



Public Service Staff
Relations Act



Date: 20041223
File: 185-2-407
Citation: 2004 PSSRB 185

Before the Public Service
Staff Relations Board

IN THE MATTER OF
THE *PUBLIC SERVICE STAFF RELATIONS ACT*
and a dispute affecting the
Professional Institute of the Public Service of Canada, as bargaining agent,
and the Treasury Board of Canada, as employer,
in respect of all the employees in the Audit, Commerce and Purchasing Group

TERMS OF REFERENCE OF THE ARBITRATION BOARD

To: Philip Chodos, chairperson of the arbitration board;
Mike McTaggart and Sandra Budd, arbitration board members

[1] By letter of November 8, 2004, the Professional Institute of the Public Service of Canada, pursuant to section 64 of the *Public Service Staff Relations Act* (the *Act*), requested the establishment of an arbitration board in respect of all the employees of the employer in the Audit, Commerce and Purchasing Group.

[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

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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.

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

(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 November 8, 2004, the Professional Institute of the Public Service of Canada 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 November 23, 2004, the Treasury Board of Canada provided its position on the terms and conditions of employment that the employer wished to have referred to the arbitration board. That letter and supporting material are attached hereto as SCHEDULE II.

[5] The Professional Institute of the Public Service of Canada did not provide any additional comment concerning the employer's reply.

[6] 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 SCHEDULE I and SCHEDULE II attached hereto.

[7] 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.

**Original Signed by
Original signé par
Yvon Tarte,
Chairperson**

DATED AT OTTAWA, December 23, 2004