Date: 20120912

File: 567-02-39

Citation: 2012 PSLRB 93

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

FEDERAL GOVERNMENT DOCKYARD TRADES AND LABOUR COUNCIL (EAST)

Bargaining Agent

and

TREASURY BOARD
(Department of National Defence)

Employer

and

FEDERAL GOVERNMENT DOCKYARD TRADES AND LABOUR COUNCIL (ESQUIMALT)
Applicant

Indexed as
Federal Government Dockyard Trades and Labour Council (East) v. Treasury Board (Department of National Defence) v. Federal Government Dockyard Trades and Labour Council (Esquimalt)

In the matter of a group grievance referred to adjudication

REASONS FOR DECISION

Before: Kate Rogers, adjudicator

For the Bargaining Agent: Ronald Pink, counsel

For the Employer: Anne-Marie Duquette, counsel

For the Intervenor: Des Rogers

Decided on the basis of written submissions,
filed February 28 and March 6 and 15, 2012.

Group grievance referred to adjudication

[1] Michael Ashley and others ("the grievors") are employees at Fleet Maintenance Facility (FMF) Cape Scott of the Department of National Defence ("the employer"), in Halifax, Nova Scotia. All the grievors are covered by the collective agreement between the Treasury Board and the Federal Government Dockyard Trades and Labour Council (East) ("FGDTLC-E") for the Ship Repair (East) occupational group; expiry date: December 31, 2011.

[2] On April 20, 2009, the grievors filed a group grievance which read as follows:

> *We wish to grieve management's violation of our Collective Agreement, Article 6.01 & 32.01 with respect to the Ship Repair Occupational Group and their assignment of duties I.A.W. the Canada Gazette 1999 and their Statement of Duties and Responsibilities as per their Work Descriptions.*

[3] The group grievance was referred to adjudication on January 13, 2010.

Application before the adjudicator

[4] On February 28, 2012, the Federal Government Dockyards Trades and Labour Council (Esquimalt) ("FGDTLC-W") filed an application for intervenor status under subsection 99(1) of the *Public Service Labour Relations Board Regulations*, SOR/2005-79 ("the *Regulations*"). The FGDTLC-W argued that it had a substantial interest in the outcome of the grievance. It noted that the occupational group definition that applies to its members is very similar to the occupational group of the grievors and that any decision that could impact the occupational group definition of the members of the FGDTLC-E also had the potential to affect the assignment of work to its own members in the west.

[5] Although the FGDTLC-E did not object to the request for intervenor status by the FGDTLC-W in its response, filed on March 6, 2012, the employer did object. On March 15, 2012, the employer filed a response to the request in which it took the position that the FGDTLC-W did not have a substantial interest in the outcome of the grievance. The employer argued that the group grievance involved only employees of the Ship Repair (East) bargaining unit and that it concerned the application of specific clauses of the collective agreement covering the grievors. In this situation, there was no question of general interest that would justify the intervention of another

bargaining agent, such as in *Amos v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 74 (overturned in 2009 FC 1181; upheld in 2011 FCA 38.) According to the employer, a decision issued by a Public Service Labour Relations Board (PSLRB) adjudicator on the group grievance could not affect the occupational group definition of employees in the Ship Repair (West) occupational group; nor could it affect the assignment of work to those employees. The employer argued that an intervention by the FGDTLC-W would serve only to add confusion and delay to the adjudication proceedings.

[6] The parties filed no other submissions on the application for intervenor status.

Reasons

[7] The right to be added as a party or intervenor in an adjudication hearing derives from subsection 99(1) of the *Regulations,* which provides as follows:

> ***99.*** *(1) Any person with a substantial interest in a grievance may apply to the Chairperson or the adjudicator, as the case may be, to be added as party or an intervenor.*

[8] The *Regulations* do not define the phrase "substantial interest"; nor do they establish any further criteria that must be met to grant intervenor status. However, the issue has been considered. For example, in *Amos,* the adjudicator found that the issue raised by the grievance before him would have broad ramifications for all employees, bargaining agents and employers covered by the *Public Service Labour Relations Act*, S.C. 2003, c. 22, who relied on the integrity of settlement agreements and the proper functioning of the PSLRB's dispute resolution services. Likewise, in *Djan v. Treasury Board (Correctional Service of Canada),* 2001 PSSRB 60, the adjudicator considered that the decision would have ramifications for all employees in the public service. In both *Amos* and *Djan*, the adjudicators, on their own initiative, sought submissions from all interested bargaining agents and employers, based on their appreciation of the broad importance of the issues before them. Furthermore, in both cases, the issue was jurisdiction.

[9] No question of jurisdiction has been raised in the group grievance before me. The matter at issue concerns, at least on the face of the grievance, the assignment of duties. The grievance specifically refers to particular clauses in the collective agreement as well as to the grievors' occupational group description. There is nothing

to suggest that a decision on this matter would directly affect the proposed intervenor. In fact, the request for intervenor status filed by the FGDTLC-W really relates more to the jurisprudential impact of a decision in this case than to its direct impact. The FGDTLC-W is a separate bargaining unit, with its own collective agreement, operating in a completely different establishment. Although some collective agreement provisions, occupational group descriptions and even work assignments might be similar, my decision in the group grievance will directly and substantially affect only the FGDTLC-E.

[10] A jurisprudential interest in a decision in the group grievance is not sufficient to justify granting the request for intervenor status. In *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.,* [2000] F.C.J. No. 220 (C.A.) (QL), the Federal Court of Appeal denied a request for intervenor status, stating as follows at paragraph 11:

> ***11****. It seems clear that at its highest PSAC's interest is "jurisprudential" in nature; it is concerned that the decision of the Tribunal, if allowed to stand, may have repercussions on litigation involving pay equity issues in the future. It is well established that this kind of interest alone cannot justify an application to intervene.*

[11] In my view, a concern about the jurisprudential impact of a decision does not amount to a substantial interest, as required by the *Regulations*. If it did, then nothing would prevent interventions in almost every case, particularly in cases involving the interpretation of collective agreements, as similar language is frequently found in the collective agreements of different bargaining units across the public service. I agree with the employer that intervention in the circumstances of this case would create an unnecessary delay. Therefore, I cannot allow the FGDTLC-W's request to be added as an intervenor in the hearing of the group grievance.

[12] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[13] The request for intervenor status is denied.

September 12, 2012.

Kate Rogers,
adjudicator