

Date: 20031022

File: 442-HC-16

Citation: 2003 PSSRB 95



Parliamentary Employment and
Staff Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

HOUSE OF COMMONS

Employer

RE: Application for Certification pursuant to section 25 of the
Parliamentary Employment and Staff Relations Act

Before: Guy Giguère, Deputy Chairperson

For the Applicant: Alain Piché, Public Service Alliance of Canada

For the Employer: Mary J. Gleason, Counsel

Heard at Ottawa, Ontario,
September 19, 2003.

DECISION

[1] This is an application for certification made pursuant to section 25 of the *Parliamentary Employment and Staff Relations Act* (the Act) which states the following:

25. Where the Board

(a) as received from an employee organization an application for certification as bargaining agent for a bargaining unit in accordance with this Part,

(b) has determined the group of employees that constitutes a unit appropriate for collective bargaining in accordance with section 23,

(c) is satisfied that a majority of employees in the bargaining unit wish the employee organization to represent them as their bargaining agent, and

(d) is satisfied that the persons representing the employee organization in the making of the application have been duly authorized to make the application,

the Board shall, subject to this Part, certify the employee organization making the application as bargaining agent for the employees in that bargaining unit.

[2] On July 26, 2002, the Public Service Alliance of Canada (PSAC) filed with the Board a Form 4, Application for Certification, for certain employees employed by the House of Commons. The proposed unit was described as being comprised of all full-time and part-time employees of the Security Services Directorate of the House of Commons employed as scanners and classified within the Administrative Services Sub-Group (ADS) of the Administrative Services Group (AD). According to the PSAC, there were 37 employees in the proposed unit with 26 employees representing 73% of the total membership having signed cards and paid fees in support of the application. Subsequently, the PSAC provided the Board with one additional signed card, thus bringing the total cards signed to 27.

[3] The Board, on July 31, 2002, forwarded the Application for Certification to the attention of the employer, set August 30, 2002, as the terminal date and requested that the employer provide the Board with a reply along with lists of employees in the bargaining unit proposed by the applicant as well as a separate list identifying those persons in the proposed bargaining unit who were, in the opinion of the employer, employed in a managerial or confidential capacity. The Board also forwarded to the employer, on August 6, 2002, copies of the Form 5, Notice to Employees of Application

for Certification and requested that the employer immediately post them in conspicuous places where they were most likely to come to the attention of employees who might be affected by the application and to advise the Board as to when the notices were posted. Confirmation of posting was received by the Board on August 8, 2002.

[4] On August 27, 2002, the House of Commons Security Service Employee Association (SSEA) filed a Form 8, Application for Certification by Intervener, opposing the application of the Public Service Alliance of Canada. In the application filed with the Board, the SSEA stated that the bargaining unit described by the PSAC was not appropriate for collective bargaining and that these employees should be part of the SSEA bargaining unit as described in the PSSRB certificate given to the SSEA on March 24, 1987. Copies of the Intervention were forwarded to both the applicant and employer by the Board on September 5, 2002.

[5] On August 30, 2002, the employer filed a Form 6, Reply by Employer to Application for Certification. It proposed that the bargaining unit be comprised of all employees of the employer in the Security Services Directorate working as scanners save and except students. According to the employer, the total number of employees in the proposed bargaining unit was twelve. When compared to the signed memberships submitted by the PSAC, only 7 of the 12 employees had signed membership cards. The employer proposed no managerial or confidential exclusions. Given that the Board only forwarded the Application for Certification by Intervener to the employer on September 5, 2002, after the employer had filed its reply to the PSAC's application for certification, the employer filed a separate reply to the Intervener's Application for Certification on September 19, 2002. The employer took the position that the scanners who met the definition of employee under the Act did not come within the bargaining unit represented by SSEA and should be included in a unit of their own.

[6] The PSAC filed a reply to SSEA's application on September 19, 2002, and, following receipt of the employer's reply to SSEA's application, filed further comments with the Board contesting the employer's position regarding the exclusion of students from the bargaining unit.

[7] On October 2, 2002, SSEA informed that Board that it was withdrawing its application for intervention. The Board in turn advised both the PSAC and the employer of this withdrawal.

[8] In light of the differing views of the parties and the questions raised, and pursuant to the powers of the Board under section 10 and subsection 26(1) of the Act, the Board appointed two officers to inquire into the matter and to submit a report thereon to the Board.

[9] A draft report was submitted to the parties by the Board on February 27, 2002, for their review and comments. The PSAC and the employer submitted their comments on March 4th and March 6th respectively. The final report was sent to both parties on March 19, 2003 and both were advised that the Board intended to deal with the matter through an oral hearing. At the hearing, both parties after they had made their opening statements, asked that, as the presiding member, I attempt to mediate the situation. The mediation was successful and on September 29, 2003, the parties signed a Memorandum of Agreement, settling all issues in the certification application file.

[10] Therefore, the Board has come to the following findings.

[11] The Public Service Alliance of Canada is one of four bargaining agents to represent employees of the House of Commons. Specifically, the PSAC presently represents employees of the following groups and sub-groups: Operational Group, Reporting and Text Processing sub-groups of the Parliamentary Group and the Postal Service sub-group of the Administrative Support Group. The Board finds that the Public Service Alliance of Canada is an “employee organization” as described in section 3 of the Act.

[12] The Board is satisfied that Alain Piché, Debbie Broad and Sean Blatt, the individuals representing the PSAC in the making of the application, have been duly authorized to do so.

[13] With respect to the issue of the definition of the bargaining unit, the parties have agreed that it should be described as

All employees of the Security Services Directorate of the House of Commons working as scanners.

[14] However, the parties also agreed that employee status, for the purposes of inclusion in the above-mentioned bargaining unit, should be governed by the Rules Governing Employee Status attached to the Memorandum of Agreement as Attachment "A". Having regard to the duties and classification of the employees in the proposed bargaining unit in relation to the classification plan in place at the House of Commons, the Board has determined that the unit as described in the Memorandum of Agreement and as set out above constitutes a unit appropriate for collective bargaining.

[15] Pursuant to paragraph 4(c) of the Memorandum of Agreement between the parties, the Board orders that a representation vote be conducted in the most expeditious manner possible amongst the employees listed in Attachment "B" to the Memorandum of Agreement who are still employed by the House on the date the representation vote is ordered. This matter is therefore referred to the Secretary of the Board for the purpose of making arrangements for the conduct of the representation vote.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, October 22, 2003.