

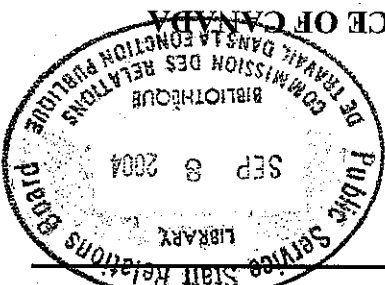
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Citation: 2004 PSSRB 92

Before the Public Service
Staff Relations Board

Public Service Staff
Relations Act



BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

LIBRARY OF PARLIAMENT

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

Intervener

RE:

Application for Certification

Before:

Guy Giguère, Deputy Chairperson

For the Applicant:

Michel Gingras, Professional Institute of the Public Service of Canada

For the Employer:

Carole Piette, Counsel

For the Intervener:

Alain Piché, Public Service Alliance of Canada

Heard at Ottawa, Ontario,
May 4 and 5, 2004.

DECISION

[1] On June 24, 2002, the Professional Institute of the Public Service of Canada (PIPSC) filed an application for certification to represent all non-unionized but unionizable employees of the Library of Parliament (Library). In its reply to the Institute's application for certification, the employer stated that a number of positions had to be excluded because the employees in question were persons employed in a managerial or confidential capacity and that, for the other positions, a number of employees shared a greater community of interest with the LS, LT and CGS subgroups, bargaining units of the Public Service Alliance of Canada (Alliance).

[2] A hearing in this matter was held in September 2003 and, at the request of the parties, the hearing dealt only with the employer's objection to include some 20 positions in the bargaining unit on the grounds that the employees in question officially handled grievances at the first level.

[3] In a decision rendered on November 28, 2003 (2003 PSSRB 107), I found after reviewing the jurisprudence, that the persons occupying the 20 positions in question were officially responsible for grievances for the employer. I therefore concluded that those 20 positions were managerial or confidential positions within the meaning of the *Parliamentary Employment and Staff Relations Act (PESRA)*, which were to be excluded from the proposed bargaining unit.

[4] On April 23, 2004, Mr. Piché wrote to the Board to say that, in the Alliance's view, certain Library of Parliament employees belonging to the MPA (Management, Professional and Administrative) Subgroup performed duties that met the definitions of the LAS (Library Administrative Services) Subgroup and the CGS (Corporate General Services) Subgroup, for which the Alliance is the bargaining agent.

[5] Mr. Piché asked that the Board render a decision as to which bargaining unit was appropriate for the positions in question, a decision that could be rendered in the context of the Institute's application for certification in this case.

[6] On April 28, 2004, Ms. Piette wrote the Board to say that, in the employer's view, a number of non-unionized positions in the MPA Subgroup shared a greater community of interest with the CGS Subgroup.

[7] Upon receiving a copy of Mr. Piché's letter to the Board dated April 23, 2004, the employer revised its position and considered that additional positions, currently in the

Position Number	Title	Classification	Incumbent
P-128 Generic Job Description	Administrative Assistant, Parliamentary Public Programs	MPA-1	F. Brown
P-126 Generic Job Description	Administrative Assistant, Parliamentary Public Programs	MPA-1	D. Lambert (from 20/08/01 to 02/09/02); A. Simard (from 24/03/03 to 07/12/03); F. Leduc from 05/01/04 to present)
I-050	Administrative Assistant to Directors of Information and Documentation Branch	MPA-1	L. Bruyère

At April 28, 2004

Positions Sharing a Community of Interest with the CGS Subgroup

[10] At the start of the hearing, Ms. Piette stated that the list of MPA employees who, in the employer's view, had a greater community of interest with the CGS subgroup, had to be amended and would now read as follows:

[9] Thus, the Institute would propose, upon resumption of the hearing of this case, that the bargaining units represented by the Alliance and the MPA employees be combined under a single bargaining unit certificate and that a vote be held to establish whether the Alliance or the Institute would hold the merged certificate and represent the MPA employees.

[8] On April 29, 2004, Mr. Gingras wrote to the Board further to the correspondence between the Alliance and the employer. It was the Institute's view that the large number, size and complementary nature of the bargaining units required, in the interests of industrial peace, that the certificates held by the Alliance be combined into a single certificate, including the unionizable employees originally sought by the Institute. In that way, there would be no further discussion about any community of interest specific to the employees of the MPA Subgroup.

of those positions was attached to Ms. Piette's letter.

