Date: 20060331

File: 538-34-01

Citation: 2006 PSLRB 38

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

**CANADA REVENUE AGENCY,
PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA
and PUBLIC SERVICE ALLIANCE OF CANADA**

Applicants

and

**ASSOCIATION OF CANADIAN FINANCIAL OFFICERS and
CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES**

Respondents

Indexed as
Canada Revenue Agency et al. v. Association of Canadian Financial Officers and Canadian Association of Professional Employees

In the matter of an application for an order under section 84 and section 89 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Dan Butler, Board Member

For the Applicants: Anne Ross, Canada Revenue Agency
Robert F. Luce, Professional Institute of the Public Service of Canada
Kate Rogers, Public Service Alliance of Canada

For the Respondents: Milt Isaacs, Association of Canadian Financial Officers
José Aggrey, Canadian Association of Professional Employees

Decided without a hearing.

Application before the Board

[1] On December 7, 2005, the Public Service Labour Relations Board received a joint application dated December 5, 2005, filed by the Canada Revenue Agency (the Agency), the Professional Institute of the Public Service of Canada (PIPSC) and the Public Service Alliance of Canada (PSAC) under sections 84 and 89 of the *Public Service Labour Relations Act (PSLRA).* The joint application seeks an order from the Board declaring that certain positions and incumbents transferred by Order-in-Council P.C. 2005-1355, dated July 28, 2005, from Human Resources Development Canada (HRDC) to the Agency, do not constitute a unit appropriate for collective bargaining. The application further asks that the Board declare that the PSAC and the PIPSC are the bargaining agents for the positions and incumbents in question and that existing collective agreements and corresponding successor rights cease to apply as of the date of the Board's order.

[2] The applicants attest that the transfer, effective August 1, 2005, involved a total of 428 employees classified in five occupational groups and represented prior to the transfer by three bargaining agents as set out below:

Group	**Permanent**	**Term**	**Group Total**
PSAC			
AS	6	3	9
CR	44	19	63
PM	271	62	333
CAPE			
SI	6	5	11
ACFO			
FI	5	7	12
Total	332	96	428

The list of transferred employees identified by the parties can be found on file with the Board.

[3] Under the successor rights provisions of the *PSLRA*, three collective agreements have continued in force since August 1, 2005, in respect of the transferred employees:

1. PSAC and Treasury Board (expiry date: June 20, 2007) for those employees classified as AS, CR and PM.

2. Canadian Association of Professional Employees and Treasury Board (expiry date: June 21, 2006) for those employees classified as SI.

3. Association of Canadian Financial Officers and Treasury Board (expired November 6, 2004) for those employees classified as FI.

The applicants note that ACFO served the Treasury Board with notice to bargain on October 27, 2004.

[4] The application proposes that the PSAC be determined to be the bargaining agent for employees classified as AS, CR and PM, and that the applicable collective agreement be that which currently exists for the Program Delivery and Administrative Services (PDAS) bargaining unit, which bargaining unit was certified by the Public Service Staff Relations Board on December 12, 2001, in *Canada Customs and Revenue Agency, Professional Institute of the Public Service of Canada and Public Service Alliance of Canada,* 2001 PSSRB 127.

[5] The application proposes that the PIPSC be determined to be the bargaining agent for employees classified as SI and FI, and that the applicable collective agreement be that which currently exists for the Audit, Financial and Scientific (AFS) bargaining unit, which bargaining unit was certified by the Public Service Staff Relations Board on December 12, 2001, in *Canada Customs and Revenue Agency, Professional Institute of the Public Service of Canada and Public Service Alliance of Canada (supra),* and as subsequently amended in August 2005, in *Canada Customs and Revenue Agency and Professional Institute of the Public Service of Canada,* 2005 PSLRB 79.

[6] In their application, the Agency, the PIPSC and the PSAC requested that this matter be dealt with in writing and without a hearing.

[7] On December 16, 2005, the Board wrote to acknowledge receipt of the application and requested that the two other parties affected by the orders sought from the Board, the ACFO and the CAPE, file replies to the application.

[8] Both ACFO and CAPE subsequently indicated in writing, both by letters dated December 20, 2005, that they have no objection to the application.

[9] The Board advised the parties on February 2, 2006 that it intended to deal with the application in writing. The Board invited the applicants and respondents to file additional written submissions, if they so desired. All parties responded that they did not wish to file additional submissions.

