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Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

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

In the matter of a policy grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Bargaining Agent: Steven Welchner, counsel

For the Employer: Dora Benbaruk, counsel

Heard at Ottawa, Ontario,
October 7, 2008.

I. Policy grievance referred to adjudication

[1] The Professional Institute of the Public Service of Canada (PIPSC) filed a policy grievance against the Treasury Board (TB or "the employer") alleging a violation of article 40 of the Computer Systems (CS) collective agreement ("the collective agreement") between the TB and the PIPSC covering the period from December 22, 2004 to December 21, 2007. Article 40 of the collective agreement deals with the Penological Factor Allowance (PFA). The PFA is used to provide additional compensation to some members of the bargaining unit who work for the Correctional Service of Canada (CSC) and who assume additional responsibilities for the custody of inmates other than those exercised by correctional officers. Article 40 outlines the criteria and rules of payment of the PFA.

[2] There are approximately 13 400 employees in the CS bargaining unit, with 430 working for the CSC. At the relevant time, between 123 and 132 of those 430 were entitled to receive a PFA. They work at 42 different penal institutions across all regions of Canada.

[3] Following the signing of the collective agreement in July 2006, the employer was unable to pay the new PFA rates within 90 days, as per subsection 117*a)* of the *Public Service Labour Relations Act* ("the *Act*"). By the time the notice to bargain for the new collective agreement was served, on August 27, 2007, the PFA had still not been paid to employees.

[4] As a result, the PIPSC filed this policy grievance pursuant to section 220 of the *Act*. In a response dated May 12, 2008, the employer denied the policy grievance on the basis that subsection 220(1) of the *Act* does not support the grievance as it does not relate to an issue affecting the bargaining unit generally. Subsection 220(1) reads as follows:

> ***220.*** *(1) If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally.*

[5] The employer has now paid the PFA to those who were entitled to it pursuant to the terms of the collective agreement.

[6] At the beginning of the hearing, it was agreed by the parties that this decision will serve only to determine if the employer correctly interpreted the *Act* in objecting to the grievance on the basis that it is not a policy grievance. The arguments made by the parties at the hearing were limited to that single question.

II. Summary of the arguments

A. For the employer

[7] The facts of this grievance are simple: those employees of the CS Group who were entitled to receive the PFA did not receive it within the allocated time. Between 123 and 132 CS employees were affected by this action or inaction of the employer out of 13 400 CS employees covered by the collective agreement. This means that less than 1 percent of the bargaining unit was affected.

[8] Subsection 220(1) of the *Act* specifies that a policy grievance can be filed in either of the following two cases: if it relates to one of the parties or if it relates to the bargaining unit generally.

[9] An example of the first case would be a policy grievance based on an issue related to the right of the bargaining agent to be consulted or based on the employer's obligation to remit union dues to the bargaining agent. These two examples could be the object of policy grievances, as they relate to the bargaining agent.

[10] The employer is obliged to pay the PFA not to the bargaining agent but to employees who are members of the bargaining unit. When a grievance relates to employees, as is the case here, it must relate to the bargaining unit generally to be considered a policy grievance. That is not the case here, considering that less than 1 percent of the members of the bargaining unit are affected by the situation.

[11] Section 220 of the *Act* is an expansion of the rights that existed under section 99 of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 ("the former *Act*"). Under section 99 of the former *Act*, the employer or the bargaining agent could file a complaint with the Public Service Staff Relations Board only in situations related to their respective rights under the collective agreement. In situations related to the enforcement of employees' rights, the grievance procedure had to be used.

[12] When it adopted the concept of policy grievances in section 220 of the *Act*, Parliament's intention was to limit policy grievances only to situations where the

bargaining unit was generally affected. To accept the argument that the late payment of the PFA generally affects the bargaining agent or the bargaining unit would be to distort what Parliament intended.

[13] Section 220 of the *Act* must be interpreted within the context of the other recourses provided by the *Act*. If the adjudicator accepts the employer's argument, the bargaining agent and its members are not left without recourse. The approximately 130 employees could have filed individual grievances and referred them to adjudication under section 209 of the *Act*. The bargaining agent could have filed a group grievance and referred it to adjudication under section 216 of the *Act*. As an alternative to the use of the grievance procedure, the bargaining agent could have filed a complaint with the Public Service Labour Relations Board ("the Board") alleging a violation of section 117 of the *Act*.

