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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

UNION OF CANADIAN CORRECTIONAL OFFICERS - CSN

Applicant

and

**TREASURY BOARD
(Correctional Service Canada)**

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

Intervenor

RE: Applications for Certification under Section 28 and
for Revocation of Certification under Section 42 of the
Public Service Staff Relations Act – Correctional Services Group

Before: [Yvon Tarte, Chairperson](#)

(Decided without an oral hearing.)

DECISION

[1] In a decision dated July 19, 1967 (Board file 146-2-7), the Board certified the Public Service Alliance of Canada (PSAC) as the bargaining agent for the following two bargaining units:

- (a) *all of the employees of the Employer in the Correctional Group of the Operational Category other than employees whose duties include the supervision of other employees in that occupational group;*
- (b) *all of the employees of the Employer in the Correctional Group of the Operational Category whose duties include the supervision of other employees in that occupational group.*

[2] On June 16, 1999, pursuant to the provisions of the *Public Service Reform Act*, the Board amalgamated these two bargaining units into one, namely the Correctional Services Group bargaining unit (Board file 142-2-341). As a result of that amalgamation, the Board also confirmed that the PSAC was the bargaining agent for the following bargaining unit:

All employees of the Employer in the Correctional Services Group as defined in Part I of the Canada Gazette of March 27, 1999.

[3] On May 25, 2000, Brenda McLarnon-Leroux applied for certification for this bargaining unit on behalf of the Union of Canadian Correctional Officers - CSN (UCCO-CSN) pursuant to section 28 of the *Public Service Staff Relations Act* (PSSRA) (Board file 142-2-356). The UCCO-CSN estimated that there were 5500 employees in the bargaining unit. On the same date the UCCO-CSN also submitted an application for revocation of the PSAC's certification for this bargaining unit pursuant to section 42 of the PSSRA (Board file 150-2-49).

[4] In support of its applications, the UCCO-CSN submitted a number of signed Applications for Membership in UCCO-CSN/Resignations from the PSAC forms, as well as a list of bank deposits in the name of the UCCO-CSN. The UCCO-CSN also submitted the Minutes of its Founding Meeting dated January 20, 1999, at which time its Constitution was adopted and its officers were elected. Articles 3 and 4 of the Constitution (Statutes of the Union) provide:

Article 3 The objectives of the union are to promote the professional, economic, social, moral and political interests of the workers, by collective action which include the negotiation and the conclusion of a collective agreement, and this, without any discrimination with respect to race, nationality, sex, language or religious belief.

Article 4 The jurisdiction of the union shall mainly cover the sector of Federal Correctional Services Group and may also include all other workers.

[5] In addition, the UCCO-CSN submitted the Minutes of its Executive Committee Meeting held on May 9, 2000, pursuant to which Brenda McLarnon-Leroux was authorized to make these applications to the Board.

[6] The terminal date fixed by the Secretary pursuant to section 20 of the *P.S.S.R.B. Regulations and Rules of Procedure* was June 23, 2000. In accordance with sections 21 and 47 of the Regulations, the Treasury Board as employer was directed to post in the workplace an appropriate number of notices of the application for certification and the application for revocation of certification in specified form where they would most likely come to the attention of the employees affected by them. Pursuant to the Regulations, the notices stated, among other things, that any employee or group of employees affected by the applications and intending to make representations in opposition thereto was required to file, in writing with the Board by the terminal date, a concise statement of opposition signed by the employee or each member of a group of employees. The Board received a number of statements expressing opposition to the applications.

[7] On June 23, 2000, the PSAC applied to intervene in both these applications. Among other things, it alleged that the applications should be dismissed because the UCCO-CSN was not an employee organization within the meaning of the definition contained in section 2 of the PSSRA. Furthermore, the PSAC questioned the validity of the membership evidence submitted in support of the applications. In particular, the PSAC alleged that some of the membership evidence had been obtained as a result of harassment and intimidation of employees in the bargaining unit on the part of the UCCO-CSN.

