

Date: 20230331

File: 525-34-45881
XR: 525-34-3 and 140-34-17, 18, and 19

Citation: 2023 FPSLREB 32

*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

**CANADA REVENUE AGENCY AND PROFESSIONAL INSTITUTE OF THE PUBLIC
SERVICE OF CANADA**

Applicants

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Canada Revenue Agency v. Public Service Alliance of Canada

In the matter of a request for the Board to exercise any of its powers under section 43
of the *Federal Public Sector Labour Relations Act*

Before: Caroline E. Engmann, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Applicants: Nick Gualtieri

For the Respondent: No one

Decided on the basis of written submissions,
filed October 13, 2022.

REASONS FOR DECISION

I. Request before the Board

[1] The Canada Revenue Agency (“the CRA”) and the Professional Institute of the Public Service of Canada (“the PIPSC”) have jointly applied to the Federal Public Sector Labour Relations and Employment Board (“the Board”) for an amendment of the orders certifying the PIPSC as the bargaining agent for the Audit, Financial and Scientific (AFS) group at the Canada Customs and Revenue Agency, now named the CRA, and amended on July 29, 2005.

[2] This application is made pursuant to s. 43(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), which provides as follows:

43 (1) Subject to subsection (2), the Board may review, rescind or amend any of its orders or decisions, or may re-hear any application before making an order in respect of the application.

43 (1) La Commission peut réexaminer, annuler ou modifier ses décisions ou ordonnances ou réentendre toute demande avant de rendre une ordonnance à son sujet.

II. Background

[3] The CRA is a separate agency within the meaning of s. 11(1) of the *Financial Administration Act* (R.S.C., 1985, c. F-11) and is designated as such in that Act’s Schedule V. The CRA has two bargaining units, represented respectively by the Public Service Alliance of Canada (“the PSAC”) and the PIPSC.

[4] The PIPSC is certified for the Audit, Financial and Scientific bargaining unit at the CRA, described as follows (see *Canada Customs and Revenue Agency v. Professional Institute of the Public Service of Canada*, 2005 PSLRB 79 at para. 7; “*Canada Customs*”):

[7] ... the Audit, Financial and Scientific Group comprising all employees who are primarily engaged in the application of a comprehensive body of knowledge in such specialized areas as accounting, auditing, economics, statistics, financial management, commerce, actuarial sciences, chemistry, engineering, education, library science, social sciences, computer sciences **and physical sciences** ... it includes the employees who were in occupational groups in the central administration prior to the gazetting of the

above groups in March 1999 in the following abbreviated groups:
AU, CO, AC, EN, CH, PS, SE, FI, ES, SI, LS, ED and CS.

[Emphasis in the original]

[5] The joint application explains the rationale for the request as follows:

...

The CRA will introduce the NU occupational group, specifically the NU-EMA medical adjudicator sub-group will be used within the organization. The CRA employees that perform the duties of medical adjudicators are currently allocated to the SP occupational group and represented by the PSAC-Union of Taxation Employees (UTE).

The decision to allocate the CRA's current medical adjudicator positions to the NU occupational group/NU-EMA medical adjudicator sub-group classification was based on analysis, relativity studies conducted with the core public administration (CPA) and the recommendation of an interdepartmental classification committee.

These employee's [sic] primary responsibilities are best allocated in classification to the NU occupational group/NU-EMA medical adjudicator sub-group that have the primary responsibility for determining the medical eligibility of applicants for a government program or for the provision of expert advice related to medical adjudication. The NU-EMA medical adjudicator sub-group definition is more specific and more closely aligned with the primary purpose of the jobs that were reviewed...

The employees performing the work share a community of interest with regards to skill sets, qualifications, duties assigned within the program and working conditions. They are required to maintain valid nursing licenses within their province/territory of residence in order to perform their duties.

The Commissioner of the CRA has approved for use the NU classification standard currently used in the CPA...

...

[6] Currently, CRA medical adjudicator jobs are classified in the Services and Programs group ("SP group"). They were modelled after similar jobs at Employment and Social Development Canada and were classified in the Program Administration (PM) group before the CRA's classification conversion. After that, they were classified in the SP group in the bargaining unit for which the PSAC is certified as the bargaining agent.

[7] In 2010, the core public administration (“the CPA”) introduced a new subgroup to the Nursing group (“NU group”), namely, the Nursing - Community Health (NU-EMA) subgroup. The PIPSC is the certified bargaining agent for the NU group in the CPA for which the Treasury Board is the employer.

[8] The NU group definition is as follows: “The Nursing Group comprises jobs that are primarily involved in the application of a comprehensive knowledge of professional specialties in the fields of nursing to the physical and mental well-being of people.”

