

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD

Employer

RE: Determination of Designated Position -
Educational Support Group

Before: [Yvon Tarte, Acting Chairperson](#)

(Decided without a hearing.)

DETERMINATION AND NOTICE OF DESIGNATION OF POSITION

Pursuant to section 78.1 of the *Public Service Staff Relations Act (PSSRA)*, the parties met to review the position of each employee in the educational support group bargaining unit to determine whether any of them had safety or security duties as specified in subsection 78(1). By letter dated September 27, 1996, the employer advised the Board as required by subsections 78.1(5) and 78.1(7) of the *PSSRA* that the parties had agreed that all but one position in the bargaining unit had no safety or security duties. The parties were unable to agree on whether the remaining position had safety or security duties and the employer indicated that it wished to refer it to a designation review panel.

Subsequently, the Board was informed that the parties had reached agreement on the position in question on October 10, 1996, with the assistance of the Board's mediation services. The Memorandum of Agreement of October 10, which was signed by the representatives of the parties, reads as follows:

*...in the matter of the Designation of Position TCG 02967 -
DFO PSSRB FILE 181-00344*

The parties agree that the position in question shall be a standby/conditional designation. The incumbent employee shall be required to report to work for Duty Security Watches on a rotational basis only in the event that there is a strike by the Ships' Officers concurrent with that of the EU Group.

Pursuant to subsection 78.1(6) of the *PSSRA*, the Board hereby designates the following position as having safety or security duties according to the agreement of the parties:

<u>Position Number</u>	<u>Title</u>	<u>Department</u>
TCGO2967	Senior Physical Education Instructor	Fisheries & Oceans

In light of the conditions agreed upon by the parties in their Memorandum of Agreement, the employer requested that the Board not require that the employee occupying the position be notified of the designation within the 30 day time frame set out in section 60 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* but rather delay this requirement to a date to be agreed to by the parties.

The requirement to inform an employee who occupies a designated position is set out in section 78.5 of the Act. The obligation to inform arises from the designation of the position. Subsection 78.1(6) provides that, where the parties determine that a position has safety or security duties, the employer is to notify the Board of that position and that the Board is to designate the position as having those duties. Even where the parties agree to the designation of a position conditional on some future event that may or may not take place, the position is nevertheless one which the Board is required to designate pursuant to subsection 78.1(6). Section 60 of the *Regulations* provides that an employee who occupies a designated position is to be informed of the designation by a notice (Form 13) within 30 days of the day the position was designated or the date the employee first occupies the position.

Although the Board has the authority pursuant to section 6 of the *Regulations* to extend any time limits set out therein, I believe that this authority must be exercised with a definite time in view and cannot be used to extend the time for an indefinite period to be determined by the parties. In any case, I am of the opinion that one of the main reasons for requiring the designation of positions having safety or security duties and the notification of the incumbents thereof well in advance of any possible strike action is to avoid exacerbating the situation when the parties reach an impasse in a dispute. If I were to accede to the employer's request, this purpose would be thwarted contrary to the interests of all concerned. Therefore, I do not believe that it would be appropriate for the Board to comply with the employer's request to delay notification of the employee occupying the designated position.

Accordingly, pursuant to section 78.5 of the *PSSRA*, the Board hereby authorizes the employer to inform the employee occupying the position in question (and all subsequent occupants of that position) of the designation of that position. By such authorization the employer is required to inform the employee within the time limits and pursuant to the procedure specified in subsection 60(1) of the *Regulations*. In addition, the Board draws the employer's attention to its responsibility under subsection 60(2) of the *Regulations* to provide forthwith a copy of the notice referred to in subsection (1) to the bargaining agent.

Yvon Tarte
Acting Chairperson

OTTAWA, November 15, 1996.