[14] In support of its interpretation of subsection 220(1) of the *Act*, the employer referred me to Rootham, *Labour and Employment Law in the Federal Public Service* (2007), at 304 and 305:

. . .

> *The real question for adjudicators will be what constitutes a matter that "relates to either of them or to the bargaining unit generally." In the private sector, there is a fairly broad discretion for unions to bring policy grievances. . . .*
>
> *However, the use of the term "the bargaining unit generally" may be interpreted to limit the scope of policy grievances so that only matters that affect the entire bargaining unit may be the subject of a policy grievance. Also, section 232 of the* PSLRA *explicitly limits an adjudicator's remedial jurisdiction in policy grievances. Where the matter could have been the subject of an individual or group grievance, the adjudicator may only grant declaratory relief and may not grant damages or other individual relief as in the private sector. This may incline the Board to take a more limited view of what constitutes a proper policy grievance.*
>
> *In* Canadian Broadcasting Corp. and National Association of Broadcast Employees and Technicians, *the arbitration panel set out the four general classifications of grievances:*

> *a) individual employee grievances where the subject-matter of the grievance is personal to the employee;*
>
> *b) group grievances where a number of employees with individual grievances join together in filing their grievances. This type of grievance is really an accumulation of individual grievances;*
>
> *c) union or policy grievances where the subject-matter of the grievance is of general interest and where individual employees may or not be affected at the time that the grievance is filed;*
>
> *d) there is a hybrid type of grievance which is a combination of the policy grievance and the individual grievance. In this type of situation, although one individual may be affected, he may be affected in a way that is of concern to all members of the bargaining unit. Thus, the individual case may grieve on the basis of how he is particularly affected while the union may also grieve citing the individual as an example of how certain conduct may affect the members of the bargaining unit generally.*
>
> *The use of "all members of the bargaining unit" as interchangeable with "members of the bargaining unit generally" in the fourth example may support the proposition that a policy grievance under the new* PSLRA *must affect the entire bargaining unit, and not just some portion thereof. . . .*
>
> . . .

[15] In light of the above, the facts of this case do not support the argument that this grievance is a policy grievance. The situation is limited to roughly 130 CS employees working for the CSC and not to the bargaining unit as a whole. There could be exceptions to this rule, but to stretch it to about 130 employees out of a total of about 13 000 would be to turn the proposition on its head.

[16] The employer referred me to the definitions provided by the *Oxford English Dictionary* for the words "general" and "generally." The employer also referred me to the definition provided by the French dictionary, *Le Petit Robert*, for the phrase "de façon générale." These definitions in no way support the idea that "generally" or "de façon générale" could mean 1 percent of a group, in this case the bargaining unit.

[17] The employer stated that these definitions imply the idea of the totality of a group and not a portion of a group. The same idea must be retained in the context of subsection 220(1) of the *Act*.

[18] The employer also argued that the *Act* does not allow parcelling out the bargaining unit. For the purpose of subsection 220(1), the term "generally" cannot apply to a portion of a bargaining unit. For that scenario to be acceptable, subsection 220(1) would have to include the words "portion of" in relation to the bargaining unit, as those words are used on 21 occasions in the *Act*.

B. <u>For the PIPSC</u>

[19] The PIPSC had a choice in its attempt to enforce article 40 of the collective agreement. It could have asked every one of its approximately 130 members affected to file individual grievances. It could also have presented a group grievance that requested the written consent of all the approximately 130 employees working at the 42 penitentiaries across Canada. Rather than those options, the PIPSC chose to file a policy grievance, considering that it was not practical to proceed with a group grievance or individual grievances and that the dispute applied to every member of the bargaining unit entitled to a PFA.

[20] In considering the availability and limits of a policy grievance under section 220 of the *Act*, it is first necessary to understand how policy grievances fit into the overall scheme of grievance resolution within the federal public service.

[21] An individual grievance is appropriate when the employer's conduct has affected only one employee. Under section 64 of the *Public Service Labour Relations Board Regulations* ("the *Regulations*"), the grievance process relating to individual grievances must not exceed three levels of management decision making. Having multiple grievance levels allows for the grievance's unique individual circumstances to be first considered and possibly resolved at lower management levels. This is appropriate when the individual grievance raises specific issues that do not widely affect the bargaining unit.

