

**Date:** 20000920

**File:** 172-02-1692

**Citation:** 2000 PSSRB 85



**Public Service Staff  
Relations Act**

**Before the Public Service  
Staff Relations Board**

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**BETWEEN**

**Treasury Board  
(Department of National Defence)**

**Employer**

**and**

**Public Service Alliance of Canada**

**Bargaining Agent**

**RE: Post-Certification Identification of a Managerial or Confidential  
Position - Director Maritime Civilian Personnel Requirements - AS-6**

***Before:* Yvon Tarte, Chairperson**

***For the Employer:* Raymond Dionne**

***For the Bargaining Agent:* Rachel Dugas**

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**Heard at Ottawa, Ontario,  
July 6, 2000.**



## DECISION

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[1] On February 22, 1999, the Treasury Board (TB) identified the position of Director Maritime Civilian Personnel Requirements, classified at the AS-6 level, for exclusion from the bargaining unit. The employer's proposal for exclusion is based on paragraph (e) of the definition of "managerial or confidential position" contained in subsection 2(1) of the *Public Service Staff Relations Act* (PSSRA) and, in the alternative, on the provisions of paragraph 5.1(1)(d) of the PSSRA.

[2] The Public Service Alliance of Canada (PSAC) objected to the employer's proposal on March 12, 1999.

[3] The Board derives its authority from section 21 of the PSSRA to consider the employer's identification of the position under paragraph (e) of the definition. The Board derives its authority from section 5.2 of the PSSRA to consider the employer's identification of the position under paragraph 5.1(1)(d).

[4] On July 15, 1999, the Board appointed Carol Rossignol as examiner in this matter. Her report dated January 21, 2000 was provided to the parties who advised me at the hearing that they would argue their positions solely on the basis of the examiner's report. The report and its various exhibits are therefore incorporated into this decision by reference.

[5] The relevant provisions of the PSSRA are the following:

2. (1) *In this Act,*

*"managerial or confidential position" means a position*

...

*(e) the occupant of which provides advice on staff relations, staffing or classification,*

*5.1(1)(d) ... a position the occupant of which has duties and responsibilities not otherwise described in this subsection and who in the opinion of the Board should not be included in a bargaining unit for reasons of conflict of interest or by reason of the person's duties and responsibilities to the employer;*

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ArgumentsFor the employer

[6] Although the position is classified at the AS-6 level, the incumbent of the position is referred to as a Human Resources Business Manager, level 1 (HRBM-1).

[7] The incumbent reports to the Director General Naval Personnel, Commodore Davidson. As HRBM-1, the incumbent assists management in resolving human resources, staff relations and classification issues.

[8] The job description for this position clearly states that a key activity for the incumbent is to provide strategic management advice to the Chief of Maritime Service and his/her senior management team in all aspects of human resources management and labour-management relations.

[9] The HRBM-1 is involved on behalf of management in such matters as designations, managerial or confidential exclusions, complaints, strike planning, employment equity and union-management consultation committees.

[10] The HRBM-1, even though classified at the AS-6 level, spends most of her time dealing with human resources and labour relations issues.

[11] The Board's jurisprudence supports the employer's position in this matter: Board files 172-2-303, 174-8-320 and 174-2-359.

[12] Under the new Occupational Group Definitions published in the Canada Gazette Part 1 on 27 March, 1999, the HRBM-1 job description comes squarely within the Human Resources Management Group definition. The position should therefore be excluded pursuant to paragraph (e) of the definition of "managerial or confidential position" contained in subsection 2(1) of the *PSSRA*.

[13] In the alternative this position should be excluded under paragraph 5.1(1)(d) of the *PSSRA* by reason of conflict of interest which will inevitably arise in the execution of its functions.

For the bargaining agent

[14] The examiner's report does not clearly show that the incumbent of the position provides independent advice to management in the areas of labour relations, designations, staffing or classification.

[15] The eloquent testimony of the Director Material Group Human Resources is of little usefulness in this matter since the Director doesn't work with or supervise the incumbent of the position at issue.

[16] Under paragraph (e) of the definition of "managerial or confidential position" contained in subsection 2(1) of the PSSRA, a position can be excluded only if its incumbent provides advice on staff relations, staffing or classification. Given that no such "advice" is given by the HRBM-1, the position does not meet the restrictive criteria enunciated in the definition.

[17] With respect to paragraph 5.1(1)(d) of the PSSRA, the examiner's report shows that the HRBM-1 performs mostly administrative functions from which no conflict of interest can arise. Even though the incumbent is involved in personnel administration her work does not require that she give advice which could put her in a situation of conflict of interest.

[18] The following decisions were referred to in support of the bargaining agent's position: Board files 172-2-61, 172-14-297, 172-2-884A and 886A, 174-2-359, 174-2-515, 175-2-410 and 175-2-467.

Reasons for determination

[19] The employer has identified the position of Director Maritime Civilian Personnel Requirements, classified at the AS-6 level and commonly referred to as an HRBM-1 position, under paragraph (e) of the definition of "managerial or confidential position" contained in subsection 2(1) of the PSSRA and, in the alternative, under the provisions of paragraph 5.1(1)(d) of the PSSRA.

[20] The Board bases its determination in this case on the report of the examiner and the exhibits appended to it as well as the submissions of the parties.

[21] Following a detailed reading of the examiner's report, I find that the incumbent of the As-6 position at issue is very much involved in providing advice to management on staff relations, staffing and classification.

[22] Providing advice requires that one express an opinion or make recommendations on future situations and conduct. The incumbent of the position in this case does that on a significant basis in all areas listed in paragraph (e) of the definition of "managerial or confidential position" contained in subsection 2(1) of the PSSRA. I note, that given the use of the conjunction "or" in that paragraph, an occupant need only provide advice in one of the three areas listed for his or her position to be excluded.

[23] Furthermore, given the nature of the functions performed by the occupant of the position in the areas of collective bargaining, grievances and classification, I find that the position should not be included in a bargaining unit for reasons of conflict of interest which in this case would be both apparent and real.

[24] The employer's identification of the position of Director Maritime Civilian Personnel Requirements is therefore confirmed under both paragraph (e) of the definition of "managerial or confidential position" contained in subsection 2(1) of the PSSRA and paragraph 5.1(1)(d) of the PSSRA.

Yvon Tarte  
Chairperson

OTTAWA, September 20, 2000