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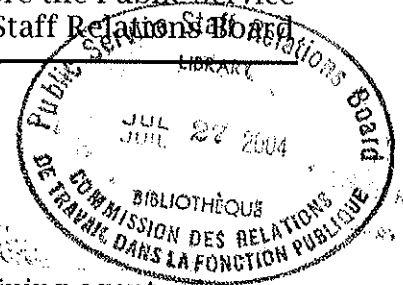
File: 185-02-401

Citation: 2004 PSSRB 93



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board



IN THE MATTER OF
THE *PUBLIC SERVICE STAFF RELATIONS ACT*
and a dispute affecting the
Canadian Association of Professional Employees, as bargaining agent,
and the Treasury Board, as employer,
in respect of all employees of the Employer in the
Economics and Social Sciences Services Group as defined in Part 1 of the *Canada
Gazette* of March 27, 1999

TERMS OF REFERENCE OF THE ARBITRATION BOARD

To: K.E. Norman, chairperson of the arbitration board;
Fred Pomeroy and Richard Nannini, arbitration board members

[1] By letter of May 11, 2004, the Canadian Association of Professional Employees, pursuant to section 64 of the *Public Service Staff Relations Act* (the Act), requested the establishment of an arbitration board for the employees in the Economics and Social Sciences Services Group as defined in Part 1 of the *Canada Gazette* of March 27, 1999.

[2] Sections 64 to 75.1 of the Act apply where arbitration is the method of dispute resolution. The following sections, which set out the procedure for an arbitration board, are of particular interest:

66. (1) Subject to section 69, forthwith on the establishment of an arbitration board, the Chairperson shall deliver to the arbitration board a notice referring the matters in dispute to the board for arbitration.

(2) Where, at any time before an arbitral award is rendered, the parties reach agreement on any matter in dispute referred to an arbitration board under subsection (1) and enter into a collective agreement in respect thereof,

the matters in dispute so referred to the board shall be deemed not to include that matter and no arbitral award shall be rendered by the board in respect thereof.

67. In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute, an arbitration board shall consider

(a) the needs of the Public Service for qualified employees;

(b) the conditions of employment in similar occupations outside the Public Service, including such geographic, industrial or other variations as the board may consider relevant;

(c) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation and as between occupations in the Public Service;

(d) The need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and

(e) any other factor that to it appears to be relevant to the matter in dispute.

68. Subject to this Act, an arbitration board shall, before rendering an arbitral award in respect of a matter in dispute, give an opportunity to both parties to present evidence and make submissions to it.

69. (2) Subsection 57(2)¹ applies, with such modifications as the circumstances require, in relation to an arbitral award.

(3) No arbitral award shall deal with

(a) the organization of the Public Service or the assignment of duties to, and classification of, positions in the Public Service;

¹

57. (2) No collective agreement shall provide, directly or indirectly, for the alteration or elimination of any existing term or condition of employment or the establishment of any new term or condition of employment,

(a) the alteration or elimination or the establishment of which would require or have the effect of requiring the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating moneys required for its implementation; or
(b) that has been or may be established pursuant to any Act specified in Schedule II.

(b) standards, procedures or processes governing the appointment, appraisal, promotion, demotion, deployment, lay-off or termination of employment, other than by way of disciplinary action, of employees; or

(c) any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof.

(4) An arbitral award shall deal only with terms and conditions of employment of employees in the bargaining unit in respect of which the request for arbitration was made

70. (1) An arbitration board shall, as soon as possible after it receives the notice referred to in subsection 66(1), render an arbitral award in respect of the matters in dispute.

(1.1) An arbitral award shall be signed by the chairperson of the arbitration board and a copy thereof shall be sent to the Chairperson, and no report or observations thereon shall be made or given by the other members of the board.

(1.2) On receipt of a copy of an arbitral award, the Chairperson shall forthwith cause a copy thereof to be sent to the parties and may cause the award to be published in such manner as the Chairperson sees fit.

(2) Subject to subsection (3), a decision of the majority of the members of an arbitration board in respect of the matters in dispute shall be the arbitral award in respect of those matters.

(3) Where the majority of members of an arbitration board cannot agree on the terms of the arbitral award to be rendered, the decision of the chairperson of the board shall be the arbitral award in respect of the matters in dispute.

(4) An arbitral award shall, whenever possible, be made in such form

(a) as can be read and interpreted with, or annexed to and published with, any collective agreement dealing with other terms and conditions of employment of the employees in the bargaining unit in respect of which the arbitral award applies; and

- (b) *as enables its incorporation into and implementation by regulations, by-laws, directives or other instruments that may be required to be made or issued by the employer or the relevant bargaining agent in respect thereof.*

[3] With its letter of May 11, 2004, the Canadian Association of Professional Employees provided a list of the terms and conditions of employment that it wished to have referred to the arbitration board. That letter, the terms and conditions of employment and supporting material are attached hereto as SCHEDULE I.

[4] By letter of May 26, 2004, the Treasury Board of Canada provided additional terms and conditions of employment that it wished to have referred to the arbitration board. That letter, the terms and conditions of employment and supporting material are attached hereto as SCHEDULE II.

[5] The bargaining agent, by letter of June 3, 2004, replied to the employer's letter of May 26, 2004. That letter is attached hereto as SCHEDULE III.

[6] On May 28, 2004, the bargaining agent wrote to the Board for the purpose of making corrections to the Request for Arbitration dated May 11, 2004. That letter, which sets out a reviewed proposal and changes to the presentation that address the matter, is attached hereto as SCHEDULE IV.

[7] In its letter of June 10, 2004, the employer did not object to the inclusion of the corrected proposal and maintained its position previously cited in its letter of May 26, 2004. The employer also provided a revised sign-off sheet, signed by the parties on February 17, 2004, for Article 7. The letter is attached hereto as SCHEDULE V.

[8] Accordingly, pursuant to section 66 of the Act, the matters in dispute on which the arbitration board shall render an arbitral award in this dispute are those set out as outstanding in SCHEDULES I, II, III and IV attached hereto.

[9] Should any jurisdictional question arise during the course of the hearing as to the inclusion of a matter in these terms of reference, that question must be submitted forthwith to me because the Chairperson of the Public Service Staff Relations Board is, according to the provisions of subsection 66(1) of the Act, the only person authorized to make such a determination.

**Yvon Tarte,
Chairperson**

DATED AT OTTAWA, 22nd of July, 2004