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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

**UNION OF CANADIAN CORRECTIONAL OFFICERS –
SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA
(UCCO-SACC-CSN)**

Bargaining Agent

and

**TREASURY BOARD
(Solicitor General Canada – Correctional Service)**

Employer

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

Before: [Guy Giguère, Deputy Chairperson](#)

For the Bargaining Agent: [Céline Lalande, Counsel, UCCO-SACC-CSN](#)

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

Heard at Montréal, Quebec,
November 3, 2003.

DECISION

[1] On March 14, 2003, Sylvain Martel, the National President of the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada (UCCO-SACC-CSN), wrote to the Public Service Staff Relations Board (the Board) to file a reference under section 99 of the *Public Service Staff Relations Act* (the *Act*). According to the bargaining agent, the employer fails to make deductions for other purposes on the production of appropriate documentation in violation of clause 10.07 of the collective agreement between the Treasury Board and UCCO-SACC-CSN (Codes: 601 and 651).

[2] In his letter, Mr. Martel explained that, on October 26, 2001, the bargaining agent formally requested that the employer institute a system for source deduction so that correctional officers could contribute to the Fondation of the CSN. For several years now, Canada's correctional officers have been able to have their contributions to the Solidarity Fund, a fund similar to the Fondation of the CSN, deducted from the payroll. The employer answered that it did not object to the union's request but that the system could not be instituted until after the collective agreement had been renewed. Since then, and after some correspondence with the bargaining agent, no system has been put in place to permit the employer to make such a deduction.

[3] On October 1, 2003, John Lukaszczyk, the employer's representative, wrote to the Board in reply to the reference filed by UCCO-SACC-CSN. He indicated that, according to the employer, the current language of the collective agreement did not permit union members to contribute to the Fondation of CSN through source deductions.

[4] Mr. Lukaszczyk emphasized that the employer did not contravene the provision or the obligation to enforce Clause 10.7 of the collective agreement. However, this issue is under discussion in the current round of negotiations and the parties are in the process of finding a solution. The complaint to the Board by the bargaining agent under section 99 of the *Act* is therefore premature.

[5] At the hearing, the parties submitted a joint statement of facts and indicated that they had reached agreement concerning the production of a certain number of documents (Exhibits 1 to 12). The joint statement of facts reads as follows:

[Translation]

The parties admit the following facts:

1. *In March 2001, the correctional officers of Canada changed their union allegiance and created the UCCO-SACC-CSN.*
2. *On April 2, 2001, the employer and the union signed the collective agreement.*
3. *On October 9, 2001, Sylvain Martel, National President of the Union, met with Denis Martel, Senior Analyst, Pay Administration, on behalf of the employer; Sylvain Martel discussed the FONDACTION program of the CSN.*
4. *On October 26, 2001, Sylvain Martel made a formal request to the employer to put in place a deduction at source system to permit correctional officers to contribute to FONDACTION.*
5. *On January 25, 2002, UCCO-SACC-CSN reiterated its request to Marcel Nouvet, Chief Human Resources Officer, Treasury Board, to establish a deduction at source system to permit correctional officers to contribute to FONDACTION.*
6. *On April 10, 2002, UCCO-SACC-CSN tabled a draft collective agreement for the renewal of the labour contract that expired on May 31, 2002.*
7. *The draft collective agreement did not contain a request from the union concerning the deduction at source for FONDACTION.*
8. *At the meeting for the tabling of union demands on April 10, 2002, Michel Gauthier, the union bargaining agent, requested a response from the Treasury Board representatives regarding the establishment of a deduction at source system for contributions to FONDACTION.*
9. *On April 30, 2002, at an explanatory meeting on union demands for the renewal of the collective agreement, Daniel Langevin, the employer's negotiator, answered on behalf of the Treasury Board that the employer did not object to the principle of deductions at source for contributions to FONDACTION, but that the system could be put in place only after the collective agreement had been renewed.*
10. *Since that time, the parties have tried to negotiate a text, to be annexed to the new collective agreement, that would permit deductions at source to FONDACTION.*
11. *On December 13, 2002, the union asked the employer to comply with its obligations under the collective*

agreement to put in place a deduction at source system for contributions to FONDACTION.

12. On January 6, 2003, the employer answered the union that it would not establish a deduction at source system for contributions to FONDACTION.

13. To date, no system permitting deductions at source for contributions to FONDACTION has been put in place.

[...]

[sic for the quotation as a whole]

[6] Gilles Leclair, a CX-02 at the Cowansville Institution of the Correctional Service of Canada, testified for the bargaining agent. Mr. Leclair explained that he has been familiar with the Solidarity Fund since 1987. The Solidarity Fund is a workers' fund to create and maintain jobs for companies in financial difficulties. Since April 1992, he has worked for the employer where he began at the Port-Cartier Institution. At the time, the Public Service Alliance of Canada (the Alliance) was the bargaining agent representing correctional officers. The Alliance is related to the FTQ and it offered the Solidarity Fund to employees who wished to contribute. Mr. Leclair soon became the local representative for the Solidarity Fund.

[7] Since March 2001, UCCO-SACC-CSN has represented Correctional Service employees, and Mr. Leclair became the regional representative and the provincial representative for the Fondation of the CSN.

[8] He explained that someone who contributed to the Solidarity Fund was given a 15% tax credit at the provincial and federal levels respectively and was also entitled to retirement savings plan credits if the employee so elected. According to Mr. Leclair, this represents a net cost of \$18 to \$25 for every \$100 invested in the Solidarity Fund when the employer deducts the contributions directly from the payroll.