[9] The NU-EMA subgroup definition to be adopted for the positions at issue is as follows: “Jobs responsible for determining the medical eligibility of applicants for a government program or for the provision of expert advice related to medical adjudication.”

[10] Jobs included in the NU-EMA subgroup require the incumbents to apply a comprehensive knowledge of nursing and related experience to a) assess medical information to determine applicants’ eligibility, or b) provide specialized or expert advice with respect to the assessment and eligibility determinations, or c) provide expert advice with respect to medical adjudication.

[11] The CRA has created two new jobs, as follows: 1) Medical Adjudicator (NU-EMA 1), and 2) Senior Medical Adjudicator (NU-EMA 2). It is proposed that having the NU group at the CRA represented by the PIPSC would align with the group’s current representation in the CPA. It is currently estimated that six CRA employees in the PSAC bargaining unit would be impacted by the proposed change.

[12] On June 14, 2022, the CRA informed the PSAC - Union of Taxation Employees (“the UTE”) of this application, provided it with the relevant documentation, and asked for its position.

[13] On July 7, 2022, the UTE informed the CRA as follows:

...

UTE has now had the opportunity to consult and reviewed [sic] the information provided in relation to this application with the bargaining agent (PSAC), and we concluded that the work more appropriately meets the definition of the groups represented by PIPSC. We see no reason to contest this application.

...

[14] Upon receipt of the application, the Board requested that the bargaining agent, the PSAC, confirm its position as stated in the UTE's communication. The Board received no response from the PSAC.

III. Summary of the arguments

[15] The applicants rely on s. 70 of the *Act* and argue that when the Board reviews the structure of one or more bargaining units to determine whether the group of employees constitutes a unit appropriate for collective bargaining, it must have regard to the requirements of the *Act*. In this case, they argue that the NU group shares a community of interest with the groups represented by the PIPSC and that their addition to the unit would be appropriate for collective bargaining.

IV. Reasons

A. The scope of reconsideration

[16] Section 43(1) grants the Board the discretion to review, rescind, or amend any of its orders or decisions. The joint applicants in this case request that the Board "review" and "amend" the order of its predecessor on December 12, 2001 and amended on July 29, 2005.

[17] In *Canadian Food Inspection Agency Financial Officer Association v. Canadian Food Inspection Agency*, 2015 PSLREB 68, a predecessor to this Board identified two main reasons for exercising discretion under s. 43, which can be described as procedural and substantive. First, the discretion may be exercised to correct a procedural, technical, or clerical error or an abnormality in the order or the decision, and second, the discretion may be exercised to review the substantive merits of the decision or order. The predecessor explained these two reasons as follows:

...

67 ... there are two possibilities for exercising the PSLREB's discretion. The first, envisaged for a review under section 43 of the PSLRA, might apply to clerical or technical errors in the decision or order. For example, a party's name might have been incorrectly written or errors might need fixing that resulted from an oversight or a miscalculation of a numerical or monetary amount, or the PSLREB or one of its predecessors might have omitted dealing with a collateral issue. In these situations, the PSLREB can be said to be clarifying its language or intent.

68 *The second reason for the PSLREB to review one of its decisions or orders relates more to the merits of the case than to how the decision was expressed. In such cases, it must be made to appear to the PSLREB **that there is some compelling reason for it to review its decision.** This must of necessity mean more than that one party simply is unhappy with the decision or order that was rendered since when a decision is rendered, at least one party will likely be unhappy with the result. Thus, **generally speaking, before the PSLREB will review one of its decisions or orders when the requested review is on the merits of the case, the party requesting the review has an onus to present substantial reasons for reviewing the decision.***

...

[Emphasis added]

[18] Placing an onus on the party requesting a review to “present substantial reasons” for the application is consistent with the jurisprudence developed by the Board on its power of reconsideration, which is a limited exception to the finality of its decisions. In *Chaudhry v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 39, a predecessor to this Board summarized certain guidelines or criteria for exercising this exceptional discretion to reconsider orders and decisions. Two criteria that are most germane to the present application are as follows:

- any new evidence or arguments presented must have a material and determining effect on the outcome; and
- there must be a compelling reason for reconsideration.

B. The determination of bargaining units

[19] Section 7 of the *Act* preserves the authority of the Treasury Board or a separate agency to determine the organization of its enterprise, assign duties to, and classify positions and persons employed in the enterprise.

[20] Section 54 the *Act* permits employee organizations to apply for certification as bargaining agents in respect of employee groupings that it considers appropriate for collective bargaining.

