer as unpaid time.
106. Meanwhile, the private industry standard is that officers are paid for time spent travelling from their homes to the place of work, and paid for expenses incurred that are related to that travel (such as tickets, meals, lodging and so on).

#### **Travel Time to Work – Private Industry and Public Sector Standards**

107. Private industry comparators such as Maersk consider officers “on duty,” and pay them as such, during all travel time to and from work. For example, at Article 20 of the collective agreement between the Guild and Maersk (Masters and Chief Engineers) the parties provide as follows<sup>69</sup>:

**20.01** Masters or Chief Engineers shall be considered as on duty and not on leave during any period of travel. It is understood that any travel will be by the most direct means.

**20.02** All Masters or Chief Engineers shall receive full pay from the time they leave home to join their vessel, and will remain on pay until they return home after leaving their vessel.

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<sup>69</sup> Collective Agreement between Maersk Supply Services Canada and the Canadian Merchant Service Guild (January 1, 2018 to December 31, 2022); Guild’s Folder of Collective Agreements.

108. Similarly, in the Guild’s collective agreements with private-sector employers such as Algoma Tankers, Canada Steamship Lines, and Great Lakes and International Towing and Salvage Company, time spent travelling to and from home is paid as working time.<sup>70</sup>
109. The GSO collective agreement does not pay travel time to and from home in all instances, although it specifies that travel time outside of an officer’s “headquarters area” will be paid time. An GSO officer’s “headquarters area” is the home port of the vessel to which they have been assigned. In the Atlantic region, the Canadian Coast Guard vessels on which GSO members work are headquartered in either St. John’s or Dartmouth. When those vessels are not in the headquarters port on crew change day, their employer arranges for travel at no cost to officers, and the officers are paid time and one-half until they reach the vessel or home port.
110. It is noteworthy that when MAI hired contractors to work in Agreement “A” positions during the summer of 2022, MAI paid the contractors to travel to and from the workplace.<sup>71</sup> The Guild submits this reflects both an acknowledgment that such payments are industry standard, and a practical recognition that recruitment is more difficult when that expectation of officers is not met.
111. The Guild’s proposal to amend Article 15.2 is designed to match the private comparators by compensating officers for time spent travelling to and from the workplace. Not only is this proposal justified in light of the comparators, it will help ensure ongoing ability to recruit and retain officers, who must choose between these comparators and MAI when deciding where to work.

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<sup>70</sup> Package of excerpts of Guild private-sector collective agreements; Guild’s Book of Documents at Tab 10.

<sup>71</sup> As described at paragraphs 112-120 of the Guild’s October 24 Agreement “A” submissions.

## Travel expenses – private industry and public sector standards

112. The present Agreement “E” provides, in Appendix E, for a once-annual travel allowance payment of either \$2100 or slightly more, depending on distance between an officer’s residence and home port. It has been the experience of officers that these amounts are not sufficient to cover the actual expenses of travel to and from the workplace. This is particularly true in this era of rapid inflation and high fuel costs.
113. It must be remembered that each officer generally travels to and from work 11 to 12 times per year, and often for long distances to get to the workplace. This is a highly-specialized workforce, and the “pool” for recruiting Masters, Chief Engineers and Chief Electrical Officers is small. It is not a local labour market, but a regional or national one. MAI has been able to draw from this pool in when hiring its most senior officers— however, that often means that these officers must travel long distances to and from the workplace, and incur significant expense in so doing.
114. The private industry comparators represented by the Guild most often pay officers for all actual expenses associated with travel. Maersk, for example, provides that: “The Company will pay all reasonable travelling expenses to and from the Master or Chief Engineer’s residence to the place of joining the vessel... .”<sup>72</sup> Other private industry comparators have similar articles, which allow officers to claim actual expenses of travel (typically including air travel<sup>73</sup>).<sup>74</sup>

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<sup>72</sup> Collective Agreement between CMSG and Maersk (2018-2022), at Article 21.01; Guild’s Folder of Collective Agreements.

<sup>73</sup> See, for example, the collective agreement between the Guild and Algoma Tankers Limited (August 1, 2021 to July 31, 2028) at Articles 15.01-15.03, included in Guild’s package of private sector collective agreement excerpts, supra note 70.

<sup>74</sup> *Ibid.* see, generally.

115. With regard to the public sector: the GSO officers are subject to the National Joint Council's Travel Directive, which sets out detailed provisions for how various aspects of travel expense should be calculated and paid to officers.<sup>75</sup>
116. After several iterations of its proposal on travel expense payments during negotiations, the Guild now proposes for Appendix E that officers' expenses be calculated based on the existing framework set out in the National Directive. As a Crown Corporation, the National Directive is not binding upon MAI, but the parties could agree to adopt the directive as a standard against which expense claims should be payable. The Guild submits this represents a well-considered and fair framework upon which to base such reimbursements.

