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File: 548-32-06

Citation: 2011 PSLRB 131



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

Indexed as

*Professional Institute of the Public Service of Canada v. Canadian Food Inspection
Agency*

In the matter of a request for the Board to exercise any of its powers under section 36
of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Michele A. Pineau, Vice-Chairperson

For the Applicant: Michel Gingras, negotiator

For the Respondent: Gloria A. Tatone-Blaker, negotiator

Decided on the basis of written submissions
filed March 22, 2010 and June 29, 2011.

Application before the Board

[1] The Canadian Food Inspection Agency (CFIA) and the Professional Institute of the Public Service of Canada (PIPSC or the bargaining agent) have negotiated a collective agreement, which has been ratified and has received Governor-in-Council assent. The collective agreement contains a memorandum of agreement (MOA) on the disclosure of employee contact information to the bargaining agent. On March 22, 2010, the parties jointly applied to the Board to issue an order under section 36 of the *Public Service Labour Relations Act* (PSLRA), giving their MOA the force of a Board decision.

[2] Section 36 of the *PSLRA* provides as follows:

36. The Board administers this Act and it may exercise the powers and perform the functions that are conferred or imposed on it by this Act, or as are incidental to the attainment of the objects of this Act, including the making of orders requiring compliance with this Act, regulations made under it or decisions made in respect of a matter coming before the Board.

[3] This issuance of a Board order was put in abeyance in light of the circumstances that follow.

[4] The Board has issued similar if not identical orders to this one in the past. However, one such order was contested before the Federal Court of Appeal (*Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2008 PSLRB 58). As a cautionary measure, the Board put this application in abeyance pending the outcome of the decision of the Federal Court of Appeal in that matter. The Federal Court of Appeal issued its decision on February 8, 2010 (*Bernard v. Attorney General of Canada*, 2010 FCA 40).

[5] The *Bernard* case can be summarized as follows. The Board's order in 2008 PSLRB 58 was the result of a complaint of bad faith bargaining by the PIPSC, alleging that the employer's refusal to provide contact information to the union was a breach of the duty to bargain in good faith. After the Board expressed in its decision *Professional Institute of the (Public Service of Canada v. Treasury Board and Canada Revenue Agency*, 2008 PSLRB 13), its "strong conviction" that the details of the corrective action were best left to the agreement of the parties, the parties presented the Board with their agreement, which the Board incorporated into an order dated

July 18, 2008. The order required the employer to provide the union, on a quarterly basis, the home mailing addresses and home telephone numbers of all bargaining unit employees, which the employer had in its human resources information systems.

[6] An employee of the bargaining unit affected by that decision, Elizabeth Bernard, learned of the existence of the MOA and filed an application for judicial review, objecting to the Board's order that required her employer to disclose her home address and telephone number to the bargaining agent. Ms. Bernard had declined to join the PIPSC and had elected to become what is known as a Rand formula employee, that is, one who pays union dues in return for enjoying the benefits of union representation but who is not a member of the union. Before the Court, she argued that disclosing her information to the PIPSC was a violation of her privacy rights as well as a violation of her constitutional right to freedom of association as decided by the Supreme Court of Canada in *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211.

[7] The Federal Court upheld Ms. Bernard's application on the basis that, although the Board had clearly articulated the questions to be resolved in deciding the complaint, it had not raised or canvassed those questions when it issued its order to provide home contact information to the bargaining agent. The Board had merely incorporated into its order the agreement that the bargaining agent and the employer had negotiated. The Court held that the Board's acquiescence to the parties' agreement without any other analysis was a failure to exercise its jurisdiction with respect to a matter that it was bound to consider. The Court declined to deal with the issues of the violation of Ms. Bernard's right of freedom of association and remitted the matter to the Board for redetermination, with an order that the Board give the Office of the Privacy Commissioner and Ms. Bernard notice of its proceedings.

[8] The notice of proceedings was sent to all employers and bargaining agents who were the subject of a similar consent order. Any other party that could be affected by a decision, other than the principal litigants, was given intervenor status, including the CFIA. On March 21, 2011, the Board issued a decision reviewing the consent order issued in 2008 PSLRB 58 (see *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2011 PSLRB 34).

[9] The decision reviewed the privacy interests of bargaining unit employees concerning the sharing of contact information. The following excerpt is relevant to this application:

...