[10] The Chairperson of the Board has, under the authority of section 44 of the *PSLRA*, appointed me as a panel of the Board to decide this matter on the basis of the written submissions on file.

Reasons

[11] This application is filed under sections 84 and 89 of the *Public Service Labour Relations Act (PSLRA)* which provide as follows:

> *84. (1) Whenever a collective agreement or arbitral award is continued in force by section 81, the Board must, by order, on application by the new separate agency or any bargaining agent affected by the conversion,*
>
> *(a) determine whether the employees of the new separate agency who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;*
>
> *(b) determine which employee organization is to be the bargaining agent for the employees in each such unit; and*
>
> *(c) in respect of each collective agreement or arbitral award that binds employees of the new separate agency, determine whether the collective agreement or arbitral award is to remain in force and, if it is to remain in force, determine whether it is to remain in force until the expiration of its term or until any earlier date that the Board may fix.*
>
> *(2) The application may be made only during the period beginning 120 days and ending 150 days after the conversion date.*
>
> . . .
>
> *89. If a notice to bargain collectively was given before a conversion,*
>
> *(a) on application by the new separate agency or bargaining agent, made during the period beginning 120 days, and ending 150 days, after the date of the conversion, the Board must make an order determining*

> *(i) whether the employees of the new separate agency who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and*
>
> *(ii) which employee organization is to be the bargaining agent for the employees in each such unit; and*
>
> *(b) if the Board makes the determinations under paragraph (a), the new separate agency or the bargaining agent may, by notice given under section 105, require the other to commence collective bargaining for the purpose of entering into a collective agreement.*

[12] Section 84(2) above limits the period for submitting an application under section 84 to a date which ends the fifth month following the effective date of the triggering event. Section 89(*a*) has the same effect in respect of an application in a situation where a party has given notice to bargain prior to the triggering event. (The written joint submission of the applicants indicates that the ACFO served the Treasury Board with notice to bargain on October 27, 2004, in respect of the transferred FI employees.) Order-in-Council P.C. 2005-1355 provided an effective date for the transfer of August 1, 2005. The date of the application before me is December 7, 2005. The application is therefore timely in respect of both sections 84(2) and 89(*a*).

[13] The applicants request that the Board declare as follows: (i) that the positions and incumbents transferred from Human Resources Development Canada (HRDC) to the Agency, effective August 1, 2005, do not constitute a unit appropriate for collective bargaining; (ii) that the PSAC and the PIPSC are the bargaining agents for those incumbents of the positions in question, in accordance with paragraphs four [4] and five [5] above; and (iii) that existing collective agreements and corresponding successor rights cease to apply as of the date of the Board's order.

[14] Under both sections 84 and 89, the Board has the discretionary authority to make the determinations requested. In exercising this authority, the Board must ensure that the declarations sought by the parties are consistent with the requirements and objectives of the *Act*. The fact that three parties have joined in an agreed, common application and are unopposed in their request by the two respondents is a very important consideration, though not ultimately determinative of the matter. Nonetheless, there are no reasons before me why I should not grant this application,

nor do I find any impediment in the written submissions of the parties to my doing so. The stated objective in the legislation of ensuring effective labour-management relations is well served where the parties have themselves reached a voluntary agreement on a proposed arrangement, provided that the proposed arrangement accords substantively and procedurally with the *Act* and with previous relevant decisions of the Board.

[15] Section 84(1)(*a*) of the *PSLRA* requires that I "determine whether the employees of the new separate agency who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining". Section 89(*a*)(i) is the parallel provision applicable in the situation where a party has given notice to bargain prior to the triggering event. The Board has previously decided that two bargaining units are the appropriate structure for the Agency, described as follows in *Canada Customs and Revenue Agency, Professional Institute of the Public Service of Canada and Public Service Alliance of Canada (supra)* at paragraph 527 and in *Canada Customs and Revenue Agency and Professional Institute of the Public Service of Canada* at paragraph 7 *(supra)*:

