

Date: 20050803

File: 572-13-41

Citation: 2005 PSLRB 89



*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

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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 positions are managerial or confidential positions

**REASONS FOR DECISION**

***Before:*** Ian R. Mackenzie, Vice-Chairperson

***For the Applicant:*** Barbara Gibbons and Mark Sweitzer, Communications Security Establishment, Department of National Defence

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(Decided without an oral hearing)

## REASONS FOR DECISION

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### 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 some positions are 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 certified 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 April 1, 2005, the new Act, enacted by section 2 of the *Public Service Modernization Act (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 May 17, 2005, the employer applied to the Board for an order declaring that some positions in the bargaining unit are managerial or confidential pursuant to section 71 of the new Act. Those positions are 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 name of the occupant for any of the positions listed in the annex to this decision. The employer stated that it considered that information to be classified.

[6] On or about May 17, 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 for each position listed in the annex to this decision 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 positions listed in the annex to this decision to be managerial or confidential positions.

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

*(The Order appears on the next page)*

Order

[10] The positions identified in the annex to this decision are declared to be managerial or confidential positions.

August 3, 2005.

**Ian R. Mackenzie,  
Vice-Chairperson**