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Citation: 2003 PSSRB 113

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agent

and

TREASURY BOARD

Employer

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

Before: Ian R. Mackenzie, Board Member

For the Bargaining Agent: Dougald Brown, Counsel

For the Employer: Jennifer Champagne, Counsel

Heard at Ottawa, Ontario,
October 31, 2003.

[1] This is a reference by the Professional Institute of the Public Service of Canada (PIPSC) pursuant to section 99 of the *Public Service Staff Relations Act* (*PSSRA*) relating to the deduction of union dues by the employer. In particular, the bargaining agent alleges that the employer is in violation of the union dues provisions in the six PIPSC collective agreements with the employer: Applied Science and Engineering; Computer Systems; Health Services; Law; Research; and Audit, Commerce and Purchasing.

[2] In its application, the bargaining agent alleges the following:

> *There has been a failure to observe or carry out the said obligations, the particulars of which are as follows: The collective agreement requires that membership dues be deducted and remitted to the Bargaining Agent commencing the first full month of the effective date of the appointment. Contrary to the collective agreement, the Employer has been deducting and remitting dues to the Bargaining Agent on the first day of the month following the effective date of the appointment, or the issue date of the Report on Staffing transaction, whichever is later.*

[3] The bargaining agent requested that the Board issue the following order:

> *a.* *Declaring that the Employer has violated the check off provisions of the collective agreement;*
>
> *b.* *Directing the Employer to cease and desist from such violations;*
>
> *c.* *Directing payment by the Employer to the Bargaining Agent of an amount equal to the Bargaining Agent's losses arising out of the breaches of the collective agreement, with interest, retroactive to the commencement of the collective agreement; and*
>
> *Such other relief as may be requested or necessary to make the Bargaining Agent whole.*

[4] Counsel for the bargaining agent and counsel for the employer both made opening statements. One witness testified on behalf of the bargaining agent, and the employer called no witnesses.

Evidence

[5] The PIPSC represents approximately 30,000 employees in the part of the public service for which the Treasury Board is the employer. Edward (Eddie) Gillis is the Executive Secretary of the PIPSC and has occupied this position since 1999. His

responsibilities include the management of dues deductions for PIPSC. He testified that dues are the lifeblood of the organization and are necessary for providing representation to employees in PIPSC bargaining units.

[6] Mr. Gillis testified that in reviewing their membership numbers and dues deductions, a significant discrepancy between the two was discovered by the PIPSC. In reviewing this discrepancy, two distinct causes were discovered. First, there were systemic problems with the timely deduction and remittance of dues; administrative error and delays were causing very large arrears in dues. Mr. Gillis estimated that the amount of dues in arrears was close to $500,000 at the time of the review. Currently, the amount is close to $750,000. Second, the Treasury Board policy on dues deductions (Exhibit C-2) and the department's administration of that policy meant that no dues were being deducted from an employee until that employee received a letter of offer.

[7] The provision for the deduction of union dues is the same in all PIPSC collective agreements (Exhibit C-1). The Applied Science and Engineering Group collective agreement provides as follows:

> *ARTICLE 27*
>
> *CHECK-OFF*
>
> *27.01 The Employer will as a condition of employment deduct an amount equal to the amount of the membership dues from the monthly pay of all employees in the bargaining unit.*
>
> […]
>
> *27.03 For the purpose of applying clause 27.01, deductions from pay for each employee in respect of each month will start with the first full month of employment to the extent that earnings are available.*
>
> […]
>
> *27.05 No employee organization, as defined in Section 2 of the* Public Service Staff Relations Act*, other than the Institute, shall be permitted to have membership dues and/or other monies deducted by the Employer from the pay of employees in the bargaining unit.*

> *27.06 The amounts deducted in accordance with clause 27.01 shall be remitted to the Institute 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.*

[8] The Treasury Board policy on the deduction of union dues ("Union Dues Check-off", Exhibit C-2) sets out the procedure to be used by departments in cases where internal appointments result in a change in union representation. The change in union representation occurs because the position to which the employee is appointed is in a different bargaining unit:

> *4.1 Subsequent appointments (promotions, demotions, transfers) to bargaining unit positions.*
>
> *Appointments that result in a change in union representation require the Department to stop the previous dues deductions and start the new ones, and complete the Notice of Change of Union Affiliation…*
>
> *Where there is a change in bargaining agent only, Departments must change dues deductions on the first day of the month following:*
>
> - *the effective date of the appointment; or*
> - *the issue date of the Report on Staffing Transaction (ROST), whichever is later.*

[9] The policy provides that for acting assignments, departments shall deduct dues as if the assignment were an appointment (section 6, Exhibit C-2).