162. The evidence has shown that the employer has the following contact information for all employees: work address, work email address and home address. It has the home telephone number of those employees who have chosen to provide it. It is clear that home contact information (address and telephone number) is considered personal information under the Privacy Act, while work contact information is not. However, it is not appropriate for a bargaining agent to use employer facilities (including telephones and email) for its business. In common with most collective agreements, the applicable collective agreement in this case clearly sets out the parameters for conducting union business at the workplace. The ability of a bargaining agent to communicate with employees at the workplace is clearly constrained. Most notably, communications from bargaining agents must be vetted and approved by the employer before posting... In addition, there is no expectation of privacy in electronic communications at the workplace. For those reasons, work contact information is not sufficient to allow a bargaining agent to meet its obligations to represent all employees in the bargaining unit.

...

[10] The Board held that the bargaining agent was entitled to obtain home contact information without breaching the *Privacy Act* R.S.C. 1985, c. p-21, in accordance with conditions outlined in the decision. The Board modified the parties' MOA accordingly.

[11] This application raises the same issues. An employee provides home contact information to the employer as part of the employment relationship. To be able to communicate effectively with its membership as part of its responsibilities as the bargaining agent under the *PSLRA*, the PIPSC must be able to communicate with the employees it represents. The disclosure of employee information to the bargaining agent is consistent with the main purpose for which it is gathered in accordance with paragraph 8(2)(a) of the *Privacy Act*, that is, that such disclosure fulfils an intrinsic part of the employment relationship. To the extent that personal information communicated to the employer is used for the purpose of providing bargaining unit

members information about their terms and conditions of employment, the PIPSC is entitled to the disclosure of home contact information of the employees it represents.

[12] On June 29, 2011, the Board received from the parties a joint submission for a revised consent order, adapted in light of the Board's decision in *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2011 PSLRB 34. I have reviewed the terms of the revised consent order that is the subject of this application to determine if the privacy interest of the employees is adequately protected. I have concluded that amended consent order proposed by the parties provides for greater protection of that information, save and except for small changes as they appear in the order that follows these reasons.

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

(The Order appears on the next page)

Order

[14] The consent order set out in the *Memorandum of Agreement between the Canadian Food Inspection Agency and the Professional Institute of the Public Service of Canada* is amended by the addition of the following clauses to the employer's obligations. After paragraph 4, the two following paragraphs are added:

5. The home contact information transmitted from the employer shall be password protected or encrypted to ensure its safe transmission;
6. Upon his or her initial appointment to a position in the bargaining unit represented by the PIPSC, an employee shall be notified by the employer that his or her home contact information will be shared with the bargaining agent for purposes of collective bargaining;

[15] The consent order set out in the *Memorandum of Agreement between the Canadian Food Inspection Agency and the Professional Institute of the Public Service of Canada* is amended by the addition of the following clause to the bargaining agent's obligations. After paragraph 8, the following paragraph is added:

9. The home contact information provided by the employer shall be securely disposed of after it has been replaced by current home contact information.

[16] All employees of the bargaining unit affected by this decision and order are to be provided with a copy of it within 30 days of its issue in either paper or electronic format.

November 17, 2011.

**Michele A. Pineau,
Vice-Chairperson**

Attachment: Annex I - Modified Consent Order

Annex I

**Canadian Food Inspection Agency/Professional Institute of the Public Service of
Canada
Veterinary Medicine (VM) Group Negotiations**

AS MODIFIED BY THE PUBLIC SERVICE LABOUR RELATIONS BOARD

NOVEMBER 17, 2011

The parties mutually agree to renew Article D3 – Information PCA.

MEMORANDUM OF AGREEMENT (MOA)

BETWEEN

CANADIAN FOOD INSPECTION AGENCY

AND

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

The employer will:

1. on a quarterly basis, disclose to the bargaining agent the home mailing addresses and home telephone numbers of its employees belonging to the VM bargaining unit that the employer possesses in its human resources information systems. The employer will endeavour to provide this information to the bargaining agent within four months of the PSLRB Order endorsing this MOA;
2. subject to the receipt of an express written consent from the Public Service Alliance of Canada (PSAC) granting permission to use the business process and system developed for the PSAC (*Public Service Alliance of Canada v. Treasury Board*, 2008 PSLRB 43) for the sole purpose of transmitting employee home contact data to the bargaining agent, the employer agrees to provide the data as outlined in paragraph 1;
3. provide the data in a flat file comma delimited format specified in Appendix A (field lengths to be confirmed);

