

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

**FEDERAL GOVERNMENT DOCKYARDS TRADES AND
LABOUR COUNCIL (ESQUIMALT)**

Applicant

and

TREASURY BOARD

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

Intervener

RE: Application under section 34 of the Act - Ship Repair Group-West

Before: Yvon Tarte, Chairperson

For the Applicant: Dan Quigley, Federal Government Dockyards Trades and Labour Council (Esquimalt)

For the Employer: Harvey Newman, Q.C.

For the Intervener: Gail Owen, Public Service Alliance of Canada

Heard at Victoria, British Columbia,
June 24, 1999

DECISION

By this application under section 34 of the *Public Service Staff Relations Act* (PSSRA), the Federal Government Dockyards Trades and Labour Council (Esquimalt) FGDTLC (Esq.) seeks a determination that 11 employees of the Department of Fisheries and Oceans (DFO) working at the Marine Repair Fleet Workshop at the Institute of Ocean Sciences in Sidney, B.C. should in fact be included in the Ship Repair Group-West.

The Public Service Alliance of Canada (PSAC) is the bargaining agent for the General Labour and Trades Group to which the 11 aforementioned employees presently belong. By letter dated 22 February, 1999, the PSAC advised the Board that it did not oppose the FGDTLC (Esq.)'s application in this case.

At the hearing, counsel for the employer brought a motion for summary judgment on the basis that the application had no chance of success.

Mr. Newman first reviewed the history of this matter starting with the application presented to the Board on 13 November, 1998 and the exchange of correspondence which followed.

The employer then referred to Vol. 133, No 13 of Part I of the *Canada Gazette*, published on 27 March, 1999, which provides new occupational group definition for the federal public service pursuant to subsection 102(1) of the *Public Service Reform Act* (PSRA), S.C. 1992, c. 54.

The "Ship Repair-West Group Definition" contained in the *Canada Gazette* states that the group "comprises positions in the Department of National Defence located on the West Coast that are primarily involved in the repair, modification and refitting of naval vessels and their equipment".

On 2 June, 1999, (Board decision 141-2-13) the Board, pursuant to the provisions of subsection 103(2) of the PSSRA, amended the description of the bargaining unit for which the FGDTLC (Esq.) is the bargaining agent to reflect the new group definition published on 27 March, 1999, and referred to above.

Mr. Newman then argued that since the new group definition requires that the positions it covers belong to the Department of National Defence, the 11 DFO positions could not be part of the Ship Repair Group-West bargaining unit.

Mr. Quigley indicated that the application had been made under the old group definition which only required that positions be located in a National Defence dockyard and not in the Department itself. Mr. Quigley further stated that he had not been advised of the change to the group definition until after the *Canada Gazette* publication on 27 March, 1999 and the Board had issued its decision (*supra*) on the amended certificate.

The PSAC declined to make any comment on the motion presented by the employer.

Decision on the motion for summary judgment

This application, having been filed sometime ago, relied on the old Ship Repair-West group definition. The new group definition published on 27 March, 1999 with an effective date of 18 March, 1999, effectively precludes the 11 DFO positions from being included in the Ship Repair-West bargaining unit.

Given satisfactory evidence, I might well have concluded that the 11 positions were covered by the old Ship Repair-West group definition and were therefore part of the bargaining unit represented by the FGDTLC (Esq.) as it existed prior to 27 March, 1999.

It would however, in my opinion, serve no useful purpose to continue with this application in view of what precedes. As of 27 March, 1999, only positions in the Department of National Defence can be included in the Ship Repair-West bargaining unit. The employer's motion is allowed and this application is dismissed.

**Yvon Tarte,
Chairperson**

OTTAWA, July 6, 1999