[10] Mr. Gillis testified that the Report on Staffing Transaction referred to in the policy had been replaced by the letter of offer that each employee receives when the employee is promoted or on an acting assignment. He also testified that the departments start dues deductions from the date of the letter of offer, and not from the effective date of the appointment.

[11] The PIPSC receives a monthly list of bargaining unit employees from the employer. This list is called the "BUD" (bargaining unit determinator) list. The PIPSC has created its own database that cross-references this information with the payroll deduction information also provided by the employer. The bargaining agent introduced a binder of documents relating to a number of employees that included both the BUD details and the payroll details (Exhibit C-6). The BUD details document

indicates what month the individual employee entered the bargaining unit. The payroll details document shows what month dues deductions to the PIPSC started for each employee. Mr. Gillis reviewed several of the examples in the binder at the hearing, showing that in each case the department refused to deduct dues for the period prior to the date of the letter of offer. Mr. Gillis testified that the departments do not deduct or remit dues for acting periods that have ended by the time a letter of offer is issued. He also testified that in some cases the letter of offer is issued up to 18 months after the effective date of the appointment.

[12] During the time between the effective date of the appointment and the date of the letter of offer, dues are deducted and remitted to the previous bargaining agent for the position that the employee occupied before the appointment. Mr. Gillis testified that in most cases, this bargaining agent was the Public Service Alliance of Canada (PSAC). Mr. Gillis stated that the PIPSC takes responsibility for representing an employee on the first day that the employee performs the duties of a bargaining unit position. The former bargaining agent does not provide any representation to that employee, although dues are being remitted to that bargaining agent. Mr. Gillis also testified that it was the PSAC's internal policy to limit refunds of dues paid to it in error to one year.

[13] Mr. Gillis could not put a specific dollar amount on the difference in the amount of dues between the effective date of appointment and the letter of offer. He stated that this was because the PIPSC is not always advised of the effective dates of promotions and acting appointments. He estimated that the amount at issue was in the hundreds of thousands of dollars.

[14] The PIPSC and the Treasury Board met on May 11, 2001, to discuss the issue of unremitted dues. Mr. Gillis testified that Steve Hindle, the President of the PIPSC, Frank Claydon, the Secretary of the Treasury Board, Michael Nurse, Associate Deputy Minister of Public Works and Government Services (PWGSC), Marcel Nouvet, Chief Human Resources Officer, and he attended the meeting where a number of issues relating to dues deductions were discussed, including the issue of the effective date. In a letter in advance of the meeting (Exhibit C4), Mr. Gillis included a background document on the problem of unremitted dues, which set out the following "Negative Impacts":

> 1. *Cumbersome administrative processes must be initiated by the Employer and by PIPSC to correct mistakes, collect arrears and process refunds.*
>
> 2. *Employees are faced with unexpected deductions of unpaid dues through no fault of their own.*
>
> 3. *PIPSC is deprived of significant operating revenues.*
>
> 4. *Harmonious labour relations are threatened as third party intervention must be sought to enforce collective agreement obligations.*

[15] At the May 11, 2001 meeting, it was agreed to establish a small working group to review the issues. Thomas (Tom) Smith, Director of Pay Administration at Treasury Board, and Mr. Gillis were given the responsibility of following up on the issues.

[16] In a letter to Mr. Smith dated July 12, 2001, Mr. Gillis outlined in more detail the problems relating to the issuance of letters of offer, from the PIPSC's perspective (Exhibit C-5). He stated that from recent experience, the PIPSC has found that the average delay between the effective date of the appointment and the issuance of a letter of offer is "about six months, and often a year or longer". The letter also stated:

> *We strongly believe that the Employer's collective agreement obligation to deduct and remit dues cannot be superceded by policy or the manner in which policy is administered.* ***Consideration should be given to amending the policy to require the deduction and remittance of dues beginning on the first day of the month following the effective date of the appointment****. In any event, the Professional Institute can no longer accept the situation as it currently exists, and we are seeking your assistance in bringing about positive change. (Emphasis in original)*

[17] Mr. Gillis testified that, through the working group, there was an exchange of information on the arrears situation and efforts to rectify the problems were made. In cross-examination, he acknowledged that some of the arrears problems were addressed. However, the issue of the effective date for the deduction of dues was not addressed substantively. He stated that there was an acknowledgement by the employer of the problem, to the extent that there was a discussion about a revised draft policy and that the employer advised the PIPSC that its concerns would be taken into account.