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<sup>75</sup> See National Directive generally, at <https://www.njc-cnm.gc.ca/directive/d10/en>

**Article 19 – Annual Vacation**

117. The Guild proposes the following adjustment to vacation entitlement, which would add a new 15-year vacation increment, and adjust downward the years of employment needed to achieve the highest vacation amount:

**19.1** Vacation and vacation pay for the calendar year will be allotted in accordance with the following table:

Years of Continuous Employment Relationship at Preceding 31 Dec	1	4	10	<b>15</b>	<del>27</del> <b>20</b>
Vacation Entitlement	120 hours	180 hours	200 hours	<b>220 hours</b>	240 hours

118. These proposals must be understood in the context of the Agreement “E” work schedule. Like other vessel-based employees, Agreement “E” members work a 15 or 16 day tour, consisting of 12-hour days. Thus, 180 hours of vacation is needed in order to have a “full tour” off as vacation.

119. 160 hours of vacation would be enough for 40-hour-per-week office-based employee of MAI to have a month off from work. 240 hours, which is the highest amount of vacation an Agreement “E” member can earn, would allow an office-based employee to be off work for six full weeks. In contrast Agreement “E” member at 240 hours would only be off for one full tour, plus 1/3 of another tour.

120. In summary, hours of paid vacation for vessel-based employees “buy less” actual time off than for employees on a more traditional work schedule. One purpose of the Guild’s proposed amendments to vacation entitlement is to create more equity in this respect between MAI’s office-based employees and Agreement “E” members by bringing forward in time access to the higher vacation entitlements.

121. Another purpose of the proposed 15-year increment is to reduce the current 17-year wait for an improved vacation allotment. Presently, a member who has attained 10 years of employment stays at the 200-hour vacation level for the next 17 years of her career with MAI. After that 17 years pass, her vacation allotment improves by only 40 hours, which is only 3.3 additional days off.
  
122. The Guild proposal would create a more steady progression to the highest amount, by introducing a 15-year vacation step, and by reducing the 27-year step to 20 years.
  
123. The Guild's proposal is modest and incremental, and is designed to promote greater employee satisfaction (and therefore retention), with a relatively modest financial impact on MAI.

**Article 45 – Duration of Agreement**

124. The Guild proposes that the next agreement have a four-year term, as follows:

<b>Current Language</b>	<b>Guild Proposal</b>
45.1  This agreement shall remain in effect until 31 December 2019, and thereafter subject to four (4) months notice in writing from either party of the Agreement of its desire to revise, amend or terminate it. Such notice may be served at any time subsequent to 31 August 2019.	This agreement shall remain in effect until 31 December <b>2023</b> , and thereafter subject to four (4) months notice in writing from either party of the Agreement of its desire to revise, amend or terminate it. Such notice may be served at any time subsequent to 31 August <b>2023</b> .

125. While the term length of the most recently—expired collective agreement was three years, the four agreements that preceded it had four-year terms:

<b>Term of Agreement</b>	<b>Length of Agreement, in Years</b>
January 1, 2017 – December 31, 2019	3
January 1, 2013 – December 31, 2016	4
January 1, 2009 – December 31, 2012	4
January 1, 2005 – December 31, 2008	4
January 1, 2001 – December 31, 2004	4

126. The Guild submits that a four year term is appropriate for the next collective agreement. It will have a start date of January 1, 2020. A three-year term would have it expire on December 1, 2022, meaning that it will be expired almost as soon as it is awarded.

127. The Guild submits that a four-year term will give the parties time to live with and assess any changes made in this round, or via this interest arbitration, before returning to the negotiating table. This would be a more sensible labour relations outcome than a three-year term that would require a near-immediate return to collective bargaining, having had no real opportunity to operate under the new agreement.

**Letter of Understanding – Appendix I**

128. The Guild proposes to enhance the weekly indemnity benefit to provide greater protection to officers who become ill or injured and cannot work, as follows:

<b>Current Language</b>	<b>Guild Proposal</b>
<p>Adjustment effective 1 December 2010;</p> <p>For claims resulting from the illnesses commencing on or after the first of the month following the date the notice of ratification is received by the Company, the weekly cap for Weekly Indemnity benefits will increase to 70% of the Officers weekly wage to a maximum of \$1750 per week.</p>	<p><b>Amend as follows:</b></p> <p>For claims resulting from the illness commencing on or after the first of the month following the date the notice of ratification is received by the Company, the weekly cap for Weekly Indemnity benefits will increase to <b>100% of the Officers weekly wage and will include payment of pension plan contributions and will be exclusive of any supplemental coverage from Employment Insurance benefits. Coverage will be for a period of 52 weeks. Weekly indemnity coverage for 52 weeks will be for each illness or period of disability and will include reoccurring illnesses.</b></p>

129. Agreement “E” does not contain sick leave, and there is no long term disability plan. Presently, if a member is too sick to work or suffers a non-workplace injury that prevents them from working, they will try to cover the loss of pay using any banked hours they may have. If the illness or injury persists, and they qualify for the benefit, they have access to the weekly indemnity plan.

