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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

COMMUNICATIONS SECURITY ESTABLISHMENT

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA, PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, AND CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondents

Indexed as
Communications Security Establishment v. Public Service Alliance of Canada

In the matter of an application under section 89 of the *Federal Public Sector Labour Relations Act*

Before: David Olsen, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Richard Pierson

For the Public Service Alliance of Canada: Andrew Raven, counsel

For the Professional Institute of the Public Service of Canada: Peter Englemann, counsel

For the Canadian Association of Professional Employees: Claude Vezina, bargaining agent

Decided on the basis of written submissions, filed February 28, August 8, and September 30, 2019.

REASONS FOR DECISION

I. Application before the Board

[1] On February 28, 2019, the applicant, the Communications Security Establishment (CSE), filed a successor-rights application with the Federal Public Sector Labour Relations and Employment Board ("the Board"), pursuant to s. 89 of the *Federal Public Sector Labour Relations Act* ("the *Act*"), about the transfer of employees to it from Shared Services Canada (SSC) and Public Safety Canada (PSC). It sought an order stating that the appropriate bargaining unit in this matter is the existing bargaining unit at the CSE and that the bargaining agent is the Public Service Alliance of Canada (PSAC).

[2] A number of represented employees in the core public administration from SSC and PSC were moved to the CSE, a separate agency, where they were to work in a section known as the "Canadian Centre for Cyber Security". The functions they performed in their incumbent positions were integrated into the CSE effective October 1, 2018, per Order in Council PC-2008-1061. This move constituted a conversion within the meaning of s. 80 of the *Act*.

[3] Those former employees of the core public administration were in four different bargaining units represented by three different bargaining agents.

[4] The PSAC represents employees in the Program and Administrative Services bargaining unit. Their collective agreement had expired before the conversion date, and notice to bargain was served on the Treasury Board on April 12, 2018.

[5] The Professional Institute of the Public Service of Canada (PIPSC) represents employees in the Computer Systems and Architecture, Engineering and Land Survey bargaining units. Their collective agreements had also expired, and notice to bargain was served on the Treasury Board on November 5, 2018, and September 28, 2018, respectively.

[6] The Canadian Association of Professional Employees (CAPE) represents employees in the Economics and Social Science Services bargaining unit. Their collective agreement had also expired, and notice to bargain was served on the Treasury Board on November 8, 2018.

[7] The CSE's represented employees are in a single bargaining unit, represented by the PSAC.

[8] According to s. 89(a) of the *Act*, if a notice to bargain collectively was given before a conversion, the separate agency may apply to the Board, from 120 to 150 days after the date of the conversion, for an order determining whether the employees who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and which employee organization is to be the bargaining agent for the employees in each such unit.

[9] The CSE made this application within the 120- to 150-day time frame counted from the October 1, 2018, conversion date as required under s. 89(a) of the *Act*.

[10] The CSE's application was supported by the consent and with the agreement of the PSAC and CAPE that the represented employees would constitute one unit for collective bargaining purposes and that the PSAC would be the bargaining agent for those employees.

[11] In particular, under the memoranda of agreement between the CSE and the PSAC and CAPE respectively, the parties agreed that the former SSC and PSC employees who were PSAC members would become PSAC members, in its component the Union of National Defence Employees, Local 70654 ("PSAC-UNDE, Local 70654"), on the effective date of the memoranda of agreement (i.e., the date of the Board's decision) and that the former SSC and PSC employees who were CAPE members would also become members of that local on that date.

[12] On the same date as the CSE's application, February 28, 2019, PIPSC made an application pursuant to ss. 84 and 89 of the *Act* for an order stating that its affected members in the Computer Systems and Architecture, Engineering and Land Survey bargaining units constitute a single unit appropriate for collective bargaining and that PIPSC would be the bargaining agent for those members.

[13] On August 8, 2019, PIPSC formally withdrew its successor-rights application.

[14] On September 30, 2019, the Board was advised that PIPSC, the PSAC, and the CSE had reached an agreement and that on consent, they sought an order to confirm that the appropriate bargaining unit was the existing one at the CSE and that the bargaining agent was to be the PSAC.