[18] The employer's dues deduction policy is currently under review and bargaining agents have been consulted on a new draft policy (Exhibit C-7). The Treasury Board forwarded the final draft of the policy to the National Joint Council (NJC) for distribution to bargaining agents on October 21, 2003. In the covering letter to the draft policy, Brent DiBartolo, Assistant Secretary, Labour Relations and Compensation Operations, stated that this "latest draft" would be sent to departments in October 2003, for their review and comments. He expressed the hope that the approved document would be issued by January 1, 2004.

[19] The draft policy (Exhibit C-7) provides that for promotions, deployments, transfers and acting assignments, departments are required to stop dues deductions for the former bargaining agent and commence dues deductions for the new bargaining agent effective the first day of the complete calendar month following the change (paragraphs 6.1.1 and 7.2). The examples given in the policy indicate that the date of the letter of offer is no longer to be considered as the date from which dues deductions are calculated.

Arguments

For the Bargaining Agent

[20] Dougald Brown, counsel for the bargaining agent, submitted that the issue in this application was simple: When does a person become employed in the bargaining unit? The collective agreement creates an obligation on the employer to deduct dues that is triggered by the first full month of employment in the bargaining unit. The recognition article in all the collective agreements recognizes the PIPSC as the exclusive bargaining agent for all employees described in the certificate for the occupational group issued by the Public Service Staff Relations Board (the Board) (Exhibit C-3). The combined effect of these two articles is to require the employer to remit dues starting on the first full month that the person becomes employed in the bargaining unit. This obligation becomes even clearer when one looks at clause 27.05 (Exhibit C-1), which states that once an employee is in a bargaining unit represented by the PIPSC, no dues are to be remitted to another bargaining agent.

[21] Mr. Brown stated that the facts are not in dispute. The employer did not reply to the application, did not call any evidence to counter the bargaining agent's evidence and did not challenge Mr. Gillis on his testimony.

[22] It was Mr. Brown's submission that the employer has issued a policy on the deduction of dues that violates the employer's obligation under the collective agreement. The employer cannot issue a unilateral policy that has the effect of amending the collective agreement. The provisions of the collective agreement bind the employer.

[23] Mr. Brown submitted that the offending part of the employer's policy is in paragraph 4.1, where it states that dues are to be deducted as of the effective date of the appointment or the date of the letter of offer, whichever is later. This would make sense when an employee is a new hire to the public service. The problem that has become apparent is that letters of offer are now routinely issued many months after the employee has started to perform the duties of the new position. The letters of offer all specify a retroactive effective date. The *Public Service Employment Act* (*PSEA*), in section 22, expressly contemplates the retroactive application of letters of offer. There is nothing improper about a retroactive effective date. If there were, there would be no authority for paying the higher salary from the date that the employee started to perform the duties.

[24] According to Mr. Brown, the problem is not late letters of offer; the problem is that the employer fails to recognize that a person is "employed" when he or she commences to perform the duties of a position within the bargaining unit. This flows from the definition of "employee" and "public service" in the *PSSRA*. It is employment in a position that makes a person an employee. The certificates issued by the Board refer to "all employees of the employer in the relevant group, as defined in the Canada Gazette". It is the performance of duties within that group definition that makes a person an employee in the relevant group.

[25] Mr. Brown submitted that the PIPSC has the legal obligation to represent those individuals who are in the bargaining unit. There is no dispute that in all of the individual situations, based on the employer's own records, these individuals started performing the duties of a position in the PIPSC bargaining unit on a date that the employer refuses to recognize as the starting date. It is also clear that the legal obligation to represent those individuals begins on the date that the employee commences the duties of the position. This is the date that the dues become payable – both as a matter of law and as a matter of common sense.

[26] Mr. Brown also submitted that the employer's other policies do not focus on the date of the letter of offer as a trigger for anything. The Terms and Conditions Policy and Regulations have quite a different focus. For example, in section 20(1), the focus is not on the artificial date of the letter of offer, but on the services rendered. The definition of employee in the policy says nothing about the letter of offer. Even without a formal appointment, an employee is still entitled to be paid under the collective agreement that applies to the assigned duties (section 47A). If those duties being performed are in the PIPSC unit, the employee is entitled to be paid in accordance with the rates of pay in the PIPSC collective agreement. The actual date on which the employee receives the letter of offer is irrelevant.