[22] Group grievances are permissible when two or more employees have been affected by a common interpretation or application of a collective agreement. While each affected employee could file an individual grievance, common sense suggests that group grievances are preferable in the interest of labour-relations efficiency. However,

the procedural requirements established by the *Act* and the *Regulations* can make group grievances administratively difficult in the context of a large number of affected employees located in dozens of locations across the country. As group grievances are in many ways similar to individual grievances, it is not surprising that the *Regulations* similarly impose a maximum of three levels of employer response as part of the group grievance process.

[23] In contrast to individual and group grievances, individual employees are not required to consent to the bargaining agent filing a policy grievance. Such a grievance belongs to the bargaining agent, even though the outcome is likely to affect many individual employees. Pursuant to the *Regulations*, consideration of a policy grievance is limited to only one level of decision making: a single final decision is rendered at the highest management level.

[24] Section 232 of the *Act* makes it clear that the fact that a grievance could have been filed as an individual or a group grievance does not prohibit a bargaining agent from proceeding instead by filing a policy grievance. Section 232 is consistent with arbitral jurisprudence, where arbitrators have concluded that, unless expressly indicated, individual and policy grievances are not necessarily mutually exclusive. Furthermore, section 220 does not contain the restrictive conditions that applied to referring a policy grievance to adjudication under section 99 of the former *Act*, which prohibited policy grievances where the matter could be the subject of an individual grievance.

[25] In contrast to the terminology used in section 99 of the former *Act*, Parliament adopted the use of the term “policy grievance” as the relevant description of the type of grievance that falls within the ambit of that section. In doing so, the drafters of the legislation would have been aware of the meaning and availability of “policy grievance” as generally discussed in the arbitral jurisprudence.

[26] Subsection 220(1) of the *Act* includes the words “bargaining unit generally”, and it could be suggested, in isolation, that the subsection applies only to, at minimum, a majority of the members of the bargaining unit. However, there can be no reasonable suggestion that those words require that each and every member of the bargaining unit be affected.

[27] A sterile interpretation of those words in isolation from their statutory context is not appropriate. In this case, the words "bargaining unit generally" must be understood in the context of section 220 as a whole. In that context, it is clear that "bargaining unit generally" is an indirect reference to the particular dispute being pursued via the policy grievance itself, which in turn must relate to the interpretation or application of one or more particular collective agreement provisions. In applying this approach, the appropriate question to consider is whether the alleged breach of the particular collective agreement provision is a breach that applies generally to all those members of the bargaining unit to which the collective agreement provision applies. The arbitral jurisprudence supports such an interpretation.

[28] The adjudicator should strive to resolve the ambiguity in the meaning of the words "bargaining unit generally" in a way that makes practical labour relations sense. According to *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (2002), ambiguous legislative provisions should be interpreted in a manner that avoids "pointless inconvenience" or "disproportionate hardship", or that interferes with the "efficient administration" of the provision in question. Where there is more than one possible interpretation, there is a need to consider each interpretation with regard to reasonableness, administrative feasibility and anomalous results.

[29] In interpreting section 220 of the *Act*, there are three practical labour relations realities that should be taken into account: (i) where a dispute raises an issue of general importance unrelated to the particular circumstances of any employee, a bargaining agent should be able to commence a grievance at the final level of the grievance process; (ii) the requirement to file a group grievance where there are numerous affected employees working at diverse locations across Canada is impractical and inefficient; and (iii) the requirement that a majority of employees in a bargaining unit be affected before a policy grievance can be presented could effectively exclude large groups of employees from the ability to have their bargaining agent represent their interests by filing a policy grievance.

[30] Under the *Act*, both individual and group grievances may have up to three levels associated with the grievance process. In contrast, policy grievances are initially considered by the highest management level. Based on this distinction, an adjudicator should be inclined to find that a policy grievance may be filed where the grievance raises issues of general importance concerning the application or interpretation of the

collective agreement, without reference to the particular facts of any one employee. In this way, the parties need not waste their time participating at lower levels of the grievance procedure.

[31] In the federal public service, a bargaining unit can have many thousands of members. In such a case, it is possible that a collective agreement dispute may arise that affects a thousand employees in the bargaining unit, which may still not comprise a majority. If in those circumstances the dispute were not considered as affecting the "bargaining unit generally," the bargaining agent would have to obtain the written consent of each affected employee before proceeding with a group grievance. That is administratively unworkable, particularly given that employees in the same bargaining unit can work at locations all across Canada. Such a process, requiring individual written consent, would be extremely inefficient.