> *Program Delivery and Administrative Services (PDAS)*
>
> [527] *The PDAS group is made up of all the PSAC units in the CCRA with the exception of the ED and LS groups; it comprises the AS, IS, PM, DA, CR, OE, ST, DD, EG, GT, GL, GS and OM groups, the EL group represented by the International Brotherhood of Electrical Workers, the PR group represented by the Council of Graphic Arts Unions of the Public Service of Canada and the PG group represented by the Professional Institute of the Public Service of Canada.*
>
> *Audit, Financial and Scientific Group (AFS)*
>
> [7]*...comprising all employees who are primarily engaged in the application of a comprehensive body of knowledge in such specialized areas as accounting, auditing, economics, statistics, financial management, commerce, actuarial sciences, chemistry, engineering, education, library science, social sciences, computer sciences* ***and physical sciences****. . . . To be more specific, it includes the employees who were in occupational groups in the central administration prior to the gazetting of the above groups in March 1999 in the following abbreviated groups: AU, CO, AC, EN, CH, PS, SE, FI, ES, SI, LS, ED and CS..*

[16] In my view, adding to, or revising this dual bargaining unit structure in any substantive fashion would require a compelling labour relations justification. The number of positions and incumbents transferred to the Agency is relatively small, compared to the size of the Agency's total workforce. There is certainly no suggestion in the written submissions that the transferred employees might not be effectively represented within the existing bargaining unit structure. To the contrary, creating a new bargaining unit or altering existing bargaining units in some way in this situation would be disruptive as the classifications involved in the transfer of employees from HRDC are already subsumed under the two existing bargaining unit descriptions. With no objection from either ACFO representing the FI incumbents or CAPE representing the SI incumbents, there is no live issue between the applicants and the respondents.

[17] Pursuant to sections 84(1)(*a*) and 89, I find, therefore, that the employees transferred from HRDC to the Agency, effective August 1, 2005, do not constitute a unit or units appropriate for collective bargaining.

[18] I find further that, pursuant to sections 84(1)(*b*) and 89(*a*)(ii), the PSAC is the bargaining agent for the employees in the AS, CR and PM classifications, and the PIPSC is the bargaining agent for the employees in the SI and FI classifications.

[19] Section 84(1)(*c*) requires that I determine whether applicable collective agreements predating the transfer should remain in force until the expiration of their terms or, alternatively, should terminate on any earlier date. Two collective agreements were in force immediately prior to August 1, 2005:

> PSAC and Treasury Board (expiry date: June 20, 2007) for those employees classified as AS, CR and PM.
>
> CAPE and Treasury Board (expiry date: June 21, 2006) for those employees classified as SI.

With no apparent reason to continue these two collective agreements in force or to delay their termination, I determine that the above-cited collective agreements and corresponding successor rights cease to have effect as of the date of this decision.

[20] For the ACFO and Treasury Board collective agreement which expired November 6, 2004, and in respect of which notice to bargain was given prior to the transfer date, section 89(*b*) requires that I determine whether the Agency or the bargaining agent may, by notice given under section 105, require the other to

commence collective bargaining for the purpose of entering into a collective agreement. I do not so require, in order that there be no disruption to the current bargaining schedule at the Agency affecting the two existing bargaining units. For greater certainty, I determine that any successor rights existing with respect to the expired ACFO and Treasury Board collective agreement cease as of the date of this decision.

[21] I have noted from the file that the applicants have entered into certain Memoranda of Agreement concerning the transferred positions and incumbents. These Memoranda address, *inter alia*, issues related to terms and conditions of employment, rates of pay and excluded positions. The applicants have not asked that the Board make any determinations with respect to these specific issues. I wish to confirm that this decision takes no position on these issues.

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

(The Order appears on the next page)

Order

[23] Effective the date of this decision, the Board declares that:

> 1. The employees transferred to the Agency from HRDC, effective August 1, 2005, by virtue of Order-in-Council P.C. 2005-1355, do not constitute a unit or units appropriate for collective bargaining.
>
> 2. The PSAC is the bargaining agent for the transferred employees in the AS, CR and PM classifications.
>
> 3. The PIPSC is the bargaining agent for the transferred employees in the SI and FI classifications.
>
> 4. The collective agreements between the PSAC and Treasury Board, and between CAPE and the Treasury Board, and all corresponding successor rights, cease to have effect as of the date of this decision.
>
> 5. With respect to positions and incumbents in the FI classification, neither the Agency nor the bargaining agent shall be required to serve notice to bargain, and any successor rights in effect cease to have effect as of the date of this decision.

March 31, 2006.

Dan Butler,
Board Member