[27] Mr. Brown noted that it is well known that when employees start performing the duties in a PIPSC unit, they start receiving the rate of pay in the relevant PIPSC agreement immediately. The increased compensation does not wait until the letter of offer.

[28] Mr. Brown pointed out that between the date on which an individual starts performing the duties of a position in a PIPSC bargaining unit and the issue date of a letter of offer, the dues are actually being collected and remitted to the old bargaining agent. He argued that this is a blatant violation of the collective agreement (clause 27.05).

[29] Mr. Brown submitted that the draft Treasury Board policy (Exhibit C-7) is correct. The obligation to remit dues is triggered when the employee starts performing the duties of a position in a PIPSC bargaining unit.

[30] Mr. Brown also submitted that if the date of the letter of offer was the effective date, it would leave open the possibility of blatant manipulation by the employer in preferring one bargaining agent over another. This cannot be right; the employer must be completely neutral and impartial when it comes to bargaining agents. The PSAC has received a lot of dues attributable to employees that it did not represent. Why is the employer favouring the PSAC? If the employer's policy is right, the employer could starve one union out of existence, which cannot be right.

[31] Mr. Brown submitted that the time for talking about these issues was over. It should not take two years of discussion to resolve a clear breach of a collective agreement. It is not an answer to say that the employer is still consulting on the

matter. No further amount of consultation will resolve this issue. This is not an issue that the bargaining agent should have to negotiate.

[32] Mr. Brown requested that the Board issue a declaration that clause 4.1 of the policy on dues is in breach of the employer's obligation under the collective agreement. Also, he requested that the Board issue a declaration that the obligation to remit dues to the PIPSC commences on the first full month in which the employee begins performing the duties of a position in a bargaining unit represented by the PIPSC.

[33] Mr. Brown also submitted that the bargaining agent was entitled to be made whole and compensated for the breach of the collective agreement. There is no time limit on a reference under section 99 of the *PSSRA* and, therefore, no limit on how far back monetary compensation should go. The bargaining agent should not be prejudiced because it made good faith efforts to resolve the issue prior to initiating these proceedings. There is an obligation of the Treasury Board to remit the dues to the bargaining agent*: Canadian Air Traffic Control Association and Treasury Board* (Board file 169-2-588). The obligation is the Treasury Board's and not the departments'. It is no answer for the employer to say that those dues were paid to someone else. The PIPSC should not have to wait until the employer gets dues payments back from the PSAC. The PIPSC does not get interest on amounts owing and should, therefore, not have to wait until some other bargaining agent decides to return the amount owing. If the Board makes it very clear that the dues are payable to the PIPSC immediately and that it is up to the employer to get the dues back, this would create the necessary incentive to come to a resolution of these matters.

[34] Mr. Brown submitted that the Board should make a remedial order directing that the bargaining agent be made whole and direct that the parties meet to determine the amount owing and for payment within 60 days. The PIPSC has good records, and all that is needed is the effective date on which each employee commenced duties. The rest is a simple calculation.

[35] Mr. Brown also submitted that the Board should remain seized of this application to resolve any outstanding issues at the end of the 60 days.

[36] Mr. Brown referred me to *The Professional Institute of the Public Service of Canada and Treasury Board* (Board file 125-2-63). He also referred me to the decisions of the Federal Court in *Eaton v. Canada*, (1982) 43 N.R. 347 (C.A), and the Supreme Court in *Doré v. Canada* [1987], 2 S.C.R. 503.

For the Employer

[37] Jennifer Champagne, counsel for the employer, stated that she was not here to apologize for the delays in the issuance of letters of offer. She submitted that the problem was not a policy problem but a problem with the operation of the policy. It may be that there is a need to expedite the process, but the solutions to look at are beyond the scope of the collective agreement or the employer policy.

[38] Ms. Champagne pointed to a few examples in the binder (Exhibit C-6) to show that the problem in remittance of dues went beyond the date of the letter of offer. In fact, the main problem was the delay between the issuance of the letter of offer and the remittance of the dues. The issue is not the starting point for the dues deduction but resides elsewhere in the staffing process. This is a practical problem that needs a solution. The problem has been identified and has been explained both in correspondence and in the draft policy. Steps have been taken to remedy the problem. A lot of work has been done, and departments should be applauded for their efforts to respond to the concerns raised by the bargaining agent.

