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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

Professional Institute of the Public Service of Canada, as bargaining agent,  
and the Canadian Food Inspection Agency, as employer,  
in respect of all the employees performing duties in positions which are or would be  
classified under the Agriculture (AG), Biological Sciences (BI) (which includes the former  
Scientific Regulation (SG) Group), Chemistry (CH), Commerce (CO), Engineering and Land  
Survey (ELS), Purchasing and Supply (PG), Scientific Research (SE) and Economics,  
Sociology and Statistics (ES) groups in the classification system of the Treasury Board

TERMS OF REFERENCE OF THE ARBITRATION BOARD

To: Philip Chodos, chairperson of the arbitration board;  
Pierre Delage and Sandra Budd, arbitration board members

[1] By letter of January 13, 2005, the Professional Institute of the Public Service of Canada (the bargaining agent), 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 Canadian Food Inspection Agency (the employer) in the Agriculture (AG), Biological Sciences (BI) (which includes the former Scientific Regulation (SG) Group), Chemistry (CH), Commerce (CO), Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific Research (SE) and Economics, Sociology and Statistics (ES) groups in the classification system of the Treasury Board.

[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)<sup>1</sup> 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;

(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.

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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.

*(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 letters of December 1, 2004, and January 20, 2005, 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. Those letters, the terms and conditions of employment and supporting material are attached hereto as SCHEDULE I.

[4] By letter of February 2, 2005, the Canadian Food Inspection Agency 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 by letter dated February 8, 2005, provide additional comment concerning the employer's reply. That letter is attached hereto as SCHEDULE III.

[6] In its correspondence to the Board dated February 2, 2005, the Canadian Food Inspection Agency provided not only its position on the terms and conditions of employment which it wished to have referred to the arbitration board, it also raised an objection to the inclusion of a particular proposal. The employer's objection was worded as follows:

With respect to the list of outstanding issues Mr. Gingras appended to his January 20, 2005, letter to the PSSRB, the Agency objects to the inclusion of...

the new Article on Professional Ethics....With regards to the new proposed article on Professional Ethics, the Agency is of the view that, in accordance with Section 69 of the *Public Service Staff Relations Act*, this is a subject matter that is inappropriate for referral to an Arbitration Board.

The employer has provided no further elucidation of its viewpoint and the bargaining agent has responded that nothing in the *Act* prevents this subject matter from being included in a collective agreement and it states that the employer did not object to the negotiation of this clause at the bargaining table. The bargaining agent also responded by characterizing the above objection as frivolous and vexatious and it accused the employer of employing it as a stalling tactic.

[7] I note that the employer, with reason, has not characterized its objection to the inclusion of the impugned proposal as a jurisdictional one. There is nothing in the wording of the proposed article which brings it within the ambit of the exclusions outlined in subsection 69(3) of the *Act*. Nor is it in violation of subsection 57(2) of the *Act* which prohibits the inclusion in a collective agreement of a condition of employment if its inclusion would have the effect of requiring the enactment or amendment of any legislation by Parliament.

[8] Section 65 of the *Act* states that on receiving the request to establish an arbitration board, the Chairperson shall do so for the arbitration of "the matters in dispute" and subsection 66(1) states that "the Chairperson shall deliver to the arbitration board a notice referring the matters in dispute" to the board for arbitration. While section 84 of the *Act* provides that the Chairperson may delete from terms of reference to a conciliation board "any matter the Chairperson deems necessary or advisable in the interest of assisting the parties in reaching agreement", no such wording is found in the section applicable to the terms of reference for an arbitration board.

[9] As outlined in the *Act*, the subject matter of the proposed clause and not its wording or content should be the focus of any exclusion from the terms of reference of an arbitration board. Given that the proposed article does not violate any provision of the *Act*, it should be included in the terms of reference before this arbitration board.

[10] Accordingly, pursuant to section 66 of the *Act*, the matters in dispute on which the arbitration board shall render an arbitral decision are those set out as outstanding in SCHEDULE I, SCHEDULE II and SCHEDULE III attached hereto.

[11] 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, March 11, 2005