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Citation: 2000 PSSRB 13



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

Canadian Food Inspection Agency

Employer

and

Professional Institute of the Public Service of Canada

Bargaining Agent

RE: Designated Positions -
Agriculture (AG), Biological Sciences (BI), Chemistry (CH), Commerce (CO),
Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific
Research (SE) and Economics, Sociology and Statistics (ES) Groups bargaining unit
and Informatics (IN) Group bargaining unit

Before: Yvon Tarte, Chairperson

For the Employer: Jana Palacek, Peter Cenne and Patricia A. Ballantyne, Canadian
Food Inspection Agency

For the Bargaining Agent: Andy Zajchowski and Michel Gingras, Professional
Institute of the Public Service of Canada

Decided without an oral hearing.

DECISION

[1] On March 29, 1999, the employer proposed for designation, as having safety or security duties pursuant to subsection 78.1(4) of the *Public Service Staff Relations Act*, approximately 70% of the positions in the Agriculture (AG), Biological Sciences (BI), Chemistry (CH), Commerce (CO), Computer Systems Administration (CS), Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific Research (SE), and Economics, Sociology and Statistics (ES) Groups bargaining unit.

[2] The parties met pursuant to subsection 78.1(4) of the Act to review the position of each employee in the bargaining unit to determine whether any of them have safety or security duties. The bargaining agent objected to the proposed designations. Then, on August 19, 1999, it requested that all positions in the bargaining unit be designated, for the following reasons:

[unofficial translation]

...

The Professional Institute of the Public Service of Canada learned that the employer was granted, despite the union and collective bargaining, an Order-in-Council suspending arbitration as a dispute resolution process.

As a result of this Order-in-Council, the parties are forced to face a conflict-based situation i.e. conciliation/strike route, with the designation process being one of its consequences.

In so acting, the employer is increasing the public's insecurity within the meaning of section 78 of the Public Service Staff Relations Act, and contributing to a situation in which the Institute refuses to take part, and where it would have to suffer the consequences of the employer's decision. Accordingly, the Institute is of the opinion that all positions comprised in the bargaining unit be "designated".

As the bargaining agent is now looking after the public's interests, discussions about designations are no longer necessary.

...

The employer refused the bargaining agent's offer to propose for designation all positions in the bargaining unit.

[3] On September 30, 1999, the employer provided the Board with a diskette bearing identification *CFIA - PIPSC S&A Designations 99-09-30*. This diskette is

accepted by the Board as containing the list of all of the positions in the bargaining unit that the employer is proposing for designation and is contained in the Board file.

[4] On November 29, 1999, the parties filed a joint application requesting the Board to decide the matter without first referring it to a designation review panel. The parties informed the Board that the bargaining agent "... has stated that it does not challenge the Employer's designation proposals" and that "[t]he Bargaining Agent is attempting ... to seek redress for their concerns as identified in their letter dated August 19, 1999."

[5] On December 2, 1999, the Board directed the parties to file written submissions in support of their joint application.

[6] On December 17, 1999, the parties filed another joint application, which reads as follows:

Pursuant to section 21(1) of the Public Service Staff Relations Act and section 6 of the Regulations of the Public Service Staff Relations Act, the parties hereby submit a joint application for an order of the Public Service Staff Relations Board allowing the extension of the limitation periods identified in section 60 of the Regulations of the Public Service Staff Relations Act to allow for the delivery of the Form 13 - Notice of Designated Status within 30 days of the receipt of an official request for conciliation by the Board. This joint application applies to the delivery of Form 13's - Notices of Designated Status as related to those positions designated by the PSSRB for [this] Bargaining Unit only.

...

(Board file 181-2-1)

[7] On December 21, 1999, the Board informed the parties of the following:

...

... in the case of the ... bargaining unit, the Board will extend the time specified in subsection 60(1) of the Regulations within which an employee is to be informed of the fact that he or she occupies a designated position to a period of 30 days from the date of a request for conciliation pursuant to section 76 of the Act.

This joint request is in accordance with the Board's decision in files 125-2-68 to 70 and will serve as a specific request for

an extension of time in the . . . bargaining unit until such time as one or both parties rescind the application.

[8] On December 22, 1999, at the request of the parties, the Board divided the bargaining unit into the following two bargaining units: the Agriculture (AG), Biological Sciences (BI), Chemistry (CH), Commerce (CO), Engineering and Land Survey (ELS), Purchasing and Supply (PG), Scientific Research (SE) and Economics, Sociology and Statistics (ES) Groups bargaining unit and the Informatics (IN) Group bargaining unit (Board file 125-32-93).

Submissions of the parties

[9] On December 17, 1999, the employer filed its written submissions in support of the November 29, 1999 joint application. It argued that the Board has no jurisdiction to designate positions which are not proposed for designation by the employer. It also stressed that there is no dispute between the parties that the positions proposed for designation by the employer have safety or security duties as specified in paragraph 78(1)(a) of the Act. The employer relied on the Board's decision in *Treasury Board and Professional Institute of the Public Service of Canada* (Board files 181-2-400 and 403) to argue that the Board has no jurisdiction to designate positions for strategic collective bargaining reasons.

