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File: 190-34-334

Citation: 2004 PSSRB 79



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

IN THE MATTER OF
THE PUBLIC SERVICE STAFF RELATIONS ACT
and a dispute affecting the
Public Service Alliance of Canada, as bargaining agent,
and the Canada Customs and Revenue Agency, as employer,
in respect of all the employees in the
Program Delivery and Administrative Services Group bargaining unit

TERMS OF REFERENCE OF THE CONCILIATION BOARD

To: Prof. Thomas S. Kuttner, Q.C., chairperson of the conciliation board;
Mr. James Wolfgang and Ms. Sandra Budd, conciliation board members

[1] By letter of May 11, 2004, the Public Service Alliance of Canada, pursuant to section 76 of the *Public Service Staff Relations Act* (the *Act*), requested the establishment of a conciliation board for the Program Delivery and Administrative Services Group bargaining unit.

[2] Sections 76 to 90 of the Act apply where conciliation is the method of dispute resolution. The following sections, which set out the procedure for a conciliation board, are of particular interest:

84. Forthwith on the establishment of a conciliation board, the Chairperson shall deliver to the conciliation board a statement setting out the matters on which the board shall report its findings and recommendations to the Chairperson, and the Chairperson may, either before or after the report to him of its findings and recommendations, amend the statement by adding thereto or deleting therefrom any matter the Chairperson deems necessary or advisable in the interest of assisting the parties in reaching agreement.

85. (1) A conciliation board shall, as soon as possible after the receipt by it of the statement referred to in section 84, endeavour to bring about an agreement between the parties in relation to the matters set out in the statement.

(2) Except as otherwise provided in this Act, a conciliation board may determine its own procedure, but shall give full opportunity to both parties to present evidence and make representations.

(3) The chairperson of a conciliation board may, after consultation with the other members of the board, fix the times and places of its sittings and shall notify the parties of the times and places so fixed.

(4) The chairperson of a conciliation board and one other member constitute a quorum, but in the absence of a member at any sitting of the board the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

(5) A decision of a majority of the members of a conciliation board on any matter referred to it is a decision of the board thereon.

(6) The chairperson of a conciliation board shall forward to the Chairperson a detailed statement signed by him of the sittings of the conciliation board and of the members and witnesses present at each sitting.

86. *A conciliation board has all the powers of the Board set out in paragraphs 25(a) to (e) and, in addition, may authorize any person to exercise any of the powers of the conciliation board as set out in paragraphs 25(b) to (e) and may require the person to report to the conciliation board thereon.*

87. (1) *A conciliation board shall, within fourteen days after the receipt by it of the statement referred to in section 84, or within such longer period as may be agreed on by the parties or determined by the Chairperson, report its findings and recommendations to the Chairperson.*

(2) Subsection 57(2)¹ applies, with such modifications as the circumstances require, in relation to a recommendation in a report of a conciliation board.

(3) No report of a conciliation board shall contain any recommendation concerning the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, deployment, lay-off or termination of employment, other than by way of disciplinary action, of employees.

(4) After a conciliation board has reported to the Chairperson its findings and recommendations on the matters set out in the statement referred to in section 84, the Chairperson may direct it to reconsider and clarify or amplify its report or any part thereof, or to consider and report on any matter added to the statement pursuant to that section.

(5) Where the conciliation board is directed under subsection (4) to reconsider its report or consider an added matter, the report shall be deemed to have been received by the Chairperson notwithstanding that the reconsidered report or the report on the added matter has not been received by the Chairperson.

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57. (2) No collective agreement shall provide, directly or indirectly, for the alteration or elimination of any existing term or condition of employment or the establishment of any new term or condition of employment,

(a) the alteration or elimination or the establishment of which would require or have the effect of requiring the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating moneys required for its implementation; or
(b) that has been or may be established pursuant to any Act specified in Schedule II.

[3] With its letter of May 11, 2004, the Public Service Alliance of Canada provided a list of the terms and conditions of employment that it wished to have referred to the conciliation board. That letter, the terms and conditions of employment and supporting material are attached hereto as Schedule I.

[4] By letter of May 20, 2004, the Canada Customs and Revenue Agency provided additional terms and conditions of employment that it wished to have referred to the conciliation board. That letter, the terms and conditions of employment and supporting material are attached hereto as Schedule II.

[5] The Public Service Alliance of Canada, by letter of May 31, 2004, replied to the employer's letter of May 20, 2004. That letter is attached hereto as Schedule III.

[6] In a letter dated June 11, 2004, the Public Service Alliance of Canada withdrew certain proposals previously referred to the conciliation board. That letter is attached hereto as Schedule IV.

[7] Accordingly, pursuant to section 84 of the *Act*, the matters on which the conciliation board shall report its findings and recommendations to me in this dispute are those set out as outstanding in Schedules I, II, III and IV attached hereto.

[8] Should any jurisdictional question arise during the course of the hearing as to the inclusion of a matter in these terms of reference, that question must be submitted forthwith to me because the Chairperson of the Public Service Staff Relations Board is, according to the provisions of section 84 of the *Act*, the only person authorized to make such a determination.

**Yvon Tarte,
Chairperson**

DATED AT OTTAWA, June 29, 2004