[32] An interpretation of section 220 of the *Act* that would require that a majority of the bargaining unit be affected before a policy grievance could be filed would prevent that bargaining agent from representing significant segments of its membership through filing a policy grievance. For example, the bargaining agent would be unable to file a policy grievance for provisions of the collective agreement regarding benefits for part-time employees or for maternity leave if the majority of the bargaining unit comprised full-time male employees.

[33] Because the words "bargaining unit generally" in the context of section 220 of the *Act* are ambiguous, those words should be interpreted in a manner that does not make the grievance process unworkable, impractical or inefficient or outside the reach of large segments of employees whose common interests could be best served by filing a policy grievance.

[34] Section 220 of the *Act* should be interpreted in a manner that is consistent with the purpose of the *Act* as set out in its preamble. The principles expressed by the preamble reflect Parliament's intention that labour relations in the federal public service, including the processes for dispute resolution, proceed in both an "effective" and "efficient" manner. As such, the policy grievance provisions in the *Act* should not be construed as requiring the individual written consent of every member affected by the same interpretation of a particular provision of a collective agreement where those affected members represent less than 50 percent of the bargaining unit.

[35] In this case, the alleged breach of the collective agreement affects every member of the bargaining unit to which article 40 of the collective agreement applies. The alleged breach of the collective agreement relates generally to the interpretation and application of the collective agreement and does not rely on any facts or circumstances relating to any individual employee. Given the nature of this grievance, it is appropriate for it to be referred directly to the final level of the grievance procedure, as required of a policy grievance.

[36] It would make no "industrial relations sense" to require the filing of individual or group grievances in these circumstances, which would require the written consent of each of the approximately 130 affected members of the bargaining unit, located in 42 penitentiaries across Canada. Such a requirement would be both impractical and inefficient. The affected members are a large enough segment of the bargaining unit to warrant providing the bargaining agent with the right to file a policy grievance on their behalf in relation to an issue involving the general interpretation and application of the collective agreement as it applies to each member of that segment.

[37] In conclusion, no member of the CS bargaining unit entitled to the PFA under article 40 of the collective agreement received their entitled benefit during the term of the collective agreement. Based on that fact, the alleged breach affected the "bargaining unit generally" within the meaning of section 220 of the *Act*, thereby entitling the PIPSC to file a policy grievance. Forcing the PIPSC to proceed with a group grievance, as the employer wishes, would only serve to frustrate the important goals of effective and efficient conflict management as set out in the *Act*'s preamble.

[38] As an alternative, the PIPSC argues that the grievance affects the bargaining agent directly. The grievance specifies that the employer failed to implement a negotiated requirement of the collective agreement promptly in not paying the PFA to entitled employees. Acting as it did, the employer did not respect its negotiated obligation, and its inaction affected the bargaining agent directly.

[39] To support its arguments, the PIPSC referred me to *Community Health Services v. SEIU, Local 1* (2005), 81 C.L.A.S. 65; *Weston Bakeries Ltd. v. Milk & Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 674* (1970), 21 L.A.C. 308; *Treasury Board v. PIPSC* (1990), 18 C.L.A.S. 134; *Treasury Board v. PIPSC* (1989), 14 C.L.A.S. 11; *British Columbia v. UPN/BCNU* (1994), 38 C.L.A.S. 72; *Toronto District School Board v. CUPE, Local 4400* (2006), 85 C.L.A.S. 95; *Peterborough Victoria*

