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File: 172-2-1068

Citation: 2000 PSSRB 92



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

TREASURY BOARD

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

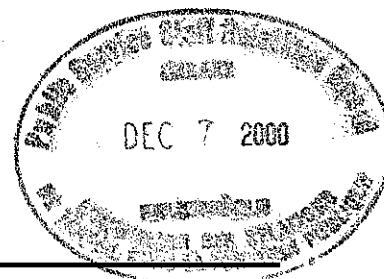
Bargaining Agent

RE: Post-Certification Identification of Three Managerial or
Confidential Positions: Benefits Advisors, AS-2, Finance
Canada

Before: Yvon Tarte, Chairperson

For the Employer: Raymond Dionne, Treasury Board

For the Bargaining Agent: Rachel Dugas, Public Service Alliance of Canada



Heard at Ottawa, Ontario,
July 18, 2000.

DECISION

[1] On September 17, 1997, the employer proposed that three benefits advisor positions at the Department of Finance be identified as "managerial or confidential positions" under paragraph 5.1(1)(d) of the *Public Service Staff Relations Act* (Act). On November 16, 1998, the employer added to the file paragraphs (d) and (e) of the definition of "managerial or confidential position" found in subsection 2(1) of the Act as grounds for identification.

[2] The bargaining agent objected to the identification of those positions on November 24, 1998.

[3] Section 21 of the Act gives the Board the authority to review the identification of a position pursuant to the definition of "managerial or confidential position" in subsection 2(1). Section 5.2 of the Act authorizes the Board to review the identification of a position under subsection 5.1(1).

[4] The relevant provisions of the Act read as follows:

2. (1) *In this Act,*

...

"managerial or confidential position" means a position

...

(e) the occupant of which provides advice on staff relations, staffing or classification,

...

...

5.1 (1) Where, in connection with the application for the certification of an employee organization as a bargaining agent, the Board is satisfied that any position of an employee in the group of employees for which certification is sought meets any of the following criteria, it shall identify the position as a managerial or confidential position:

...

(d) a position the occupant of which has duties and responsibilities not otherwise described in this subsection and who in the opinion of the Board should not be included in a bargaining unit for reasons of conflict of interest or by reason of the person's duties and responsibilities to the employer; and

...

[5] On May 5, 1999, the Board authorized an examiner to meet with the parties and to receive all relevant evidence relating to the duties and responsibilities of the positions in question and to submit a report thereon.

[6] The examiner's report was filed on January 21, 2000. When the hearing began, the parties told me that they accepted its content subject to certain amendments. The amended report is therefore incorporated into this decision by reference.

[7] The employer also told me when the hearing began that it was giving up its argument that the positions could be identified under paragraph (d) of the definition of "managerial or confidential position" in subsection 2(1) of the Act.

[8] Diane Piché, who holds one of the three positions in question, testified in order to clarify some of the information found in the examiner's report. The witness first stated that her position had recently been reclassified to the AS-3 level. I would like to point out right away that that fact in itself has no impact on the Board's decision in this case.

[9] Ms. Piché provides services to government employees at all levels, from the Deputy Minister to clerks. She said that about 70 percent of her work involves providing "... guidance and counsel to the employees of Finance and the Treasury Board Secretariat regarding the policies, guidelines and procedures issued by the Central Agencies on all matters of pay and benefits ..." (see paragraph 1 on page 2 of the position description appended to the examiner's report as Exhibit P-6). She must do this:

...

by analysing related Treasury Board directives, Collective Agreements, Compensation Plans, Public Service Commission directives and PWGSC directives to assess their application with respect to the noted departments to determine their short and long term impact on the current programs, policies and procedures and to take the necessary action to ensure timely implementation;

by disseminating information to all levels of management and employees relating to new or existing employee benefit plans;

by interpreting policy and procedural directives from central agencies, adapting them to meet departmental requirements and preparing guidelines and instructions for implementation;

by developing and maintaining liaison with officials of the noted departments and central agencies to establish contacts for the exchange of information on salary and other benefits, and to establish sources of expert advice;

by drafting Submissions to Treasury Board on special and specific cases for formal rulings, special authorities, etc. ...

...

