

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Canada Post Corporation v. Canadian Union of Postal Workers, 2011 OHSTC 5

Date: 2011-03-15
Case No.: 2010-01
Rendered at: Ottawa

Between:

Canada Post Corporation, Appellant

and

Canadian Union of Postal Workers, Respondent

Matter: Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by a health and safety officer

Decision: The direction is confirmed

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the appellant: Mr Stephen Bird, Counsel, Bird Richard

For the respondent: Mr Thomas McDougall, Counsel, Perley-Robertson, Hill & McDougall LLP/s.r.l.

Canada

REASONS

[1] This is an appeal brought under ss. 146(1) of the *Canada Labour Code* (the Code) of a direction issued by Mr Bruce McKeigan, Health and Safety Officer (HSO), on December 17, 2009.

Background

[2] In 2004, Rural and Suburban Mail Carriers (RSMCs), represented by the Canadian Union of Postal Workers (CUPW – the trade union), became employees of Canada Post Corporation (CPC – the employer) following negotiations between the parties. Prior to 2004, RSMCs were contracted personnel to CPC as Rural Route and Suburban Service (RRSS) couriers; they did not have employee status and as such they were precluded from becoming members of a trade union pursuant to the *Canada Post Corporation Act*.

[3] On March 12, 2009, CUPW wrote to the headquarters of Human Resources and Skills Development Canada, Labour Program, to bring forward the issue addressed in the direction. The letter reiterated a previously stated position that CUPW never consented to the arrangement of having two policy health and safety committees (policy committee) for two employee groups under their representation.

[4] It was CUPW's position that having one policy committee for RSMC operations and another for Urban Postal Operations (UPO), each group of employees being represented by the same trade union, was a contravention of para. 134.1(3)(a) the Code.

[5] On June 3, 2009, HSO McKeigan began his investigation by attending a policy committee meeting for the RSMC group of employees. The policy committee was called the Rural and Suburban Mail Carriers - National Joint Health and Safety Committee (RSMC-NJHSC). The HSO concluded during this meeting that the representatives of the trade union on the policy committee had not agreed to the formation of two distinct policy committees for CUPW members.

[6] Following this meeting, HSO McKeigan determined that the employer was therefore not in compliance with para. 134.1(3)(a) of the Code and he stated this to the RSMC-NJHSC members. He then attempted to resolve the issue between the parties internally. Subsequently, he met with employer representatives, however, they did not agree with his interpretation of the Code on the issue.

[7] On December 17, 2009, HSO McKeigan issued the following direction to CPC:

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On June 3, 2009, the undersigned health and safety officer began an inquiry in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at 2701 Riverside Drive, Ottawa, Ontario, K1A 0B1, the said work place being sometimes known as Canada Post Corporation (H).

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened:

No./No: 1

134.1(3)(a) – Canada Labour Code Part II, -
An employer may establish more than one policy committee with the agreement of the trade union, if any, representing the employees.

The employer has established more than one policy committee without the agreement of the trade union.

Therefore you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than January 15, 2010.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

Issued at Ottawa, Ontario this 17th day of December, 2009.

[HSO McKeigan signed here]

Bruce McKeigan
Health and Safety Officer
Certificate Number: ON8567

To: CANADA POST CORPORATION
2701 Riverside Drive
Ottawa, Ontario
K1A 0B1

[8] HSO McKeigan provided reasons for his direction in a report dated December 8, 2009. The following is a summary of those reasons:

- He determined that the term “agreement” referred to in ss. 134.1(3) of the Code may take different forms and is not restricted to a collective bargaining agreement;

- No other agreement between the parties was presented to him therefore he referred to the collective bargaining agreement between CPC and the UPO employee group represented by CUPW;
- He then referred to the collective bargaining agreement between CPC and the RSMC employee group as represented by CUPW;
- He did not accept CPC's argument that the mere existence of two separate collective bargaining agreements in itself constituted an agreement between the parties to establish a separate policy committee and he determined that there must be language in an agreement to support such an arrangement;
- He stated that the RSMC employee group collective bargaining agreement did not contain provisions for the establishment of either a separate policy committee as CPC negotiated in collective bargaining agreements with three other employee groups nor did it include provisions for the establishment of separate work place (local) health and safety committees or representatives;
- He found that the existence of only one set of terms of reference to cover both the RSMC and UPO employee group policy committees is further evidence that only one national joint health and safety committee for both groups was established;
- His final conclusion was that CUPW did not agree to establish more than one policy committee and therefore CPC was not in compliance with the Code.

