

Date: 20060131

File: 542-02-00003

Citation: 2006 PSLRB 8



*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

---

BETWEEN

**TREASURY BOARD**

Applicant

and

**ASSOCIATION OF JUSTICE COUNSEL, FEDERAL LAW OFFICERS OF THE CROWN  
AND THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**

Respondents

Indexed as

*Treasury Board v. Association of Justice Counsel et al.*

In the matter of an application for consent to alter terms and conditions of employment under section 56 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

***Before:*** [Yvon Tarte, Chairperson](#)

***For the Applicant:*** [Hélène Laurendeau, Treasury Board](#)

***For the Respondents:*** [C. Michael Mitchell, counsel for the Association of Justice Counsel,](#)  
[Donald K. Eady, counsel for the Federal Law Officers of the Crown](#)  
[and Michel Gingras, negotiator for the Professional Institute of the](#)  
[Public Service of Canada](#)

---

(Decided without an oral hearing)

## REASONS FOR DECISION

---

### Application before the Board

[1] On December 6, 2005, the Public Service Labour Relations Board (the Board) received an application under section 56 of the *Public Service Labour Relations Act (PSLRA)* from the Treasury Board of Canada Secretariat (the employer), requesting the Board's consent to alter the terms and conditions of employment applicable to employees of the Department of Justice classified at the LA-3 group and level by providing them with a 3% economic increase effective April 1, 2005.

### Summary of the arguments

[2] The employees in question are currently covered by certification applications filed by both the Association of Justice Counsel (AJC) and the Federal Law Officers of the Crown (FLOC), which applications are currently being debated before a panel of the Board. Although the Professional Institute of the Public Service of Canada (PIPSC) currently holds a bargaining certificate for a small group of LAs who are currently unionized, none are classified above the LA-2 group and level and the PIPSC has not presented a certification application seeking to enlarge its current LA bargaining unit. Nevertheless, a copy of the employer's application was forwarded by the Board to all three organizations for their comments.

[3] The application states that, once certification was granted, a number of the employees covered by the section 56 application would likely become excluded employees. The application further states that the employer's policy with respect to excluded employees was to extend to the employees in question the same salary increases and changes to terms and conditions of employment as those granted to their colleagues as a result of the collective bargaining process. The application goes on to state that, since 1998, the employer had extended economic increases for the Executive Group (EX) to LA-3s, with the exception of the LA-3s who were in receipt of the Toronto regional rates. Those LA-3s received half the EX increase in both 1998 and 2000.

[4] The application states that, prior to being notified by the Board that certification applications had been filed, the employer had provided economic increases to unrepresented employees classified at the LA developmental level up to and including the LA-2B level, effective April 1, 2004 and April 1, 2005. The employer states that it is therefore seeking approval from the Board to extend to the LA-3s the economic

increase that would have been granted to them prior to the certification applications being filed.

[5] The PIPSC responded by stating that in its view the application comes at an inappropriate time, as certification proceedings are under way, and that collective bargaining would follow regardless of the outcome. It submitted that, as salaries are a “bargainable item to be negotiated between the certified bargaining agent and the employer”, the application must be denied.

[6] The AJC, on the other hand, submitted that the employer was in fact “required to pay an increase to those at the LA-3 level”. It pointed to the fact that the employer’s application acknowledged that payment had been the usual business practice since 1998. As such, the AJC took the position that it would constitute an unfair labour practice for the employer not to make the payment in question. The AJC also submitted that it was unnecessary for it to provide its consent to the salary increase, but was doing so, given that the employer had sought the Board’s consent and given that the Board had in turn requested their response with respect to the application.

[7] As for the FLOC, it responded to the employer’s submission by stating that it was in agreement with the position taken by the AJC.

### Reasons

[8] Under section 52 of the former *Public Service Staff Relations Act (PSSRA)*, the terms and conditions of employment for employees subject to the *PSSRA* continued in effect during the collective bargaining process and could not be amended except by agreement between the employer and the bargaining agent. However, this provision, commonly referred to as the freeze provision, applied in the context of collective bargaining only and was not applicable to certification applications.

[9] With the introduction of the *PSLRA* came the introduction of a new freeze provision, applicable during the certification process. Section 56 of the *PSLRA* reads as follows:

*56. After being notified of an application for certification made in accordance with this Part, the employer may not, except under a collective agreement or with the consent of the Board, alter the terms and conditions of employment that are applicable to the employees in the proposed bargaining unit and that may be included in a collective agreement until*

*(a) the application has been withdrawn by the employee organization or dismissed by the Board; or*

*(b) 30 days have elapsed after the day on which the Board certifies the employee organization as the bargaining agent for the unit.*

[10] The instant case is the first request of its kind under section 56 of the new legislation.

[11] Given the submissions of both the FLOC and the AJC, I have decided to accede to the employer's request. In doing so, I make no finding on whether or not the consent of the Board is required and on whether or not the proposed salary increase would in fact constitute an alteration of the terms and conditions of employment or whether the withholding of such an increase would violate the "business as usual rule".

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

*(The Order appears on the next page)*

Order

[13] The Board consents to the employer's request to provide an economic increase in salary effective April 1, 2005 to employees of the Department of Justice classified at the LA-3 level.

January 31, 2006.

**Yvon Tarte,  
Chairperson**