130. The weekly indemnity plan is funded by MAI, and administered by a third party provider in accordance with the terms of the provider’s plan. MAI has control over the terms of the benefits, in that it negotiates with the third party provider for a plan that provides the agreed-upon benefits.

131. The current language of Appendix I specifies that weekly indemnity coverage can last for up to 52 weeks. Presently, the weekly benefit payments for Agreement “E” members are

limited to 70 percent of the officer’s weekly wage, to a maximum of \$1750 per week. This results, by design, in officers receiving substantially less pay while on WI than when they are actively working:

	<b>Weekly rate</b>	<b>70 percent of weekly rate</b>	<b>Maximum possible WI weekly WI pay</b>	<b>Difference between regular weekly pay and WI weekly pay</b>
<b>Master</b>	\$2741.54 <sup>76</sup>	\$1919.07	\$1750.00	\$991.54
<b>Chief Engineer</b>	\$2457.14	\$1719.99	\$1719.99	\$737.15
<b>Chief Electrical Engineer</b>	\$1958.13	\$1370.69	\$1370.69	\$587.44

132. Additionally, under the terms of the current plan a member must apply for any available Employment Insurance benefits, and the 70 percent maximum is inclusive of any EI benefit received.

133. The present language has presented a number of practical problems for Officers. Firstly, the total benefit received is substantially less than regular pay. This creates difficulty paying mortgage payments, car payments, and other expenses when an illness or injury results in longer-term absences. This is especially difficult in the present inflationary environment. The Guild’s proposal to increase the maximum benefit to 100 percent of salary, with no dollar-amount cap, seeks to address this concern.

134. Secondly, tying the benefit to an EI application creates additional “red tape” at a time when the Officer is least equipped to deal with such requirements, and often adds delay while the Officer waits for EI to process the application. There have also been unintended consequences—in once instance with which the Guild is familiar, [REDACTED]

[REDACTED]

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<sup>76</sup> Weekly rate calculated by multiplying the applicable top hourly rate at Article 22 by 180 hours (one full tour), and then dividing by 4 weeks.



135. The Guild’s proposal language referencing Employment Insurance is intended to disentangle the provision of WI coverage from the EI process, and thereby address these concerns. The Guild submits that this is a straightforward and practical proposal that will enhance the WI benefits that are so important in the absence of sick leave or LTD coverage.

**Letter of Understanding – Appendix J - Extended Supplemental Health Insurance and Dental Care Insurance**

136. MAI presently offers “Extended Supplemental Health Insurance and Dental Insurance” (“the Insurance Plan”) which is administered by a third-party provider and cost shared at 20 percent by Officers. The terms of the Insurance Plan are within the control of MAI—it has the ability to purchase changes in coverage and coverage limits.

137. Maximum coverage limits are not specified within the collective agreement, but they can be the subject of negotiations between the parties. The present benefits maximums were most recently set out for the Guild in an email on March 31, 2021.<sup>77</sup>

138. The Guild proposes updates to the maximums for several areas of coverage, as follows:

<b>Current Language</b>	<b>Guild Proposal</b>
Currently the following maximums apply to the health insurance and dental plan:	Amend the maximums as follows:
Paramedical services: \$1500 per year	Paramedical services: \$2500 per year.
Dental care basic and major restorative services: \$1200 per year	Dental care basic and major restorative services: \$2500 per year
Orthodontic lifetime coverage: \$1100 lifetime maximum	Orthodontic lifetime coverage: \$2500 lifetime maximum

139. Paramedical services (current \$1500 yearly maximum) include “licensed speech therapist, massage therapist, chiropractor, osteopath, physiotherapist, acupuncturist, chiropodist/podiatrist or naturopath.”<sup>78</sup>

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<sup>77</sup> Email from Travis Stone to Tom Spindler, “Medical and Dental Benefits Agreement E,” dated March 31, 2021. Guild’s Book of Documents at Tab 11.

<sup>78</sup> *Ibid.*

140. The dental care benefits include basic dental care (current \$1200 yearly maximum) and orthodontic care (current lifetime maximum of \$1100).

141. It has been a long time since these maximum coverage amounts were updated. In the meantime, the cost of living has continued to rise substantially (as discussed elsewhere). The price of paramedical and dental services has continued to rise along with everything else, which has meant that the coverage amounts cover less of the full cost, and so employees are paying more out of their own pockets.