Northumberland and Newcastle Roman Catholic Separate School Board v. CUPE, Local 1453 (1996), 43 C.L.A.S. 66; *London Free Press Printing Co. v. Southern Ontario Newspaper Guild, Local 87* (1994), 33 C.L.A.S. 657; *Bell Canada v. Communications Workers of Canada* (1982), 3 L.A.C. (3d) 413; *Zellers Inc. v. UFCW, Local 175* (2005), 140 L.A.C. (4th) 45; *Toronto Transit Commission v. ATU, Local 113* (2000), 59 C.L.A.S. 408; *R v. Mac,* [2002] 1 S.C.R. 856; *Schreiber v. Canada (Attorney General),* [2002] 3 S.C.R. 269; *R. v. Daoust,* [2004] 1 S.C.R. 217; *Belvedere Heights Home for the Aged v. Canadian Health Care Workers* (2003), 74 C.L.A.S. 257; *Toronto Catholic District School Board v. OECTA* (2000), 88 L.A.C. (4th) 47; *Wilfrid Laurier University v. Wilfrid Laurier University Faculty Association* (2006), 84 C.L.A.S. 337; *Times-Colonist v. Communications Workers of America, Local 14003* (1997), 67 L.A.C. (4th) 340; *Langley (School District No. 35) v. Langley Teachers 'Association* (1991), 24 C.L.A.S. 577; *Fairhaven Home for Senior Citizens v. ONA* (1992), 25 L.A.C. (4th) 345; *Tree Island Industries Ltd.,* [1997] B.C.L.R.B.D. No. 407 (QL); *CUPE Local 1090 v. Township of Vaughan* (1969), 20 L.A.C. 392; *University of Western Ontario v. University of Western Ontario Staff Association* (2002), 108 L.A.C. (4th) 139; *St. Joseph 's Hospital v. SEIU, Local 204* (1997), 65 L.A.C. (4th) 160; *East Isle Shipyard Ltd. v. IAM, Local 1934* (1998), 53 C.L.A.S. 64; and *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board (Department of National Defence),* 2008 PSLRB 36. The PIPSC also referred me to *Sullivan and Driedger* at 154, 155, 210, 220, 248, 250, 259, 261, 299 and 300.

C. <u>Rebuttal for the employer</u>

[40] It is important to consider, in interpreting section 220 of the *Act*, that section 220 is a limited extension of section 99 of the old regime. The intent of section 220 is not to allow the bargaining agent to file a grievance when it feels that there has been a breach of the collective agreement.

[41] A policy grievance must affect the bargaining unit in general. An example would be an alleged violation of clause 17.17 (volunteer leave) of the collective agreement. If the employer were to list in a policy the community organizations to which that clause applies, then the bargaining agent could file a policy grievance because the clause applies to the bargaining unit generally.

[42] With respect to the difficulty of filing group grievances, the difficulties raised by the PIPSC can be avoided. If there is a group, not all members of the group have to

provide a signature. Also, signatures could be gathered by fax. Furthermore, the adjudicator's decision would apply to all members of the group.

[43] In clause 40.01 of the collective agreement, the parties recognized that the CS employees entitled to a PFA are a subgroup working for the CSC. Within that subgroup of 430 CS employees, approximately 130 CS employees receive a PFA. This is not the "bargaining unit generally."

[44] The jurisprudence submitted by the PIPSC comes from cases in the private sector. The private sector relies on the collective agreement rather than legislation to define the nature of a policy grievance. That jurisprudence does not shed light on the current situation. There is no ambiguity to section 220 of the *Act*. A policy grievance relates to the bargaining unit generally.

[45] On the alternative argument submitted by the PIPSC, the employer argues that the proper recourse to enforce the legal obligation to implement the provisions of a collective agreement in a timely manner is a complaint to the Board under section 190 of the *Act*, not a policy grievance.

III. Reasons

[46] The employer denied this grievance on the basis that subsection 220(1) of the *Act* does not support the grievance as it does not relate to an issue affecting the bargaining unit generally. In this decision, I have to determine whether this is a policy grievance, i.e. whether it can be said that this grievance relates to the bargaining unit generally.

[47] The facts of the grievance are not disputed. Following the signing of the collective agreement, the employer was unable to pay the new PFA rates within 90 days. There are approximately 13 400 employees in the CS bargaining unit. Of those CS employees, 430 work for the CSC and approximately 130 were entitled to receive a PFA. Those 130 employees are spread across 42 penitentiaries throughout Canada. They represent slightly less than 1 percent of the bargaining unit.

[48] Could an action or inaction of the employer, related to less than 1 percent of the bargaining unit, be interpreted as relating to the bargaining unit generally? That is how the employer formulates the question and concludes that 1 percent of the bargaining unit cannot be interpreted as the bargaining unit generally. In contrast, the PIPSC

considers those approximately 130 employees as the totality of the bargaining unit affected by article 40 of the collective agreement and, with this approach, concludes that the dispute over the payment of the PFA relates to the bargaining unit generally.

