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File: 525-32-63
XR: 125-32-93 and
572-32-306 to 308 and S2

Citation: 2017 PSLREB 39

*Public Service Labour Relations
and Employment Board Act and
Public Service Labour Relations Act*



Before a panel of the
Public Service Labour Relations
and Employment Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

Indexed as

*Professional Institute of the Public Service of Canada v. Canadian Food Inspection
Agency*

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*

Before: Chantal Homier-Nehmé, a panel of the Public Service Labour Relations and
Employment Board

For the Applicant: Michael Urminsky, Professional Institute of the Public Service of
Canada

For the Respondent: Brenda Dagenais, Canadian Food Inspection Agency

Decided on the basis of written submissions
filed May 2 and 26, June 16 and August 12, 2016, March 7, March 16 and 20, 2017.

REASONS FOR DECISION

I. Request before the Board

[1] On May 2, 2016, the Professional Institute of the Public Service of Canada (“the Institute”) brought an application to the Public Service Labour Relations and Employment Board (“the Board”) under s. 43 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*). It requested an amendment of *Canadian Food Inspection Agency v. Public Service Alliance of Canada*, PSSRB File No. 140-32-14 (19971027), as amended by *Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada*, PSSRB File No. 125-32-90 (19990420), and further amended by *Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency*, PSSRB File No. 125-32-93 (19991222). The amendment sought is the inclusion of the occupational group to the description of the Scientific and Analytical bargaining unit (“the bargaining unit”). The Canadian Food Inspection Agency (“the Agency”) requested that the identification of managerial or confidential positions with regard to the bargaining unit be amended accordingly, as the case may be.

[2] As indicated in the Public Service Staff Relations Board’s (PSSRB) December 22, 1999 decision, positions in the classification groups Biological Sciences (BI), Chemistry (CH), and Agriculture (AG) all belong to the Institute’s bargaining unit.

[3] At page 2 of its decision dated December 22, 1999, the PSSRB determined the following:

2) *The Professional Institute of the Public Service of Canada is the bargaining agent for:*

...

b) all the employees of the employer performing duties in positions which are or would be classified in the Agriculture (AG), Biological Sciences (BI) (which includes the former Scientific Regulation (SG) Group), Chemistry (CH), Commerce (CO), Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific Research (SE), and Economics, Sociology and Statistics (ES) Groups in the classification system of the Treasury Board.

...

3) *The Public Service Alliance of Canada is the bargaining agent for:*

a) all the employees of the employer other than those identified in paragraphs 2(a), (b) and (c) above.

[4] On May 26, 2016, the Agency informed the Board that it supported the Institute's application to add the Regulatory Science (SR) occupational group to the description of the bargaining unit. The Agency explained that the new SR Group, an Agency classification standard, replaces the BI, CH, and AG classification groups previously used at the agency. The SR group was created by the Agency for its own use, as such; it is not "in the classification system of the Treasury Board". Therefore, it has requested that it be reflected in the description. Even though the SR Group created by the Agency replaces the BI, CH and AG classification groups, the Institute and the Agency agree with maintaining the inclusion of those three groups in the definition of the bargaining unit in the event any positions are created in the years ahead.

II. Reasons

[5] The legislation and Board overseeing the bargaining unit in question has been twice amended and the following statutory provisions allow the Board to make amendments to decisions issued by the PSSRB.

[6] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act* (S.C. 2003, c.22; "PSMA"), was proclaimed into force (SI/2005-22 to24), creating the Public Service Labour Relations Board (PSLRB) to replace the PSSRB. On the same day, the consequential and transitional amendments contained in sections 36 to 66 of the PSMA also came into force (SI/2005-24). Pursuant to s. 47 of the PSMA, a decision, order, determination and declaration made by the PSSRB is deemed to have been made by the PSLRB.

[7] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2003, c.40, s.365) was proclaimed into force (SI/2014-84), creating the Board to replace the PSLRB as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c.40; "EAP 2013 No.2") also came into force (SI/2014-84). Pursuant to s. 402 of the *EAP 2013 No. 2*, an order or decision made by the PSLRB is deemed to have been made by the Board.

