

Date: 20101014

Files: 525-03-32 and 542-03-06

Citation: 2010 PSLRB 108



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADIAN NUCLEAR SAFETY COMMISSION

Respondent

Indexed as

*Professional Institute of the Public Service of Canada v. Canadian Nuclear Safety
Commission*

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* and in the matter of an application for certification under section 54 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Ian R. Mackenzie, Vice-Chairperson

For the Applicant: Michael Urminsky and Dejan Tonicic, Professional Institute of the Public Service of Canada

For the Respondent: Ronald Snyder, counsel

Decided on the basis of written submissions
filed May 4, June 15, July 19, and August 9 and 19, 2010.

REASONS FOR DECISION

Request and application before the Board

[1] This request began as an application for certification for a group of unrepresented employees at the Canadian Nuclear Safety Commission (CNSC or “the respondent”). The Professional Institute of the Public Service of Canada (PIPSC or “the applicant”) was issued a certificate for a professional group (RL- 05 to RL-07) in 2004. On May 4, 2010, the PIPSC filed an application for certification for a group of unrepresented employees also classified in the RL group at the RL-01 to RL-04 levels. On June 15, 2010, the respondent objected to the proposed certification on the basis that an appropriate bargaining unit included all employees in the RL classification. The applicant agreed with the respondent’s description of the appropriate bargaining unit. In response to a letter from the Public Service Labour Relations Board (PSLRB), the respondent submitted that the application, in effect, was a review of bargaining unit structure under section 70 of the *Public Service Labour Relations Act (PSLRA)*. The applicant agreed with the respondent.

[2] Accordingly, the original decisions on the bargaining unit structure at the CNSC (2004 PSSRB 19 and 2004 PSSRB 43) are subject to reconsideration, based on the submissions of the parties on file with the PSLRB.

[3] After submissions were closed on this application, further correspondence was received from the employer and the bargaining agent. In a letter dated September 20, 2010, Tracey S. D’Crus, a collective bargaining officer with the CNSC, stated that management and human resources staff had been approached by some of the employees in the RL-01 to RL-04 group and levels about unspecified concerns with the process. She stated that management at CNSC recommended that the PSLRB “entertain holding a vote . . . in order to ensure that [employee] voices are heard and that they have the opportunity to assert their democratic rights. . . . We would simply like to make sure that our employees’ interests are taken into account in this process.”

[4] The bargaining agent replied to this letter on September 24, 2010. It submitted that it had strong majority support within the bargaining unit in its original application. The bargaining agent also drew the Board’s attention to section 29 of the *PSLRB Regulations* which provides for the filing of a statement of opposition on an approved form on or before the closing date. It noted that after the closing date it had received no notification of statements of opposition.

[5] This correspondence of the parties is not germane to this reconsideration application. Firstly, the submissions were filed after the established timeline for submissions from the parties. Secondly, a vote of employees is not required for a reconsideration application. Thirdly, it is not the responsibility of the employer to raise concerns on behalf of employees. The proper forum for employees to raise concerns is through the submission of Statements of Opposition (Form 4). As noted below, only one Statement of Opposition was received and it included no reasons for the opposition.

Background

[6] The Public Service Staff Relations Board (PSSRB) issued a decision on the PIPSC's initial application for certification on March 18, 2004 (2004 PSSRB 19). A subsequent reconsideration decision was issued that rescinded the earlier order for a representation vote (2004 PSSRB 43).

[7] In the original application for certification, the PSSRB considered what an appropriate bargaining unit was under the *Public Service Staff Relations Act*. The respondent argued that an appropriate bargaining unit would be all employees at the RL-01 to RL-07 group and levels. The applicant proposed a smaller unit. The PSSRB did not accept either proposal, and held as follows:

...

[61] . . . I believe that neither of the units proposed by the parties is appropriate. . . Furthermore, it is at the RL-5 to 7 levels (whether in the APP, TS or SE subgroups) that we see true functional integration. The community of interests between these latter positions is significant.

[62] The employer's proposed all-inclusive bargaining unit cannot be accepted at this time. The employer's position might have been acceptable had there been before the Board a satisfactory indication of the desire of a majority of the employees at the CNSC to participate in collective bargaining. The fact is that no employee at the RL-1 to 4 levels has shown an interest in being represented by the applicant. That fact is evidenced by the signed membership cards submitted by the PIPSC with its application. Accepting a single all-inclusive bargaining unit would therefore likely have the effect of preventing collective bargaining given the lower level . . . clearly expressed opposition to unionization. The Board, in exercising its discretion on initial certification, must respect the purposes and objectives of the PSSRA which

include the promotion and facilitation of collective bargaining within the federal public sector.

[63] The Board therefore concludes that an appropriate bargaining unit in this case would be composed of all employees, regardless of pay band, at the RL-5 to 7 levels who are not excluded from collective bargaining by law or determination of the Board.

...

[8] On June 14, 2004, the PIPSC was certified as the bargaining agent for:

...the employees of the Canadian Nuclear Safety Commission employed in the bargaining unit comprised of all employees, regardless of pay band, at the RL-5 to 7 levels who are not excluded from collective bargaining by law or determination of the Board.