[49] Under the former *Act*, there was only one type of grievance: the individual grievance. Policy grievances did not exist as such. The parties were able to file a complaint under subsection 99(1) of the former *Act* only if an individual grievance could not be filed. The *Act* changed that regime by introducing three types of grievances that are not necessarily mutually exclusive. When a situation relates to the bargaining unit generally, the bargaining agent and its members may opt for individual grievances, for a group or several group grievances, or for a policy grievance. The choice of grievance type implies the procedure to follow.

[50] The words "bargaining unit generally" might seem clear when taken alone, but they become ambiguous when trying to understand their real meaning in the context of section 220 of the *Act* and in the context of the *Act* in its entirety.

[51] I believe that the legislator, by using the words "the bargaining unit generally," referred to the members of the bargaining unit that are generally affected by the application or interpretation of the collective agreement. The word "generally" is qualitative and not quantitative and it cannot be dissociated from the concept of the application or interpretation of the collective agreement.

[52] An employer's policy on the interpretation or the application of the collective agreement could be the object of a policy grievance because it is of interest to the bargaining unit generally. It does not need to affect directly all members of the bargaining unit to meet the criteria of a policy grievance. In this case, if the employer had issued a policy on the interpretation or application of article 40 of the collective agreement, the bargaining agent could have filed a policy grievance even if article 40 applies only to 130 members of the bargaining unit because it would be of general interest to the bargaining unit.

[53] As the parties did in their arguments, I find it useful to apply the employer's interpretation of the words "the bargaining unit generally" to some specific articles of the collective agreement.

[54] Article 11 of the collective agreement deals with shift work. Article 10 deals with stand-by pay. Considering that a small portion of the bargaining unit works shifts or is required to be on stand-by, the bargaining agent, according to the employer, would be unable to file policy grievances against a new policy from the employer on the interpretation or application of those articles. Rather, in order to challenge the policy, the employees themselves would have to file individual grievances or the bargaining agent would have to file a group grievance with the consent of the affected employees.

[55] Clause 17.03 of the collective agreement deals with maternity leave without pay. Considering that a large number of members of the bargaining unit are males, the bargaining agent, according to the employer, would be unable to file a policy grievance against a policy from the employer on the interpretation or application of that article. Rather, the affected female employees would have to file individual grievances, or the bargaining agent would have to file, on their behalf, a group grievance with their consent.

[56] Those examples reinforce the conclusion that the employer's interpretation of the words "bargaining unit generally" is erroneous. It is inefficient to use individual or group grievances to challenge an employer's policy. It does not matter if the policy affects 1 percent, 10 percent or 50 percent of the bargaining unit. The words "bargaining unit generally" must be interpreted qualitatively and not quantitatively. It is not the number of members of the bargaining unit directly affected that matters but the very nature of the grievance.

[57] Because subsection 220(1) of the *Act* is ambiguous, it is useful to read it and interpret it in relation to the preamble of the *Act*, which gives the *Act* its tone in setting its purpose. The following sections of the preamble are of particular interest to this case:

. . .

Recognizing that

. . .

the Government of Canada is committed to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment;

> *the Government of Canada recognizes that public service bargaining agents represent the interests of employees in collective bargaining and participate in the resolution of workplace issues and rights disputes;*
>
> *commitment from the employer and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service;*
>
> . . .

[58] A grievance is a matter arising from the terms and conditions of employment. The preamble suggests that it be resolved efficiently. In the case of an employer's policy which allegedly violates the collective agreement, the most efficient way to resolve the alleged violation is through a policy grievance, because the policy can be challenged whether it applies yet or not, without the need to consider individual circumstances of the employees to which it may eventually apply.

[59] The employer's interpretation of what constitutes a policy grievance is erroneous. In this case, the employer erred in rejecting the grievance on the basis that it was not a policy grievance because it did not relate to the bargaining unit generally. The grievance does affect the bargaining unit generally, in that it affects all members of the bargaining unit entitled to the benefits of article 40, without regard to individual circumstances. Potentially, any member of the bargaining unit could be affected by article 40, if he or she accepted a position within Correctional Services that receives the PFA. The important point is that the grievance be of general interest to the members.

