

**Date:** 20020618

**File:** 169-2-653

**Citation:** 2002 PSSRB 58



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

UNION OF CANADIAN CORRECTIONAL OFFICERS –  
SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA –  
CSN

Bargaining Agent

and

TREASURY BOARD

Employer

**MATTER:** Reference under Section 99 of the  
Public Service Staff Relations Act

**Before:** [Marguerite-Marie Galipeau, Deputy Chairperson](#)

**For the bargaining agent:** [Céline Lalande, Counsel](#)

**For the employer:** [Jennifer Champagne, Counsel](#)

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Heard at Montréal, Quebec,  
April 29, 2002.

## DECISION

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[1] This determination is made pursuant to a January 24, 2002 reference under section 99 of the *Public Service Staff Relations Act* (PSSRA) submitted to the Board by the bargaining agent, the UNION OF CANADIAN CORRECTIONAL OFFICERS – SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA – CSN, which is seeking to enforce an obligation that, in its opinion, arises out of article 10 of the collective agreement between the Treasury Board and the bargaining agent concerning the Correctional Services Group; this collective agreement expires on May 31, 2002.

[2] Article 10 of this collective agreement reads as follows:

### **ARTICLE 10 CHECK-OFF**

**10.01** *Subject to the provisions of this article, the Employer will, as a condition of employment, deduct an amount equal to the monthly membership dues from the monthly pay of all employees in the bargaining unit. Where an employee does not have sufficient earnings in respect of any month to permit deductions made under this article, the Employer shall not be obligated to make such deduction from subsequent salary.*

**10.02** *The Bargaining Agent shall inform the Employer in writing of the authorized monthly deduction to be checked off for each employee.*

**10.03** *For the purpose of applying clause 10.01, deductions from pay for each employee in respect of each calendar month will start with the first (1<sup>st</sup>) full calendar month of employment to the extent that earnings are available.*

**10.04** *An employee who satisfies the Employer to the extent that he or she declares in an affidavit that he or she is a member of a religious organization whose doctrine prevents him or her as a matter of conscience from making financial contributions to an employee organization and that he or she will make contributions to a charitable organization registered pursuant to the Income Tax Act, equal to dues, shall not be subject to this article, provided that the affidavit submitted by the employee is countersigned by an official representative of the religious organization involved.*

**10.05** *No employee organization, as defined in Section 2 of the Public Service Staff Relations Act, other than the Bargaining Agent, shall be permitted to have membership dues and/or other monies deducted by the Employer from the pay of employees in the bargaining unit.*

**10.06** *The amounts deducted in accordance with clause 10.01 shall be remitted to the Comptroller of the Bargaining Agent by cheque within a reasonable period of time after deductions are made and shall be accompanied by particulars identifying each employee and the deductions made on the employee's behalf.*

**10.07** *The Employer agrees to continue the past practice of making deductions for other purposes on the basis of the production of appropriate documentation.*

**10.08** *The Bargaining Agent agrees to indemnify and save the Employer harmless against any claim or liability arising out of the application of this article, except for any claim or liability arising out of an error committed by the Employer limited to the amount actually involved in the error.*

[3] On March 27, 2002, the bargaining agent filed an amended application that reads as follows:

[Translation]

**FORM 16**  
**(Section 85 of the**  
**P.S.S.R.B. Regulations and Rules of Procedure)]**

**Public Service Staff Relations Act**  
**REFERENCE UNDER SECTION 99 OF THE ACT**

*Before the Public Service Staff Relations Board:*

1. *The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN, 687 Gardiners Road, Kingston, Ontario K7M 3Y4 (hereinafter referred to as the Union), is the certified Union;*
2. *The Treasury Board, Esplanade Laurier, West Tower, 6<sup>th</sup> floor, 300 Laurier Avenue West, Ottawa, Ontario K1A 0M7, is the employer;*
3. *We attach to this reference a copy of the collective agreement, produced as in Exhibit S-1;*
4. *The bargaining agent, the UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN, seeks to enforce the following obligations arising out of the collective agreement;*