[15] The agreement provided in part that the former SSC and PSC employees, represented by PIPSC, would become members of PSAC-UNDE, Local 70654 (UNISON classification), on the date of the Board's decision determining the CSE's successor-rights application.

[16] The matter was referred to this panel of the Board on October 7, 2019, for a decision.

II. Reasons

[17] The relevant statutory provisions appear in Division 5 of Part 1 of the *Act*, under the title "Successor Rights and Obligations" and read as follows:

> …
>
> ***79 (1)*** *If, by reason of a merger or an amalgamation of employee organizations or a transfer of jurisdiction among employee organizations, other than as a result of a revocation of certification, an employee organization succeeds another one that, at the time of the merger, amalgamation or transfer of jurisdiction, is a bargaining agent, the successor is deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement, an arbitral award, an essential services agreement or otherwise.*
>
> …
>
> ***80*** *…*
>
> **conversion** *means the establishment as a separate agency, or the integration into a separate agency, of any portion, or part of a portion, of the core public administration.…*
>
> ***81*** *Subject to sections 83 to 93, a collective agreement or arbitral award that applies to employees in any portion, or part of a portion, of the core public administration before its conversion continues in force after the conversion, and binds the new separate agency, until its term expires.*
>
> …
>
> ***83*** *An employee organization may apply to the Board for certification as the bargaining agent for the employees bound by a collective agreement or arbitral award that is continued in force by section 81, but it may do so only during the period in which an application for certification is authorized to be made under section 55 in respect of those employees.*
>
> ***84 (1)*** *Whenever a collective agreement or arbitral award is continued in force by section 81, the Board must, by order, on application by the new separate agency or any bargaining agent affected by the conversion,*

> ***(a)*** *determine whether the employees of the new separate agency who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;*
>
> ***(b)*** *determine which employee organization is to be the bargaining agent for the employees in each such unit; and*
>
> ***(c)*** *in respect of each collective agreement or arbitral award that binds employees of the new separate agency, determine whether the collective agreement or arbitral award is to remain in force, and if it is to remain in force, determine whether it is to remain in force until the expiration of its term or until any earlier date that the board may fix.*
>
> ***(2)*** *The application may be made only during the period beginning 120 days and ending 150 days after the conversion date.*
>
> …
>
> ***89*** *If a notice to bargain collectively was given before a conversion,*
>
> ***(a)*** *An application by the new separate agency or bargaining agent, made during the period beginning 120 days, and ending 150 days, after the date of the conversion, the Board must make an order determining*
>
> ***(i)*** *whether the employees of the new separate agency who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and*
>
> ***(ii)*** *which employee organization is to be the bargaining agent for the employees in each such unit; and*
>
> ***(b)*** *if the board makes the determinations under paragraph (a), the new separate agency or the bargaining agent may, by notice given under section 105, require the other to commence collective bargaining for the purpose of entering into a collective agreement.*
>
> …
>
> ***91 (1)*** *For the purposes of paragraphs 84(1)(a) and 89(a), in determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board must have regard to the employer's classification of persons in positions, including the occupational groups or subgroups established by the employer.*
>
> ***(2)*** *The Board must establish bargaining units that are co-extensive with the occupational groups or subgroups established by the employer, unless doing so would not permit satisfactory representation of the employees to be included in a particular bargaining unit and, for that reason, such a unit would not be appropriate for collective bargaining.*
>
> …

[18] The CSE seeks an order under s. 89(a) of the *Act* since notices to bargain were served on the Treasury Board before the October 1, 2018, conversion for the Program and Administrative Services bargaining unit (PSAC), the Architecture, Engineering and Land Survey bargaining unit (PIPSC), and the Economics and Social Science Services bargaining unit (CAPE). On November 5, 2018, notice to bargain was given for the Computer Systems bargaining unit (PIPSC).

[19] Section 89(a) requires that the application be made during the period beginning 120 days and ending 150 days after the conversion date, which in this case was October 1, 2018. The application was filed with the Board on February 28, 2019, which was the 150th day after the conversion date.