[9] On May 4, 2010, the PIPSC filed an application for certification of a bargaining unit consisting of “. . . all employees in classifications RL-1 to RL-4, save and except employees working in the Human Resources Department and the Office of the President . . .” In subsequent correspondence dated May 12, 2010, the PIPSC clarified that the “Legal Department” was also to be excluded from the proposed definition. The estimated number of employees in the proposed unit was 142. The PIPSC provided membership cards signed by a majority of the employees in the proposed unit.

[10] In accordance with the *Public Service Labour Relations Board Regulations*, a notice was posted in the workplace. One Statement of Opposition (Form 4) was received in response to the original posting of the application for certification. The opponent did not provide any reasons for his or her objection. An email of opposition was also sent but the employee did not complete a Form 4 (although the employee was advised of the right to do so).

[11] In its June 15, 2010 reply to the application for certification, the respondent objected to the application on the basis that the proposed unit was not appropriate for collective bargaining. The respondent’s submission was that an appropriate unit was one that was “. . . inclusive of the entire RL classification of RL-1 to RL-7 employees. . .” The respondent estimated that the total number of employees in its proposed unit was 722. It provided the following rationale for a single bargaining unit:

The employer's proposed single comprehensive bargaining unit for all RL employees will:

- a. be co-extensive with the employer's plan of classification;*
- b. include all employees with similar work duties;*
- c. permit satisfactory representation of all RL employees while providing for stable collective bargaining;*
- d. avoid undue fragmentation and its resulting negative consequences;*
- e. be administratively efficient; and*
- f. foster harmonious labour relations.*

[12] The respondent submitted that the RL group shares a strong community of interest because of the following:

- (i) all enjoy similar working conditions and environment;*
- (ii) there is one job evaluation plan in effect for the entire group;*
- (iii) a single, highly aligned pay structure applies to the entire group;*
- (iv) there is a continuation of job streams; and*
- (v) there is a crossover or gradation of duties.*

[13] The respondent's submission was that any divergent interests among bargaining unit members would not be material and that they could be reconciled by the applicant.

[14] The applicant, in correspondence to the PSLRB on July 19, 2010, agreed with the respondent's proposed bargaining unit structure and did not dispute the respondent's submissions on the reasons for one unit or on the issue of community of interest.

Reasons

[15] The parties are in agreement with the proposed change to the bargaining unit structure. This does not eliminate the need for the Board to determine if the proposed unit is appropriate for collective bargaining. However, in light of the requirements of the *PSLRA* and the uncontested submissions on the community of interest, I am satisfied that the proposed unit is appropriate for collective bargaining.

[16] Subsections 57(2) and (3) of the *PSLRA* are important considerations in reviewing bargaining unit structures. They read as follows:

57.(2) In determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board must have regard to the employer's classification of persons and positions, including the occupational groups or subgroups established by the employer.

(3) 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.

[17] The proposed bargaining unit would be co-extensive with the RL occupational group. The respondent's submission, agreed to by the applicant, is that such a unit would permit the satisfactory representation of employees in the proposed unit. In addition to the same classification, the employees in the proposed unit are under the same basic working conditions, and there is a gradation of duties through the levels of the classification.

[18] I note that, in the original certification decision, the Board member stated as follows:

[62] The employer's proposed all-inclusive bargaining unit cannot be accepted at this time. The employer's position might have been acceptable had there been before the Board a satisfactory indication of the desire of a majority of the employees at the CNSC to participate in collective bargaining. The fact is that no employee at the RL-1 to 4 levels has shown an interest in being represented by the applicant. . . .

[19] At this time, there is a ". . . satisfactory indication of the desire of a majority of the employees at the CNSC to participate in collective bargaining. . . ." That is shown by the submitted membership cards for those classified in the RL-01 to RL-04 group and levels.

[20] The parties are in agreement with the parts of the organization that should not be included in the amended certificate as follows: the Office of the President, Legal Services and the Human Resources Directorate (except for RL-05 and RL-06 Learning

Officers/Specialists). Given the nature of the functions of those parts of the organization, such exclusions are appropriate. In addition, there are five RL-03 and RL-04 positions proposed by the employer for exclusion. These exclusion proposals will be addressed through the usual process for determining exclusions under the *PSLRA*.

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

(The Order appears on the next page)

Order

[22] The certification of the PIPSC as the bargaining agent for employees at the CNSC as determined in 2004 PSSRB 19 and 2004 PSSRB 43 is amended to indicate that the PIPSC is the bargaining agent for:

All employees in classification RL-1 to RL-7, save and except employees working in the Human Resources Directorate (with the exception of RL-5 and RL-6 Learning Officers/Specialists), the Office of the President, and Legal Services and who are not excluded from collective bargaining by law or determination of the Board.

[23] The previous certificate issued by the Board is hereby revoked and an amended certificate will be issued.

[24] The Board retains jurisdiction for a period of 30 days from the date of this order to resolve any matters relating to its implementation.

October 14, 2010

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