

Date: 20080930

Files: 550-09-05, 06 and 07

Citation: 2008 PSLRB 77



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

THE RESEARCH COUNCIL EMPLOYEES' ASSOCIATION

Applicant

and

NATIONAL RESEARCH COUNCIL OF CANADA

Respondent

Indexed as

The Research Council Employees' Association v. National Research Council of Canada

In the matter of applications for revocation of certification under section 94 of the
Public Service Labour Relations Act

REASONS FOR DECISION

Before: [Marie-Josée Bédard, Vice-Chairperson](#)

For the Applicant: [Joan Van Den Bergh, Research Council Employees' Association](#)

For the Respondent: [Steve Blais, National Research Council of Canada](#)

Decided on the basis of written submissions
filed June 5 and July 29, 2008.

REASONS FOR DECISION

Applications before the Board

[1] The Research Council Employees' Association ("the applicant") filed three applications for revocation of the certifications it holds as a bargaining agent for the following bargaining units at the National Research Council of Canada ("the respondent"):

- File No. 550-09-05 refers to the unit composed of ". . . all employees of the National Research Council of Canada in the Administrative and Foreign Service Category classified as communications officers." That certification was issued by the Public Service Staff Relations Board under the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 ("the former Act") on February 15, 1974 (PSSRB File No. 144-09-149).
- File No. 550-09-06 refers to the unit composed of ". . . the employees of the Employer engaged in the operation of a variety of teletype and associated equipment in preparing, receiving, transmitting and relaying messages, and the performance of the related clerical processes, whose duties include the supervision of other employees engaged in such tasks in the Communications Group in the Administrative Support Category." That certification was issued by the Public Service Staff Relations Board under the former Act on December 1, 1972 (PSSRB File No. 145-09-148).
- File No. 550-09-07 refers to the unit composed of ". . . all employees of the Employer engaged in the operation of a variety of teletype and associated equipment in preparing, receiving, transmitting and relaying messages, and the performance of the related clerical processes in the Communications Group in the Administrative Support Category." That certification was issued by the Public Service Staff Relations Board under the former Act on November 25, 1968 (PSSRB File No. 145-09-108).

[2] The applicant filed its applications under section 94 of the Public Service Labour Relations Act ("the Act") and cited the following reasons for the applications:

[File No. 550-09-05]

The Communications Officer Group no longer exists at the National Research Council, having been transferred to the Department of National Defense [sic] in or around 1975. By

administrative oversight, no action was taken with respect to this bargaining unit. The RCEA does not have any members called Communication Officers and has not represented them in any way since 1975.

[File No. 550-09-06]

This group no longer exists as a separate bargaining unit at the National Research Council. There is no record of what transpired with this group, however, we believe that its members were either reclassified as either CR or ST and remained at NRC as members of other RCEA bargaining units or were transferred out of NRC when the Communications Branch was transferred to the Department of National Defense [sic] in 1975.

The RCEA does not have any members classified as Communications - Supervisory.

By administrative oversight, no action was taken by the RCEA in 1975.

[File No. 550-9-07]

This group no longer exists as a separate bargaining unit at the National Research Council. There is no record of what transpired with this group, however, we believe that its members were either reclassified as either CR or ST and remained at NRC as members of other RCEA bargaining units [sic] or were transferred out of NRC when the Communications Branch was transferred to the Department of National Defense [sic] in 1975.

The RCEA does not have any members classified as Communications - Supervisory

By administrative oversight, no action was taken by the RCEA in 1975.

[3] In the letter joined to the applications, the applicant added the following information:

...

Enclosed please find three applications for revocation of certificates. These applications are being made by the bargaining agent, the Research Council Employees' Association that currently holds these certificates. The three certificates apply to bargaining units that no longer exist. We believe that the members of these groups were either transferred out of NRC in 1975 or were reclassified in to

other bargaining units. For some unknown reason, the RCEA at the time failed to take any action with respect to the certificates. In fact, we were unaware that these certificates were still valid until recently when we were questioned by the Board on this matter.

It is our belief that there are no employees of the NRC currently classified in one of these three groups. There are no current collective agreements nor do we have any members with these designations

...

[4] The respondent confirmed in writing on June 23, 2008, that “there are no more positions classified in the Communications Officers, Communications-Supervisory and Communications Non-Supervisory groups” and that it does not object to the application.