[8] Because there was some dispute between the parties regarding membership in the bargaining unit, on July 10, 2000, the Board appointed Guy Baron and Gilles Grenier, who are officers of the Board, to enquire into the matter and to report back to it. On November 2, 2000, they issued their report which established that the parties agreed to the names of 5176 employees in the bargaining unit out of a total number of 5831 possible employees. There are therefore 655 names in dispute. The report further sets out the categories and number of names in each category which are in dispute, as well as the positions of the parties in each category.

[9] By letter dated November 2, 2000, the Board advised the parties that it would first deal with the application for certification and that it intended to do so without an oral hearing on the basis of the material on the record and any additional submissions which the parties wished to make. This position was taken in light of the provisions of subsection 41(2) of the PSSRA.

SUBMISSIONS OF THE PARTIES

Position of the UCCO-CSN

[10] The UCCO-CSN objected to the Board's decision to proceed first with its application for certification and to hold its revocation application in abeyance pending the outcome of the former application. Its purpose in filing the revocation application was to avoid the application of the Board's policy to hold a representation vote in a displacement application where the applicant has submitted *prima facie* evidence of majority support, as the UCCO-CSN has done here.

[11] The UCCO-CSN maintained that, even in a displacement application, a representation vote should only be held where there is doubt respecting the validity of the evidence establishing that the applicant has the support of the majority of the employees in the bargaining unit. There is no such doubt here. Furthermore, the PSAC has adduced no evidence to establish its level of support among employees in the bargaining unit.

[12] In addition, the UCCO-CSN argued that exceptional circumstances exist which should persuade the Board not to hold a representation vote in this case. In particular, the UCCO-CSN alleged numerous acts of improper interference by the employer in the UCCO-CSN's attempts to secure and retain the support of a majority of employees in the bargaining unit. Also the uncertainty as to which employee organization will

represent these employees has led to turmoil in the workplace. As this could be dangerous for both inmates and employees, it must be resolved as soon as possible. Holding a representation vote will only prolong this situation and is unnecessary since the UCCO-CSN has provided the Board with evidence that it has the support of the majority of the employees in the bargaining unit.

[13] Finally, should a representation vote be ordered, it is the position of the UCCO-CSN that a mail ballot is not feasible in light of the deplorable state of the employer's records. The only other alternative is to hold the vote on the premises of each institution where these employees work and it will be necessary that this be done over a period of several days as the majority of the employees in the bargaining unit work shifts.

[14] The UCCO-CSN also made some submissions on the categories of disputed employees identified in the report of the Board's officers.

Position of the PSAC

[15] The PSAC alleged that there is no doubt that the Board has the full authority to order a vote in either an application for certification or an application for revocation of certification. In support of this allegation the PSAC referred to subsections 36(2) and 42(3) of the PSSRA. Furthermore, it is the Board's practice to order a representation vote in a displacement application: *PSAC and Treasury Board* (Board file 144-2-296). The Board has a well-established practice of ordering a representation vote in the case of a revocation application: *Rae and UFCW, Local 401* (Board file 150-18-21); *Cliff and PSAC* (Board file 150-18-23); *Kellar and PSAC* (Board file 150-18-24). In fact, it is the practice of virtually every labour relations tribunal in Canada to order a vote in displacement circumstances. This is the case whether the displacement is presented in the form of a certification application or a revocation application.

[16] Furthermore, the PSAC submitted that in a raid situation it is not uncommon for allegations of inappropriate behaviour to be raised as was done by the UCCO-CSN against the employer in this case. Indeed, the UCCO-CSN has filed complaints under section 23 of the PSSRA relating to these allegations. These complaints are currently pending before the Board (Board files 161-2-1135 and 1150). In these circumstances, the ordering of a representation vote is even more justified as is evidenced by labour

board practice across the country: *United Steelworkers of America and Echo Bay Mines Ltd* [1996] C.L.R.B.D. No. 29; *Royal Aviation Inc.* (CIRB February 8, 2000).

[17] The PSAC submitted that the onus is on the UCCO-CSN to establish that exceptional circumstances exist which would justify a deviation from the Board's practice of holding a representation vote. To a large extent the UCCO-CSN is relying on its allegations of employer interference to support its submission that the Board should not hold a representation vote. However, these allegations demonstrate the need for conclusive evidence of support among the employees in the bargaining unit. In these circumstances, it is entirely appropriate that the Board order a representation vote.

