Date: 20011207

File: 125-33-100
140-33-15
140-33-16

Citation: 2001 PSSRB 123

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

PARKS CANADA AGENCY

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

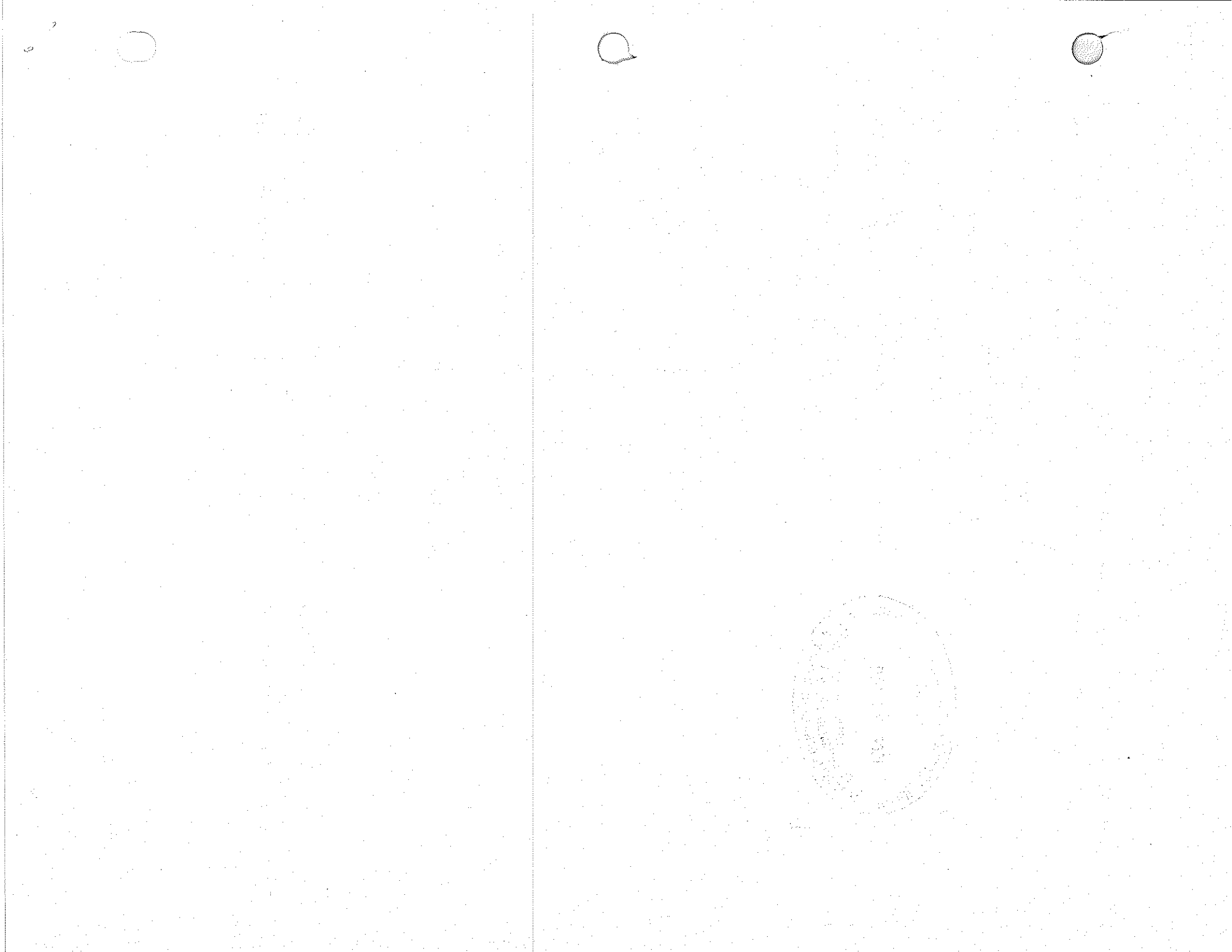
RE: Application Pursuant to Section 27 of the Public Service Staff Relations Act

Before: Yvon Tarte, Chairperson

For the Employer: Stephen Bird

For the Bargaining Agent: Alain Piché

Decided on the basis of written submissions without an oral hearing.