MPA Subgroup, shared a greater community of interest with the CGS Subgroup. A list

Position Number	Title	Classification	Incumbent
P-259	Administrative Officer, Education Outreach	MPA-1	K. Cameron (from 11/06/01 to 24/08/02); D. Lambert (from 03/09/02 to 13/12/03); K. Bourke (from 16/12/03 to present)
F-246	Material Management Officer	MPA-1	F. Charette
R-151 Generic Job Description	Division Administrative Services Coordinator	MPA-2	L. Clayton (formerly substantive position, however on LWOP since 10/07/00; thus has not had a home position since 07/01/04); N. Quesnel (on assignment in the R-151T position since 03/02/03, but appointed to the R-151 home position on 07/01/04)
R-264 Generic Job Description	Division Administrative Services Coordinator	MPA-2	G. Cousineau (substantive position since 15/09/01, however on LWOP from 12/03/04 to present)
R-068 Generic Job Description	Division Administrative Services Coordinator	MPA-2	R.A. Leclerc
R-147 Generic Job Description	Division Administrative Services Coordinator	MPA-2	H. McLean
R-070 Generic Job Description	Division Administrative Services Coordinator	MPA-2	N. Quesnel (substantive position from 01/03/00 to 06/01/04, on maternity leave from 04/02/02 to 02/02/03); M.F. Marleau (acting assignment to R-070T position from 01/03/02 to 12/01/03); G. Cousineau (on assignment to R-070T position since 13/01/03, however on LWOP since 12/03/04)
P-105	Publications Support	MPA-1	S. Routhier
F-009	Finance and Material Management Officer	MPA-2	C. Cullen
P-149	Purchasing and Administrative	MPA-1	D. Leonard

[13] In analyzing the descriptions of positions P-126 and P-128, he explained the similarities between the responsibilities of those positions (Exhibit E-18, pages 4 and 5) and the definition of the CGS Subgroup (Exhibit E-17, page 14).

[12] A document from the Library of Parliament entitled *Definition of Groups and Subgroups* (Exhibit E-17) was filed in evidence. Mr. Lacene analyzed the definitions of the Library Administrative Services (LAS) Subgroup and the Corporate General Services (CGS) Subgroup. He emphasized that the main differences between the two subgroups are that LAS Subgroup employees must exercise a certain degree of discretion and know the organization's objectives, but that the two subgroups are otherwise very similar in their duties.

[11] Tarik Lacene, the Library's Chief, Labour Relations, Classification and Staffing, explained that the list of MPA employees prepared by the employer identified 15 positions that share a greater community of interest with the CGS Subgroup. He testified specifically on two administrative positions, P-126 and P-128, and said that those positions were similar to seven other positions: R-151, R-264, R-068, R-147, R-070, I-050 and P-259. He also testified on position I-033 ("Senior Binder/Conservator") and indicated that that position had been selected from the remaining positions in the interest of expediency.

Evidence

Position Number	Title	Classification	Incumbent
I-033	Senior Binder/Conservator	MPA-3	Mr. Lapointe (on secondment at National Archives, however, has been in position I-033 since 22/04/91)
I-033T	Senior Binder/Conservator		R. Damphousse (on secondment at LoP, not an employee)

Additions to Community of Interest List

Position Number	Title	Classification	Incumbent
	Coordinator		

proposes.

[19] Lastly, Ms. Piette submitted that it would be an error in law to grant the Institute's application in combining the bargaining units represented by the Alliance and the MPA Subgroup and in giving them a vote to determine who would represent the new subgroup. Nothing in the *PESRA* permits a vote to be held as the Institute now

have to go before the Board for adjudication of their disputes.
would be impossible for the parties to come to an agreement, and they would always be able to bargain effectively, which would cause serious staff relations problems. It unit. Because of the heterogeneous nature of the MPA Subgroup, the unit would not be by the Institute would be inappropriate for the purpose of constituting a bargaining [18] Ms. Piette further stated that it was the employer's position that the unit sought

Subgroup.

[17] Ms. Piette first submitted, as the evidence showed, that the 15 positions identified on the employer's list shared a greater community of interest with the CGS

Employer's Arguments

[16] Denis Leonard, a purchasing and administrative officer at the Library, testified as to how his position had evolved since 1997. He had previously been an administrative purchasing clerk in the CGS Subgroup, a clerk position in which he followed his supervisor's instructions. His supervisor met the suppliers and had to enter the information in the data base. Now he is in the MPA group; he meets with suppliers and makes purchasing recommendations.

[15] In response to a question by Mr. Piché, Mr. Lacene said that the MPA Subgroup had been constituted by grouping together non-unionized employees from two subgroups. Seventy (70) employees had been affected by the regrouping, 12 of whom were from the LM Subgroup and 58 from the LAS Subgroup.

they are not represented by a union.