Reasons

[5] These applications for revocation of certification are unopposed and this Board has jurisdiction to deal with these applications, given that it inherited all active certifications that were issued by its predecessor, the Public Staff Relations Board (section 48 of the *Public Service Modernization*, 2003, c.22).

[6] The applications for revocation were filed under section 94 of the *Act*, which reads as follows:

...

94. (1) Any person claiming to represent a majority of the employees in a bargaining unit bound by a collective agreement or an arbitral award may apply to the Board for a declaration that the employee organization that is certified as the bargaining agent for the bargaining unit no longer represents a majority of the employees in the bargaining unit.

...

[7] The revocation of a certification under section 94 requires three conditions:

- the application must be filed by a person claiming to represent a majority of the employees in the bargaining unit;

- those employees must be bound by a collective agreement or an arbitral award and;
- the employee organization that is certified as the bargaining unit no longer represents a majority of the employees in the bargaining unit.

[8] Those three conditions are not met in this case. First, the applicant is a bargaining agent and not considered to be a person under the *Act*. Second, the reason for filing the application is based on the fact that there are no more employees in the bargaining units in question and has nothing to do with the issue of majority representation. Lastly, given the assertion by the bargaining agent that it has not represented the employees in question since 1975, no collective agreement or arbitral award has governed the relationships between the respondent and the applicant for some time. An application made under section 94 is not, therefore, the appropriate process for this factual situation.

[9] However, I find that section 99 of the *Act* does apply to this matter:

99. The Board must revoke the certification of an employee organization if the employee organization advises the Board that it wishes to give up or abandon its certification or if the Board, on application by the employer or any employee, determines that the employee organization has ceased to act as bargaining agent.

[10] In this case, both the applicant and the respondent recognize that there are no more employees in the bargaining unit and therefore it no longer exists. I interpret the applicant's statements to that effect as an abandonment of its certifications as prescribed by section 99 of the *Act*. I also rely on the interpretation of section 99 that was given by the Board in *Staff of the Non-Public Funds, Canadian Forces v. United Food and Commercial Workers Union, Local 832*, 2008 PSLRB 2:

...

[12] Decisions of the former Board that interpreted a statutory provision for revocation of certification substantially similar to section 99 of the new Act, as well as a definition of "bargaining unit" substantially similar to that found in subsection 2(1) of the new Act, granted applications for the revocation of certification where there were no longer any employees in the bargaining unit. These decisions found that since there were no employees, there could be no

bargaining unit for which a bargaining agent could act: Staff of the Non-Public Funds, Canadian Forces v. United Food and Commercial Workers Union, Local 864, PSSRB File No. 150-18-39 (19970327); and Staff of the Non-Public Funds, Canadian Forces v. United Food and Commercial Workers Union, Local 864, PSSRB File No. 150-18-40 (19970327).

[13] It is uncontested that no employees remain in the bargaining unit.

[14] I am satisfied that the rationale for granting revocation of certification expressed in the decisions cited at paragraph 12 applies equally in this matter.

...

[11] I agree with that interpretation and add that, in this case, like in *Staff of the Non-Public Funds, Canadian Forces*, it is uncontested that no employees remain in the bargaining units.

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

(The Order appears on the next page)

Order

[13] The applications are granted, and the following certifications are revoked:

-The certification issued to The Research Council Employees' Association as the bargaining agent for ". . . all employees of the National Research Council of Canada in the Administrative and Foreign Service Category classified as communications officers." issued on February 15, 1974 (PSSRB File No. 144-09-149);

- The certification issued to The Research Council Employees' Association as the bargaining agent for ". . . the employees of the Employer engaged in the operation of a variety of teletype and associated equipment in preparing, receiving, transmitting and relaying messages, and the performance of the related clerical processes, whose duties include the supervision of other employees engaged in such tasks in the Communications Group in the Administrative Support Category" issued on December 1, 1972 (PSSRB File No. 145-09-148);

- The certification issued to The Research Council Employees' Association as the bargaining agent for ". . . all employees of the Employer engaged in the operation of a variety of teletype and associated equipment in preparing, receiving, transmitting and relaying messages, and the performance of the related clerical processes in the Communications Group in the Administrative Support Category issued on November 25, 1968 (PSSRB File No. 145-09-108).

September 30, 2008.

**Marie-Josée Bédard,
Vice-Chairperson**