[10] On January 6, 2000, the bargaining agent filed its written submissions in support of the November 29, 1999 joint application. It argued that an Order-in-Council has suspended the right to arbitration the Act provides to its members and that the impact of the large number of positions proposed for designation by the employer is to render illusory any right to strike that employees in the bargaining units referred to in paragraph 8 would acquire, should the collective bargaining process reach an impasse. Therefore, the bargaining agent requested that all positions in the bargaining units referred to in paragraph 8 be designated as having safety or security duties.

[11] On January 18, 2000, the employer informed the Board that it would not reply to the bargaining agent's written submissions in support of the November 29, 1999 joint application.

Reasons for Decision

[12] In the case at hand, the Board has to decide which positions in the bargaining units referred to in paragraph 8 shall be designated as having safety or security duties as specified in paragraph 78(1)(a) of the Act. This case is similar to the one the Board had to decide in *Treasury Board and Professional Institute of the Public Service of Canada (supra)*. In that case, as in the present matter, there was no dispute between the parties as to whether the positions proposed for designation by the employer had safety or security duties; the only issue in dispute rested with the remaining positions in the bargaining units. In both cases, the bargaining agent argued that all positions in the bargaining units should be designated. In neither case was there any suggestion that every position in the bargaining units had safety or security duties; the bargaining agent rather suggested that all positions should be designated, for what could be best described as strategic collective bargaining reasons.

[13] In *Treasury Board and Professional Institute of the Public Service of Canada (supra)*, the Board dealt with the issue as follows:

...

The question now to be answered is: Does the Board have jurisdiction to designate more positions than the employer says it requires?

Subsection 78.2(1) says it is the employer who refers positions in dispute to the Board if the parties continue to disagree after considering the recommendations of the designation review panel. There is no legislative provision for the bargaining agent to refer disputed positions to the Board. This, I believe, is based on the premise that as a general rule the bargaining agent would want the designation list kept to a minimum and the employer would want more designated positions; therefore the employer would refer the positions in dispute to the Board.

In the instant case, the employer has put together a list of positions it seeks to have designated. The [bargaining agent], while not explicitly agreeing with the list, has taken the stance that all positions should be designated. At that point, the employer can request the Board, under subsection 78.1(6), to designate the positions. As far as the employer is concerned, all the positions it needs for designation have been agreed to by the bargaining agent.

I do not see any provision for the [bargaining agent] to ask that the list be increased. Neither do I see where the Board could derive jurisdiction to increase the list, which the employer says is sufficient to meet its own operational needs. The Board is not in the business of running the employer's operations.

The legislation does not oblige the employer to propose all positions in the bargaining unit for designation. Where the employer proposes positions for designation and the bargaining agent disagrees with some or all of the proposals, the Board is required to make a determination. However, here there is, in fact, no disagreement. Absent that, there is no issue for the Board to decide.

...

In the instant case, the employer says it does not require 100 percent of the positions in the ND and OP bargaining units to be designated. While the bargaining agent may wish for the designation of 100 percent of the positions, for whatever strategic reason, there is no authority that I can see that would permit the Board to make such a ruling. . . .

...

This approach also applies to the case at hand; the Board has no authority under the Act to designate the positions in the bargaining units referred to in paragraph 8 that have not been proposed for designation by the employer.

[14] As I have already stated, there is no dispute between the parties to the case before the Board that the positions proposed for designation by the employer have safety or security duties as specified in paragraph 78(1)(a) of the Act. Therefore, pursuant to subsection 78.1(6) of the Act, the Board hereby designates as having safety or security duties the positions contained in the diskette provided by the employer on September 30, 1999 and that diskette is now considered as containing the list of all of the positions in the bargaining units referred to in paragraph 8 that have safety or security duties.

[15] Pursuant to subsection 78.5 of the Act, the Board hereby authorizes the employer to inform the employees occupying the designated positions identified herein. For this purpose, the Board will provide the employer with a Form 13 for each designated position containing all the information required, with the exception of the name of the employee occupying the designated position and the "Dated at. . . ." portion of the Form, which is to be completed by the employer prior to notification.

[16] In accordance with the letter the Board sent to the parties on December 21, 1999, the employees who occupy designated positions in the bargaining units referred to in paragraph 8 are to be so informed within 30 days from the date of a request for conciliation pursuant to section 76 of the Act. Thereafter, future incumbents of a designated position shall be notified within 30 days of the date on which they first occupy the position.

[17] Finally, the Board draws the employer's attention to its responsibility under subsection 60(2) of the Regulations that, on notification of an employee who occupies a designated position, it is to provide forthwith a copy of the notice referred to in subsection 60(1) to the bargaining agent.

**Yvon Tarte
Chairperson**

OTTAWA, February 18, 2000.