[14] He did the same for position I-033 (Exhibit E-19, pages 3 and 4) and the definition of the CGS Subgroup (Exhibit E-17, page 14). Mr. Lacene also testified that the MPA Subgroup is highly heterogeneous because it is composed of employees whose equivalent positions in the public service would be in the CS, PE, FI, PM, CR and other subgroups. He stated that the common factor among those employees is that

[20] In support of these arguments, Ms. Pietre submitted the following decisions: *Public Service Alliance of Canada and Library of Parliament*, PSSRB file 442-I-9 (1987) (OL) and *National Energy Board v. Public Service Alliance of Canada*, 2003 PSSRB 79.

Applicant's Arguments

[21] Mr. Gingras submitted that the criterion used by the Board in its decisions on applications for certification is to look for the unit most capable of bargaining. The duties of the employees in the MPA and CGS subgroups clearly overlap. Adding another bargaining unit for an employer with approximately 275 unionizable employees is definitely not conducive to good staff relations. The bargaining ability of the unit initially sought by the Institute would not be the same as if the initially proposed unit had been put together from the subgroups represented by the Alliance.

[22] Mr. Gingras submitted that, in determining the appropriate bargaining unit, the adjudicator is not bound by the description of the unit initially proposed by the applicant, in that it may subtract from or add to the proposed unit. On this point, Mr. Gingras cited Fernand Morin, of the Department of Industrial Relations at Laval University, in *Rapports collectifs du travail*, Edition Themis Inc., 1982, pp. 234 ff. One of the criteria used by Professor Morin in that book is the fostering of industrial peace, the adjudicator considering, in determining a bargaining unit, whether it will be capable of achieving all the ends sought by the legislation. Thus, according to Professor Morin, too many certifications within a single employer may cause needless repetitions of the bargaining process, thus increasing the number of opportunities for conflict.

[23] Mr. Gingras stated that the original purpose of the Institute's application was to obtain a unionizable subgroup of approximately 50 employees. That bargaining unit would have been viable, but removing from that subgroup the employees who are the first level of the grievance process and excluding 15 employees because they have a greater community of interest with the CGS Subgroup would leave only 15 to 18 members. It would be very difficult for such a small unit to convince the employer to change its position in a negotiation.

[24] In Mr. Gingras' view, a revised certificate should be issued. The Institute's initial position has changed, and, as a result, the Institute now seeks a vote to determine who the bargaining agent will be for this new integrated bargaining unit. Mr. Gingras

submitted the following decisions in support of his arguments: *Communications Security Establishment and PSAC and PIPSC*, 2001 PSSRB 14, *Parks Canada and PIPSC and PSAC*, 2001 PSSRB 39, and *National Energy Board and PSAC and PIPSC*, 2003 PSSRB 79.

Intervener's Arguments

[25] Mr. Piché stated that, as a result of the Institute's application, the Alliance had obtained information from the employer enabling it to establish that a number of positions targeted by the application should belong to the subgroups represented by the Alliance. That led the Alliance, on April 23, 2004, to file an application with the Board under section 24 of the *PESRA* to determine the membership of the employees in the LAS and CGS subgroups.

[26] Mr. Piché said that discussions had taken place with the employer and would continue on the membership of certain employees in the LAS Subgroup. The Alliance's application under section 24 of the *PESRA* ultimately concerns only the 15 positions identified on the employer's list as having a greater community of interest with the CGS Subgroup.

[27] Mr. Piché submitted that the evidence filed by the employer showed that those 15 positions should belong to the CGS Subgroup.

[28] Mr. Piché submitted that the Institute's application for a vote to determine who would represent a new bargaining unit made up of the subgroups represented by the Alliance and the MPA Subgroup should be dismissed.

[29] The Institute did not bring evidence concerning the members of the CGS Subgroup. The vote provided for in subsection 26(2) of the *PESRA* concerns the employees of a proposed unit, not a vote by the employees of an existing unit. In Mr. Piché's view, allowing such a vote would be a violation of section 21 of the *PESRA*, which establishes limited periods during which the employee organization may engage in raiding.

[30] Mr. Piché further submitted that the cases submitted by the Institute could not apply to the situation because *Parks Canada, supra*, concerned a right of succession, and *Communications Security Establishment and National Energy Board, supra*, concerned applications for review of a previous decision on the certification of the

bargaining unit rendered by the Board. The employer had filed the application under section 27 of the *Public Service Staff Relations Act* (PSSRB), which cannot apply in this case concerning an application for certification of a new bargaining unit.

Reasons for Decision

[31] The first issue I must address concerns the Institute's application to combine the bargaining units represented by the Alliance and the unionizable MPA employees. In the letter of April 29, 2004, Mr. Gingras stated that the Institute had amended its initial application and requested that the certificates held by the Alliance be combined in a single certificate, including the unionizable employees originally sought by the Institute. The employer and the intervenor both submitted that such an application cannot be consistent with the *PESRA*. A reading of the following sections of the *PESRA* will assist in answering this question:

When Application for Certification may be Made

21. (1) Where a collective agreement or an arbitral award is in force and is for a term of not more than two years, an employee organization may apply to the Board for certification as bargaining agent for any of the employees in the bargaining unit to which the agreement or award applies only after the commencement of the last two months of its operation.

