

Date: 20010504

File: 169-2-634

Citation: 2001 PSSRB 44



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Solicitor General – Correctional Service of Canada)

Employer

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

Before: [Léo-Paul Guindon, Board Member](#)

For the Bargaining Agent: [Luc David, Public Service Alliance of Canada](#)

For the Employer: [Paul Deschênes, Counsel](#)

Heard at Montréal, Quebec,
December 18, 2000.

DECISION

[1] On October 31, 2000, the Public Service Alliance of Canada (PSAC) submitted a reference under section 99 of the *Public Service Staff Relations Act* (the Act).

[2] This reference was directed against the Department of the Solicitor General and concerned the obligation to consult, as set out in clause 29.12 of the collective agreement, which reads as follows:

29.12 The Employer agrees that, once a year before scheduling vacation leave, consultation shall take place at each institution with the local authorized representative of the Alliance, to determine the minimum number of correctional officers of each level who may be granted vacation leave at the same time based on the operational requirements of the institution.

[3] In the reference, the bargaining agent requested the following corrective action:

[Translation]

We therefore ask the Public Service Staff Relations Board (Board) to order the Employer:

- *to comply with the obligations set out in clause 29.12 of the collective agreement, that is, to carry out genuine consultations, explaining how it meets its obligation to **consider various factors**;*
- *to redefine its criteria for allocating employee vacation leave, so that employees may have the vacation leave for which they apply; and*
- *to consider all individual vacation leave requests made by employees under their collective agreement, and provide specific explanations for any refusals it may decide upon.*

[4] The employer objected to the Board's jurisdiction to deal with the reference and to allow the requested corrective action.

[5] The parties acknowledged that the Board has jurisdiction to rule on a reference concerning the obligation to consult, as set out in clause 29.12 of the collective agreement, since this obligation cannot be the subject of a grievance by an individual member of the bargaining unit. This jurisdiction covers the first item of the requested corrective action.

[6] However, the Board's authority to order the employer to redefine its criteria for allocating vacation leave and to reconsider employees' vacation leave requests is still contested. In the employer's opinion, these items of the requested corrective action could be the subject of individual grievances, but not of a reference under subsection 99(1) of the Act. The bargaining agent argued that the lack of consultation had an impact on employees' vacation leave requests, and that the purpose of the corrective action requested was to offset the consequences.

[7] This objection was taken under advisement at the hearing, and will be dealt with in this decision.

Facts

[8] Jean-Yves Blais, deputy warden of the Leclerc Institution, gave the manager of Unit no. 3 a mandate to consult on the following issues (Exhibit R-4) :

- employee deployment at the end of the fiscal year;
- vacation leave in 2000-2001;
- work schedules; and
- position standard.

[9] Jean-Yves Blais would like to be able to sign agreements covering, for example, the vacation leave ratio, that is, the minimum number of correctional officers of each level who could be granted vacation leave at the same time.

[10] At the first union-management meeting, on January 1, 2000, Archer Amyot and Pierre Blouin were given the mandate of preparing a paper setting out the bargaining agent's position. This position paper (Exhibit P-3) was produced at the second union-management meeting, on January 26, 2000, and set out the union's interpretation of each paragraph of clause 29 of the collective agreement concerning vacation leave. A table appended to Exhibit P-3 shows examples of leave periods during which days of rest and vacation leave were combined without consideration for the maximum permissible summer leave period of two consecutive weeks. The content of the bargaining agent's paper was not presented or debated by the parties; the employer

notified the bargaining agent's representatives that, for budgetary reasons, it would not consider the content of this paper.

[11] The issue of the vacation leave ratio was not discussed by the parties, either at the two above-noted meetings or on other occasions. Michel DesLauriers, warden of the Leclerc Institution, testified that the minimum number of correctional officers was calculated using a formula from the Regional Management Committee. Mr. DesLauriers testified that the employees were informed of this formula and the calculation before the meetings, and that the issue of the vacation leave ratio was not addressed.

[12] André Chenevert and Martial Jolicoeur testified for the bargaining agent about the employer's refusal to give them more than 10 consecutive working days' leave during the summer. Martial Jolicoeur filed a grievance against the employer's refusal of his vacation leave request. André Chenevert did not file a grievance against the employer's refusal of his vacation leave request. The employer objected to these testimonies on the ground that they were not relevant to the subject of the reference. This objection was taken under advisement, and will be dealt with in this decision.

Arguments

[13] The bargaining agent argued that the evidence showed that there was no consultation as set out in clause 29.12 of the collective agreement to determine the minimum number of correctional officers who may be granted vacation leave at the same time. At the meetings, the employer did not seek the bargaining agent's opinion nor did it request information that could have been provided by the bargaining agent. The employer applied the formula imposed by the Regional Management Committee to determine the number of correctional officers who could be granted vacation leave at the same time, and did not discuss this formula with the bargaining agent. The employer did not comply with the obligation to consult, as set out in clause 29.12 of the collective agreement, and the bargaining agent requested a statement to this effect. The bargaining agent asked the Board to order the employer to review its policy and directives on vacation leave so as to respect the bargaining agent's right to genuine consultation. The lack of consultation has caused prejudice to the members, who called for the employer to reconsider their vacation leave requests after consultation.

