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Citation: 2012 PSLRB 132

Public Service Labour Relations Act

Before the Chairperson of the Public Service Labour Relations Board

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IN THE MATTER OF
THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
and a dispute affecting
the Public Service Alliance of Canada, as bargaining agent, and the Staff of the Non-Public Funds, Canadian Forces, as employer, in respect of the bargaining unit composed of all Staff of the Non-Public Funds, Canadian Forces, employees in the Operational and Administrative Support categories at the Canadian Forces Base in Valcartier, Quebec

Indexed as
Public Service Alliance of Canada v. Staff of the Non-Public Funds, Canadian Forces

TERMS OF REFERENCE

To: François Bastien, chairperson of the arbitration board;
Roger Vaillancourt and Jock Climie, arbitration board members

Before: Linda Gobeil, Vice-Chairperson of the Public Service Labour Relations Board

For the Bargaining Agent: Wesney Duclervil, Public Service Alliance of Canada

For the Employer: François Paltrinieri, Staff of the Non-Public Funds, Canadian Forces

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Issued on the basis of written submissions
dated August 3, 14, 21 and 31 and September 5, 18 and 21, 2012,
and on a hearing held at Montreal, Quebec, on November 16, 2012.
(PSLRB Translation)

[1] By letter of August 3, 2012, the Public Service Alliance of Canada ("the bargaining agent") filed a request for arbitration in respect of the bargaining unit composed of all Staff of the Non-Public Funds, Canadian Forces, employees in the Operational and Administrative Support categories at the Canadian Forces Base in Valcartier, Quebec ("the bargaining unit"). The bargaining agent provided a list of the terms and conditions of employment that it wished to refer to arbitration. Those terms and conditions of employment and supporting material are attached as Schedule 1.

[2] By letter of August 14, 2012, the Staff of the Non-Public Funds, Canadian Forces, ("the employer") provided its position on the terms and conditions of employment that the bargaining agent wished to refer to arbitration. The employer also provided a list of additional terms and conditions of employment that it wished to refer to arbitration. That letter and supporting material are attached as Schedule 2.

[3] By letter of August 21, 2012, the bargaining agent provided its position on the additional terms and conditions of employment that the employer wished to refer to arbitration. In addition, the bargaining agent raised an objection about clauses 3.01(a) and 19.03(c) of the collective agreement, included in Appendix B of the employer's Schedule 2. The bargaining agent alleged that the employer had withdrawn its demand concerning clause 3.01(a) and that the parties had mutually agreed on new wording for clause 3.01(a). Consequently, this demand had already been settled. As for clause 19.03(c), the bargaining agent alleged that the employer had previously withdrawn its proposal. That letter is attached as Schedule 3.

[4] By letter of August 31, 2012, the employer argued that the proposals concerning clauses 3.01(a), 3.01(c) and 19.03 of the collective agreement were still in dispute. That letter is attached as Schedule 4.

[5] By letter of September 5, 2012, the bargaining agent agreed that clause 19.03 of the collective agreement was still in dispute. However, the bargaining agent maintained its objection that clause 3.01(a) of the collective agreement had been settled by the parties and therefore that this clause was no longer part of the issues in dispute to be referred to arbitration. That letter is attached as Schedule 5.

[6] The Chairperson decided that a hearing would be held on the matter in dispute. Under section 45 of the *Public Service Labour Relations Act* ("the *Act*"), the Chairperson

of the Public Service Labour Relations Board ("the Board") has authorized me, as Vice-Chairperson, to give these terms of reference to the arbitration board.

The November 16, 2012 hearing

[7] During the hearing on November 16, 2012, the parties agreed that it remained to be determined whether the employer's proposal concerning clause 3.01(a) of the collective agreement, according to which an employee would work thirty-two (32) hours instead of thirty (30) to be considered a "full-time employee," was still an issue in dispute that was to be referred to arbitration. The parties also admitted that the employer's proposal concerning clause 3.01(a) had been the subject of negotiation as required by subsection 150(2) of the *Act.*

A. Evidence of the bargaining agent

[8] The bargaining agent's representative testified and submitted four supporting documents and had a witness testify on consent, namely, union local President Danielle Lemay.

[9] Essentially, the testimony given by Ms. Lemay and the bargaining agent's representative pertains to the fact that the employer accepted the bargaining agent's proposal concerning clause 3.01(a) to replace the term "[translation] probationary period" with "[translation] his or her period of probation." With respect to the part of the employer's proposal to increase the hours of work from thirty (30) to thirty-two (32), both witnesses maintained that, even though this matter was covered in the negotiations between the parties, the employer dropped this demand.

[10] In support of his argument, the bargaining agent's representative filed Exhibit E-1. In their testimony, Ms. Lemay and the bargaining agent's representative explained that, after the negotiations that took place from July 16 to 19, 2012, the parties specified the status of each negotiated clause in the memorandum of agreement of bargaining, which constitutes Exhibit E-1. However, they alleged that there is no reference to the employer's proposal in Exhibit E-1. Therefore, according to Ms. Lemay and the bargaining agent's representative, Exhibit E-1, which was signed by the parties, continues to refer to the fact that a full-time employee must work continuously for thirty (30) hours; there is no reference to the proposal to increase the hours of work to thirty-two (32), as the employer claims. According to Ms. Lemay and

the bargaining agent's representative, both parties knowingly signed Exhibit E-1. Given that evidence, the bargaining agent's representative argues that I must find that the employer withdrew its proposal.

[11] With the consent of the employer's representative, Ms. Lemay and the bargaining agent's representative submitted copies of their notes made during the July 2012 bargaining session, which contain no mention of the employer's proposal or clause 3.01(a). Therefore, according to the bargaining agent's representative, this is further evidence that the employer withdrew its proposal since it did not mention it in the documents used during the bargaining sessions.