[39] Ms. Champagne submitted that words cannot be added to the collective agreement. The collective agreement is silent on the starting point for the deduction of dues; it does not refer to the effective date. The collective agreement cannot contravene the *PSEA*. The *PSEA* provides that for one to start in a position, one needs to be officially appointed. The employer policy incorporates the language of the *PSEA*. There cannot be a promotion if the appointment is not done under the *PSEA* and its regulations. The policy cannot reflect anything other than the *PSEA*. The collective agreement also has to follow that same line.

[40] Ms. Champagne agreed that letters of offer should be issued more speedily, so they are closer to the date on which the person commences duties. She submitted that it was the intent that the letters of offer be issued as close as possible to the commencement of duties. However, there must be an official appointment before dues can be deducted.

[41] There are a number of possible reasons for the delay in the issuance of a letter of offer, including increased mobility in the public service and understaffing in human resources. This is not a policy problem, however, but a problem with the operation of the policy.

[42] There are also problems with the bargaining agent's position on the effective date, in that it is often impossible to determine what an effective date is in reclassification and acting situations, as duties evolve over time. A formal document to determine the date of appointment is therefore necessary. Also, short-term acting appointments that get extended will create problems in determining the effective date, creating a flux. In order to avoid this uncertainty, a formal document of appointment is necessary. Since the process is the same for everyone, there is uniformity of treatment. The use of the official letter of offer ensures that a debate is avoided on what the effective date really is. It also ensures that debates between bargaining agents are avoided. Ms. Champagne submitted that the employer policy is in absolute conformity with wording of the collective agreement and the *PSEA*.

[43] Ms. Champagne noted that both parties are working to find a long-term solution to the problems and submitted that a Board decision was not an appropriate long-term solution to the problems. The problems go well beyond the scope of the policy.

[44] Ms. Champagne also referred me to *Professional Association of Foreign Service Officers and Treasury Board,* 2003 PSSRB 70, a decision on acting pay, and stated that it must be reconciled with the bargaining agent's argument on when its obligation to represent an employee commences.

[45] Ms. Champagne submitted that I had no authority to award interest and referred me to *Eaton* (*supra*) and *Guest and Canada Customs and Revenue Agency*, 2003 PSSRB 89.

Reply Argument

[46] Mr. Brown submitted that the employer called no evidence on so-called "grey areas" and could not rely on this in its argument. The employer presented no examples of a case where there was any difficulty in determining the date on which an employee comes into the bargaining unit.

Reasons for Decision

[47] There is little dispute between the parties on the facts raised in this application. The lack of any dispute on the facts is highlighted by the employer's election not to call any evidence. What is in dispute is the narrow issue of when the bargaining agent's entitlement to union dues commences.

[48] I agree with counsel for the employer that a comprehensive solution to the issues around the collection of union dues is not an appropriate role for the Board. The parties should be able to work out administrative matters and address the barriers to the timely remittances of dues without the aid of a Board decision. The draft Treasury Board policy (Exhibit C-7) is a good indicator of the progress that can be made through consultations. However, it is appropriate for the Board to interpret collective agreement provisions and resolve any alleged contradictions between the collective agreement and employer policies.

[49] The collective agreement provisions relating to check-off are the same in all the PIPSC collective agreements (see paragraph 7 of this decision).

[50] The employer's policy on dues deduction states that dues are to be deducted on the "first day of the month following the effective date of the appointment, or the issue date of the Report on Staffing Transaction, **whichever is later"** (emphasis added). Section 6 of the policy relates to acting assignments, and it states that departments are to deduct dues, "as if the assignment were an appointment". It is common ground that the letter of offer has replaced the Report on Staffing Transaction. It is also undisputed that in the case of acting appointments and promotions, the letter of offer is often issued after the employee has commenced the duties of the new position. In some cases, this can mean that the bargaining agent sees no dues deducted if the acting appointment is over by the time that the letter of offer is issued.

[51] The collective agreement refers to a check-off for "employees in the bargaining unit" and states that deductions are to commence in the "first full month of employment". The collective agreement does not refer to the issue date of the authorizing instrument. The simple question here is: When does "employment" in the bargaining unit begin?

[52] "Employment" refers to the terms and conditions to which an individual is subject. It is clear from the Terms and Condition of Employment Policy and Regulations that when an employee accepts an acting position in another bargaining unit, the terms and conditions of that bargaining unit apply, unless otherwise provided. In *PAFSO* (*supra*), the acting position was in an excluded group, not in another bargaining unit. The Regulations also provide that when an individual is promoted and starts performing the duties of a higher classification, the employee becomes subject to the terms and conditions from the date that he/she commences those duties.