[14] According to the employer, the bargaining agent was trying to use this reference to challenge the vacation leave policy, particularly the summer vacation leave maximum of 10 consecutive working days. Refusals of vacation leave applications exceeding 10 consecutive working days can be challenged by means of individual grievances, and cannot be considered in this reference. On this point, since the bargaining agent was using this reference to challenge the vacation leave policy, the Board should conclude that it lacks jurisdiction. Concerning consultation, the bargaining agent seemed to consider consultation synonymous with “agreement”, which departed from the accepted meaning of consultation as asking someone's opinion. There would have been consultation before the vacation leave policy was adopted. The employer fulfilled its obligation to consult by asking for the bargaining agent's comments and suggestions on vacation leave at the meetings. In response to these requests, the bargaining agent provided its paper on vacation leave (Exhibit P-3). Because the bargaining agent's requests were unreasonable as they gave no consideration to operational requirements, the employer refused them. Since the employer did fulfil its obligation to consult, the Board should dismiss the reference.

Reasons for Decision

[15] This reference based on clause 29.12 of the collective agreement is in accordance with the authority given to the Board by subsection 99(1) of the Act.

[16] Clause 29.12 of the collective agreement requires the employer to consult to determine the minimum number of correctional officers of each level who may be granted vacation leave at the same time. This clause also sets out the following criteria governing this consultation:

- once a year;
- before scheduling vacation leave;
- at each institution with the local authorized representative of the bargaining agent;
- based on the operational requirements of the institution.

[17] The Board has jurisdiction to make a determination on the consultation issue set out in clause 29.12 of the collective agreement. An alleged failure by the employer

to comply with the obligation to consult the local representatives of the bargaining agent cannot be the subject of individual grievances, since the right to be consulted is entirely the prerogative of the local representatives of the bargaining agent. Therefore the exception contained in subsection 99(1) of the Act does not apply here.

[18] The criteria for allocating vacation leave are set out in article 29 of the collective agreement; failure to apply these criteria may be the subject of grievances by individual employees. Clause 29.10 of the collective agreement requires the employer to notify employees in writing if it refuses their vacation leave requests, and individual grievances may be filed if this employee's right is not respected. The exception contained in subsection 99(1) of the Act does apply to the criteria for allocating vacation leave and the written explanations of refusals, since these items of the requested corrective action may be the subject of grievances by individual members of the bargaining unit.

[19] Regarding these two items of the requested corrective action, the objection on the Board's jurisdiction is allowed.

[20] The objection raised by the employer on the relevance of Messrs. Chenevert and Jolicoeur's testimonies is dismissed. The facts surrounding the employer's refusal of these two employees' vacation leave requests put this reference concerning the failure to consult in the overall context of the relations between the parties. Specifically, these testimonies shed light on the nature of the employees' frustration with the vacation leave allocation procedure applied by the employer. Although no determination on the refusal to approve vacation leave requests can be made in this reference, the testimonies of André Chenevert and Martial Jolicoeur are relevant.

[21] This reference is allowed, since the employer did not fulfil its obligation to consult, as set out in clause 29.12 of the collective agreement, to determine the minimum number of correctional officers of each level who could be granted vacation leave at the same time.

[22] Despite the fact that the employer called meetings on vacation leave, the evidence shows that the issue of the vacation leave ratio was never addressed by the parties at the institutional level. On the contrary, it has been established that this ratio was set, and employees were notified of it, before the meetings on vacation leave were

called. The ratio was calculated using a formula established by the Regional Management Committee several years ago.

[23] This consultation was provided for recently, in the collective agreement effective March 30, 1999 (Exhibit P-1); it does not appear in the former collective agreement (Exhibit P-1). From this perspective, calculating the vacation leave ratio by applying the Regional Management Committee formula to each institution and not discussing with the other party each of the criteria governing consultation constitute failures to comply with the obligation to hold local consultations once a year between management of the institution and local representatives of the bargaining agent.

[24] Although the bargaining agent emphasized the wording of clause 29.12 of the collective agreement, reproducing it in boldface type in the paper (Exhibit P-3) provided to the employer on January 26, 2000, the employer took no concrete action to comply with its obligation to consult.

[25] Although the employer told the bargaining agent that its requests were unrealistic, at no time did it specify on which aspects of operational requirements that assessment was based. The wording of clause 29.12 clearly links the minimum number of correctional officers who may be granted vacation leave at the same time to operational requirements, thus establishing the two basic elements of consultation. By failing to provide information about these aspects of operational requirements and to discuss them with the bargaining agent, the employer did not fulfil its obligation to consult.

[26] Although the Board could order the employer to consult before scheduling vacation leave, it appears that such an order would be useless for the vacation year from April 1, 2000 to March 31, 2001, or for the period from April 1, 2001 until the date of this decision.

[27] The Board therefore orders the employer to consult with the local representatives of the bargaining agent to determine the minimum number of correctional officers of each level who may be granted vacation leave at the same time, for the annual vacation leave period. As part of this consultation, the employer must submit to the local representatives of the bargaining agent all aspects of operational

requirements that may have an impact on determining the minimum number of correctional officers of each level who may be granted vacation leave at the same time.

**Léo-Paul Guindon,
Board Member**

OTTAWA, May 4, 2001

Certified true translation

Maryse Bernier