[12] In cross-examination, Ms. Lemay admitted that there was no mention anywhere in the exhibits filed by the bargaining agent's representatives that the employer withdrew its demand with respect to clause 3.01(a) of the collective agreement. Ms. Lemay also agreed that it was logical to conclude that, had the employer withdrawn its proposal for clause 3.01(a), it would have been noted in Exhibit E-1; every withdrawn proposal is mentioned in Exhibit E-1.

B. <u>Evidence of the employer</u>

[13] The employer's representative testified and had the following testify on consent: Sonja Gonsalves, Negotiator and Manager for the employer, and Lucie Lapierre, Human Resources Manager for the employer.

[14] Essentially, the testimony given by the employer's representatives was that the parties exchanged demands on June 14, 2012. The employer's demands included an amendment to clause 3.01(a) of the collective agreement to raise the number of continuous hours of work for a full-time employee from (30) to thirty-two (32). The employer apparently never withdrew this demand concerning clause 3.01(a), which is still in dispute.

[15] Ms. Gonsalves indicated that, on July 16, 2012, the employer accepted the new wording for clause 3.01(a) that the bargaining agent had proposed, namely, replacing "[translation] probationary period" with "[translation] period of probation." The employer subsequently filed its demand concerning clause 3.01(a) to increase the continuous hours of work for a full-time employee. Ms. Gonsalves indicated that the bargaining agent rejected that proposal by the employer.

[16] According to Ms. Gonsalves, the parties confirmed the issues still in dispute on July 17, 2012, and the employer's demand concerning clause 3.01(a) was still one of them.

[17] Ms. Gonsalves indicated that, each time a demand was settled or withdrawn by one of the parties, she put it in her personal notes. However, Ms. Gonsalves testified that the notes that she made during bargaining in July 2012 do not mention the settlement or withdrawal of the employer's demand concerning clause 3.01(a).

[18] Ms. Gonsalves also indicated that she prepared the memorandum of agreement of bargaining, signed by the parties on July 20, 2012 (Exhibit E-1). She said that, each time a proposal was accepted or withdrawn by one of the parties, a specific reference was made in the July 2012 memorandum of agreement of bargaining. She indicated that no mention of settlement or withdrawal was made in the July 2012 memorandum of agreement of bargaining with respect to the employer's demand concerning clause 3.01(a).

[19] The testimony given by Ms. Lapierre and Mr. Paltrinieri corroborated Ms. Gonsalves's statements. They also indicated that the employer never withdrew its demand concerning clause 3.01(a) and that this matter was still in dispute between the parties. In support of their testimony, Ms. Lapierre and Mr. Paltrinieri submitted copies of their personal notes made during the July 2012 bargaining session.

Decision

[20] The question to be decided in this matter is relatively simple: did the employer withdraw its demand to amend clause 3.01(a) of the collective agreement that sought to increase the number of continuous hours of work of a full-time employee from thirty (30) to thirty-two (32)? The bargaining agent's representative alleged that the employer decided to withdraw its demand about clause 3.01(a) and that, consequently, this demand cannot be part of the matters in dispute referred to the arbitration board pursuant to subsection 144(1) of the *Act.* However, the employer's representative argued that the employer did not withdraw its demand with respect to clause 3.01(a). He maintained that the employer's demand was still not settled and that, as a result, it had to be part of the other matters in dispute to be referred to arbitration.

[21] As mentioned earlier, the parties admitted that the employer's demand concerning clause 3.01(a) had been subject to negotiations as set out in subsection 150(2) of the *Act*. In addition, it was admitted that this demand by the employer was not part of the matters excluded from the scope of an arbitral award as provided for in subsection 150(1) of the *Act*.

[22] Therefore, I must determine, based on the evidence, whether the employer withdrew its demand concerning clause 3.01(a).

[23] After analyzing the testimony, and in light of the documents submitted by the parties, there is no doubt that the employer did not withdraw its demand concerning clause 3.01(a) and that this demand is still in dispute between the parties. Ms. Gonsalves made it very clear in her testimony that the employer never had any intention to withdraw its demand. In addition, the personal notes made by the parties and those in the memorandum of agreement convinced me that there was no evidence that, at any time, the employer decided to withdraw its demand. For example, Ms. Gonsalves's notes in the July 2012 memorandum of agreement make no mention of a withdrawal of the employer's demand concerning clause 3.01(a). However, in other cases in which a demand was settled or withdrawn, the memorandum of agreement of bargaining contained a specific mention to that effect. Therefore, it was the parties' practice to remove the demands in writing during the round of bargaining. There is no written evidence from either party that this clause was withdrawn. In the circumstances, the bargaining agent did not convince me that the employer withdrew its demand with respect to clause 3.01(a).

Conclusion

[24] Under the circumstances, I find that the employer did not withdraw its demand concerning clause 3.01(a) and that this demand by the employer is still part of the matters in dispute.

[25] Accordingly, pursuant to section 144 of the *Act*, the matters in dispute on which the arbitration board shall make an arbitral award are those set out in Schedules 1 to 5, attached, including the employer's demands with respect to clauses 3.01(a), 3.01(c) and 19.03.

[26] Any jurisdictional issue raised during the hearing as to the inclusion of a condition or term of employment in these terms of reference must be submitted without delay to the Chairperson of the Public Service Labour Relations Board, who is, according to subsection 144(1) of the *Act*, the only person authorized to make such a determination.

December 19, 2012.

PSLRB Translation

Linda Gobeil,
Vice-Chairperson of the
Public Service Labour Relations Board