

Date: 20211214

File: 536-08-40682

Citation: 2021 FPSLREB 135

*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

**SYNDICAT GÉNÉRAL DU CINÉMA ET DE LA TÉLÉVISION,
LOCAL 4835 (CANADIAN UNION OF PUBLIC EMPLOYEES)**

Applicant

and

NATIONAL FILM BOARD

Respondent

Indexed as

Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) v. National Film Board

In the matter of an application for determination of successor rights and obligations under section 79 of the *Federal Public Sector Labour Relations Act*

Before: Chantal Homier-Nehmé, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Chantal Bourgeois, Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees)

For the Respondent: Arlette Boghoskhan, National Film Board

Decided on the basis of written submissions,
filed October 5, 6, 14, and 20, 2021.
(FPSLREB Translation)

Reasons for decision**(FPSLRB Translation)**

I. Application before the Board

[1] This decision follows the representation vote held as part of an application for determination of successor rights and obligations under s. 79 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) made by the Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) (“the Syndicat général”).

[2] On July 11, 2019, the Syndicat général made an application under s. 79 of the Act to consolidate three bargaining units at the National Film Board (“the respondent”) comprising all personnel in the following categories:

- administrative support, represented by the Canadian Union of Public Employees, Local 2656 (“CUPE”); see *Canadian Union of Public Employees, Local 2656 v. National Film Board*, PSSRB File No. 145-08-228 (19850131);
- operational, represented by CUPE; see *Canadian Union of Public Employees, Local 2656 v. National Film Board*, PSSRB File No. 146-08-229 (19850131); and
- technical, represented by the Syndicat général; see *Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) v. National Film Board*, 2007 PSLRB 117.

[3] The Syndicat général and the respondent agreed that a unit that is appropriate for collective bargaining includes all employees in the technical, administrative support, and operational categories.

II. Procedural background

[4] Because the documentation submitted in support of the application was insufficient to determine whether a majority of the employees included in the bargaining unit proposed by the Syndicat général wished it to represent them as their bargaining agent, the Federal Public Sector Labour Relations and Employment Board (“the Board”) convened the parties to a case management conference.

[5] The first case management conference in this matter took place on August 7, 2019, as the parties were not available before that date.

[6] On August 12, 2019, the Board ordered the respondent to provide it with a complete and up-to-date list of all the employees affected by the application and the home and personal email addresses of each one no later than September 13, 2019.

[7] On August 15, 2019, the Board issued a notice to the employees about an application to determine successor rights (“the notice”). It informed the employees affected by the application of their right to file a notice of objection before 4:00 p.m. on September 13, 2019. Also on August 15, 2019, the Board ordered the respondent to take the following steps:

- display, until September 13, 2019, an appropriate number of copies of the notice in each of its offices and in prominent locations where the employees affected by the application would be most likely to see it;
- post, until September 13, 2019, on its intranet home page, and display in a prominent location where the employees affected by the application would be most likely to see it, a message informing the employees that the Board had ordered posted a digital copy of the notice on the respondent’s intranet home page, and a digital copy of the notice; and
- send, by email to the work email address of each employee affected by the application, a message informing these employees that the Board had ordered sending by email to each employee’s work email address a digital copy of the notice, and a digital copy of the notice.

[8] None of the employees affected by this application filed a notice of objection, and no other employee or employee representative intervened.

[9] On September 13, 2019, the respondent filed a list of the employees affected by the application and their home and personal email addresses and confirmed that it complied with the Board’s orders issued on August 15, 2019.

[10] On September 16, 2019, the respondent confirmed that it had complied with the Board’s August 15, 2019, order.

[11] On October 1, 2019, the Board requested written submissions from the Syndicat général, the respondent, and CUPE with respect to a unit that is appropriate for collective bargaining. The written submissions had to be filed no later than October 22, 2019. On October 16, 2019, the Syndicat général and the respondent requested that the time limit be extended to October 23, 2019, and the Board agreed to the request the same day.

[12] The CUPE did not file any written submissions.