[9] On January 14, 2010, the appellant filed the appeal and also made an application to stay the direction.

[10] On February 22, 2010, Mr Richard Lafrance, Appeals Officer, ordered a stay of the direction until a decision on the merits of the appeal is rendered.

Issue

[11] I must determine whether HSO McKeigan erred in finding that, CPC, the employer contravened para. 134.1(3)(a) of the Code by establishing two policy committees for employees grouped under RSMC and UPO, without the agreement of, CUPW, their trade union.

Preliminary Issues

1) Apprehension of bias

[12] During the hearing held on May 27, 2010, the respondent raised the issue that an apprehension of bias existed on my part. This occurred after I informed the parties, following the lunch break, that I had been an employee with the Post Office Department

[13] Mr MacDougall submitted that since I pondered about disclosing the fact that I was an employee with CPC during the lunch break, this confirmed an anxiety about the appearance of bias for the union that may result in “bias correction” i.e. a countervailing bias in favour of the employer.

[14] Mr Bird submitted that CUPW did not provide any foundation as to why a brief period of employment as a part-time employee within the bargaining unit some thirty years ago would cause any tangible reason or suspicion that I might favour CPC in this appeal. He argued that my past employment gave me no inside knowledge of the issue, nor could it be argued that it would pre-dispose me to rule one way or the other.

[15] I indicated to counsel for the parties that I did not hold any position with the union during that period. I informed them that I did not have any type of relationship with either CPC or CUPW in the thirty years since my departure. My intention was to simply disclose this fact to the parties.

[16] To assist me in explaining my decision not to step down from this matter, I would like to refer to the following excerpt from a reputable text on administrative tribunal procedures¹:

“... not every relationship or connection, however tenuous, between a decision maker and a participant gives rise to bias concerns. It is only through relationship which a reasonable person would reasonably apprehend might interfere with the ability of the decision-maker to act with neutrality – where the relationship **is so close, so recent, or so strong** that a reasonable person could reasonably apprehend that it might influence the decision-maker.

For example, generally speaking the mere fact that they may have been some professional relationship in the past between the decision-maker and a participant does not give rise to a reasonable apprehension of bias.”
[my emphasis]

[17] I find that the respondent failed to provide any basis as to why my brief period of employment as a part-time employee within the trade union thirty years ago would create any reason or any suspicion that I may favour the employer in my adjudication. Speculation or suspicion that a possibility of bias may exist is not enough to establish an apprehension of bias.

[18] Consequently, I declined to recuse myself from hearing this appeal.

¹ MaCaulay and Sprague, *Practice and Procedure Before Administrative Tribunals*, Carswell, 2004, volume 4, chapter 39, pages 39-32.2(1) and 39-32.3

2) The rule in *Browne v. Dunn*

[19] The appellant submitted that during the testimony of Mr Steve Matjanec, the appellant's witness, it was clearly stated that the employer put CUPW on notice that it would not agree to a single combined policy committee by including the RSMC employee group in the ambit of the UPO employee group policy committee's jurisdiction. Mr Bird argued that Mr MacDougall did not cross-examine Mr Matjanec on this crucial point, nor did he advise Mr Matjanec that Mr Floresco would challenge this assertion in his subsequent evidence, thereby depriving Mr Matjanec the opportunity of clarifying his own evidence or specifically commenting on the anticipated evidence of Mr Floresco.

[20] Mr Bird argued that the above is precisely the harm that the rule established in *Browne v. Dunn* is designed to address. Therefore, based on the rule, he argued that the evidence of Mr Floresco which is contrary to that of Mr Matjanec on this key point is inadmissible, or in the alternative, is to be given no weight.

[21] I find that Messrs Matjanec and Floresco's contradictory testimonies relating to their recollections and intentions surrounding the discussions that took place prior to the reaching of the collective agreement will not assist me in deciding whether or not an agreement was reached and as such will not impact my decision. Therefore, I do not need to address the admissibility issue regarding their evidence because it will not be given any weight.

Submissions of the parties

[22] The submissions of the parties were received in their entirety on August 6, 2010.

Appellant's submissions

[23] The only witness the appellant called was Mr Steve Matjanec, General Manager, and at the time of the hearing he occupied the position of Senior Lead for the delivery for the Postal Transformation Project for Canada Post. During the 2003 negotiations between CPC and CUPW the parties entered into exploratory talks regarding the possibility of Rural Route and Suburban Service (RRSS) couriers becoming employees represented by CUPW. Mr Matjanec was one of the two persons representing CPC and his evidence pertained to those discussions with union representatives.

