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*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

**TREASURY BOARD
(Canada Border Services Agency)**

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Treasury Board (Canada Border Services Agency) v. Public Service Alliance of Canada

In the matter of a request for the Board to exercise any of its powers under section 43 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Ian R. Mackenzie, [Vice-Chairperson](#)

For the Applicant: Michel LeFrançois, Counsel

For the Respondent: Andrew Raven, Counsel

(Decided on the basis of written submissions.)

I. Request before the Board

A. The application

[1] The creation of the Canada Border Services Agency in 2003 led to the creation of a new occupational group - Border Services (FB) - which was carved out of the Program and Administrative Services (PA) occupational group in 2006. On April 25, 2006, the Treasury Board (“the employer”) filed an application with the Public Service Labour Relations Board (“the Board”) under section 43 of the *Public Service Labour Relations Act (PSLRA)* to review the decision of the former Public Service Staff Relations Board dated June 7, 1999, in PSSRB File No. 142-02-337. In its application, the employer asked the Board to reconfigure the Program and Administrative Services (PA) bargaining unit to be co-extensive with the employer’s revised occupational group structure. The bargaining agent, the Public Service Alliance of Canada (PSAC), consented to the application on April 28, 2006.

[2] In letters to the Board dated January 16 and 19, 2007, the employer and the PSAC set out a common position on the application and the requested order. The joint submissions of the parties are summarized below.

B. Background

[3] On December 12, 2003, the federal government announced the creation of the Canada Border Services Agency (CBSA), bringing together portions of the former Canada Customs and Revenue Agency (CCRA), the Department of Citizenship and Immigration, and the Canadian Food Inspection Agency (CFIA).

[4] As the CCRA and the CFIA were, at that time, already separate agencies, they had different classification systems and pay plans from those that exist in the core public administration for which the Treasury Board is the employer. The Public Service Human Resources Management Agency of Canada, which is responsible for classifying positions in the core public administration, embarked on a classification reform initiative to create the new Border Services occupational group. It also set about creating the corresponding classification standard that would be applicable to a specific category of employees who would be employed by the CBSA in border service work. All such employees are presently included in the PA bargaining unit.

[5] The FB and amended PA group definitions were published in Part I of the *Canada Gazette* on March 11, 2006. As noted in the *Canada Gazette*, the FB occupational group definition was effective November 14, 2005. The employer stated in its application that all of the positions to be converted to the FB group were, at that time, in the PA group. The bargaining agent for the PA group is the PSAC.

[6] The employer requested (and the PSAC agreed) that the Board modify the PA bargaining unit description as set out in its June 7, 1999, decision so that it would read as follows:

All employees of the Employer in the Program and Administrative Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

Tous les fonctionnaires de l'employeur compris dans le groupe Service des programmes et de l'administration, tel que défini dans la Partie I de la Gazette du Canada du 11 mars 2006.

[7] The employer also requested (and the PSAC agreed) that the Board establish, by order, the FB bargaining unit, described as follows:

All employees of the Employer in the Border Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

Tous les fonctionnaires de l'employeur compris dans le groupe Services frontaliers, tel que défini dans la Partie I de la Gazette du Canada du 11 mars 2006.

[8] All of the employees who will be transferred into the new FB occupational group are currently represented by the PSAC. The collective agreement for the PA occupational group expires on June 20, 2007.

II. Submissions of the parties

[9] The employer is not taking the position that the employees currently in the PA group who will be converted to the FB group should become unrepresented through the restructuring of the PA group. The PSAC is certified as the bargaining agent for employees currently performing the duties of the future FB group. Accordingly, the parties agreed to the following with regard to the transition to the new FB group, should an order certifying the PSAC be issued by the Board:

1. that February 21, 2007, be the date on which the FB occupational group and bargaining unit are populated, for the purpose of permitting its bargaining agent to provide notice to bargain on that date;
2. that the current PA collective agreement continue to bind the employer and the employees who will populate the FB occupational group and bargaining unit, dependent on notice to bargain being provided; and
3. that designations for the safety or security of the public and managerial or confidential exclusions currently applicable to employees who will populate the FB occupational group and bargaining unit shall continue and be recognized by order of the Board.

[10] The PSAC further emphasized in its submissions that the parties are agreed that the issuance of the requested orders by the Board would not alter the status quo on the issue of designations and managerial exclusions. The PSAC requested that the Board make clear in its orders that the rights of the parties under Division 8 of the *PSLRA* respecting essential services and essential services agreements are not affected by the orders.