[18] Finally, there is no obligation on the PSAC to prove that it continues to have the support of the majority of the employees in the bargaining unit although it alleges that it does and the presumption is that it does. Rather, the onus is on the UCCO-CSN to establish that it has majority support in the bargaining unit, a fact which can only be established by way of a representation vote.

[19] The PSAC also made some submissions on the categories of disputed persons identified in the report of the Board's officers.

Position of the Employer

[20] The employer limited its submissions to the status of certain categories of disputed persons identified in the report of the Board's officers.

REASONS FOR DECISION

[21] Having examined the material submitted in support of its applications, the Board finds, as indicated in its letter of November 2 to the parties, that the UCCO-CSN is an employee organization within the meaning of the definition contained in section 2 of the PSSRA. Furthermore, the Board is satisfied that Brenda McLarnon-Leroux has been duly authorized by the UCCO-CSN to make these applications. In addition, the Board finds that the proposed unit which is the subject matter of the application for certification is appropriate for collective bargaining.

[22] The Board has examined the report of the Board's officers dated November 2 and notes that the UCCO-CSN has the support of from 54.7% to 61% of the employees in the bargaining unit depending on how many and which of the 655 employees whose

names are in dispute are included therein. Moreover, as a result of letters of opposition received by the Board the support for the UCCO-CSN by another 143 persons may be in doubt, thereby possibly reducing their support accordingly.

[23] It is the Board's practice to hold a representation vote in displacement and revocation applications where the applicant has adduced evidence of majority support, unless exceptional circumstances dictate otherwise. In this regard I refer to *Canadian Labour Law*, second edition, by George Adams at page 7-76 where he states the following:

Another common situation where a board will always order a vote is when one union is seeking to displace another. The atmosphere of confusion generated by two competing unions renders membership evidence equivocal, hence, the secret ballot is demanded as a test of employee wishes.

[24] The UCCO-CSN has not convinced the Board that the circumstances of this application for certification, which seeks to displace the incumbent bargaining agent, are such as to require it to deviate from the usual practice. Accordingly, the Board directs that a representation vote be held by secret ballot among the employees in the bargaining unit, namely, all employees of the employer in the Correctional Services Group as defined in Part I of the Canada Gazette of March 27, 1999. Given the large number of work locations across the country for these employees, the Board believes that an on-site ballot could not be conducted in a timely and efficient manner. Therefore, this vote will be conducted by mail ballot.

[25] The normal practice of the Board is to allow a vote to take place over a period of four weeks. However, in light of the large number and the geographical locations of the Institutions involved a voting period of at least five weeks will be allowed. The voting period will commence with the mailing of the ballots on January 8, 2001 and will terminate on February 16, 2001.

[26] For the purpose of the vote the Board directs the employer to file with the Board on or before December 19, 2000 a list of the names of the 5831 persons listed in the report of the Board's officers dated November 2, 2000, together with an address by which each such person may be contacted by mail. The employer is directed to exclude from the above list, and to file as a separate list, the names and mailing addresses of the 655 persons whose eligibility to vote is in dispute. These 655 persons will be allowed to vote but their ballots will be segregated and not counted. If the

outcome of the vote is inconclusive, the Board will then determine who among the 655 persons is eligible to vote and the ballots of those who are found to be eligible will be counted.

[27] The employer is further directed to exclude the name of any person on the lists who has ceased to be employed since May 25, 2000, the date of the application, and to include the name of any employee hired since that date. In addition, the employer is directed to advise the Board forthwith of any subsequent changes, either by way of deletions or additions, to the updated list up to the end of the voting period. In turn, the Board will forthwith advise both the UCCO-CSN and the PSAC of any changes to the names on the lists made subsequent to the report of November 2, 2000.

[28] Voters will be asked to indicate whether they wish the UCCO-CSN to represent them as their bargaining agent or whether they wish to continue to be represented by the PSAC.

[29] This matter is referred to the Secretary of the Board for the purpose of making arrangements for the conduct of the representation vote.

**Yvon Tarte,
Chairperson**

OTTAWA, November 28, 2000.