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File: 148-2-369

Citation: 2000 PSSRB 38

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

TREASURY BOARD OF CANADA

Applicant

and

PROFESSIONAL ASSOCIATION OF FOREIGN SERVICE OFFICERS

Respondent

RE: Application under section 21 alleging a violation of
section 51 of the Public Service Staff Relations Act

Before: Yvon Tarte, Chairperson

For the Applicant: Harvey Newman, Counsel

For the Respondent: James L. Shields, Counsel

Heard at Ottawa, Ontario,
24 March 2000.

INTRODUCTION

[1] On February 25, 2000 the Treasury Board (TB) filed an application under section 21 of the *Public Service Staff Relations Act (PSSRA)* alleging the Professional Association of Foreign Service Officers (PAFSO) had failed to bargain collectively in good faith and to make every reasonable effort to conclude a collective agreement as is required by section 51 of the *PSSRA*.

[2] This application is concerned with the terms of a Memorandum of Settlement signed by the parties on February 11, 2000 following negotiations commenced on August 18, 1999 for the renewal of the Foreign Service collective agreement.

THE EVIDENCE

For the Applicant

[3] Dennis Duggan, a Labour Relations Consultant with the TB testified he was involved as the chief negotiator for the employer. Ian MacKenzie was the chief negotiator for PAFSO.

[4] The parties met to bargain collectively in August, November and December 1999 at which time discussions broke off. The PAFSO applied to the PSSRB for the appointment of a conciliator to help the parties continue with their negotiations.

[5] At the request of both parties, Norm Bernstein was appointed to facilitate discussions between the TB and the PAFSO. Mr. Bernstein met with the parties on February 10 and 11, 2000 at which time a tentative agreement was signed.

[6] Mr. Bernstein initially met with both sides in a short joint session on February 10. The parties were then separated into individual caucus rooms. After 1½ day of shuttle mediation, Mr. Bernstein announced to the employer caucus that a deal had been reached.

[7] Mr. Duggan then proceeded to draft a tentative agreement, in part using a pre-prepared template. This work was done in the main meeting room without input from the PAFSO team.

[8] While this drafting work was being performed, Mr. MacKenzie came into the room and talked to Mr. Duggan and Mr. Bernstein. The PAFSO chief negotiator

indicated at that time that the tentative deal would have to be “brought” to the union executive since it was not the PAFSO negotiating team mandate.

[9] Mr. Duggan did not recall any discussions with either Mr. Bernstein or any of the PAFSO members of the negotiating team on the meaning of the word principals in the tentative agreement. In his mind the tentative agreement required that the PAFSO negotiating team recommend approval of the deal to the union membership at large.

[10] A signing ceremony took place with both negotiating teams present and without further discussion. A few days later the PAFSO executive wrote to its membership clearly indicating that it could not recommend approval of the tentative agreement (see appendix B of the TB application).

For the Bargaining Agent

[11] Dan George has been President of the PAFSO since October 21, 1999. He testified on behalf of the bargaining agent.

[12] The facts leading up to the events on February 11 are not in dispute. According to Mr. George, Mr. Bernstein advised the PAFSO negotiating team in the afternoon of February 11th that he had a “package” for them which represented the best the employer could come up with.

[13] After some discussion between the PAFSO team in the absence of the conciliator, Mr. Bernstein was called back in. Since the employer’s proposal fell well short of the union mandate, the PAFSO group asked Mr. Bernstein if mediation could be extended for one more day in order to consult their executive.

[14] Mr. Bernstein advised that an extension was not possible and that if the employer’s proposal was not accepted then, it would “vanish” off the table. The PAFSO team then decided to accept the tentative agreement “to keep it on the table and recommend it to its executive”.

[15] The parties next got together in the presence of Mr. Bernstein to sign the tentative agreement. Mr. George testified that when he read the text of the proposed agreement, he assumed that his team was agreeing to recommend approval to its executive and said so out loud to no one in particular. The PAFSO bargaining team

recommended approval of the tentative agreement to its executive on Monday, February 14, 2000.

[16] The PAFSO executive rejected the negotiating team's recommendation and decided not to recommend approval to the PAFSO membership.

ARGUMENTS

For the Applicant

[17] The duty to bargain in good faith goes to the very essence of collective bargaining. Allegations of bad faith are never made lightly. Unfortunately in this case the TB had no choice.

[18] The situation is similar to a case involving the Public Service Alliance of Canada (PSAC) and the TB (see Board file 148-2-143) in which the word principal was interpreted as meaning membership.

[19] If there was any misunderstanding or doubt on the part of the PAFSO team as to the meaning of the word "principal" Mr. George should have raised it during the discussions.

[20] The PAFSO team knew it had agreed to recommend approval to the membership but never got the courage to do so. In fact they did the opposite and recommended it not be approved.

[21] Good faith bargaining requires that a tentative agreement be put to the membership whether specific language in the document signed requires it or not.

[22] The applicant therefore asks for a declaration that PAFSO has failed to bargain in good faith and an order that a second ratification vote take place with recommended acceptance by the PAFSO negotiating team.

For the Bargaining Agent

[23] The PAFSO approaches this situation from a very different perspective. Early on Mr. Duggan was advised by Mr. MacKenzie that the deal had to go to the union executive since it was well below mandate.

[24] The situation that we are confronted with is very different than the one contained in the PSAC case where the word ratification was used in the tentative agreement and the parties were in agreement as to the meaning of the word principals.

[25] There is ample evidence that a clear misunderstanding existed between the parties in this case. The PAFSO team honestly believed that the tentative agreement they had signed only obligated them to recommend approval of the deal to their executive committee.

[26] The PAFSO team did not draft the tentative agreement. Any misunderstanding should therefore be interpreted in their favour. Mr. George raised the issue as best he could. Maybe he didn't do a very good job but that does not constitute a violation of section 50 of the *PSSRA*. Bargaining in bad faith requires intent or deception, neither of which is present here.

REASONS FOR DECISION

[27] Good faith bargaining lies at the heart of the collective bargaining process enshrined in the *PSSRA*. Allegations that this very important duty has been breached are very serious and cannot be taken lightly.

[28] The onus in this case was on the Applicant and I am forced to conclude, given the evidence adduced, that the allegation of bargaining in bad faith levelled against the PAFSO has not been proven.

[29] The evidence indicates a clear misunderstanding as to what was agreed upon. It appears that the representatives of the applicant and the bargaining agent were at cross purposes when they reached their tentative agreement on February 11, 2000.

[30] This unfortunate situation, which certainly does not foster trust and respect between the parties could easily have been avoided by the use of clear and simple language. Both parties to an agreement should make every effort to ensure that the language they use in their contractual arrangement does not lead to misunderstanding.

[31] The use of the word "principals" in the context of collective bargaining in the federal public service is not particularly helpful, in the absence of a definition as to what the term means. In this case the applicant, given its views, should have stipulated that the deal had to be recommended for ratification to the membership

whereas the PAFSO should have insisted that the word principals be replaced by the expression executive committee.

[32] Given what precedes, this application is dismissed.

Yvon Tarte
Chairperson

OTTAWA, April 20, 2000