[1] This is an application by the Parks Canada Agency (PCA) under section 27 of the *Public Service Staff Relations Act* (PSSRA) requesting the Board to review and, if necessary, amend the description of the bargaining unit in its decision of December 11, 2000 by which the Public Service Alliance of Canada (PSAC) was certified as the bargaining agent (Board files 140-33-15 and 16).

[2] The PCA became a separate employer under Part II of Schedule 1 of the PSSRA on December 21, 1998. At that time, a number of employees, who had up to then been part of the central administration for which the Treasury Board is the employer, were transferred to the new separate employer, the PCA.

[3] On August 4, 1999, the Professional Institute of the Public Service of Canada (PIPSC) proposed, in its application (Board file 140-33-15), pursuant to section 48.1 of the PSSRA, that all bargaining units for which it was the bargaining agent at the time of transfer be lumped into one single bargaining unit for which it would continue to be the bargaining agent.

[4] The PCA filed its application (Board file 140-33-16) under section 48.1 on August 27, 1999. The PCA application proposed that the various bargaining units in existence at the time the new agency was created be reconfigured to establish two new bargaining units.

[5] The PSAC, the Social Science Employees Association (SSEA), the Association of Public Service Financial Administrators (APSFA) and the International Brotherhood of Electrical Workers, Local 2228 (IBEW), all bargaining agents who represented employees of the new employer prior to its creation, were notified of both applications under section 48.1 and were given the opportunity to respond.

[6] The position put forward in these proceedings by the PCA and the bargaining agents as to what would constitute an appropriate bargaining unit(s) was based on various combinations of the employees of the PCA who were represented by one or other of the bargaining agents immediately before the deletion and transfer was made.

[7] Following extensive hearings the Board determined that all the employees of the PCA should be included in a single bargaining unit. The Board ordered a representation vote by which the employees who were represented by the various

bargaining agents involved in the application were asked to indicate whether they wished the PIPSC or the PSAC to represent them as their bargaining agent.

[8] A majority of the employees who cast a ballot indicated they wished the PSAC to represent them as their bargaining agent. Accordingly, in its decision of May 1, 2001 the Board certified the PSAC as the bargaining agent for a bargaining unit described as "All employees of Parks Canada Agency" (Board files 140-33-15 and 16).

[9] Apparently, a difference of opinion has arisen between the parties as to whether the above described bargaining unit includes employees of the PCA who are classified in occupational groups that, at the time of the transfer were not represented by a bargaining agent. In particular this would relate to employees of the PCA classified in the PE (Program Administration group) and the MM (Management Group). The position of the bargaining agent is that they are included whereas the position of the employer is that they are not. It is this issue that prompted the PCA to bring the instant application under section 27 of the Act in which it requests an amendment, if necessary, of the above bargaining unit description. By way of remedy it seeks the following:

> *In light of the parties' representations, as well as statutory limitations, the PCA requests that the Board reconsider its decision in* Parks Canada Agency and Professional Institute of the Public Service of Canada and Public Service Alliance of Canada, *2001 PSSRB 39 (140-33-15, 140-33-16), and declare that employees in the occupational classifications who were not, on the date of the first application to the Board bound by a collective agreement or arbitral award (and more specifically, the PE and MM classifications) are not included in the bargaining unit described in the bargaining unit description.*

[10] The parties were advised that the Board would determine the matter on the basis of written submissions. Those submissions are set out below.

Submissions of the PCA

Part I - Background

1. *Parks Canada Agency ("PCA") became a separate employer under Part II of Schedule 1 of the* Public Service Staff Relations Act *("PSSRA") on December 21, 1998. At that time, a number of employees, who had up until then been part of the central administration for*

which the Treasury Board is the employer, were transferred to the new separate employer, the PCA.

2. *On August 4, 1999, the Professional Institute of the Public Service of Canada ("PIPSC") filed an application with the Board (Board File No. 140-33-15) pursuant to section 48.1 of the* PSSRA *requesting a consolidation of all bargaining units for which it was the certified bargaining agent at the time of the transfer into one single bargaining unit, and that it continue to be the bargaining agent for such unit.*

3. *On August 27, 1999, the PCA filed an application (Board File No. 140-33-16) under section 48.1 of the* PSSRA *proposing that the various bargaining units in existence at the time the new agency was created be reconfigured to establish two new bargaining units.*