[20] The CSE seeks an order stating that the appropriate bargaining unit is its existing bargaining unit and that the bargaining agent is the PSAC.

[21] By memoranda of agreement, the parties agreed that the former SSC and PSC employees, who were PSAC members, and that the former PSC employees, who were CAPE members, would become members of PSAC-UNDE, Local 70654, on the effective date of the memoranda of agreement.

[22] Similarly by a memorandum of agreement, PIPSC, the CSE, and the PSAC agreed that the former SSC and PSC employees that PIPSC represented would become members of PSAC-UNDE, Local 70654 (UNISON classification), on the date of the Board's decision determining the CSE's application of February 28, 2019.

[23] Does the voluntary agreement of all the parties meet the *Act*'s objective of ensuring effective labour-management relations?

[24] A similar case, *Canada Revenue Agency v. Association of Canadian Financial Officers*, 2006 PSLRB 38, stated as follows:

> …
>
> *[14] Under both sections 84 and 89, the Board has the discretionary authority to make the determination requested. In exercising this authority, the board must ensure that the declarations sought by the parties are consistent with the requirements and objectives of the* Act. *The fact that three parties have joined in an agreed, common application and are unopposed in their request by the two respondents is a very important consideration, though not ultimately determinative of the matter.*

> *Nonetheless, there are no reasons before me why I should not grant this application, nor do I find any impediment in the written submissions of the parties to my doing so. The stated objective in the legislation of ensuring effective labour-management relations is well served where the parties have themselves reached a voluntary agreement on a proposed arrangement, provided that the proposed arrangement accords substantially and procedurally with the* Act *and with previous relevant decisions of the Board.*
>
> …

[25] In the circumstances of this case, it is significant that all the parties agree with respect to the appropriateness of the bargaining unit and to the representation of the employees.

[26] Section 89(a) requires that I determine whether the employees of a new separate agency constitute one or more units appropriate for collective bargaining and the employee organization to be the bargaining agent for such units.

[27] I have reviewed the previous decisions of the Board and its predecessors dealing with certification applications and determining the appropriate bargaining units at the CSE.

[28] In *Communication Security Establishment, Department of National Defence v. Public Service Alliance of Canada*, 2001 PSSRB 14, the Public Service Staff Relations Board (PSSRB) determined that a single bargaining unit was appropriate for collective bargaining at the CSE and that the bargaining unit should be represented by the PSAC.

[29] In that case, the CSE sought a reconsideration of five previous PSSRB decisions, which determined that five separate bargaining units were appropriate for collective bargaining and requested that the PSSRB determine that a single bargaining unit was more appropriate.

[30] The PSSRB relied upon the fact that the CSE had developed a new universal job evaluation plan for all its jobs under which all positions not at the executive level would be evaluated using the same standard. At paragraph 66, the PSSRB found as follows: “This, to me, is a very strong and cogent reason why the present bargaining unit structure needs to be reviewed.” At paragraph 78, it found that the job evaluation plan was the very pith and substance of a classification plan.

[31] In my view, that decision complies with the requirements of s. 91 of the *Act* as it considers the employer’s classification of persons in positions.

[32] In exercising my authority under s. 89, given the agreement of all the parties and the fact that the Board's predecessor, the PSSRB, has already determined that one bargaining unit is appropriate for CSE employees, and in accordance with the *Act*'s labour relations objectives, I confirm that one unit is appropriate for collective bargaining.

[33] Given the agreement of all the parties and the fact that there is no evidence to show that any of the employees affected are dissatisfied with the proposal in the application, I find that those employees shall be represented by the PSAC.

[34] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

III. Order

[35] The Board confirms that the bargaining unit described in the existing PSSRB order dated February 16, 2001, is appropriate for collective bargaining.

[36] The Board also confirms that the PSAC shall continue to represent the employees in the bargaining unit, including those employees described in the application who were moved to the CSE from SSC and PSC.

March 27, 2020.

David Olsen,
a panel of the Federal Public Sector
Labour Relations and Employment Board