[13] On October 23, 2019, the Syndicat général and the respondent filed joint written submissions.

[14] In March 2020, given the context of the global pandemic that is still here today, the appropriate authorities imposed limits on freedom of movement to protect public health. On that occasion, access to the business offices of many organizations, including those of the Board Secretariat, was prohibited, and the employees of those organizations were placed on telework.

[15] On March 26, 2020, in *Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) v. National Film Board*, 2020 FPSLREB 31, the Board determined the following unit as appropriate for collective bargaining (“the bargaining unit”):

all employees of the Employer in the Technical Category, as well as those in the Administrative Support Category and those in the Operational Category.

tous les fonctionnaires de l'employeur compris dans la catégorie technique, ainsi que ceux compris dans la catégorie du soutien administratif et ceux compris dans la catégorie de l'exploitation.

[16] On March 26, 2020, in *Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) v. National Film Board*, 2020 FPSLREB 31, the Board also ordered that an electronic representation vote be held to determine whether a majority of employees included in the bargaining unit wished the Syndicat général to represent them as their bargaining agent and appointed the director of the Board Secretariat’s Registry as the director of the representation vote.

[17] On March 31, 2020, the Syndicat général inquired about the next steps of the process in this matter. On April 3, 2020, the Board informed the Syndicat général that the context of the global pandemic prevented the director of the representation vote from organizing a rapid holding of the vote.

[18] On October 27, 2020, in preparation for the representation vote, the Board ordered the respondent to submit to it an updated list of the employees affected by the application and their home and personal email addresses no later than November

23, 2020. The Board also ordered the Syndicat général to confirm its agreement or disagreement with the contents of the update by December 7, 2020. Finally, the Board ordered the Syndicat général and the respondent to report to it before December 22, 2020, on all measures that had to be taken with respect to any employees affected by the application, under the *Accessible Canada Act* (S.C. 2019, c. 10), to enable them to participate fully in the electronic representation vote ordered by the Board.

[19] On November 23, 2020, with the agreement of the Syndicat général, the respondent submitted to the Board an updated list of the employees affected by the application and their home and personal email addresses.

[20] On November 25, 2020, the Board reminded the Syndicat général and the respondent to report to it by December 22, 2020, on any measures that had to be taken with respect to any employees affected by the application, under the *Accessible Canada Act*, to enable them to participate fully in the electronic representation vote ordered by the Board.

[21] On December 1, 2020, the Syndicat général requested clarification about the measures mentioned in the Board's October 27, 2020, order. That same day, the Board clarified the measures mentioned in the order to the Syndicat général and the respondent.

[22] On December 3, 2020, the Syndicat général and the respondent informed the Board that an employee in the bargaining unit required specific measures to be able to participate fully in the representation vote by telephone.

[23] On December 4, 2020, the Board informed the respondent that the updated list of the employees affected by the application and their home and personal email addresses, which it had submitted on November 23, 2020, did not comply with the Board's October 27, 2020, order. The Board ordered the respondent to remedy the situation by no later than December 11, 2020.

[24] On December 7, 2020, the respondent informed the Board of its inability to comply with the Board's December 4, 2020, order in the foreseeable future. On December 18, 2020, the Syndicat général did not object to the respondent's claims.

[25] On January 8, 2021, the Board held a second case management conference in this matter.

[26] On January 11, 2021, the respondent submitted to the Board a partially updated list of the employees affected by the application and their home and personal email addresses.

[27] On January 18, 2021, the Board amended its March 26, 2020, decision in *Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) v. National Film Board*, 2021 FPSLREB 8, ordering that the representation vote be held electronically and by telephone.

[28] On March 23, 2021, the Syndicat général inquired about the next steps of the process in this matter. On March 24, 2021, the Board informed the Syndicat général and the respondent about the difficulties that the director of the representation vote was encountering with organizing the vote. On April 14, 2021, the Board updated the Syndicat général and the respondent on the organizing of the vote.

