

Date: 20121026

File: 525-18-46

XR: 125-18-72 and 145-18-227

Citation: 2012 PSLRB 116



*Public Service
Labour Relations Act*

Before a panel of the Public
Service Labour Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

and

STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES

Applicants

Indexed as

Public Service Alliance of Canada and Staff of the Non-Public Funds, Canadian Forces

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: Margaret T.A. Shannon, a panel of the Public Service Labour Relations Board

For the Public Service Alliance of Canada: David Orfald, Public Service Alliance of Canada

***For the Staff of the Non-Public Funds,
Canadian Forces:*** Sonja Gonsalves, Staff of the Non-Public Funds, Canadian Forces

Decided on the basis of written submissions,
filed June 26, 2012.

REASONS FOR DECISION

Request before the Board

[1] The parties submitted a joint application under section 70 of the *Public Service Labour Relations Act* (“the Act”) for a review of the structure of the two bargaining units represented by the Public Service Alliance of Canada (PSAC) for employees employed by the Staff of the Non-Public Funds, Canadian Forces (“the employer”) in the Ottawa area. The point of the request was to seek a merger of the PSAC bargaining unit consisting of all employees of the employer in the Administrative Support Category and the Operational Category employed at the National Defence Headquarters at Ottawa under the direction and control of the Director General of Personnel Services and the PSAC bargaining unit consisting of all employees of the employer in the Administrative Support Category employed at the Canadian Forces Base, Ottawa (“CFB Ottawa”) into the following new bargaining unit:

All employees of the employer in the Operational Category, the Administrative Support Category and the Technical Category at National Defence Headquarters (NDHQ) at Ottawa under the direction and control of the Director General Personnel Services (DGPS) and all employees of the employer in the Administrative Support Category at the Canadian Forces Base at Ottawa, save and except Category II Employees who are recognized as either Administrative and Foreign Services Category or Scientific and Professional Category employees.

Background

[2] In *Public Service Alliance of Canada v. Staff of the Non-Public Funds, Canadian Forces*, PSSRB File No. 146-18-207 (19821004), the Public Service Staff Relations Board (“the former Board”) certified the PSAC as the bargaining agent for the bargaining unit consisting of “. . . all employees of the employer in the Operational Category employed at the National Defence Headquarters at Ottawa under the direction and control of the Director General of Personal Services” In *Public Service Alliance of Canada v. Staff of the Non-Public Funds, Canadian Forces*, PSSRB File No. 145-18-206 (19821101), the former Board certified the PSAC as the bargaining agent for the bargaining unit consisting of “. . . all employees of the Employer in the Administrative Support Category employed at the National Defence Headquarters at Ottawa under the direction and control of the Director General of Personnel Services.” In *Staff of the Non-Public Funds, Canadian Forces v. Public Service Alliance of Canada*, PSSRB File No. 125-18-72 (19970630), both units were merged to form a bargaining unit

consisting of “. . . all employees of the Staff of the Non-Public Funds, Canadian Forces in the Administrative Support Category and the Operational Category employed at the National Defence Headquarters at Ottawa under the direction and control of the Director General of Personnel Services.” That bargaining unit currently has 68 members.

[3] In *Commercial Workers Union, Local No. 486 v. Staff of the Non-Public Funds, Canadian Forces*, PSSRB File No. 145-18-227 (19841102), the former Board certified the PSAC as the bargaining agent for a bargaining unit consisting of “. . . all employees of the Employer in the Administrative Support Category employed at the Canadian Forces Base, Ottawa” That unit currently has seven members.

[4] The parties agree that the two bargaining units are represented by the same bargaining agent, are located in Ottawa, and that the employees they include are covered by the same classification system and almost identical occupational groups and subgroups. The parties further agree that the present terms and conditions of employment of employees in the two bargaining units are virtually identical.

[5] The collective agreements of both bargaining units have expired and notice to bargain has been served by the PSAC on behalf of each one. Negotiations have not yet begun.