4. prior to the initial disclosure of the information outlined in paragraph 1 above, the employer and the bargaining agent will jointly advise employees that the information will be disclosed. The message will explain the reasons why the information is being disclosed. Attached to the joint message will be the Board Order. Any questions concerning the disclosure will be directed to the bargaining agent. The joint message is attached to this agreement as Appendix B.
5. The home contact information transmitted from the employer shall be password protected or encrypted to ensure its safe transmission;
6. Upon his or her initial appointment to a position in the bargaining unit represented by the PIPSC, an employee shall be notified by the employer that his or her home contact information will be shared with the bargaining agent for purposes of collective bargaining;

The bargaining agent will:

1. agree that this is a full and final settlement of all claims they have, or shall have in respect of home contact information for employees in the bargaining units, against Her Majesty in right of Canada, Her employees, agents and servants arising out of this application and, subject to the provisions of the *PSLRA*, agrees not to take any proceeding of any manner with respect to them;
2. ensure that the disclosed information is used solely for the legitimate purposes of the bargaining agent in accordance with the *PSLRA*;
3. ensure that the disclosed information will be securely stored and protected;
4. respect the privacy rights of the employees in the bargaining units;
5. acknowledge that the employer is bound by the *Privacy Act* with respect to the protection of personal information as defined in that *Act*. The bargaining agent shall manage the personal information disclosed under this Memorandum of

Agreement in accordance with the principles of fair information practices embodied in the *Privacy Act* and the *Privacy Regulations*. Specifically, it will keep private and confidential any such personal information disclosed by the employer to the bargaining agent under this Memorandum of Agreement;

6. for the sake of clarity, the bargaining agent shall among other things:
 - a. not disclose the personal information to anyone other than bargaining agent officials that are responsible for fulfilling the bargaining agent's legitimate obligations in accordance with the *PSLRA*;
 - b. not use, copy or compile the personal information for any purposes other than those for which it was provided under this agreement;
 - c. respect the principles of the *Government Security Policy* at http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_12Agsp-psg_e.html for the security and disposal of this personal information; and
 - d. endure that all bargaining agent officials that have access to the disclosed information comply with all the provisions of this agreement;
7. recognize the sensitivity of the information being disclosed with respect to personal security of employees, especially where inadvertent mishandling/disclosure of this information could result in serious safety concerns, and accordingly, will ensure vigilant management and monitoring controls on this information at all times in light of these potential risks to employees and their families;
8. recognize that the information provided from the employer's databases in place at the time of disclosure was provided by employees and that the employer will not be held liable should a strike vote be challenged. The bargaining agent is responsible for updating its own database.
9. the home contact information provided by the employer shall be securely disposed of after it has been replaced by current home contact information.

The terms and conditions of this agreement are made without prejudice or precedent.

**Canadian Food Inspection Agency/Professional Institute of the Public Service of
Canada**

Veterinary Medicine (VM) Group Negotiations

Appendix A

Union Address File (UAF) DRAFT **(TO BE DETERMINED-UNDER DISCUSSION)**

Person:		To PWGSC	To Union
PRI (9)	<i>Num (9)</i>	Y	N
IAN (9)	<i>Num (9)</i>	N	Y
Person Name			
<i>Mixed Char (4)</i>	Prefix Name	Y	Y
<i>Mixed Char (30)</i>	Person Given Name	Y	Y
<i>Mixed Char (6)</i>	Initials Name	Y	Y
<i>Mixed Char (30)</i>	Person Family name	Y	Y
<i>Mixed Char (15)</i>	Suffix Name	Y	Y
Person Address			
<i>Mixed Char (55)</i>	Prefix Address Line (X4)	Y	Y
<i>Mixed Char (30)</i>	Municipality/City Name	Y	Y
<i>Mixed Char (30)</i>	Province / Territory	Y	Y
<i>Upper Char (30)</i>	Country Postal Code	Y	Y
<i>Upper Char (10)</i>			
Person Telephone			Y
<i>Num (3)</i>	International Country	Y	Y
<i>Num (3)</i>	Area City Code	Y	Y
<i>Num (7)</i>	Subscriber Number	Y	Y
<i>Example</i>	999999999,mrs,greer, hl, garson,phd,123 somewhere lane, around the corner,, ottawa, ns, canada, e8n4e6,011613999999 9		888888888,mrs,greer, hl, garson,phd,123 somewhere lane, around the corner,, ottawa, ns, canada, e8n4e6,011613999999 99