4. *Hearings were held before the Board for numerous days in 2000. In paragraph 139 at page 29 of its decision in* Parks Canada Agency and Professional Institute of the Public Service of Canada, Public Service Alliance of Canada and Association of Public Service Financial Administrators, *2000 PSSRB 109 (140-33-15, 140-33-16), the Board concluded that all employees of the PCA should be included in a single bargaining unit. Accordingly, the Board directed that a representation vote be held by which the employees would be asked to indicate whether they wished the PIPSC or the PSAC to represent them as their bargaining agent. (Tab 1)*

5. *Having considered the* Certificate of Result of Vote, *the* Scrutineers' Certificate *and the* Consent and Waiver Certificate, *the Board issued its decision in* Parks Canada Agency and Professional Institute of the Public Service of Canada and Public Service Alliance of Canada, *2001 PSSRB 39 (140-33-15, 140-33-16) on May 1, 2001. The Board was satisfied that a majority of employees at the PCA, who cast a ballot, wished the PSAC to represent them as their bargaining agent. Accordingly, the Board certified the PSAC as the bargaining agent for "all employees of Parks Canada Agency". A certificate was issued in this regard. (Tab 2)*

6. *In certifying a bargaining unit of "all employees of Parks Canada Agency", a difference of opinion has arisen between the PCA and PSAC as to whether or not the formerly unrepresented employees in the PE and MM classifications are now included in the bargaining unit. In its letter dated June 22, 2001, the PSAC advised the PCA that it considers these employees to form part of the new bargaining unit. (Tab 3)*

7. *As a result, on July 19, 2001, pursuant to section 27 of the* PSSRA, *the PCA filed an Application for Reconsideration of the Board's decision in* Parks Canada Agency and Professional Institute of the Public Service of Canada and Public Service Alliance of Canada, *2001 PSSRB 39 (140-33-15, 140-33-16).*

Part II - Point in Issue

As a preliminary matter, it is not certain that the Board need reconsider its decision certifying the PSAC as the bargaining agent for "all employees of Parks Canada Agency" in Parks Canada Agency and Professional Institute of the Public Service of Canada and Public Service Alliance of Canada, *2001 PSSRB 39 (140-33-15, 140-33-16). The Applicant acknowledges that this matter may be as simple as a misunderstanding between the parties as to the interpretation to be placed upon the bargaining certificate issued by the Board. In the event that the Board intended that the "all employees" unit description was to be read in conjunction with section 48.1(4)(a) of the Act, and that the previously unrepresented occupational categories did not form part of the bargaining unit, then no reconsideration of the Board's decision is required. The Applicant would then only request that the Board issue a clarification note in this regard to assist the parties.*

If, however, the Board did intend that these employees would be included in the bargaining unit so described, the Applicant respectfully requests that the Board reconsider its decision in this regard.

Part III - Argument

1. *In* Parks Canada Agency and Professional Institute of the Public Service of Canada, Public Service Alliance of Canada and Association of Public Service Financial Administrators, *2000 PSSRB 109 (140-33-15, 140-33-16), the Board stated in paragraph 139 that "all employees of the PCA should be included in a single bargaining unit".*

2. *The Board's determination was made pursuant to applications under section 48.1 of the* PSSRA. *Subsection 48.1(4)(a) authorizes the Board to "determine whether the employees of a separate employer* who are bound by a collective agreement or arbitral award *constitute one or more units appropriate for collective bargaining".*

3. *Employees in the PE and MM classifications were, at all material times, neither bound by a collective agreement nor an arbitral award. It is respectfully submitted that*

the Board has failed to comply with subsection 48.1(4)(a), and that the Board has thereby exceeded its jurisdiction.

4. *Section 48.1 of the* PSSRA *is a successor rights provision. Labour Boards universally have held that a successor rights provision's purpose "is to preserve, not to extend, union bargaining rights" [see* Pitts Engineering, *[1983] O.L.R.B.R. 938 (Tab 4)]. It is respectfully submitted that in order to expand the scope of bargaining rights, the Board would require legislative jurisdiction which is absent in the* Act.