[11] The parties are asking for an order by the Board dated and effective February 21, 2007, modifying the description of the PA bargaining unit, creating the FB bargaining unit, declaring the PA collective agreement to apply, declaring designations and exclusions to continue and certifying the PSAC as bargaining agent.

III. Reasons for Decision

[12] This decision concerns an application under section 43 of the *PSLRA* for a reconfiguration of the PA group, the consequent establishment of a new bargaining unit and the certification of a bargaining agent for the new bargaining unit. The parties are in agreement with the application, and have come to an understanding on the transition from one bargaining unit to two.

[13] In any review of bargaining unit structure, the Board must have regard to the employer's classification of people and positions, as set out in section 70 of the *PSLRA*:

70.(1) *If the Board reviews the structure of one or more bargaining units, it must, in determining whether a group of employees constitutes a unit appropriate for collective bargaining, have regard to the employer's classification of persons and positions, including the occupational groups or subgroups established by the employer.*

(2) *The Board must establish bargaining units that are co-extensive with the occupational groups or subgroups established by the employer, unless doing so would not permit satisfactory representation of the employees to be included in a particular bargaining unit and, for that reason, such a unit would not be appropriate for collective bargaining.*

[14] The proposed bargaining units are co-extensive with the occupational groups established by the employer. The Board therefore finds that they constitute units appropriate for collective bargaining and that there is no evidence (and there are no allegations) before the Board that the proposed bargaining units would not permit the satisfactory representation of the employees in those bargaining units.

[15] Accordingly, the Board orders that the PA bargaining unit description, as set out in its June 7, 1999, decision, be modified to read as follows:

All employees of the Employer in the Program and Administrative Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

Tous les fonctionnaires de l'employeur compris dans le groupe Service des programmes et de l'administration, tel que défini dans la Partie I de la Gazette du Canada du 11 mars 2006.

[16] The Board also orders that a new bargaining unit for the FB occupational group be created with the following description:

All employees of the Employer in the Border Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

Tous les fonctionnaires de l'employeur compris dans le groupe Services frontaliers, tel que défini dans la Partie I de la Gazette du Canada du 11 mars 2006.

[17] After determining that the unit is appropriate for collective bargaining, the Board must certify the employee organization as the bargaining agent, if it is satisfied (section 64 of the PSLRA):

...

(a) that a majority of employees in that bargaining unit wish the applicant employee organization to represent them as their bargaining agent;

(b) that the persons representing the employee organization in the making of the application have been duly authorized to make the application;

...

[18] This application represents the split of an existing bargaining unit represented by the PSAC. There are no employees in the new bargaining unit that have not been previously represented by the PSAC. There is no evidence that the majority of employees do not continue to support the PSAC as their bargaining agent. Accordingly, the Board also orders that the PSAC be certified as the bargaining agent for the FB bargaining unit.

[19] The employees who will be in the new FB bargaining unit on the date of this decision are currently represented by the PSAC. It makes good labour relations sense that there be continuity in terms and conditions of employment for these employees. They are not changing jobs; the only thing that is changing is their occupational category. Accordingly, the Board also deems the PA collective agreement to continue to apply to the employees in the FB group.

[20] On the consent of both parties, the present designations for the safety and security of the public and managerial or confidential exclusions will continue to apply to employees in the new FB bargaining unit.

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

(The Order appears on the next page)

IV. Order

[22] The PA bargaining unit description is modified as follows:

All employees of the Employer in the Program and Administrative Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

Tous les fonctionnaires de l'employeur compris dans le groupe Service des programmes et de l'administration, tel que défini dans la Partie I de la Gazette du Canada du 11 mars 2006.

[23] A new bargaining unit for the FB occupational group is created with the following description:

All employees of the Employer in the Border Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

Tous les fonctionnaires de l'employeur compris dans le groupe Services frontaliers, tel que défini dans la Partie I de la Gazette du Canada du 11 mars 2006.

[24] The Public Service Alliance of Canada is certified as the bargaining agent for the FB bargaining unit.

[25] The PA collective agreement is deemed to continue to apply to employees in the FB group.

[26] The present designations for the safety and security of the public and managerial or confidential exclusions will continue to apply to employees in the new FB bargaining unit.

February 21, 2007.

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