[24] Mr Matjanec testified on the outcome of the segment of the negotiations with CUPW on the matter of combining the UPO and RSMC into a single policy committee. The position he communicated throughout the negotiations was that the RSMC employee group was distinct, and required specific terms and conditions of employment. He also gave evidence about CPC's other policy committees.

[25] According to the appellant, HSO McKeigan erred in his determination that the employer created a separate policy committee for RSMCs without the consent of CUPW. Mr Bird argued that CPC did not create a separate committee from a whole, and the effect

[26] It is submitted by Mr Bird that Mr Matjanec testified that CPC had agreements with the four separate bargaining agents, including CUPW for the UPO employee group, which created four separate and distinct policy committees. He argued that when CPC first fell within the scope of the Code, all employees were required to be covered by a national policy committee pursuant to what is now s. 134.1(1) and, that all unionized employees therefore fell into a “general” policy committee structure.

[27] The appellant submitted that although RSMCs were represented by CUPW, they were a separate and distinct grouping of employees and bargaining unit. It is submitted that, as a new group of employees, the RSMC employee group would by default fall into the “general” policy committee structure, as at no time did CPC seek to create a distinct national policy committee for this group of employees.

[28] In order to assist in illustrating the effect of the law in this regard, Mr Bird provided three hypothetical scenarios.

[29] Mr Bird argued that when the RSMCs acquired employee status, CPC did not claim to put them in a separate policy committee as stated by CUPW. It is submitted that it was quite the contrary, by default the RSMC employee group fell into CPC’s “general” policy committee. The creation of a single combined UPO and RSMC policy committee requires CPC to take a positive step to combine these employee groups with the consent of the trade union. The appellant submitted that they never took that positive step.

[30] The HSO misinterpreted s. 134.1 of the Code, the appellant submitted, because the HSO assumed that CPC had separated the RSMC employee group from the UPO employee group’s policy committee without CUPW’s consent. Mr Bird argued that the RSMC employee group was never in this separated policy committee because CPC never placed them there. It is further submitted that under the clear language of the Code, only the employer can create a separate policy committee structure provided that agreement of the trade union is obtained.

[31] Mr Bird argued that CPC had refused to consolidate new employees into an existing previously separated policy committee. He argued further that the HSO’s direction, which in law orders the consolidation of two groups of employees into an existing separated policy committee, is without statutory authority and was thus invalid.

[32] Mr Bird argued alternatively, that CPC and CUPW agreed to separate committees during the exploratory talks held in 2003 which led to the granting of employee status to the RSMC employee group and a collective agreement for a RSMC bargaining unit. He argued that it is true that the collective agreement does not specifically reference an agreement to establish two separate committees and while such language would have no doubt been preferable, s. 134.1 does not require that any agreement reached must be reduced in writing or included in a collective agreement.

[33] It is submitted by Mr Bird that the evidence of Mr Matjanec was unchallenged about CUPW's opening proposal to include the RRSS contractors within the UPO employee group's bargaining unit and make them subject to the terms of the UPO collective agreement. He argued that this would also have clearly had the effect of including them in a single policy committee with UPO employees; there is no dispute between the parties that CPC did not agree to this proposal.

[34] The appellant submitted that CUPW soon thereafter backed away from their position of including the RSMC employee group in an all encompassing bargaining unit, but proposed that the same language found in article 33 of the UPO employee group collective agreement be included in a new RSMC collective agreement. Article 33.03(a) of the UPO collective agreement again references a policy committee, and by implication, CUPW was again proposing a single policy committee covering UPO and RSMC employees. It is further submitted that Mr Matjanec testified that Mr Floresco, Lead Negotiator for CUPW, had stated that article 33 of the UPO agreement was sufficient for both employee groups; again, there is no dispute between the parties that CPC did not agree to this proposal.

[35] Mr Bird argued that Mr Floresco's recollection of the negotiations was vague at best. He argued that while purporting to contradict Mr Matjanec's evidence on this key point, Mr Floresco had no specific recollection of this or many other aspects of the negotiations, other than to say that there was no discussion of the "umbrella committee" structure at the local levels. Mr Floresco had no notes with which to refresh his memory.

[36] By withdrawing their proposals for a single combined policy committee in the face of CPC's clearly stated position that it would not agree to such a structure, the appellant submitted that, the trade union in law agreed that the RSMC employee group would not be included in a combined UPO-RSMC policy committee. It is submitted that no express written agreement was required in this respect.

