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Citation: 2002 PSSRB 34



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

and

**PUBLIC SERVICE ALLIANCE OF CANADA AND
SOCIAL SCIENCE EMPLOYEES ASSOCIATION**

Intervenors

RE: Application under section 21(1) of
the Public Service Staff Relations Act

Before: Yvon Tarte, Chairperson

Appearances: Professional Institute of the Public Service of Canada, Dougald Brown; Canada Customs and Revenue Agency, Michel LeFrançois; Public Service Alliance of Canada, Andrew Raven; Social Science Employees Association, Peter Engelmann

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

DECISION

[1] This is an application dated October 15, 2001 by the Professional Institute of the Public Service of Canada (PIPSC) under section 21(1) of the *Public Service Staff Relations Act* (PSSRA). In its application the PIPSC requests the Board to issue an order directing the Canada Customs and Revenue Agency (CCRA) to "... desist from taking any further steps to implement the Management Group until after the Board releases its decision in the section 48.1 applications."

[2] The applications under section 48 of the PSSRA referred to by the PIPSC were initiated as a result of the conversion of the former Department of National Revenue, a department listed under Part I of Schedule I to the PSSRA, into the CCRA, as a separate employer under Part II of Schedule I of the PSSRA, effective November 1, 1999. Prior to November 1, 1999 the employees of the CCRA were represented by six bargaining agents and were grouped into thirteen bargaining units, which bargained with the Treasury Board as employer. Subsequent to the establishment of the CCRA as a separate employer, applications under section 48.1 were filed by the CCRA, the PIPSC and the Public Service Alliance of Canada (PSAC). The Association of Public Service Financial Administrators (APSFA) and the Social Science Employees Association (SSEA) were parties to the proceedings as intervenors.

[3] Essentially the purpose of the section 48.1 applications was to seek an order from the Board determining whether the employees of the CCRA who are represented by a bargaining agent constitute one or more units appropriate for collective bargaining and which employer organization(s) was to be the bargaining agent of each such unit.

[4] The section 48.1 proceedings commenced in June 2000 and extended for 53 hearing days concluding in May 2001. The decision was taken under reserve and was rendered on December 12, 2001.

[5] The section 48.1 application of the CCRA proposed, in part, the establishment of a management group comprised of positions in which the primary purpose was managerial in nature. This proposal was opposed by the other applicants and the intervenors.

[6] In the fall of 2001, while the decision of the Board was still under reserve, the CCRA notified its employees of the creation of a management group and notified individual employees of their inclusion in that group. It is this action on the part of the employer that has prompted the instant application.

[7] The exchange of submissions between the parties was completed on January 14, 2002 at which time the matter was referred to the Board for determination.

[8] The position of the PIPSC is that the unilateral establishment of a management group is inconsistent with the legislative purpose of section 48.1 of the PSSRA. The creation of such a group before the Board has rendered its decision and the notification of employees of their inclusion in this group undermines the rights of both the employees and their bargaining agents. By notifying employees currently represented by PIPSC in the AU and CS bargaining units of their inclusion in the new management group, the CCRA is, in effect, unilaterally altering the scope of the existing bargaining rights of the PIPSC and interfering with the rights of the employees to continue to be represented by their current bargaining agents. This position was endorsed and supported by the PSAC and the SSEA in respect of the employees they represent.

[9] In response the CCRA submitted that while the Board has the exclusive authority to determine bargaining units under section 33 of the PSSRA, the CCRA has the exclusive authority under the *Canada Customs and Revenue Agency Act* (CCRAA) to determine occupational groups and that authority is protected by section 7 of the PSSRA. The creation of an occupational group and the notification of such to the employees are squarely within the exclusive prerogative of the CCRA. The CCRA further submits that the creation of a new group does not and cannot affect the composition of any existing bargaining unit nor the representation rights of a bargaining agent.

Determination

[10] Since the Board's decision on the section 48.1 applications was issued on December 12, 2001, the remedy requested in the instant application would, at this point in time, appear to be moot. However, assuming without so finding, that it may arguably be said that the issue is not moot, the Board would make the following determination.

[11] Paragraph 51(1)(c) of the CCRAA provides as follows:

51. (1) Notwithstanding subsections 11(2) and (3) and section 12 of the Financial Administration Act, the Agency may, in the exercise of its responsibilities in relation to personnel management,

(c) provide for the classification of Agency positions and employees;

[12] In addition, section 7 of the PSSRA provides:

7. Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein.

[13] Also, the term “Public Service” is defined in section 2 of the PSSRA as follows:

“Public Service” means the several positions in or under any department or other portion of the public service of Canada specified in Schedule I;

[14] It is clear from the above that the CCRAA provides the CCRA with the authority to classify positions. That authority, insofar as staff relations are concerned, is protected by section 7 of the PSSRA, which provides that nothing in the PSSRA is to be construed to affect the right or authority of the CCRA to determine the organization of the CCRA and to assign duties to and to classify positions therein.

[15] The applicant submits that the reclassification of positions to form a management group is, in the circumstances of the instant case, inconsistent with the legislative purpose of section 48.1. The Applicant also submits that by so doing the CCRA is, in effect, unilaterally altering the scope of its existing bargaining rights and interfering with the rights of employees to continue to be represented by their current bargaining agent.

[16] Whether or not the classification exercise undertaken by the CCRA is inconsistent with the purpose of section 48.1, the fact remains that the authority of the CCRA to classify positions is protected by virtue of section 7 of the PSSRA. That authority cannot be extinguished or eroded by a provision of the PSSRA, including the provisions of section 48.1. However, in this regard the Board confirms the statement in the submissions of the CCRA that the classification of positions into what the CCRA refers to as a management group does not and cannot affect the composition of any existing bargaining unit nor can it affect the right of the bargaining agent to represent those employees.

[17] The classification process undertaken by the CCRA did not alter the bargaining unit structure that existed before December 12, 2001 or the reconfigured structure of

the bargaining units determined to be appropriate by the Board in its decision of that date.

[18] The employees of the CCRA who, at the time the CCRA was established, were in a bargaining unit represented by a bargaining agent continued to be in that bargaining unit and continued to be represented by that bargaining agent until December 12, 2001. On December 12, 2001 those same employees were placed in one or the other of the two bargaining units determined to be appropriate by the Board. Those employees are now represented, respectively by the employee organizations certified by the Board to be the bargaining agents for those units. This is so irrespective of any classification exercise undertaken by the CCRA.

[19] In the result the reclassification of the positions in question into a management group is within the authority of the CCRA by virtue of section 51 of the CCRAA and section 7 of the PSSRA. Furthermore, the reclassification of those positions does not alter the composition of the bargaining units nor does it affect the right of the respective bargaining agents to represent the employees who occupy those positions.

[20] For all the above reasons the application is dismissed.

**Yvon Tarte,
Chairperson**

OTTAWA, March 21, 2002.