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File: 525-02-39

Citation: 2011 PSLRB 64



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

TREASURY BOARD

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Treasury Board v. Public Service Alliance of Canada

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*

REASONS FOR DECISION

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

For the Applicant: Lynn Grenier-Beaulne, Treasury Board Secretariat

For the Respondent: Stephanie Cole, Public Service Alliance of Canada

Decided on the basis of written submissions
filed February 24 and 25 and March 17, 2011.

REASONS FOR DECISION

Application before the Board

[1] On February 24, 2011, the Treasury Board (“the employer”) filed an application with the Public Service Labour Relations Board (“the new Board”) for an order revoking the managerial or confidential status of position FCR-01406 (Registry Officer, Courts Administration Service, in Calgary, Alberta) (“the position”) and returning the position to the following bargaining unit (“the bargaining unit”), for which the Public Service Alliance of Canada (“the bargaining agent”) was certified as the bargaining agent (see *Public Service Alliance of Canada v. Treasury Board*, PSSRB File Nos. 144-02-19 and 36 (19680724), as modified by *Public Service Alliance of Canada v. Treasury Board*, PSSRB File No. 141-02-1 (19930812), *Public Service Alliance of Canada v. Treasury Board*, PSSRB File No. 142-02-337 (19990607), and *Treasury Board (Canada Border Services Agency) v. Public Service Alliance of Canada*, 2007 PSLRB 22):

All employees of the Employer in the Program and Administrative Services Group as defined in Part I of the Canada Gazette of March 11, 2006.

On April 1, 2005, the *Public Service Labour Relations Act* (“the new Act”), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to subsection 48(1) of the *Public Service Modernization Act*, the bargaining agent continues to be certified as the bargaining agent for the bargaining unit.

[2] On March 17, 2011, the bargaining agent responded that it consented to this application.

Background

[3] When the initial application for exclusion was made, the incumbent of the position was identified as a “person employed in a managerial or confidential capacity” under paragraph (a) of that definition in section 2 of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (“the former Act”). At that time, paragraph (a) read as follows:

2. In this Act,

...

*“person employed in a managerial or confidential capacity”
means any person who*

(a) is employed in a position confidential to the Governor General, a minister of the Crown, a judge of the Supreme Court of Canada or the Federal Court, the deputy head of a department or the chief executive officer of any other portion of the Public Service,

[4] No record exists of an order made by the former Public Service Staff Relations Board (“the former Board”) that declared the incumbent of the position a “person employed in a managerial or confidential capacity.” Before June 1, 1993, a person could have been identified by the employer as a “person employed in a managerial or confidential capacity” without any determination by the former Board.

[5] On June 1, 1993, subsections 32(1), (4) and (5) of the *Public Service Reform Act*, S.C. 1992, c. 54, were proclaimed in force. Subsection 32(1) repealed the definition of “person employed in a managerial or confidential capacity” in section 2 of the former Act, and subsections 32(4) and (5) provided for a new definition of “managerial or confidential position” in subsection 2(1). Paragraph (a) of the new definition of “managerial or confidential position” read as follows:

2. (1) In this Act,

...

“managerial or confidential position” means a position

(a) confidential to the Governor General, a Minister of the Crown, a judge of the Supreme Court of Canada or the Federal Court, the deputy head of a department or the chief executive officer of any portion of the Public Service,

[6] On April 1, 2005, the former Act was repealed, and the new Act was proclaimed in force. Pursuant to section 50 of the *Public Service Modernization Act*, the incumbent of the position was deemed the incumbent of a “managerial or confidential position” under the new Act as follows:

50. Every position that was a position referred to in any of paragraphs (a) ... of the definition “managerial or confidential position” in subsection 2(1) of the former Act immediately before the day on which the definition “managerial or confidential position” in subsection 2(1) of the new Act comes into force is deemed, as of that day, to be a managerial or confidential position within the meaning of subsection 2(1) of the new Act.

[Bold in the original]

[Emphasis added]

For its part, subsection 2(1) of the new Act provides as follows:

2. (1) The following definitions apply in this Act.

...

“managerial or confidential position” means a position declared to be a managerial or confidential position by an order made by the Board. . . .

...

[Emphasis added]

Reasons

[7] There is no dispute between the parties that before June 1, 1993, the incumbent of the position was identified as a “person employed in a managerial or confidential capacity” under paragraph (a) of that definition in section 2 of the former Act. Pursuant to section 50 of the *Public Service Modernization Act*, the position is deemed to have been ordered declared by the new Board as a “managerial or confidential position” within the meaning of subsection 2(1) of the new Act.

[8] Further, there is no dispute between the parties that the position no longer has managerial or confidential attributes within the meaning of subsection 2(1) of the new Act.

[9] Section 43 of the new Act provides the new Board with the authority to rescind any of its orders:

43. (1) Subject to subsection (2), the Board may review, rescind or amend any of its orders or decisions, or may re-hear any application before making an order in respect of the application.

(2) A right that is acquired by virtue of an order or a decision that is reviewed, rescinded or amended by the Board may not be altered or extinguished with effect from a day that is earlier than the day on which the review, rescission or amendment is made.

In appropriate circumstances, the new Board has exercised this authority where the facts on which one of its earlier orders was based have changed significantly.

Considering that the parties share a same view that the position no longer has managerial or confidential attributes within the meaning of subsection 2(1) of the new *Act*, I find it more probable than not that the position is no longer a “managerial or confidential position” within the meaning of subsection 2(1) of the new *Act*. In these circumstances, I find it appropriate to exercise the Board’s powers under section 43 to revoke the managerial or confidential status of the position.

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

(The Order appears on the next page)

Order

[11] I declare that position FCR-01406 (Registry Officer, Courts Administration Service, in Calgary, Alberta) is no longer a “managerial or confidential position” within the meaning of subsection 2(1) of the new *Act*, and I order revoked the order that declared it so.

April 29, 2011.

**Casper M. Bloom, Q.C., Ad. E.
Chairperson**