142. The Guild's proposals are intended to restore the efficacy of these important benefits.

**Letter of Understanding – Appendix K**

<b>Current Language</b>	<b>Guild Proposal</b>
Long Term Disability Protection  After the signing of a new Collective Agreement E the parties agree to form a joint committee to explore the implementation of a Long Term Disability Plan.	To establish an employer-paid LTD plan.

143. MAI does not presently have an LTD plan in place. The parties have discussed implementing one in the past, but have not been able to agree on the details. The expiring collective agreement contains the above language, which was newly-negotiated in that agreement.

144. The existing language describes “joint committee to explore the implementation of” an LTD plan. After the agreement was signed, the parties met and discussed the potential for an LTD plan. In general terms, the Guild’s understanding of MAI’s position was that it would be willing to help administer an LTD plan, but it would not be interested in funding one.

145. The difficulty faced by the Guild in relation to an LTD plan without employer funding (i.e. a fully employee-funded plan) is that in order to implement it all employees would have to agree to participate. It is only on that basis that any provider would agree to establish a plan. However, the Guild would never be able to achieve 100 percent employee agreement on an LTD plan. Therefore, the Guild has concluded that the only way an LTD plan can be established is if it is employer-funded and imposed on the entire membership through collective agreement negotiations.

146. The Guild has costed options for an LTD plan, the details of which are included in the Guild's materials.<sup>79</sup>

147. It should be noted that this proposed LTD plan and the improvements to Appendix I would not both be required. If an LTD plan could be implemented, Weekly Indemnity benefits would not be necessary for 52 weeks, but rather only for the applicable elimination period for the LTD plan.

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<sup>79</sup> Options for LTD Coverage.

## **The Guild's Response to MAI's Proposals**

148. In general, the Guild does not have complete information about all employer proposals. The Guild will respond briefly to what it understands to be those proposals, but intends to answer them more completely in its Reply submissions.

### **Article 11.12 – Promotions/Bulletins**

149. The present language of Article 11.12 specifies that officers holding bulletined position may be temporarily assigned in “exceptional circumstances.” The article lists three such circumstances as examples: mechanical or electrical failure, family emergency of an officer, or illness or injury of an officer.

150. The Guild understands that MAI is proposing to add to the language two additional situations as agreed-upon “exceptional circumstances,” those being: “to ensure operational readiness/maintenance of familiarization,” and “in circumstances which may otherwise result in disruption of operations.”

151. The Guild opposes these amendments because they appear to propose expanding the use of temporary assignments beyond exceptional circumstances. The first proposed addition is not consistent with exceptional circumstances, and broadens the category to include routine operational considerations. The second proposed category is vague, and is unnecessary given that the first three examples are only “examples” of conditions that would be considered exceptional circumstances, and there is no need to add a general category when the existing language already leaves space for additional circumstances to qualify.

152. Temporary assignments are disruptive for officers and undermine the stability of having a bulletined position. The Guild does not support their use being expanded.

### **Article 16 – Rest Days**

153. The Guild does not support additional liquidation requirements that are within the discretion of MAI.

154. As described in the Guild’s October 24 Agreement A Submissions, the Guild is of the view that the current practices around “bank days” violate the *Canada Labour Code* and its regulations, for the reasons set out at paragraphs 49 to 58 of the Agreement A Submissions. The Guild does not support changing a system that already disadvantages officers in ways that will make bank time even less useful for those officers.

### **Article 42- Legal Defence Insurance**

155. The Guild does not agree to changes to this Article, for reasons identical to the reasons outlined at page 21 of the Guild’s November 14 Agreement A Rebuttal Submissions.

### **Appendix B – Seniority List**

156. The Guild does not agree with any negotiated changes to the seniority lists or to any references to seniority lists within the collective agreement.

### **Appendix C – Administration Fund**

157. The Guild does not agree to remove or change the Administration Fund.

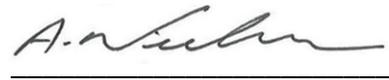
### **Appendix E – Travel**

158. The Guild has proposed changes to Appendix E, and to the extent those changes are accepted they may address any issue that MAI has with the timing and calculation of the annual amount.

**Conclusion**

159. For the above-described reasons, the Guild submits that its proposals should be adopted. Its wage proposals are reasonable, necessary to counteract the progressive erosion of MAI’s wage position relative to public and private comparators, and necessary to counteract the ongoing rapidly-increasing cost of living. Its non-wage proposals are also reasonable, representing measured and moderate improvements to existing benefits.

All of which is respectfully submitted this 21st day of November, 2022.



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Andy Nielsen



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Grace Levy

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