



EXCLUSIONS

The 'exclusions' issue arises when a job description contains duties which could be considered of a managerial or confidential nature. Under the *Public Service Labour Relations Act (PSLRA)*, the employer can argue that an employee in any such position should be excluded from the bargaining unit. **Always keep in mind that it is the position, and not the individual employee, that is being excluded.**

The *PSLRA* requires that management justify a proposed exclusion by providing both its rationale and all pertinent documentation. The union has the right to challenge the employer's definition of what constitutes managerial or confidential responsibilities.

Section 59 of the *PSLRA* sets out a clear framework in stating that "the employer may apply to the Public Service Labour Relations Board for an order declaring that any position of an employee in the proposed bargaining unit is a managerial or confidential position on the grounds that

- (a) the position is confidential to the Governor General, a Minister of the Crown, a judge of the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, or a deputy head;
- (b) the position is classified by the employer as being in the executive group, by whatever name called;
- (c) the occupant of the position provides advice on labour relations, staffing or classification;
- (d) the occupant of the position has substantial duties and responsibilities in the formulation and determination of any policy or program of the Government of Canada;
- (e) the occupant of the position has substantial management duties, responsibilities and authority over employees or has duties and responsibilities dealing formally on behalf of the employer with grievances presented in accordance with the grievance process provided for under Part 2;
- (f) the occupant of the position is directly involved in the process of collective bargaining on behalf of the employer;
- (g) the occupant of the position has duties and responsibilities not otherwise described in this subsection and should not be included in a bargaining unit for reasons of conflict of interest or by reason of the person's duties and responsibilities to the employer; or

(h) the occupant of the position has, in relation to labour relations matters, duties and responsibilities confidential to the occupant of a position described in paragraph (b), (c), (d) or (f).”

When a new position is created and the employer proposes it for exclusion, consultation takes place between the Agriculture Union and Departmental or Agency management to determine if there is agreement to the proposed exclusion. The relevant Local will also be advised of the employer’s proposal and comments sought. The Agriculture Union then advises our bargaining agent, the Public Service Alliance of Canada, whether or not we have accepted the proposed excluded position. If necessary, the PSAC then moves to challenge the proposed exclusion before the Public Service Labour Relations Board (PSLRB).

During the objection process, the employer is required to hold an amount equivalent to union dues that would normally be paid by the occupant of the proposed exclusion. Once the PSLRB renders a decision, the dues money will be returned either to the incumbent (if the position is excluded) or to the union (if the decision is to maintain the position in the bargaining unit).

Under Section 77 of the *PSLRA*, the union can apply to the Board for revocation of the order that declared the position to be excluded from the bargaining unit if we believe a position no longer qualifies under the Act as managerial or confidential in nature.

As well, employees who are required to act in an excluded position for a period of more than one month will be considered excluded from the bargaining unit during this period. Dues payment ceases on the first day of the month following the effective date of the acting appointment.

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