[8] Section 43 of the *PSLRA* states as follows:

43 (1) Subject to subsection (2), the Board may review, rescind or amend any of its orders or decisions, or may re-hear [sic] any application before making an order in respect of the application.

2) A right that is acquired by virtue of an order or a decision that is reviewed, rescinded or amended by the Board may not be altered or extinguished with effect from a day that is earlier than the day on which the review, rescission or amendment is made.

A. Amendment to Bargaining Unit Description

[9] After reviewing the documentation that the parties presented on May 2 and 26, June 16, and August 12, 2016, the Board sent a notice on August 24, 2016, pursuant to the *Public Service Labour Relations Regulations* (SOR/2005-79; “the *Regulations*”) to the Public Service Alliance of Canada (“the Alliance”) as a potentially affected party.

[10] The Alliance is the bargaining agent for all Agency employees other than those represented by the Institute. If the Board were to grant the Institute’s application, it would mean that the Board would be amending the description of the Alliance’s bargaining unit. The Board gave the Alliance until September 8, 2016, to file an application for intervenor status and to provide its position. On September 15, 2016, the Board’s registry followed up with the Alliance by email and left voice messages. Although the Alliance received the notice, it did not respond.

[11] Based on the parties’ submissions, the Board is satisfied that the amendment proposed in the application to amend the bargaining unit is appropriate for collective bargaining. Accordingly, pursuant to s. 43 of the *PSLRA*, the Board grants the application to amend the PSSRB’s decision of December 22, 1999, insofar as it relates to the determination of the units appropriate for collective bargaining, and it substitutes the following for paragraphs 2(b) and 3(a):

2) *The Professional Institute of the Public Service of Canada is the bargaining agent for:*

b) all the employees of the employer performing duties in positions which are or would be classified under the Agriculture (AG), Biological Sciences (BI) (which includes the former scientific regulation (SG) Group), Chemistry (CH), Commerce (CO), Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific and Research (SE), and Economics, Sociology and Statistics (ES) Groups in the classification system of the Treasury Board, as well as the

Regulatory Science (SR) Group in the classification system of the Canadian Food Inspection Agency.

3) The Public Service Alliance of Canada is the bargaining agent for:

a) all the employees of the employer other than those identified in paragraphs 2(a), (b) and (c) above.

B. Exclusions - Managerial or Confidential Positions

[12] In its May 26, 2016 response to the Institute's application to amend the bargaining unit, the Agency requested amendments to the PSLRB orders dated November 27, 2006 (Board File Nos. 572-32-410 and No. 572-32-S2), and October 25, 2006 (Board File Nos. 572-32-306 to 308 and S2 and PSSRB order dated August 27, 1987 regarding an AG position (Board File No. 172-02-478) ("the exclusion orders") to reflect the new Agency classification standard. It requested that the identification of managerial or confidential positions with respect to the bargaining unit be amended accordingly, as the case may be. On June 16, 2016, the Institute consented to this request. However, on March 7, 2017, the Agency specified that there was only one excluded position that would be affected by the creation of the new SR group and the Institute agreed on March 16, 2017. As such, the request only affects the October 25, 2006 exclusion order.

[13] Therefore, the exclusion order pertaining to that particular position will be amended accordingly.

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

(The Order appears on the next page)

III. Order

[15] The definition of the bargaining unit issued in the Board's December 22, 1999 decision will be amended as follows:

2) The Professional Institute of the Public Service of Canada is the bargaining agent for:

b) all the employees of the employer performing duties in positions which are or would be classified under the Agriculture (AG), Biological Sciences (BI) (which includes the former scientific regulation (SG) Group), Chemistry (CH), Commerce (CO), Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific and Research (SE), and Economics, Sociology and Statistics (ES) Groups in the classification system of the Treasury Board, as well as the Regulatory Science (SR) Group in the classification system of the Canadian Food Inspection Agency.

[16] New certificates will be issued for the bargaining unit and the one represented by the Alliance.

[17] The annex to the October 25, 2006, order in PSLRB File No. 572-32-306, 572-32-307, 572-32-308 and S2 is amended with respect to position number 26880 from classification CH-05 to classification SR-05.

April 21, 2017.

**Chantal Homier-Nehmé,
a panel of the Public Service Labour
Relations and Employment Board**