5. *The employer, the Treasury Board, has failed to deduct from the monthly pay of all employees in the bargaining unit an amount equal to the union dues, as provided for in clause 10.01 of this collective agreement;*
6. *The employer, the Treasury Board, has failed to remit the amounts deducted under clause 10.01 of the collective agreement to the Comptroller of the bargaining agent, as provided for in clause 10.06 of this collective agreement;*
7. *The employer, the Treasury Board, has failed to accompany the union dues remitted to the Comptroller of the union with particulars identifying each employee and the deductions made on the employee's behalf, as provided for in clause 10.06 of the collective agreement;*
8. *It appears that there has been a failure to observe or to enforce the alleged obligation; the details of this failure are set out below:*
9. *On March 13, 2001, the Public Service Staff Relations Board recognized the UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN as the bargaining agent for all employees of the Employer in the Correctional Services Group as defined in Part I of the Canada Gazette of March 27, 1999, produced as Exhibit S-2;*
10. *On March 14, 2001, the UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN notified the employer that its union dues were set at 1.6% of gross weekly pay (excluding bonuses and overtime), as is shown in the letter from Ms Brenda McLarnon-Leroux, produced as Exhibit S-3;*
11. *On or around April 12, 2001, Mr. Michel Gauthier, coordinator of services for the correctional officers sector at the CSN, met with Ms Hélène Laurendeau, Assistant Secretary of Labour Relations at the Treasury Board Secretariat, to discuss the deduction of union dues. Ms Laurendeau assured him that the dues would be deducted as the union requested within three or four months;*
12. *Article 6.02d of the constitution of the UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN*

provides that it is the responsibility of the national general meeting to set the amount of union dues;

13. On May 15, 2001, Mr. Sylvain Martel, National President of the Union, notified the Treasury Board of the decision by the union's founding national general meeting to increase the rate of the union dues to 1.85% of the gross weekly pay of its members starting on June 3, 2001, as is shown in the letter produced as Exhibit S-4;
14. In August 2001, Mr. Marc Langlois, National Vice-President of the Union, noted that there were still a number of irregularities in the deduction and remittance of union dues by the employer;
15. Since March 2001, union dues have been deducted and remitted on the basis of the first pay level of each employee who is a member of the bargaining unit, not the gross weekly pay as requested by the Union;
16. On or around October 9, 2001, at a meeting between the Union and the Correctional Service of Canada attended by Mr. Denis Martel of the Treasury Board, Mr. Denis Martel informed the Union that the Treasury Board was considering the issue of deducting and remitting union dues at employees' pay levels;
17. At a November 16, 2001 meeting, Ms Hélène Laurendeau of the Treasury Board informed Mr. Michel Gauthier of the CSN that it was impossible to deduct and remit the union dues as requested;
18. On December 5, 2001, Mr. Michel Gauthier and Mr. Sylvain Martel met with Mr. Marcel Nouvet, President of Labour Relations at the Treasury Board, who stated that he had not heard of the issue;
19. To date, the Union estimates that the Treasury Board has failed to deduct and remit over \$800,000, thus causing serious harm to the Union;
20. On or about January 30, 2002, Mr. Sylvain Martel, President of the Union, asked the employer to provide the lists of data on union dues deducted in September, October, November and December 2001 and January 2002;
21. To date, the employer has not provided these lists;
22. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS

CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board make a determination on whether there is an obligation to deduct, and to remit to the union, union dues of 1.85% of the gross weekly pay of all employees in the Correctional Services Group as defined in Part I of the Canada Gazette of March 27, 1999, accompanied by particulars identifying each employee and the deductions made on the employee's behalf;

23. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board determine that there has been a failure to enforce the obligation to deduct, and to remit to the Union, union dues of 1.85% of the gross weekly pay of all employees in the Correctional Services Group as defined in Part I of the Canada Gazette of March 27, 1999;
24. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board order the Treasury Board of Canada to immediately cease its violation of article 10 of the collective agreement, and order it to deduct and remit 1.85% of the gross weekly pay at the level at which each employee in the Correctional Services Group is paid;
25. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board order the Treasury Board of Canada to correct its failure to deduct and remit union dues on the basis of the difference in pay between the first pay level and the pay level at which each employee covered by the union's certification is paid, for the period from March 13, 2001 until the violation ceases. Arrears of dues are to be deducted and remitted in equal monthly payments spread out over a period of one year from the date of this order;
26. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board order the employer to pay an amount equal to the union's losses resulting from the violation of the collective agreement;

27. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board apply its remedies should the violation of article 10 of the collective agreement result in damages;
28. The UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN requests that the Public Service Staff Relations Board remain seized should problems result from the determination.

[Original emphasis]

[4] At the hearing, I asked the parties first to tell me about the nature of their claims, their perceptions of the dispute and the barriers that, in their opinions, prevented resolution of this matter.

[5] At the end of the day, the parties reached an agreement that they expressed in writing on the spot. This agreement is conditional on the issuance of an order by the Board requiring the employer to inform the bargaining agent of the pay levels of the employees represented by the bargaining agent.

[6] Counsel for the employer acknowledged that, in order to be satisfied that the deductions made from the employees' pay by the employer on behalf of the bargaining agent were accurate, it was important to know employees' pay levels, which could also vary over a given period.

[7] However, according to counsel for the employer, because of the *Privacy Act* (PA) her client was reluctant to disclose this information and therefore obtained an opinion (Exhibit E-1) from the Office of the Privacy Commissioner of Canada. Counsel for the employer agreed that, according to that opinion, disclosing this information was permissible provided certain steps were taken in order to protect the information. However, she expressed a preference that the Board confirm by means of an order that providing this information was required and that the employer was obliged to provide it.

Reasons

[8] Under clause 10.01 of the collective agreement, the employer agreed to deduct union dues. The amount of these dues is a percentage of each employee's pay; this percentage is determined by the bargaining agent. Pay is set in accordance with the pay level each employee has reached.

[9] It is in the interests of both parties to ensure that the amount deducted from each employee's pay is accurate. As clause 10.01 clearly states, this amount shall be "equal" to the monthly union dues. The pay level is therefore an essential element of information, since without it the exact pay cannot be ascertained, an accurate calculation made, or assurance given that this amount is "equal" to the union dues.

[10] I consider that the wording of clause 10.01 requires the employer to provide this information. Without this information, an accurate calculation is impossible and the bargaining agent is unable to check whether the amounts owed have been remitted.

[11] As well, the employer itself acknowledges that pay levels form the basis for calculating the deductions that are to be made at the percentage indicated by the bargaining agent.

[12] It seems to me that the reason the employer and the bargaining agent agreed (under clause 10.06 of the collective agreement) that "particulars identifying each employee and the deductions made on the employee's behalf" would accompany the amounts deducted was specifically that they recognized the need for transparency in order to ensure that the transaction was reliable. This consideration is particularly important, and it is in the interests of the employer and the bargaining agent to ensure that the dues deducted from employees' pay are equal to the amount agreed upon, neither more nor less.

[13] In summary, it arises from article 10 and particularly clauses 10.01 and 10.06 of the collective agreement that the employer must disclose to the bargaining agent the pay level of each employee in the bargaining unit.

[14] I am pleased to see that the Office of the Privacy Commissioner of Canada has recognized the parties' rights and obligations under the PSSRA and has endeavoured to reconcile the purpose of that Act and that of the PA. This order does the same, taking



into account the requirements of the collective agreement and adopting the recommendation of the Office of the Privacy Commissioner of Canada.

[15] The employer is therefore ordered to disclose to the bargaining agent the pay levels of the employees represented by the bargaining agent.

[16] As the Office of the Privacy Commissioner has done, I recommend that the parties sign an agreement concerning the protection and use of this personal information in accordance with the PA, as is provided in the agreement they signed at the hearing.

**Marguerite-Marie Galipeau,  
Deputy Chairperson**

OTTAWA, June 18, 2002.

PSSRB Translation