[6] The Public Service Labour Relations Board (“the new Board”), successor to the former Board, ordered on July 12, 2012 that notices of the joint application be posted until August 20, 2012, in all workplaces of employees in the bargaining units affected by the joint application. The new Board also ordered that notice was to be served on the United Food and Commercial Workers (UFCW), a bargaining agent representing other employees of the employer, advising it of the joint application and of the opportunity to intervene: the UFCW had previously applied for certification as the bargaining agent for employees at CFB Ottawa.

[7] The employer provided the new Board with proof of compliance with the new Board’s order about posting notices of the joint application in the workplace and serving notice on the UFCW.

[8] No objections were filed by employees in the bargaining units affected by the joint application and the UFCW made no request for intervener status.

Summary of the arguments

[9] The parties submitted that it is more efficient to bargain once on behalf of both bargaining units affected by the joint application, particularly given their sizes. The parties jointly submitted that it would be in their best interests and in the best interest of the employees in the current bargaining units if both bargaining units were merged into one before the collective agreements applying to them were renewed.

Reasons

[10] Section 70 of the *Act* provides for the factors that I shall consider in deciding whether to review the structure of the two bargaining units affected by the joint application before me and merge them into a new one. Section 70 reads as follows:

Changes to Certification

Review of Bargaining Units

70. (1) If the Board reviews the structure of one or more bargaining units, it must, in determining whether a group of employees constitutes a unit appropriate for collective bargaining, have regard to the employer's classification of persons and positions, including the occupational groups or subgroups established by the employer.

(2) 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.

[11] There is no dispute that employees in the two bargaining units affected by the joint application are covered by the same classification system and almost identical occupational groups and subgroups. Subsection 70(1) of the *Act* directs me to consider those facts. Further, subsection 70(2) authorizes me to establish a new bargaining unit that is not coextensive with the occupational groups or subgroups established by the employer if I find that establishing a new bargaining unit that is coextensive with the occupational groups or subgroups established by the employer would not permit satisfactory representation of the employee affected by the application before me. Given that those employees are employed by the same employer in the same city, are currently represented by the same bargaining agent, and are covered by virtually identical terms and conditions of employment, I find that they share a strong

community of interests. I therefore find that merging the two bargaining units affected by the joint application into the new one proposed by the parties would permit satisfactory representation on the employees affected by the application.

[12] A matter that was not raised by the parties in their joint application is the issue of the protection of the terms and conditions of employment of the employees in each of the two bargaining units affected by the joint application pending a first collective agreement for the newly created bargaining unit which results from the granting of their application. Notice to bargain has been served on behalf of each of the two bargaining units affected by the joint application and I find that these notices to bargain collectively shall be deemed to have been given under section 107 of the *Act* in relation to the new bargaining unit.

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

(The Order appears on the next page)

Order

[14] I order the bargaining unit consisting of “. . . all employees of the Staff of the Non-Public Funds, Canadian Forces in the Administrative Support Category and the Operational Category employed at the National Defence Headquarters at Ottawa under the direction and control of the Director General of Personnel Services . . .” and the bargaining unit consisting of “. . . all employees of the Employer in the Administrative Support Category employed at the Canadian Forces Base, Ottawa . . .” merged into a new bargaining unit defined as follows:

All employees of the employer in the Operational Category, the Administrative Support Category and the Technical Category at National Defence Headquarters (NDHQ) at Ottawa under the direction and control of the Director General Personnel Services (DGPS) and all employees of the employer in the Administrative Support Category at the Canadian Forces Base at Ottawa, save and except Category II Employees who are recognized as either Administrative and Foreign Services Category or Scientific and Professional Category employees.

[15] A new certificate will issue.

[16] The notices to bargain collectively that have been given in relation to the bargaining units affected by this application shall be deemed to have been given under section 107 of the *Act* in relation to the new bargaining unit.

October 26, 2012.

**Margaret T.A. Shannon,
a panel of the Public Service
Labour Relations Board**