5. *In the alternative, if the Board did have jurisdiction to include these categories of unrepresented employees in the bargaining unit, it provided no notice to these employees in respect of the representation vote, and no opportunity to participate in it. The Applicant submits that the Board has committed an error in its decision based upon a violation of the principles of natural justice.*

Part IV - Remedy Sought

1. *In light of the parties' representations, as well as statutory limitations, the PCA requests that the Board reconsider its decision in* Parks Canada Agency and Professional Institute of the Public Service of Canada and Public Service Alliance of Canada, *2001 PSSRB 39 (140-33-15, 140-33-16), and declare that employees in the occupational classifications who were not, on the date of the first application to the Board bound by a collective agreement or arbitral award (and more specifically, the PE and MM classifications) are not included in the bargaining unit described in the bargaining unit description.*

Submissions by PSAC

1. The respondent Public Service Alliance of Canada (Alliance) accepts the employer's statements of facts in paragraphs 1 through to 7, Part 1 Background of the employer's written submissions.

2. The Board's decision to certify a single bargaining unit of "all employees of Parks Canada Agency" was made after 20 days of hearings spanning over 14 months and in consideration of a vast amount of oral and documentary evidence presented by Parks Canada employees and management representatives (Board file: 140-33-15, 140-33-16, Parks Canada Agency and Professional Institute of the Public Service of Canada, Public Service Alliance of Canada

and Association of Public Service Financial Administrators, 2000 PSSRB 109).

The decision indicates that the Board exercised its broad discretionary powers in considering the weight of the evidence presented by the parties and in consideration of its belief that there should not be fragmentation or a multiplicity of bargaining units. The Board determined that a single bargaining unit representing all Parks Canada Agency employees was the unit that, after consideration of all the facts, the arguments of the parties and labour relations principles was the most appropriate unit.

3. The PSAC submissions to the Board were for the recognition of a single bargaining unit of all Parks Canada Agency employees previously represented by the Alliance under the Treasury Board of Canada. The Board invited the parties to submit comments on a single bargaining unit of employees. The Alliance submissions to the Board were to the effect that while we did not seek to represent all employees, the Alliance had the experience and ability to do so. (PCA 2000 PSSRB 109, page 117, para. 69).

4. Subsequent to the representation vote ordered by the Board the Alliance received majority support and was recognized as the bargaining agent for "all employees of Parks Canada Agency" on May 1, 2001. The employer has made no submission that the approximately three (3) employees presently classified as Management Trainees (MM) and the approximately fifty-five (55) Personnel Administrators (PE) are not employees. We submit that as employees they are covered by the all employee certificate issued by the Board and have the right to participate in collective bargaining.

While the PSAC did not seek the inclusion of the PE and MM group in the all employee certificate, the inclusion of these two small groups is consistent with the direction of the decision which states: "Our decision, we believe, looks to the future, not the past, and sets the tone for short and long term useful labour/management relations." (PCA 2000 PSSRB 109, pg. 28, para. 133). The inclusion of these groups poses no labour relations problem with respect to effective representation. The Board has broad jurisdiction pursuant to Section 21 with respect to the administration of the Public Service Staff Relations Act and has exercised this jurisdiction in a manner that is appropriate.

5. The finding of a single bargaining unit was made in consideration of the employer's organizational structure and the evidence that existing classifications no longer reflected the nature of work performed at PCA: "The evidence convinces us that existing classifications and bargaining unit

structures no longer reflect the often specialized nature of the work performed at the PCA."(PCA 2000 PSSRB 109, pg. 28, para. 134).

Further in the decision the Board also states:

Finally in reaching our decision we have taken into account the evidence that the PCA is well on its way to finalizing and adopting its own universal classification standard. This is in keeping with the Canadian Human Rights Act requirement to have in any work establishment, a classification system that is non-discriminatory and applies across all occupational lines. (PCA 2000 PSSRB 109, pg. 29, para. 138)

This decision, issued on December 11, 2000, represents a weighed and considered exercise of the Board's expertise. In view of the evidence of the development of a Parks Canada Classification system, based on the universal classification system, the Board's finding of one single bargaining unit that would have the effect of consolidating and applying similar terms and conditions of employment across all occupational groups supports the inclusion of all existing occupational groups within the all employee unit. The Board's decision took into consideration the employer's commitment to the implementation of a new, universal classification plan and the fact that all employees, whatever their current classification, would find themselves identified and measured against a universal standard. Both MM and PE groups will be measured against this standard. While we recognize that in many situations a single classification does not necessarily require a single bargaining unit, it follows in the case of the Parks Canada Agency that the bargaining agent in place will negotiate the rates of pay and other aspects of the implementation of this plan. As such, all occupational groups, including the MM and PE group will benefit from this representation.