[37] The appellant concluded by stating that HSO McKeigan did not seek to establish whether there was an agreement between the employer and the trade union by exploring the history of negotiations which lead to the existence of an RSMC and UPO policy committee. Furthermore, there is no indication in the record that the HSO ever specifically questioned any CUPW representative about the bargaining positions advanced. Therefore, it is submitted that the HSO was not in possession of the evidentiary foundation required to make an informed and reasonable decision.

[38] The appellant requested that the direction issued by HSO McKeigan on December 17, 2009 be rescinded.

Respondent's submissions

[39] The respondent called two witnesses. Mr George Floresco, 3rd National Vice President of CUPW and the trade union's chief negotiator for the first RSMC employee group's collective agreement and Ms Gayle Bossenberry, 1st National Vice President of CUPW. Ms Bossenberry was also the union's national health and safety representative and held the position of employee co-chairperson for the UPO-NJHSC between 2002 and 2008 and she held the position of employee co-chairperson for the RSMC-NJHSC between 2006 and 2008.

[40] Mr Floresco testified about his recollection of his involvement and discussions with CPC representatives during the negotiations for the new collective agreement for RSMC employee group during the summer of 2003.

[41] Ms Bossenberry testified that she was not involved in the negotiations with the employer for the new collective agreement for RSMC employee group during the summer of 2003. Her testimony addressed CPC's establishment of the RSMC-NJHSC in early 2006. She testified that between 2004 and 2006 the RSMC employee group was not represented at the policy committee level by the UPO-NJHSC or anyone during that period. Following 2006, meetings of the RSMC-NJHSC attended by the trade union were on a without prejudice basis and she testified that CUPW never acknowledged the committee's legitimacy. She maintained that from the time the RSMC-NJHSC was established the trade union never deviated from the position that the employer never received CUPW's consent to establish a separate committee.

[42] According to the respondent, on February 28, 2000, CUPW and CPC entered into a collective agreement. Article 33.03(a) of that agreement established a CUPW and CPC policy committee called the National Joint Health and Safety Committee (NJHSC).

[43] In July 2003, the respondent submitted, CUPW and CPC entered into the RSMC collective agreement and at that time the provisions of the Code applied to the RSMC employee group.

[44] The respondent submitted that as employees of CPC represented by CUPW, the RSMC employee group were to be included in the NJHSC pursuant to s. 134.1 of the Code. However, in 2006, it is submitted that CPC unilaterally established a separate policy committee for the RSMC employee group called the RSMC-NJHSC.

[45] Mr MacDougall argued that an employer may not establish more than one policy committee unless there is agreement by the trade union and the evidence clearly established that CUPW has never agreed to the establishment of a separate policy committee for the RSMC employee group.

[46] It is argued by Mr MacDougall that if the parties had intended to establish a separate policy committee for the RSMC employee group, they would have provided for it in the RSMC collective agreement. Instead, the parties simply agreed that the Code, which

[47] Mr MacDougall submitted that Mr Floresco testified that CUPW never agreed to a separate policy committee for the RSMC employee group in the collective agreement negotiations between the parties. There was little to no discussion during the negotiations about policy committees; that throughout the negotiations, the CUPW negotiators understood that the Code would apply and that the RSMC employee group would be included in the existing NJHSC which was considered the policy committee for CUPW members.

[48] The testimony of Ms Bossenberry, Mr MacDougall submitted, was that after the signing of the RSMC collective agreement, CUPW consistently opposed the establishment of a separate RSMC policy committee and the employer admitted this.

[49] It is submitted by the respondent that CPC's submissions attempted to portray the RSMC policy committee as a "general" policy committee in that the RSMC employee group are the only members by default which is a misstatement of the facts and of the law.

[50] Mr MacDougall argued that when the RSMC employees became employed by CPC there was a CUPW and CPC policy committee called NJHSC and as members of CUPW the RSMC employee group are covered by the NJHSC.

[51] According to the respondent, CPC appears to assume that, as a distinct bargaining unit, the RSMCs are not covered by the agreement between CUPW and CPC that established the NJHSC. However, it is submitted that it is not clear why CPC thinks that policy committees are to be arranged according to bargaining unit; CPC's other separate policy committees are arranged with three other trade unions.

[52] In his submissions, Mr MacDougall stated that CPC admitted that the language of the RSMC collective agreement does not demonstrate an agreement to establish a separate policy committee for the RSMC employee group. CPC further admits that an express written agreement would represent the best evidence of an agreement.