(2) Where a collective agreement or an arbitral award is in force and is for a term of more than two years, an employee organization may apply to the Board for certification as bargaining agent for any of the employees in the bargaining unit to which the agreement or award applies only

(a) after the commencement of the twenty-third month of its operation and before the commencement of the twenty-fifth month of its operation;

(b) during the two month period immediately preceding the end of each year that the agreement or award continues to operate after the second year of its operation; or

(c) after the commencement of the last two months of its operation.

(3) Where a collective agreement referred to in subsection (1) or (2) provides that it will continue to operate after the term specified therein for a further term or

26. (1) For the purpose of enabling the Board to discharge any obligation imposed by section 25 to satisfy itself as to the matters described in paragraphs (c) and (d) of that section, the Board may

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

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

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

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

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

25. Where the Board

Certification

(4) Where no collective agreement or arbitral award in respect of a bargaining unit is in force but an employee organization has been certified as bargaining agent for any of the employees in the bargaining unit, an employee organization may, after the expiration of twelve months from the date of that certification or, with the consent of the Board, at an earlier time, apply to the Board for certification as bargaining agent for any of the employees in the bargaining unit.

successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the collective agreement, an employee organization may apply to the Board for certification as bargaining agent for any of the employees in the bargaining unit to whom the collective agreement applies at any time permitted by subsection (1) or (2), as the case may be, or during the two month period immediately preceding the end of each year that the collective agreement continues to operate after the term specified therein.

(a) examine, in accordance with any regulations that may be made by the Board in that behalf, such evidence as is submitted to it respecting membership of the employees in the proposed bargaining unit in the employee organization seeking certification;

(b) make or cause to be made such examination of records or make such inquiries as it deems necessary; and

(c) examine documents forming or relating to the constitution or articles of association of the employee organization seeking certification.

(2) For the purpose of satisfying itself under paragraph 25(c) that a majority of employees in the bargaining unit wish the employee organization to represent them as their bargaining agent, the Board, in its sole discretion, may direct that a representation vote be taken among the employees in the bargaining unit.

(3) Where under subsection (2) the Board directs that a representation vote be taken, the Board shall

(a) determine the employees that are eligible to vote; and

(b) make such arrangements and give such directions as it deems requisite for the proper conduct of the representation vote including the preparation of ballots, the method of casting and counting ballots and the custody and sealing of ballot boxes.

(4) [Repealed, 1993, c. 34, s. 100]

R.S. (1985), c. 33 (2nd Supp.), s. 26; 1993, c. 34, s. 100.

[32] Section 21 of the PESRA specifically provides for times when an application for certification may be made for existing bargaining units. The purpose of this provision is to restrict raiding to a very limited period in order to ensure more peaceful labor relations. I am satisfied that raiding is not the Institute's aim in this application, but granting that application would be a violation of section 21 of the PESRA. It is also clear that the vote provided for in subsection 26(2) of the PESRA concerns an application for certification for a new bargaining unit and therefore cannot include existing bargaining units.

[33] The Institute's amended application is therefore dismissed.

P.S.S.R.B. Translation

OTTAWA, July 22, 2004

Guy Giguère
Deputy Chairperson

[38] It was apparent from the arguments of the parties that it would be more logical for the parties to continue those discussions on those positions than to constitute a subgroup from remaining and unionizable MPA employees, since that subgroup, which is too small and disparate, would be unable to bargain effectively.

[37] The employer and the Alliance stated at the hearing in this matter that other MPA Subgroup positions would be the subject of discussions because, in the Alliance's view, those positions, which are classified MPA, might have a greater community of interest with the LS Subgroup.

[36] The employer showed at the hearing of this case that those positions share a community of interest with the CGS Subgroup. I conclude from the evidence I received that the said positions, which appear on the list provided by the employer, do indeed meet the definitions of the CGS Subgroup and must therefore be part of that bargaining unit. The Alliance's application under section 24 of the *PESRA* is granted and those 15 positions belong to the CGS Subgroup.

[35] The second issue I must address concerns those 15 positions and is whether those positions should belong to the CGS Subgroup. The Alliance is in fact asking the Board, under section 24 of the *PESRA*, to determine whether the said employees belong to the CGS Subgroup.

[34] In this case, the employer and intervenor both objected to the inclusion of some 15 employees of the MPA Subgroup in the unit initially proposed because, in their view, those employees had a greater community of interest with the CGS Subgroup represented by the Alliance.