

Date: 20140523

File: 550-35-9
XR: 145-11-210 and 125-35-97

Citation: 2014 PSLRB 55



*Public Service
Labour Relations Act*

Before a panel of the Public
Service Labour Relations Board

BETWEEN

TARYN MICHELLE MCCUAIG

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

McCuaig v. Public Service Alliance of Canada

In the matter of an application for revocation of certification under section 94 of the
Public Service Labour Relations Act

REASONS FOR DECISION

Before: John G. Jaworski, a panel of the Public Service Labour Relations Board

For the Applicant: Herself

For the Respondent: Ashley Petrin, Public Service Alliance of Canada

Decided on the basis of written submissions,
filed March 18 and April 10, 2014.

REASONS FOR DECISION

Application before the Board

[1] In *Public Service Alliance of Canada v. Canadian Institutes of Health Research*, PSSRB File No. 145-11-210, as amended by the decision in 2001 PSSRB 6 (PSSRB File Nos. 125-35-97 and 145-11-210) on January 24, 2001, the former Public Service Staff Relations Board (“the former Board”) certified the Public Service Alliance of Canada as the representative of the bargaining unit described as follows: “. . . all employees of the Employer in the Administrative Support Category.”

[2] The bargaining unit is known as the “Administrative Support Category.”

[3] On March 18, 2013, Taryn McCuaig (“the applicant”) applied to the Public Service Labour Relations Board (“the Board”) for a declaration that the Public Service Alliance of Canada (“the respondent”) no longer represents a majority of the employees in the bargaining unit.

[4] There were, at the time of the application, 13 members in the bargaining unit.

[5] The application was supported by a form signed by 11 persons identified as employees in the bargaining unit who favour the revocation of the existing certification, on whose behalf the applicant purportedly acts. Only one member of the bargaining unit did not sign the form in favour of the application, as that member was on leave. That member forwarded an email to the applicant indicating her agreement with the application.

[6] The application has been made under subsection 94(1) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), which states as follows:

94. (1) *Any person claiming to represent a majority of the employees in a bargaining unit bound by a collective agreement or an arbitral award may apply to the Board for a declaration that the employee organization that is certified as the bargaining agent for the bargaining unit no longer represents a majority of the employees in the bargaining unit.*

[7] On March 21, 2014, the Board acknowledged receipt of the application and copied it to the respondent and the Canadian Institutes of Health Research (“the employer”).

[8] As required by section 37 of the *Public Service Labour Relations Board Regulations*, SOR/2005-79 (“the *Regulations*”), the Executive Director of the Board fixed April 11, 2014, as the closing date for the application.

[9] Pursuant to section 38 of the *Regulations*, the Executive Director of the Board directed the employer to post a notice provided by the Board in its workplace to bring the application to the attention of employees. On April 11, 2014, the employer confirmed in writing that it had complied with the posting requirement and stated that the notice had been posted from March 24 until April 11, 2014, on the 10th-floor bulletin board at 160 Elgin Street, Ottawa, Ontario, where all employees in the bargaining unit in question are located.

[10] The Board received no statements of opposition to the application from any employee by the closing date.

[11] On April 10, 2014, the respondent filed its reply to the application, accepting the members’ decision to choose not to have union representation.

Reasons

[12] I have examined the application, the reply of the respondent, and the signed consents of 11 of the 13 bargaining unit members and the email of the 1 bargaining unit member who was on leave, all of whom are in agreement with the application. I have as well examined the Board’s notice posted by the employer and the employer’s confirmation that the notice was posted in accordance with the *Regulations*. I am satisfied that the applicant has complied with the procedural requirements for an application for revocation of certification established by the *Act* and *Regulations*.

[13] The Board’s authority in this matter is established by section 96 of the *Act*, which states as follows:

96. If, after hearing the application, the Board is satisfied that a majority of the employees in the bargaining unit no longer wish to be represented by the employee organization, it must revoke the certification of the employee organization as the bargaining agent.

[14] As set out in *Silvestre v. Public Service Alliance of Canada*, 2010 PSLRB 122, at paragraph 20, the only substantive determination required under section 96 of the *Act* is that the Board be satisfied that a majority of the employees in the bargaining unit no

longer wish to be represented by the employee organization. If the Board is satisfied to that effect, revocation of the certification is mandatory.

[15] Section 95 of the *Act*, which states as follows, is clear that the Board's authority to order a vote is discretionary:

95. After the application is made, the Board may order that a representation vote be taken in order to determine whether a majority of the employees in the bargaining unit no longer wish to be represented by the employee organization that is the bargaining agent for that bargaining unit. The provisions of subsection 65(2) apply in relation to the taking of the vote.

[16] Attached to the application was a form, which stated: "I certify that I am in agreement with the revocation of certification of the National Health Union under the Public Service Alliance of Canada." Beneath this statement was the identification of 12 of the 13 bargaining unit members, the 13th being the applicant. Eleven of the 12 named members signed and dated the form. Only one member did not sign the form and was identified as being on leave. An email chain was provided between the applicant and this one other member, which email chain indicates that she is in agreement with the application for revocation.

[17] The respondent confirmed in its reply that there were 13 members in the bargaining unit and that it was not opposing the application. The employer confirmed in correspondence to the Board that it posted the Board's notice under sections 37 and 38 of the *Regulations*, that it was posted in the location where the bargaining unit members worked and that it was posted from March 24 to April 11, 2014. The Board has not received any statements of opposition to the application.

[18] Given the reasons set out in paragraphs 16 and 17 of this decision, I am satisfied that there is no need to conduct a vote under section 95 of the *Act*.

[19] Given the consent of all the members of the bargaining unit to the application, that the respondent does not oppose the application, and that the Board has not received any statements of opposition to the application, I am satisfied that the members of the bargaining unit no longer wish to be represented by the employee organization and that the certification of the Public Service Alliance of Canada to represent the Administrative Support Category employees of the Canadian Institutes of Health Research should be revoked.

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

(The Order appears on the next page)

Order

[21] The application for revocation of the certification of the bargaining agent for employees of the employer, the Canadian Institutes of Health Research, in the Administrative Support Category (National Health Union), is granted.

[22] The certification of the Public Service Alliance of Canada to represent the Administrative Support Category employees of the Canadian Institutes of Health Research, is revoked.

May 23, 2014.

**John G. Jaworski,
a panel of the Public Service
Labour Relations Board**