

Date: 20050630

File: 572-13-11

Citation: 2005 PSLRB 68



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

COMMUNICATIONS SECURITY ESTABLISHMENT,
DEPARTMENT OF NATIONAL DEFENCE

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
*Communications Security Establishment, Department of National Defence v.
Public Service Alliance of Canada*

In the matter of an application, under subsection 71(1) the *Public Service Labour Relations Act*, for a declaration that a position is a managerial or confidential position

REASONS FOR DECISION

Before: Sylvie Matteau, Vice-Chairperson

For the Applicant: Barb Gibbons, Communications Security Establishment,
Department of National Defence

(Decided without an oral hearing)

REASONS FOR DECISION

Application before the Board

[1] This decision deals with an application by the Communications Security Establishment, Department of National Defence (the “employer”) for an order declaring that a position is managerial or confidential pursuant to section 71 of *Public Service Labour Relations Act* (the “new Act”).

[2] In *Communications Security Establishment, Department of National Defence v. Public Service Alliance of Canada and Professional Institute of the Public Service of Canada*, 2001 PSSRB 14, the Board confirmed the Public Service Alliance of Canada (the “bargaining agent”) as the bargaining agent for the following bargaining unit (the “bargaining unit”):

All employees of the Communications Security Establishment, excluding directors, persons above the rank of director, employees involved in the planning, development, delivery or management of human resources, and such other persons employed in a managerial or confidential capacity.

[3] On March 31, 2005, the *Public Service Staff Relations Act (PSSRA)* was repealed pursuant to an Order in Council, dated March 22, 2005 (P.C. 2005-372) made under section 285 of the *Public Service Modernization Act (PSMA)*. On April 1, 2005, the new Act, enacted by section 2 of the *PSMA*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to subsection 48(1) of the *PSMA*, the bargaining agent continues to be certified as the bargaining agent for the bargaining unit.

[4] On April 28, 2005, the employer applied to the Board for an order declaring that a position in the bargaining unit is managerial or confidential pursuant to paragraph 5.1(1)(b) of the *PSSRA*. In light of the repeal of the *PSSRA*, as stated above, this application will be dealt with under section 71 of the new Act on the grounds listed in paragraph 59(1)(e) of the new Act. The position referred to in the employer’s application is listed in the annex to this decision.

[5] The employer’s application did not comply with section 33 of the *Public Service Labour Relations Board Regulations* as it did not provide the position title and description, the name of the occupant or the geographic location. The employer stated that it considered that information to be classified.

[6] On or about April 28, 2005, the employer provided the bargaining agent with a copy of the application, pursuant to section 72 of the new *Act*.

[7] Under subsection 34(1) of the *Public Service Labour Relations Board Regulations*, the bargaining agent had 20 days from the receipt of a copy of the application to file an objection with the Board. More than 20 days have elapsed, without the bargaining agent having filed any objection to the application. As the position number has been clearly identified and having received no objection from the bargaining agent, the employer is relieved from complying with section 33 of the *Public Service Labour Relations Board Regulations*.

[8] Since no objections to the employer's application have been filed, the Board must make, pursuant to section 75 of the new *Act*, an order declaring the position listed in the annex to this decision to be a managerial or confidential position.

[9] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[10] The position identified in the annex to this decision is declared to be a managerial or confidential position.

June 30, 2005.

**Sylvie Matteau,
Vice-Chairperson**