[53] Since "employment" starts at least on the effective date of the appointment, a straightforward interpretation of the collective agreement provisions requires the deduction of dues as of that effective date. What this means practically is that the dues should start to be deducted when the department knows that the employee is performing the duties of a position in the new bargaining unit. Normally, the department in its letter of offer will determine that date. Any disputes about the effective date will be resolved either by the letter of offer, or by an acting pay grievance or classification grievance if the parties cannot agree on that starting date.

[54] When an employee accepts an acting appointment in an unrepresented group, the employer dues check-off policy applies a different date: "departments shall terminate dues deductions on the first day of the month following the effective date of the assignment" (section 6, Exhibit C-2). No explanation for this differential treatment was provided at the hearing. In the situation of an acting appointment to an unrepresented group, the employer does not have the same concerns about the instrument of appointment. If there were merit to the employer's argument that dues deductions could only commence as of the date of the letter of offer, one would think that the termination of those same dues deductions could also only occur on the date of the letter of offer.

[55] It appears that the employer has at least tentatively accepted that the current policy is contrary to the collective agreement. The draft policy (Exhibit C-7) is consistent with the collective agreement interpretation put forward by the bargaining agent. The employer called no evidence to establish the status of the draft policy. The cover letter to the General Secretary of the NJC from the Assistant Secretary, Labour Relations and Compensation Operations, indicates that the draft was to be circulated

to departments in October 2003, for their review and comments. The role of departments in the deduction and remittance of dues is undeniable. However, a central issue such as the entitlement to dues deductions is not a matter that concerns departments, as this is a requirement in the collective agreement between the bargaining agent and the employer. Departments play a critical role in the administration of the check-off process, but not in the determination of entitlements.

[56] In conclusion, I find that the employer policy of only commencing dues deductions on the issue date of the letter of offer is in contravention of the collective agreement. The only value that the letter of offer has in the determination of dues deductions is that, in the absence of an acting pay or classification grievance, it specifies the effective date of the appointment.

[57] The bargaining agent in its application requested payment by the employer to the bargaining agent "of an amount equal to the Bargaining Agent's losses arising out of the breaches of the collective agreement … retroactive to the commencement of the collective agreement". In most cases, employees have had deductions made from their pay for the period between the date of appointment and the letter of offer. These dues have been remitted by the employer to other bargaining agents. Recovery of dues remitted in error to other bargaining agents is a matter between the employer and those bargaining agents. Those bargaining agents are not parties to this application and I do not have jurisdiction to make any orders affecting them; my jurisdiction is limited to the dispute between the PIPSC and the employer. I have concluded that the employer is liable for the breach of the collective agreement, and, accordingly, must remit to the PIPSC an amount equal to the dues owing under the collective agreement.

[58] In its application, the bargaining agent sought retroactive payment to the commencement of each collective agreement. While it is true that there are no time limits on applications under section 99 of the *PSSRA*, the employer should not be taken by surprise by claims made long after the commencement of a collective agreement. In this case, the policy provision at issue has been in effect since at least May 1, 1995 (the last revision date) and the evidence is that the bargaining agent first raised this formally with the employer in a meeting on May 11, 2001. As of that meeting, the employer was put on notice of the bargaining agent's position. Consequently, the remedy should be retroactive to May 2001. Therefore, the

employer's liability is for the amount equivalent to all dues owing for the relevant employees, commencing with dues for the month of May 2001.

[59] Counsel for the bargaining agent submitted that the order should include a direction that the PIPSC be paid within 60 days. I leave it to the parties to establish a process for determining the total amount owing and to remit to the PIPSC that amount as expeditiously as possible, but no later than 90 days from the date of this decision.

[60] The parties agreed that the Board had no authority to award interest.

[61] Accordingly, an order is issued:

- declaring that the employer has violated the check-off provisions of the six collective agreements with PIPSC;
- directing the employer to comply with the check-off provisions in the relevant collective agreements and deduct dues in the first month following the date of appointment; and
- directing payment of an amount equal to the dues owing to the PIPSC as a result of the breach, retroactive to May 2001, as expeditiously as possible, but no later than 90 days from the date of this decision.

[62] I will remain seized of this matter for a period of 95 days from the date of this decision.

Ian R. Mackenzie,
Board Member

OTTAWA, December 11, 2003.