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File: 151-2-19

Citation: 2000 PSSRB 103



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

TREASURY BOARD

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

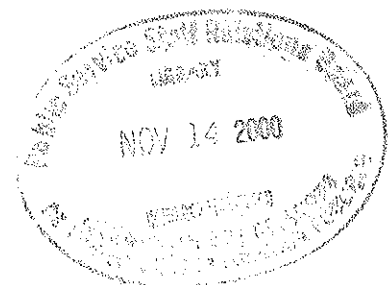
Bargaining Agent

RE: Application for extension of time for the  
implementation of a collective agreement,  
pursuant to section 57 of the  
Public Service Staff Relations Act

**Before:** Yvon Tarte, Chairperson

**For the Employer:** David Merner

**For the Bargaining Agent:** Edith Bramwell



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Heard at Ottawa, Ontario,  
23 October 2000.



## DECISION

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[1] This decision is concerned with the employer's application dated September 29, 2000, pursuant to paragraph 57(1)(b) of the *Public Service Staff Relations Act* (PSSRA) to extend the time limit for the implementation of the Public Service Alliance of Canada (PSAC) Operational Services (Table II) collective agreement (collective agreement).

[2] The collective agreement, which was executed on July 7 2000, did not include a specific date for its implementation. Pursuant to paragraph 57(1)(b) of the PSSRA, the collective agreement therefore had to be implemented on or before October 4, 2000.

[3] In its application the employer cited several grounds for justifying the request for extension of time. The first is the employer's inability to cope with workload demands particularly as they relate to pay equity payments following the agreements reached between the employer and the PSAC in October 99. Also cited was the great number of collective agreements to be implemented at about the same time.

[4] At the hearing, the employer produced one witness, Mr. Tom Smith who is the Director of pay administration, Labour Relations division, Human Resources Branch at the Treasury Board.

[5] The pay administration section is involved with Public Works and Government Services Canada (PWGSC) in coordinating the implementation of various collective agreements.

[6] The witness expanded on the reasons already given by the employer to justify its inability to meet the statutory 90 day implementation period for the Operational Services collective agreement.

[7] Mr. Smith indicated that the implementation of this collective agreement was further complicated by the need to clean up zone reductions from the previous round of collective bargaining.

[8] In addition, the employer realized at about the 70 day mark in the 90 day period that something was wrong. The PWGSC computer did not work properly because it had difficulty coping with the new group structure Gazetted in March 99 and the compression of pay zones in the previous round of bargaining.

[9] The witness believes the PSAC was advised of the problems on or about September 22, 2000. The matter was discussed with the PSAC but a solution could not be reached.

[10] According to Mr. Smith, the main problems in the implementation of the collective agreement are concentrated in the Department of National Defence (DND) and the Department of Fisheries and Oceans (DFO).

[11] The employer was unable to find the necessary resources from within or even outside the public service to complete the work for the implementation of the collective agreement within the statutory framework.

[12] Mr. Smith could not say whether the implementation of the collective agreement was discussed by the parties at the bargaining table. In cross-examination Mr. Smith indicated that he had been disappointed when he learned that the implementation period for the Operational Services collective agreement would be only 90 days.

[13] Mr. Smith further acknowledged that even at the best of times, 90 days would not be enough to fully implement all of the provisions of a new Operational Services collective agreement which normally requires that the employer deal with pay zones and numerous overtime and acting pay accounts.

[14] The PSAC called Mr. Michael McDonald to testify. Mr. McDonald is the PSAC Director of the Membership Services Branch.

[15] As part of his functions, Mr. McDonald receives regular reports on the status of collective bargaining. At no time was he advised that the implementation of the Operational Services collective agreement had been discussed at the bargaining table.

### Arguments

#### For the Employer

[16] The employer deplores the fact that it has to make this application for extension of time but was forced to do so because of a crisis situation. The employer believes the situation which arose was unforeseen.

[17] Because existing resources were already being used to their limits, the employer had no way of correcting the situation and meeting its statutory deadline.

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For the Bargaining Agent

[18] The "crisis" situation which the employer decries was the result of circumstances which were easily foreseeable. The need for more time to implement the collective agreement should have been discussed at the bargaining table.

[19] In support of its position the PSAC referred to: *Treasury Board and The Professional Institute of the Public Service of Canada* (Board file 151-2-4), *Treasury Board and the PSAC* (Board file 151-2-7) and *Treasury Board and the PSAC* (Board files 148-2-367 and 151-2-13 and 14).

Reasons for decision

[20] Slightly more than one year ago, the employer appeared before the Board to request an extension of the ninety-day limit contained in section 57 of the PSSRA for the implementation of the previous Operational Services collective agreement (see Board files 148-2-367 and 151-2-13 and 14).

[21] Many of the problems raised then involved similar issues and were tied to DND and DFO. In that case, I made very strong suggestions to the employer to always raise the question of implementation at the bargaining table. It seems clear to me that this should, at the very least, be done in those cases where there is ample reason to believe that the 90 days provided by the PSSRA for the implementation of a collective agreement will not be enough.

[22] For the second time in a short period, the employer has again failed in its statutory obligation to fully implement the provisions of the Operational Services collective agreement in a timely manner.

[23] Given the employer's evidence, I must conclude that it knew or should have known that the 90 day implementation period was not enough in this case.

[24] The employer's failure to raise the issue at the bargaining table in this case is therefore unacceptable and cannot be condoned by this Board.

[25] In 1969 (see Board file 151-2-4) when the implementation provisions were first being interpreted, the Board warned the Treasury Board that from that time on, there would be a heavy onus on the employer to establish that delays in implementation

were caused by circumstances that could not reasonably have been foreseen by the employer or by matters beyond its control.

[26] The evidence presented leads me to conclude that the employer has failed to meet this heavy onus which was theirs to discharge.

[27] Given the recurring and apparently endemic nature of most of the problems which arose in this case, it is high time the employer took the necessary steps to correct the situation. Many possibilities for change exist, some of which were raised at the hearing by the employer's counsel.

[28] Given what precedes, the employer's request for an extension of the time limit contained in section 57 of the PSSRA is denied.

**Yvon Tarte,  
Chairperson**

Ottawa, November 9, 2000.