[60] The bargaining agent's argument that proceeding by way of a policy grievance is a convenient vehicle is valid. As section 232 of the *Act* makes clear, a policy grievance may be used instead of an individual or group grievance – there is no exclusivity.

[61] This is, therefore, a valid policy grievance. I should point out that there is no longer any dispute between the parties with respect to the interpretation or application of the collective agreement. Both parties agreed that some CS employees in federal institutions were entitled to the PFA. The employer lagged in paying it. There is no longer any need for an adjudicator to determine the interpretation or application of the collective agreement. I leave it to the parties to determine how they will proceed.

[62] On October 19, 2008, the bargaining agent asked that I examine the decision in *Public Service Alliance Canada v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 84 (*PSAC*), before rendering my decision in this case. On October 21, 2008, the employer reacted by stating that the facts in *PSAC* are significantly different from those in this case. I reviewed that decision and even if the facts differ significantly, there is a common point between both cases: not all members of the bargaining unit are affected by the issue giving rise to the grievance.

[63] In *PSAC*, the bargaining agent challenged a policy of the employer that was allegedly inconsistent with a provision of the collective agreement. In one of its objections, the employer argued that the grievance was not a policy grievance because it did not relate to the bargaining unit generally. In that case, according to the parties, the issue would have affected between 56 and 71 percent of the employees in the bargaining unit. For the employer, that did not equate to the bargaining unit generally.

[64] In that decision, the adjudicator rejected that objection raised by the employer and concluded that the matter at issue related to the bargaining unit generally even if the matter did not affect the whole bargaining unit. The adjudicator wrote the following at paragraphs 66 to 68 of her decision:

> *[66] A liberal interpretation of the expression ". . . as it relates to . . . the bargaining unit generally" — meaning matters that are of a general interest to the community that forms the bargaining unit — is also consistent with the language used in the* Act*. Had the legislator intended that policy grievances be limited to policies or situations affecting all of the employees in the bargaining unit, the legislator would have stated it clearly by using language such as "relates to all of the employees in the bargaining unit" or "to the bargaining unit in totality" or "to the entirety of the bargaining unit." The use by the legislator of a more general language supports a less restrictive scope for policy grievances than suggested by the employer.*
>
> *[67] Limiting the possibility of challenging a policy through a policy grievance to policies or situations that apply to all of the employees in a bargaining unit would seriously limit the usefulness of this dispute-resolution vehicle, especially when we consider the large scope of several bargaining units in the federal public sector, which Parliament is presumed to have been aware of, and would, in my view, undermine the objectives of the* Act*.*

> *[68] My understanding of the purpose of a policy grievance is to provide a forum through which issues relating to the application and interpretation of provisions of the collective agreement or an arbitral award are resolved on a principle basis. As I stated earlier, this is reinforced by section 232 of the* Act *which provides the adjudicator with declaratory powers and the ability to issue a compliance order, but no mention is made of individual redress. In such a context, I do not see the relevance of distinguishing between those policies affecting all of the employees in the bargaining unit and those affecting only a portion of the employees in the bargaining unit: the number of employees potentially affected is irrelevant to the determination of whether the employer is in principle in breach of the collective agreement. I cannot think of any policy reason why Parliament would have required that every employee included in a bargaining unit necessarily had to be affected by an employer action before a policy grievance could be presented.*
>
> [Emphasis in the original]

[65] In this case, I arrive at the same conclusion as the adjudicator in *PSAC*. Not all members of the bargaining unit need to be affected for a policy grievance to be filed. In *PSAC*, a large number of members of the bargaining unit were affected by the grievance. In this case, all the members of the bargaining unit to whom the PFA applies are affected, even if they represent less then 1 percent of the bargaining unit. In this case, however, in contrast to *PSAC*, there is no longer any dispute between the parties on the interpretation or application of the collective agreement.

[66] I have reviewed the jurisprudence submitted by the parties. The submitted cases are enlightening in understanding the contextual meaning of a policy grievance and its application in other jurisdictions. However, they are of little use in clarifying the ambiguity of subsection 220(1) of the *Act*. The cases refer to different pieces of legislation where, most of the time, the type of grievance is defined by a collective agreement or the jurisprudence that arose from its interpretation.

[67] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[68] The employer's objection is dismissed.

[69] I direct the Registry Operations to schedule a hearing on the policy grievance.

November 20, 2008.

Renaud Paquet,
adjudicator