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*Parliamentary Employment
and Staff Relations Act*



Before a panel of the Public
Service Labour Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

HOUSE OF COMMONS

Respondent

Indexed as

Public Service Alliance of Canada v. House of Commons

In the matter of a request for the Board to exercise any of its powers under section 17 of the *Parliamentary Employment and Staff Relations Act*

REASONS FOR DECISION

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

For the Applicant: Adrian Dumitru, Public Service Alliance of Canada

For the Respondent: Shawn Garby, House of Commons

Decided on the basis of written submissions,
filed July 9, September 7, November 20 and 27, 2012 and January 16, 2013.

REASONS FOR DECISION

Request before the Board

[1] The Public Service Alliance of Canada (“the bargaining agent”) seeks the review and amendment of the order of the former Public Service Staff Relations Board (“the former Board”) rendered in *Public Service Alliance of Canada v. House of Commons*, 2003 PSSRB 95, pursuant to section 17 of the *Parliamentary Employment and Staff Relations Act* (“the Act”). The amendment sought is the inclusion of scanning supervisors within the existing scanners bargaining unit, represented by the bargaining agent. The respondent is the scanners’ employer, the House of Commons (“the employer”).

Summary of the evidence

[2] In 2003 PSSRB 95, the former Board certified the bargaining agent as bargaining agent for “all employees of the Security Services Directorate of the House of Commons working as scanners.” That decision was issued on October 22, 2003.

[3] Currently 44 employees of the Security Services Directorate, House of Commons are employed as scanners. There are also four (4) employees employed as scanner supervisors. They are not represented by any bargaining agent.

[4] The responsibilities of a scanning supervisor include, in addition to personnel-related functions: supervising scanning stations, overseeing scanning activities, deploying staff and equipment, directing groups of scanner operators, providing scanning services, and backing up staff at scanning stations. In addition, the supervisors ensure that standards, policy directions and processes are followed, delegate work, perform performance evaluations, provide on-the-job training, and approve leave.

[5] The bargaining agent submits that the scanner supervisors are not employed in a managerial or confidential capacity within the meanings of those terms in the *Act*. Scanner supervisors do not have the authority to hire or fire, to recommend hiring or firing, to transfer or recommend the transfer of an employee in the bargaining unit, or to promote or recommend an employee in the bargaining unit for promotion. The scanner supervisors have the delegated authority to impose discipline, although the common practice demonstrates that they do not discipline an employee in the bargaining unit or recommend disciplinary action. Supervisors do not sit in disciplinary meetings and do not have the right to issue written reprimands,

suspensions or terminations. When an incident that could require disciplinary action occurs, it is escalated for action up the chain of command beyond the scanner supervisor.

[6] The community of interest between employees in the bargaining unit and scanner supervisors is evidenced in the organization and administration of the work. Scanner supervisors often provide scanning services and back up staff at scanning stations. While scanner supervisors provide on-the-job training to new employees, employees in the bargaining unit often provide similar assistance to those employees until they are certified. Deploying staff forms the largest proportion of scanner supervisor's duties and is commonly done in consultation with the employees in the bargaining unit who are given the opportunity to identify their assignment preferences.

[7] The employer's position vis-à-vis the application was initially that the duties and functions of a scanner supervisor are different from those of the members of the bargaining unit. The current job description of scanner supervisor was in place at the time 2003 PSSRB 95 was rendered. Yet, at that time, the bargaining agent did not seek to include the scanner supervisors in the bargaining unit definition. While the employer initially disagreed with this application, by letter dated November 20, 2012, the Public Service Labour Relations Board ("the new Board") was advised that the employer was prepared to consent to the amendment of the certification issued by the former Board in 2003 PSSRB 95 to the extent of adding "all employees of the Security Services Directorate of the House of Commons working as Scanners and Scanner Supervisors."

[8] Neither the bargaining agent nor the employer provided any comment on the appropriateness of the bargaining agent as the bargaining agent for the supervisor scanners. On November 30, 2012, I ordered that a notice of this application be posted in the workplace commencing on January 2, 2013 and ending on March 27, 2013. I also directed that the notice be served on the Professional Institute of the Public Service of Canada (PIPSC), another bargaining agent that represents other employees at the House of Commons. By letter dated January 16, 2013, the PIPSC advised the new Board that it would not intervene in this matter.

[9] No opposition to the bargaining agent's application was filed by an employee of the employer.

Summary of the arguments

[10] Including the scanner supervisors in the bargaining unit along with the scanners is in the interests of viable and amicable labour relations. Given that there are only four (4) employees classified as scanner supervisors, it is not economically reasonable to establish a new bargaining unit for them. Including them in the same bargaining unit as the scanners will avoid fragmentation and inefficiencies and ensure that they belong to a viable bargaining unit. There is sufficient community of interest among the scanner supervisors and the scanner operators to warrant their inclusion in the same bargaining unit.

Reasons

[11] Section 17 of the *Act* provides the new Board with the authority to review the structure of the bargaining unit affected by the application before me and amend the composition of the bargaining unit to include the scanner supervisors. Section 17 reads as follows:

17. (1) Subject to subsection (2), the Board may review, rescind, amend, alter or vary any decision or order made by it, or may re-hear any application before making an order in respect thereof.

(2) Any rights acquired by virtue of any decision or order that is reviewed, rescinded, amended, altered or varied pursuant to subsection (1) shall not be altered or extinguished with effect from a day earlier than the day on which the review, rescission, amendment, alteration or variation is made.

[12] There is no dispute that the scanner supervisors concerned perform very similar job functions to those employees in the bargaining unit within the same organizational structure. The managerial functions performed by the scanner supervisors are limited. They consist primarily of training new employees, scheduling the employees in the bargaining unit and evaluating their performance. I must consider those facts. Furthermore, subsection 17(1) of the *Act* authorizes me to reconsider any order made by the new or the former Board defining a bargaining unit and to amend that order if I find that establishing a new bargaining unit or amending an existing bargaining unit would ensure the satisfactory representation of the employees affected by the application before me. The employer and the bargaining agent agree with that conclusion. They do not dispute the appropriateness of this amendment. The PIPSC,

although given the opportunity to intervene in this application has chosen to not do so. Furthermore no employee of the employer has filed any opposition to this application.

[13] Given that the affected employees are employed by the same employer in the same city and that they perform strikingly similar job functions for that employer, I find that they share a strong community of interest. Given the small number of people employed by the employer as scanner supervisors, it is economically reasonable to include them in an existing bargaining unit, given the employer's consent to the amendment, the lack of intervention by the PIPSC in the application and the lack of opposition by affected employees.

[14] Therefore, I find that amending the composition of the bargaining unit by including the scanner supervisors would permit satisfactory representation of the employees affected by the application.

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

(The Order appears on the next page)

Order

[16] I order that the former Board's decision in 2003 PSSRB 95 be amended to redefine the bargaining unit as follows:

... all employees of the Security Services Directorate of the House of Commons working as Scanners and Scanner Supervisors.

[17] A new certificate will be issued.

May 27, 2013.

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