[21] Section 57 the *Act* authorizes the Board to determine employee groupings that constitute units appropriate for collective bargaining.

[22] Section 70 of the *Act* permits the Board to review the structure of bargaining units established under s. 57. The primary purpose of reviewing a bargaining unit

structure is to determine if a group of employees constitutes a unit appropriate for collective bargaining. In conducting its review, the Board must have regard to the employer's classification of persons and positions, including the occupational groups and subgroups that the employer has established.

[23] The Board is required, under s. 70(2) of the Act, to establish bargaining units that are co-extensive with the occupational groups or subgroups established by the employer. The Board may deviate from this requirement only if doing so would permit a satisfactory representation of the affected or impacted employees.

C. The merits of the joint application

[24] In *Canada Customs and Revenue Agency v. Association of Public Service Financial Administrators*, 2001 PSSRB 127, a predecessor to this Board, when determining successor rights following the CRA's creation, adopted two bargaining units for the separate agency and rationalized its decision as follows:

...

*[542] In summary, the arguments of the employer and the bargaining agents for creating more than two units must fail. Two larger units, one for professionals and one for the other employees, ensure the creation of viable units within the context of a separate employer which has adopted a universal classification standard and which is used to dealing with two major bargaining agents. For the vast majority of employees they will retain the bargaining agent they have traditionally dealt with; **for the few who will have to change affiliation they will be placed in units where community of interest does exist.** For the employer, the two large units will provide enough flexibility to achieve the goals of its new mandate. For the bargaining agents each unit will provide enough familiarity to pursue collective bargaining with minimal adjustments.*

...

[Emphasis added]

[25] The PSAC bargaining unit was described as the Program Delivery and Administrative Services group and the PIPSC unit was described as the AFS group. The predecessor Board then proceeded to certify the PIPSC as the bargaining agent for a CRA bargaining unit described as follows:

...

[544] The second unit is the Audit, Financial and Scientific group comprising all employees who are primarily engaged in the application of a comprehensive body of knowledge in such specialized areas as accounting, auditing, economics, statistics, financial management, commerce, actuarial sciences, chemistry, engineering, education, library science, social sciences and computer sciences. Previously the employees in this occupational group were classified in the central administration in the Audit, Commerce and Purchasing group (except for employees involved in purchasing activities), the Applied Science and Engineering group, the Health Services group, the Research group, the Financial Management group, the Economics and Social Science Services group, the Education and Library Science group and the Computer Systems group. To be more specific it includes the employees who were in occupational groups in the central administration prior to the gazetting of the above groups in March 1999 in the following abbreviated groups: AU, CO, AC, EN, CH, PS, SE, FI, ES, SI, LS, ED and CS.

...

[26] After a new classification at the CRA was created comprising the Physical Sciences group ("PC group"), a joint application was submitted to the Board for an amendment to the order certifying the PIPSC to include the PC group in the PIPSC bargaining unit. Thus, on July 29, 2005, the Board amended the description of the AFS bargaining unit at the CRA as follows (see *Canada Customs*):

[7] The second unit is the Audit, Financial and Scientific Group comprising all employees who are primarily engaged in the application of a comprehensive body of knowledge in such specialized areas as accounting, auditing, economics, statistics, financial management, commerce, actuarial sciences, chemistry, engineering, education, library science, social sciences, computer sciences **and physical sciences**.... To be more specific, it includes the employees who were in occupational groups in the central administration prior to the gazetting of the above groups in March 1999 in the following abbreviated groups: AU, CO, AC, EN, CH, PS, SE, FI, ES, SI, LS, ED and CS.

[Emphasis in the original]

[27] The PSAC, through the UTE, has indicated that it does not contest the application.

[28] The Board is satisfied that the applicants have provided compelling reasons to support exercising its discretion under s. 43 of the *Act*.

[29] An amendment to the description of the AFS bargaining unit at the CRA to include the NU group meets the requirements of s. 70 of the *Act*.

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

(The Order appears on the next page)

V. Order

[31] The application is allowed.

[32] The description of the AFS bargaining unit at the CRA is to read as follows:

*The second unit is the Audit, Financial and Scientific Group comprising all employees who are primarily engaged in the application of a comprehensive body of knowledge in such specialized areas as accounting, auditing, economics, statistics, financial management, commerce, actuarial sciences, chemistry, engineering, education, library science, social sciences, computer science psychology, **nursing**, and physical sciences.*

[33] A new certificate will be issued.

March 31, 2023.

**Caroline E. Engmann,
a panel of the Federal Public Sector
Labour Relations and Employment Board**