[9] Mr. Leclair concluded by indicating that it was not as interesting for Correctional Service employees to contribute to the Fondation since the employer did not withhold their contributions to the Fondation of the CSN directly from their paycheques.

[10] Because of this, a Correctional Service employee must pay his contributions to the Fondation for the year and wait to receive the corresponding tax refund until he has filed his tax return for the year.

[11] On cross-examination, Mr. Leclair said that an employee could contribute to Fondation through a credit union. Furthermore, he explained, an employee could obtain an authorization from the tax authorities to reduce the amount of tax withheld from his salary to reflect regular contributions to Fondation. Mr. Leclair added that this procedure would be more complicated for the members and they would be less willing to invest in Fondation.

Bargaining agent's submissions

[12] Ms. Lalande submitted that, in January 1985 (document 5), the then Prime Minister, the Right Honourable Brian Mulroney, had agreed that contributions to the Solidarity Fund of the FTQ could be directly deducted from the pay of federal employees who requested it. According to Ms. Lalande, clause 10.07 of the collective agreement introduced a protection of this practice of the federal government.

[13] The Solidarity Fund and Fondation have the same objectives and, according to the bargaining agent, the employer should allow union members as soon as possible to make their contributions to Fondation by deductions from their salaries.

[14] Clause 10.07 allows source deductions for other purposes and, contrary to the employer's claims, the amounts collected may be paid to entities other than the bargaining agent. According to Ms. Lalande, all that would be needed is a request to that effect from the bargaining agent. The amounts withheld from the salaries would be remitted to the managers of Fondation.

[15] The new draft collective agreement contains no articles on this subject because, according to the bargaining agent, the practice was covered by clause 10.07. However, after the employer refused to permit such source deductions, the bargaining agent agreed to negotiate a provision to clarify the question.

Employer's submissions

[16] Ms. Champagne submitted that workers' equity funds are not covered by clause 10.07 of the collective agreement. According to Ms. Champagne, the bargaining agent claims that the introduction of clause 10.07 in the collective agreement was brought about by the 1985 agreement with the federal government permitting source deductions for contributions to the Solidarity Fund. However, as may be seen from a reading of Exhibit 11, which is the collective agreement expiring on September 30,

1968, between the Treasury Board and the Public Service Alliance of Canada for the Correctional Services Group (Codes 601/4/68), there was a similar provision back then in clause 10.07 of that agreement:

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

[17] In addition, Exhibit 12 clarifies the nature of the “deductions for other purposes” found in the past and present versions of clause 10.07. Exhibit 12, which is taken from the Pay Administration Manual, concerns payroll deductions and is dated September 1979. The last paragraph of article 9.1.7.1 contains the following:

It is further provided in all agreements for continuance of the practice of including in the dues deduction the amount of the premium for group insurance which was previously authorized by T. B. 618427 of December 17, 1963.

[18] Consequently, Ms. Champagne submits that, starting in 1963, the Treasury Board authorized deductions from employee payroll for dues that were given to the union so that it could pay the group insurance premiums.

[19] Moreover, according to Ms. Champagne, Article 10 of the collective agreement deals with union dues and must be read as a whole. Contributions to a workers' fund are certainly not union dues. A non-unionized employee may contribute to a workers' fund, whereas union dues can be paid only by a unionized employee. In contrast to union dues, which are withheld at the union's request, a contribution to a workers' fund is determined by the employee.

[20] The reference under section 99 of the *Act* presupposes a violation of the collective agreement. The onus was clearly on the bargaining agent to establish a violation of clause 10.07, which it did not do, because since 1963 clause 10.07 has applied to dues for insurance purposes, and it is this practice that the employer has an obligation to maintain.

[21] In support of these submissions, Ms. Champagne cited *Canadian Association of Professional Radio Operators and Treasury Board* (Board File No. 169-2-498).

Reasons for Decision

[22] Clause 10.07 of the collective agreement reads as follows:

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

[23] This clause requires the employer to continue the practice of making deductions for other purposes. I agree with Board Member Young's finding in *Canadian Association of Professional Radio Operators and Treasury Board (supra)* that the obligation is not as broad as if the agreement had simply stated:

The employer will make deductions for other purposes on the production of appropriate documentation.

[24] The employer's obligation, therefore, is to continue to make deductions for other purposes as in the past. Thus, its obligation is much narrower and is one that is related to specific precedents.

[25] The bargaining agent has the burden of proof in this case and, based on what was submitted, I cannot conclude that the practice referred to by clause 10.07 of the collective agreement is the source deduction of employee contributions to workers' funds.

[26] The bargaining agent established that the federal government had agreed to source deductions for contributions to the Solidarity Fund since 1985. However, it did not show that it was this practice that the employer had agreed to continue when the parties signed the collective agreement for the Correctional Services Group.

[27] On the contrary, the employer's evidence is conclusive that clause 10.07 dealt with the practice of withholding contributions for insurance premium purposes. For these reasons, the reference must be denied.

[28] Having said this, I note that the employer agrees to make such deductions in the future and that the parties are discussing, in the current round of negotiations, a text that would reflect the employer's agreement to the bargaining agent's demand. I hope that the parties will soon be able to conclude an agreement so that the employer's agreement to make source deductions for contributions to Fondation can be implemented shortly thereafter.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, February 24, 2004.

P.S.S.R.B. Translation