[29] On June 18, 2021, the Syndicat général inquired about the next steps of the process in this matter. On July 7, 2021, the director of the representation vote updated the Syndicat général and the respondent on the organizing of the vote.

[30] On July 21, 2021, the Board ordered the respondent to provide it with an updated list of the employees affected by the application and their home and personal email addresses.

[31] On July 23, 2021, the respondent filed an updated list of the employees affected by the application and their home and personal email addresses. The list contained 182 names.

[32] On July 27, 2021, the Board ordered the respondent to confirm that all the employees whose names appeared on the updated July 23, 2021, list were still eligible to vote. The respondent confirmed it the same day.

[33] On August 5, 2021, the Board confirmed that the information in the updated July 23, 2021, list was sufficient to allow the director of the representation vote to ensure that the vote was held properly.

[34] On August 18, 2021, the Board informed the Syndicat général and the respondent that the representation vote would be held from August 20 to September 9, 2021 and ordered them to post the voting dates on their intranet sites.

[35] On August 19, 2021, the Board informed the Syndicat général and the respondent that the employees who were eligible to vote had received instructions for participating in the representation vote.

[36] On August 23, 2021, the respondent confirmed that it had posted the voting dates on its intranet site. The Syndicat général did not provide any such confirmation.

III. The results of the vote

[37] The representation vote was held from August 20 to September 9, 2021, and 50.5% of eligible voters participated in the representation vote. The results were as follows:

• Number of employees eligible to vote	182
• Votes cast	92
• In favour of the Syndicat général	91
• Against the Syndicat général	1

[38] On October 5, 2021, the Syndicat général and the respondent were informed of the representation vote results. The Board ordered them to confirm whether they accepted the vote results and to identify any questions under s. 79(2) of the *Act* that the Board had to rule on.

IV. The parties' submissions

[39] On October 5, 2021, the Syndicat général accepted the representation vote results. The respondent accepted the vote results on October 6, 2021.

[40] On October 12, 2021, the Board again ordered the Syndicat général and the respondent to identify any questions under s. 79(2) of the *Act* that the Board had to rule on.

[41] On October 14, 2021, the Board again ordered the Syndicat général and the respondent to identify any questions under s. 79(2) of the *Act* that the Board had to rule on, this time by October 21, 2021.

[42] On October 14, 2021, the Syndicat général asked the Board to explain its October 5, 12, and 14, 2021, orders. On October 15, 2021, the Board urged the Syndicat

général and the respondent to consult their respective legal advisors for any required support.

[43] On October 20, 2021, the Syndicat général and the respondent jointly asked the Board to retain the rights, privileges, and obligations under the collective agreements that applied to the employees in the bargaining unit until a new collective agreement for the bargaining unit could be concluded. In addition, the Syndicat général and the respondent jointly stated to the Board that it was not required to rule on any other question under s. 79(2) of the Act.

V. Decision

[44] The Syndicat général made an application under s. 79(1) of the Act. Section 79 provides 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.

(2) If any question arises in respect of a merger, amalgamation or transfer of jurisdiction referred to in subsection (1) concerning the rights, privileges and duties of an employee organization under this Part or Division 1 of Part 2.1 or under a collective agreement, an arbitral award or an essential services agreement in respect of a bargaining unit or an employee in a bargaining unit, the Board, on application by the employer or any person or employee organization concerned, must determine what rights, privileges and duties have been acquired or are retained.

(3) Before making a determination on the application, the Board may make any inquiry or direct that a representation vote be taken among the employees to be affected by the determination. The provisions of subsection 65(2) apply in relation to the taking of the vote.

[45] The certification provisions are in ss. 64 and 65 of the Act, which provide as follows:

64 (1) After having determined the unit appropriate for collective bargaining, the Board must certify the applicant employee

organization as the bargaining agent for the bargaining unit if the Board is satisfied

(a) that a majority of employees in that bargaining unit wish the applicant employee organization to represent them as their bargaining agent;

(b) that the persons representing the employee organization in the making of the application have been duly authorized to make the application; and;

(c) if the applicant is a council of employee organizations, that each of the employee organizations forming the council has vested appropriate authority in the council to enable it to discharge the duties and responsibilities of a bargaining agent.

