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File: 585-02-20

Citation: 2008 PSLRB 104



*Public Service
Labour Relations Act*

Before the Chairperson
Public Service Labour Relations Board

IN THE MATTER OF
THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
and a dispute affecting
the Professional Institute of the Public Service of Canada, as bargaining agent,
and the Treasury Board of Canada, as employer,
in respect of all employees of the Employer in the Architecture, Engineering and Land
Survey (NR) Group as defined in Part I of the Canada Gazette of August 13, 2005

Indexed as
Professional Institute of the Public Service of Canada v. Treasury Board of Canada

TERMS OF REFERENCE OF THE ARBITRATION BOARD

To: Philip Chodos, chairperson of the arbitration board;
Larry Robbins and Jean-Guy Fleury, arbitration board members

Before: Casper M. Bloom, Q.C., Ad. E., Chairperson

For the Bargaining Agent: Glen Chochla, Professional Institute of the Public
Service of Canada

For the Employer: Josée Lefebvre, Treasury Board Secretariat

Issued on the basis of written submissions,
dated May 9, 20, and 28, June 4, 6, and 13, October 3, 10, 20, 29 and 31, 2008.

[1] By letter of May 9, 2008, the Professional Institute of the Public Service of Canada (“the bargaining agent”) requested arbitration in respect of all employees of the Employer in the Architecture, Engineering and Land Survey (NR) Group as defined in Part I of the Canada Gazette of August 13, 2005. Along with its request, the bargaining agent provided a list of the terms and conditions of employment that it wished to refer to arbitration. Those terms and conditions of employment and supporting material are attached as schedule 1.

[2] By letter of May 20, 2008, the Treasury Board of Canada (“the employer”) provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer also provided a list of additional terms and conditions of employment it wished to refer to arbitration. That letter also identified an additional list of agreed articles which the employer suggested be added to the bargaining agent’s list. The employer also suggested that the parties would benefit from the services of a mediator prior to going to arbitration. That letter and supporting material are attached as schedule 2.

[3] By letter dated May 21, 2008, the bargaining agent submitted five (5) copies of Appendix B to their request of May 9, 2008, requesting that these five copies be inserted in place of the Appendix B originally filled. This replacement document was made necessary because of a printing problem on the original Appendix B.

[4] In this same letter the bargaining agent highlighted the fact that they were not requesting arbitration in respect of its Appendix C proposal on Pension and Benefits, this matter having been withdrawn by the Institute on May 9, 2008; the May 21, 2008 letter is attached as schedule 3.

[5] By letter of May 28, 2008, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration. In that same letter, the bargaining agent also raised an objection regarding one of the additional terms and conditions (Article 33) that the employer wished to refer to arbitration, claiming that this had been withdrawn by the employer on November 29, 2007. The bargaining agent provided a handwritten note in support of this position. That letter is attached as schedule 4.

[6] By letter of June 4, 2008, the employer responded to the bargaining agent’s objection concerning Article 33 refuting the assertion that that article had been

withdrawn. The employer identified its own objection to the bargaining agent's position with respect to a portion of the employer's proposal on clause 31.01.

[7] By letter of June 6, 2008, the PSLRB requested that the parties provide written submissions on the jurisdictional issues related to clause 31.01 and Article 33. The parties were also advised that the Board had decided to proceed with the appointment of a mediator.

[8] By letter of June 13, 2008, the bargaining agent withdrew its objection to having the employer's proposal on Article 33 proceed to arbitration. In that same letter, the bargaining agent also restated its acknowledgment that agreement had been reached between the parties with respect to the specific portion of clause 31.01 cited in the employer's objection. This letter is attached as schedule 5.

[9] Mediation was conducted on September 15 and 19, 2008.

[10] By letter of October 3, 2008, the bargaining agent requested that "...the Board reinstate its Request for Arbitration filed May 9, 2008..." The bargaining agent identified a list of proposals for which the parties were no longer seeking arbitration. The bargaining agent also identified two items, Article 35 and Appendix "G", that were to be finalized within the coming days. That letter is attached as schedule 6.

[11] By letter of October 10, 2008, the employer agreed with the list of proposals to be withdrawn as identified in the bargaining agent's October 3, 2008, correspondence. The employer also stated it had "...no objection with the establishment of the Arbitration Board".

[12] By letter dated October 20, 2008, the parties were informed that the request to reactivate the arbitration board was being held in abeyance pending receipt of their proposals concerning the two outstanding matters, specifically Article 35 and Appendix "G".

[13] By letter dated October 29, 2008, the bargaining agent submitted its proposals on the two outstanding issues, namely Article 35 (Grievance procedure) and Appendix "G" (Work Force Adjustment). On the first matter, proposed language was submitted and on the second, the proposal is to retain the status quo. That letter along with the proposals are attached as schedule 7.

[14] In letters dated October 29 and October 31, 2008, the employer also provided its proposals concerning the two outstanding issues; those letters and the proposals are attached as schedule 8.

[15] Accordingly, pursuant to section 144 of the *Public Service Labour Relations Act* (the “*Act*”), the matters in dispute on which the arbitration board shall make an arbitral award are those set out in schedules 1 to 8 inclusive, which are attached to this decision.

[16] Should any jurisdictional question arise during the course of the hearing as to the inclusion of a matter in these terms of reference, that question must be submitted without delay to the Chairperson of the Public Service Labour Relations Board, who is, according to subsection 144(1) of the *Act*, the only person authorized to make such a determination.

December 11, 2008.

**Casper M. Bloom, Q.C., Ad. E.,
Chairperson
Public Service Labour Relations Board**