In practical terms, the inclusion of the MM and PEs was a consequential effect of the Board's order in consideration of the specific nature of the PCA organization and the future impact of the employer's new classification plan. As such, the inclusion of MM and PEs in the bargaining unit is consistent with Section 48.1 in that it establishes an appropriate bargaining unit.

6. The present application by the employer seeks to modify the decision in a manner which is, in the view of the Alliance, not consistent with the Board's intent in finding an all employee bargaining unit appropriate as stated at Paragraph 131 of the decision:

> *Although it could be argued that the proposed units are appropriate within certain limits, the Board is of*

> *the view that in considering several appropriate units, it should seek the most appropriate unit and if necessary, in the interest of all parties, it should fashion the most appropriate one.*

The decision and the certificate, which was subsequently issued by the Board on May 1st, 2001, provides both the union and the employer a strong framework for collective bargaining and labour relations now and for the future. It is the submission of the Alliance that it is consistent with the intent of Section 48.1(4)(a) and (b) in that the decision sought to establish appropriate bargaining units and concluded with the establishment of what was in the judgement of the Board the most appropriate unit.

7. The Board's order for the Parks Canada Agency does not reflect the applications or submissions of any of the parties. It is a finding where the Board exercised its discretion and its general powers pursuant to Section 48.1(4) and Section 21:

> *21. (1) The Board shall administer this Act and exercise such powers and perform such duties as are conferred or imposed on it by, or as may be* **incidental to the attainment of the objects of, this Act** *including, without restricting the generality of the foregoing, the making of orders requiring compliance with this Act, with any regulation made hereunder or with any decision made in respect of a matter coming before it.*

We submit that the effect of including the MM and PE groups in the PCA bargaining unit was **"incidental to the attainment of the objects of, this Act"** *and if the Board did not have the jurisdiction to render such a decision under Section 48(4) as argued by the employer, then such jurisdiction was fully available to it pursuant to Section 21and Section 22(b),* **"the determination of units of employees appropriate for collective bargaining;"**. *The Board in this matter determined, on the basis of the evidence before it, to craft a framework that would best meet the needs of all employees now and in the future.*

8. The employer indicates that the MM and PE groups were not given the opportunity of participating in the representation vote ordered by the Board. While this is regrettable, it is also a fact that in this case the Board has fashioned a brand new bargaining unit that did not exist in the past. In this situation other Boards have found that it is not necessary to order a vote of the groups being added when the group being included is so small it could not significantly alter the decision of the majority and their addition does not significantly alter the scope of the unit. We submit that the Board has the jurisdiction to apply this

reasoning to the case of the MM and PE groups whose numbers, approximately fifty-eight (58) in total, are extremely small in comparison to the whole unit (see BC. Telus. (October 19, 2000), Decision No. 94 (C.I.R.B.).

In the alternative, the Board also has the jurisdiction pursuant to Section 48.1(8) of the Act to order a representation vote of the employees in the MM and PE category to identify their wishes with respect to inclusion in the bargaining unit of Parks Canada Agency employees.

Reply Submission of the PCA

1. *With respect to the Respondent's submissions in paragraph 4 and 7 of the Response, section 21 of the* Public Service Staff Relations Act *enables the Board to exercise and perform powers "as are conferred or imposed upon it". It is an accepted principle of administrative law that, as an inferior statutory tribunal, the Board can only act within the limitations of its statutory authority. Section 48.1 (4) is such a limitation, and the Board cannot create a jurisdiction where none has be granted.*

2. *The Respondent suggests that the Board could exercise authority pursuant to its powers in respect of matters "incidental to the attainment of the objectives of [this]* Act*". In order to do so, it is respectfully submitted that the Board would have to find that it had the ability to grant itself a jurisdiction in an area specifically removed from it by Parliament, on the basis that such was for the attainment of the* Act*'s objectives. This is not only an extraordinary premise from an administrative law perspective, but is also directly contrary to the legislative mandate imposed by Parliament that the Board "administer this Act and exercise such powers and perform such duties* as are conferred or imposed upon it.*"*