(2) If an application for certification of an employee organization as the bargaining agent for a proposed bargaining unit has been denied by the Board, the Board may not consider a new application for certification from that employee organization in respect of the same or substantially the same proposed bargaining unit until at least six months have elapsed from the day on which the employee organization was last denied certification, unless the Board is satisfied that the previous application was denied by reason only of a technical error or omission made in connection with the application.

...

65 (1) *The Board may order that a representation vote be taken among the employees in the bargaining unit for the purpose of satisfying itself that a majority of them wish the applicant employee organization to represent them as their bargaining agent.*

(2) *When the Board orders that a representation vote be taken, it must:*

(a) determine the employees who are eligible to vote; and

(b) make any arrangements and give any directions that it considers necessary for the proper conduct of the vote, including the preparation of ballots, the method of casting and counting ballots and the custody and sealing of ballot boxes.

[Emphasis added]

[46] The Board defined the bargaining unit in *Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) v. National Film Board*, 2020 FPSLRB 31, and ordered a representation vote held in accordance with s. 65(2) of the *Act*. The parties did not object to the definition of the bargaining unit or to the vote. They were informed of the representation vote results on October 5, 2021. On October 5 and 6, they accepted the vote results.

[47] Once the Board has determined the bargaining unit, s. 64(1)(a) provides that it must certify, as the bargaining agent, the applicant employee organization, if it is satisfied that a majority of the employees in the bargaining unit wish the particular employee organization to represent them.

[48] As specified earlier, 182 employees were eligible to vote. Only 92 of them voted; 91 expressed the wish to be represented by the Syndicat général, and 1 expressed the contrary wish. In this case, although 91 employees do not constitute a majority in number of the employees in the bargaining unit, I conclude that in the circumstances of this case, the majority of the employees in the bargaining unit wish the Syndicat général to represent them as the bargaining agent.

[49] Although only 50% of the employees eligible to take part in the representation vote expressed the wish to be represented by the Syndicat général, in the facts of this case, the Syndicat général established that it has the support of the majority of the employees in the bargaining unit to represent them as the bargaining agent. Given the state of the ongoing pandemic, the time it took to hold the vote, the respondent's complete agreement, the absence of any objection from the employees, and the fact that essentially all employees who voted did so for the Syndicat général, the Board is satisfied that the majority of the employees in the bargaining unit wish to be represented by the Syndicat général. Therefore, the Board certifies the Syndicat général as the bargaining agent for the bargaining unit.

[50] Consequently, the Board's view is that retaining the rights, privileges, and obligations under the collective agreements that apply to the employees in the bargaining unit until a new collective agreement for the bargaining unit is concluded is indicated.

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

(The Order appears on the next page)

VI. Order

[52] The Syndicat général du cinéma et de la télévision, Local 4835 (Canadian Union of Public Employees) is certified as the bargaining agent of the following unit appropriate for collective bargaining:

all employees of the Employer in the Technical Category, as well as those in the Administrative Support Category and those in the Operational Category.

tous les fonctionnaires de l'employeur compris dans la catégorie technique, ainsi que ceux compris dans la catégorie du soutien administratif et ceux compris dans la catégorie de l'exploitation.

[53] An accreditation certificate for the bargaining unit will be issued.

[54] All the rights, privileges, and obligations under the collective agreements that apply to the employees in the bargaining unit mentioned at paragraph 52 of this decision are retained until a new collective agreement for this bargaining unit is concluded.

[55] The Board orders the director of the representation vote to make the required arrangements to destroy the ballots cast during the representation vote held in this matter once the 45-day period from the date of this decision expires, unless before the 45-day period expires, one of the parties asks the Board that they not be destroyed.

December 14, 2021.

FPSLREB Translation

**Chantal Homier-Nehmé,
a panel of the Federal Public Sector
Labour Relations and Employment Board**