

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250626

Docket: A-72-24

Citation: 2025 FCA 126

**CORAM: STRATAS J.A.
ROUSSEL J.A.
BIRINGER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Heard at Ottawa, Ontario, on June 26, 2025.
Judgment delivered from the Bench at Ottawa, Ontario, on June 26, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on June 26, 2025).

ROUSSEL J.A.

[1] The Attorney General of Canada is seeking judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board dated January 24, 2024 (2024 FPSLREB 10). In its decision, the Board dismissed the employer's application for an order declaring

39 health and safety officer positions excluded from the Technical Services Group bargaining unit of the Public Service Alliance of Canada.

[2] The employer alleged that the positions should be declared managerial or confidential under paragraph 59(1)(g) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (FPSLRA) for reasons of conflict of interest or by reason of their duties and responsibilities to the employer. In particular, the employer alleged that the inherent nature of the health and safety officer's work under Part II of the *Canada Labour Code*, R.S.C. 1985, c. L-2 conflicted with their membership in the bargaining unit.

[3] The Board determined that the employer had provided neither cogent evidence nor objective facts from which practical judgments or logical inferences could be drawn that the disputed positions should be excluded from the bargaining unit for reasons of conflict of interest or because their duties and responsibilities were incompatible with being members of the bargaining unit.

[4] Before this Court, in substance, the Attorney General argues that the Board's decision is unreasonable in three respects. First, the Board misapplied the test for finding a conflict of interest. Second, the Board failed to meaningfully grapple with the employer's primary argument that where the health and safety officers exercise their functions, they are required to make findings and issue directions that might be contrary to the interests of the bargaining agent with which they are affiliated or its members. Third, in misapprehending the evidence before it, and

making no reference to the Code's statutory scheme, the Board mischaracterized the role of health and safety officers.

[5] We are all of the view that the Board's decision is reasonable within the meaning of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[6] The burden of proving that a particular position is a position referred to in paragraph 59(1)(g) lies with the employer. As this Court has noted previously, paragraph 59(1)(g) of the FPSLRA leaves considerable discretion to the Board to determine whether the exclusion of positions from the bargaining unit is warranted and each application must be decided on its own circumstances (*Association of Justice Counsel v. Canada (Attorney General)*, 2021 FCA 87 at para. 9; *Canada (Attorney General) v. Public Service Alliance of Canada*, 2022 FCA 204 at para. 8).

[7] After reviewing the evidence adduced by the employer's witness – which in some respects the Board found to be unreliable and highly misleading – the Board summarized the submissions of both parties and conducted a detailed analysis of the relevant principles with reference to the applicable law and jurisprudence relating to paragraph 59(1)(g) of the FPSLRA. The Board then examined the duties of health and safety officers within the Labour Program, including their duty of neutrality. It then concluded that the employer had not met its onus of establishing that the disputed positions ought to be excluded from the bargaining unit for reasons of conflict of interest or because their duties and responsibilities were fundamentally incompatible with being in a bargaining unit.

[8] The Attorney General has failed to identify in the record any improper inference or any evidence or objective facts that the Board failed to consider. The Board clearly considered the duties associated with the positions, the nature of the work of health and safety officers as well as their duties and responsibilities to the employer before concluding that the employer had not established exclusion was warranted. The Board's conclusions on these were open to it. We also find that the Attorney General's submissions do not reflect the Board's reasons, which comprehensively and reasonably address the Attorney General's central arguments. Finally, it is not open to a reviewing court to reweigh or reassess the evidence that was before the Board (*Vavilov* at para. 125). The Attorney General has failed to demonstrate that the Board's decision is unreasonable (*Vavilov* at para. 100).

[9] Accordingly, the application for judicial review will be dismissed with costs.

"Sylvie E. Roussel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

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STYLE OF CAUSE:

ATTORNEY GENERAL OF
CANADA v. PUBLIC SERVICE
ALLIANCE OF CANADA

PLACE OF HEARING:

OTTAWA, ONTARIO

DATE OF HEARING:

JUNE 26, 2025

**REASONS FOR JUDGMENT OF THE COURT
BY:**

STRATAS J.A.
ROUSSEL J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY:

ROUSSEL J.A.

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