3. *In paragraph 7, the Respondent suggests that the Board has been granted the necessary powers under section 22(b) in this regard. Section 22 grants to the Board certain powers to make regulations. The Board has promulgated no regulations which would be applicable to this issue, and could not, in any event, promulgate a regulation inconsistent with its enabling legislation.*

4. *In respect of paragraph 8, the Respondent appears to suggest that the employees in the MM and PE classifications could now be given an opportunity of choosing to be included in the bargaining unit established by the Board. The logic of this argument is flawed for several reasons. First, section 48.1(8) requires the Board*

to authorize a representation vote before *determining the bargaining agent under section 48.1(4)(b). Second, subsection (8) can only be applicable to employees* in the bargaining unit, *which begs the question in issue. Third, such an interpretation is inconsistent with section 28 of the* Act, *dealing with certification of previously unrepresented employees.*

5. *In support of its arguments that it is unnecessary for the Board to provide the MM and PE employees an opportunity to participate in a representation vote, the Respondent cites the decision of the Canada Labour Relations Board in* Re: Telus Corp. *It is respectfully submitted that this decision is not of assistance in the determination of this issue.*

6. *First, the matter was an application under section 18 of the* Canada Labour Code, *a section dealing with the power of reconsideration (not unlike section 27 of the* Act), *and not section 47. Section 47(4)(a) of the* Code *contains language materially similar to section 48.1(4)(a) of the* Act. *The* Telus *decision did not deal with a devolution from a federal department, and is of questionable application from that perspective alone.*

7. *The* Telus *decision dealt with a situation where previously unionized employees were swept into a larger unit without the right to vote. It did not deal with a situation where a vote was held, but certain employees were denied the right to participate.*

8. *More importantly, the* Telus *decision did not deal with employees who were previously unrepresented. The Board's attention is drawn to paragraph 26 of the decision:*

> *"As stated by the original panel,* this was not an application by a union to expand the scope of a pre-existing unit to include a group of previously excluded employees. ... *The present situation is one where two large, complex and separate employers merged and an application was made by the merged employers to review the bargaining structures existing at the time of application within operations of each employer, with a view to merging those operations and creating a new and appropriate bargaining structure in the altered situation. The single unit created combines previously certified and voluntarily recognized groups of employees and a variety of locals of at least four different trade unions.* There is no question that the Board has power to merge the

relevant units and grant the relevant amended certificates."

9. *The Applicant requests that the relief requested in its application be granted.*

Reasons for Decision

[11] Section 48.1 of the PSSRA comes under the heading "Successor Rights". The section reads as follows:

> ***48.1*** *(1) Where the name of any portion of the Public Service specified from time to time in Part I of Schedule I is deleted therefrom and added to Part II of that Schedule, or where a portion of the Public Service included in a portion of the Public Service so specified in Part I of Schedule I is severed from the portion in which it was included and established as or becomes a part of a portion of the Public Service specified in Part II of that Schedule, a collective agreement or arbitral award that applies to any employees in that portion of the Public Service and that is in force at the time the portion of the Public Service is established as or becomes a part of such a separate employer continues in force, subject to this section, until its term expires.*
>
> *(2) An employee organization may apply to the Board for certification as the bargaining agent for the employees affected by a collective agreement or arbitral award referred to in subsection (1), but may so apply only during a period in which an application for certification of an employee organization is authorized to be made under section 31.*
>
> *(3) Where the employees in a portion of the Public Service that is established as or becomes a part of a separate employer are bound by a collective agreement or arbitral award, the employer of the employees, or any bargaining agent affected by the change in employment, may, during the period beginning on the one hundred and twentieth day and ending on the one hundred and fiftieth day after the date on which the portion of the Public Service is established as or becomes a part of the separate employer, apply to the Board for an order determining the matters referred to in subsection (4).*
>
> *(4) Where an application is made under subsection (3) by an employer or bargaining agent, the Board, by order, shall*
>
> *(a) determine whether the employees of the separate employer who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;*

(b) determine which employee organization shall be the bargaining agent for the employees in each such unit; and

(c) in respect of each collective agreement or arbitral award that applies to employees of the separate employer,

(i) determine whether the collective agreement or arbitral award shall remain in force, and

(ii) if the collective agreement or arbitral award is to remain in force, determine whether it shall remain in force until the expiration of its term or expire on such earlier date as the Board may fix.