Ms. Piché also spends 10 percent of her time providing "... advice to the Manager for the resolution of a variety of Benefit problems ..." (paragraph 5 on page 4 of the position description appended to the examiner's report as Exhibit P-6).

[10] In doing her work, Ms. Piché mostly uses the various collective agreements, which she must constantly interpret. Ms. Piché must act independently in performing her duties. As well, she is consulted about 15 times a year by staff relations officers concerning grievances relating to the interpretation of provisions of collective agreements.

[11] Ms. Piché considers herself as a representative of the employer.

Employer's Argument

[12] Benefits advisors spend the vast majority of their work time analyzing and interpreting collective agreements to determine the pay and benefits to which employees and other individuals are entitled.

[13] The evidence shows that the advice given by benefits advisors is not routine or "clerical".

[14] Benefits advisors provide advice on staff relations and participate in the resolution of complaints and grievances at the request of the staff relations manager.

[15] It is obvious that the duties performed by benefits advisors on management's behalf give rise to serious conflicts of interest if they are part of a bargaining unit. The incumbents of the positions are the employer's administrative arm in interpreting and applying collective agreements and some of the employer's policies.

[16] The fact that only three benefits advisor positions are being proposed for exclusion shows that the employer has properly organized things so as to minimize the number of positions identified.

[17] *Economists', Sociologists' and Statisticians' Association v. Treasury Board* (Board file 172-2-339, December 31, 1980) supports the employer's case. The positions should therefore be identified.

Bargaining Agent's Argument

[18] The reasons given by the employer for identifying the three benefits advisor positions are found in paragraphs 42, 50 and 89 of the examiner's report, as amended. However, there is nothing in the position description appended to the examiner's report as Exhibit P-6 that requires benefits advisors to interpret collective agreements or draft policies. In actual fact, they merely implement established rules and agreements; they must apply rules, not write them. Even when it comes to grievances, benefits advisors are merely consulted; they do not make decisions.

[19] *Treasury Board v. Public Service Alliance of Canada* (Board files 172-2-884A and 886A, December 19, 1997), *Public Service Alliance of Canada v. Treasury Board* (Board file 174-2-359, December 17, 1981), *Public Service Alliance of Canada v. Treasury Board* (Board file 145-2-159, April 7, 1976), *Research Council Employees' Association v. National Research Council* (Board file 175-9-235, January 10, 1977), *Public Service Alliance of Canada v. Treasury Board* (Board file 175-2-402, September 13, 1983), *Public Service Alliance of Canada v. Treasury Board (Public Works Canada)* (Board file 175-2-410, January 20, 1984) and *Public Service Alliance of Canada v. Treasury Board* (Board file 175-2-467, October 17, 1986) should guide the Board in its deliberations in this case.

[20] According to the employer, the three benefits advisor positions are interchangeable. It is thus difficult to speak of confidential positions or an "administrative arm".

[21] The reasons given by the employer to justify the identification are not sufficient.

Reasons for Decision

[22] Tom Smith, Director, Pay Administration, Labour Relations Division, Human Resources Branch, Treasury Board, told the examiner that benefits advisors must [translation] "... provide independent interpretations of collective agreements ..." on management's behalf (paragraph 15).

[23] Moreover, Ms. Piché told the examiner and stated during her testimony that a very high percentage of her work involved interpreting collective agreements. As well, benefits advisors are often consulted during the grievance procedure when the dispute concerns the interpretation of a non-monetary clause of a collective agreement.

[24] The evidence clearly shows that benefits advisors provide advice on staff relations; in other words, they must, as a normal part of their duties, express views or opinions on staff relations. Finally, the interpretation of collective agreements, which takes up nearly 70 percent of benefits advisors' time, obviously concerns the field of staff relations.

[25] Moreover, the duties and responsibilities of the positions in question raise conflict of interest problems that, in and of themselves, justify the identification of the positions.

[26] Based on the evidence, I can therefore confirm the identification of the benefits advisor positions as managerial or confidential positions under paragraph (e) of the definition of "managerial or confidential position" in subsection 2(1) and under paragraph 5.1(1)(d) of the Act.

**Yvon Tarte
Chairperson**

Ottawa, October 20, 2000.

Certified true translation

Maryse Bernier