(5) Where the Board determines, pursuant to paragraph (4)(c), that a collective agreement or arbitral award shall remain in force, either party to the collective agreement or arbitral award may, not later than ninety days after the date the Board makes its determination, apply to the Board for an order granting leave to give to the other party a notice to bargain collectively.

(6) Where no application for an order is made pursuant to subsection (3) within the period specified in that subsection after the date a portion of the Public Service is established as or becomes a part of a separate employer, the separate employer or any bargaining agent bound by a collective agreement or arbitral award that, by subsection (1), is continued in force, may, during the period commencing on the one hundred and fifty-first day and ending on the two hundred and fortieth day after the date the portion of the Public Service is established as or becomes a part of the separate employer, apply to the Board for an order granting leave to give to the other party a notice to bargain collectively.

(7) Where, before the deletion or severance referred to in subsection (1), notice to bargain collectively has been given in respect of a collective agreement or arbitral award binding on employees in what is now established as or has become a part of a portion of the Public Service specified in Part II of Schedule I, who, immediately before the deletion or severance were part of the Public Service specified in Part I of that Schedule,

(a) the terms and conditions of employment contained in a collective agreement or arbitral award that, by virtue of section 52, are continued in force immediately before the date of the deletion or severance or that were last continued in force before that date, in respect of those employees shall continue or resume in force on and after

> *that date and shall be observed by the separate employer, the bargaining agent for those employees and those employees until the requirements of sections 102 to 104 have been met, unless the employer and the bargaining agent agree otherwise;*
>
> *(b) on application by the separate employer or bargaining agent for those employees, made during the period beginning on the one hundred and twentieth day and ending on the one hundred and fiftieth day after the date of the deletion or severance, the Board shall make an order determining*
>
> > *(i) whether the employees of the separate employer who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and*
> >
> > *(ii) which employee organization shall be the bargaining agent for the employees in each such unit; and*
>
> *(c) where the Board makes the determinations under paragraph (b), the separate employer, or the bargaining agent may, by notice, require the other to commence or recommence collective bargaining for the purpose of entering into a collective agreement.*
>
> *(8) Before making a determination under subsection (4) or paragraph 7(b), the Board may make such inquiry or direct that such representation votes be taken among the employees to be affected by the determination as the Board considers necessary, and in relation to the taking of any such vote the provisions of subsection 36(3) apply.*

[12] Section 48.1 is not an alternative to certification proceedings under section 28 of the PSSRA. Rather the purpose of the section, as the heading implies, is to provide for the transition of the system of collective bargaining in situations where a portion of the Public Service that is subject to that system is transferred from the authority of the central administration (Treasury Board) to that of a separate employer. The section contemplates two kinds of circumstances in which applications may be made to the Board for the determination of an appropriate bargaining unit(s). One situation arises under subsection (3), the other under subsection (7).

[13] Subsection 48.1(3) provides that were the employees in a portion of the Public Service that is established as a separate employer are bound by a collective agreement, either the separate employer or the bargaining agent affected by the change in

employment, may apply to the Board for an order to determine the matters set out in subsection 48.1(4). Under that subsection the Board is to determine, among other things, whether the employees of the separate employer who at the time of the transfer, are bound by any collective agreement, constitute one or more units appropriate for collective bargaining.

[14] Subsection 48.1(7) applies to situations where, before the transfer, notice to bargain has been given in respect of a collective agreement binding on employees in what is now established as a separate employer under Part II of Schedule 1 of the PSSRA, who immediately before the transfer were part of the Public Service specified in Part I of that Schedule. Where such a situation exists either the separate employer or the bargaining agent for those employees may make an application to the Board for an order determining whether the employees of the separate employer who are represented by a bargaining agent constitute one or more units appropriate for collective bargaining.

[15] Clearly the authority of the Board under both subsections only extends to employees who are in one of the bargaining units that existed at the time the transfer took place. Accordingly, the definition "all employees of Parks Canada Agency" contained in the Board's decision of May 1, 2001 does not include employees classified in an occupational group, such as the PE and MM or any other group, that at the time of the transfer was not represented by a bargaining agent.

[16] The Board is prepared to amend the description of the bargaining unit should the parties consider it necessary.

Yvon Tarte,
Chairperson

Ottawa, December 7, 2001.