[53] As stated during the testimony of Mr Floresco, it is submitted by the respondent that the discussion between the parties during the negotiations focused on the proposed language on the structure of the work place committees and there was little to no discussion regarding the structure of the policy committees.

[54] The respondent submitted that Mr Matjanec and Mr Floresco respectively testified that during negotiations they thought the Code applied and would determine the structure of the policy committee. It is submitted that in light of the parties' disagreement about what the Code requires, their agreement during negotiations that the Code would be determinative, demonstrated the absence of any substantive agreement on the structure of the policy committee.

[55] The respondent requests that HSO McKeigan's determination be upheld and that CPC should be directed to comply with the Code.

Appellant's reply

[56] It is argued further by the appellant that CUPW's submissions are premised upon flawed premise that the RSMC employee group was in fact and in law part of the UPO policy committee structure. The respondent ignored the requirement of the Code that it is the employer who creates a separate committee. At no time did CPC place the RSMC employee group in the UPO policy committee, so it could hardly be taking a positive action to separate them into a different committee.

Analysis

[57] My role is to determine whether HSO McKeigan erred in finding that the employer contravened para. 134.1(3)(a) of the Code by establishing two policy committees for the RSMC and UPO employee groups without the agreement of the trade union which, in this case is CUPW.

[58] The Code provision referenced by the HSO in his direction reads as follows:

134.1 (1) For the purposes of addressing health and safety matters that apply to the work, undertaking or business of an employer, every employer who normally employs directly three hundred or more employees shall establish a policy health and safety committee and, subject to section 135.1, select and appoint its members.

2) An employer who normally employs directly more than twenty but fewer than three hundred employees may also establish a policy committee.

3) An employer may establish more than one policy committee with the agreement of

- a) the trade union, if any, representing the employees; and**
- b) the employees, in the case of employees not represented by a trade union.**

[my emphasis]

[59] The term "trade union" is defined in the Code under Part I, s. 3, which reads as follows:

"trade union" means any organization or employees, or any branch or local thereof, the purpose of which include the regulation of relations between employers and employees;

[60] Pursuant to the Code, it is only with agreement of the trade union or the employees involved that an employer can establish another policy committee.

[61] To resolve this issue I will therefore divide my analysis into two parts by asking the following questions:

- 1) Did the employer establish more than one policy committee for the RSMC and UPO employee groups?
- 2) In the affirmative, was an agreement reached between the employer and the trade union to establish more than one policy committee for the RSMC and UPO employee groups?

[62] The first question will permit me to focus on how the employer established its numerous policy committees pursuant to ss. 134.1(1) of the Code. This element is pivotal to determining under which policy committee the RSMC employee group would become a part of upon becoming employees of CPC. If I decide that the RSMC employee group was never in fact taken out from the employer's "general" policy committee structure as the appellant contended then my analysis will end and I need not address the second question.

[63] If I find that the employer established a distinct policy committee for the RSMC employee group, I will then proceed to the second question of whether or not there was an agreement between the employer and the trade union to establish more than one policy committee for employees represented by CUPW.

1) Did the employer establish more than one policy committee for the RSMC and UPO employee groups?

[64] The appellant's assertion that the RSMC employee group fell into a "general" policy committee structure upon becoming employees of CPC was not convincing.

[65] I did not receive evidence about either the creation or the subsistence of the "general" policy committee. I received testimony from Mr Matjanec about the employer's agreements with four trade unions to create policy committees however he said nothing about the establishment of a "general" policy committee or its structure. The only information I have before me in relation to the "general" policy committee stemmed from Mr Bird's arguments.

[66] Mr Bird argued that the RSMC employee group automatically fell into CPC's "general" policy committee structure. This argument could be valid if only there was some resemblance of a "structure" for that committee. A structure must be comprised of tangible parts, elements or components, the "general" policy committee structure as presented to me was not a well planned or organized entity in this regard.

[67] The Code in s. 135.1 prescribes numerous requirements common to policy committees. There is no evidence that CPC applied any of these to their "general" policy committee. Components listed under s. 135.1 were missing, for example: actual committee members; actual rules of procedure for the committee; actual records of

[68] Given the absence of evidence on the subject, I am not convinced by the appellant's arguments that the RSMC employee group had a "general" policy committee to come into in January 2004.

[69] On the other hand, there is evidence that, in early 2006, the employer unilaterally established a policy committee for the RSMC employee group. The committee was named the "RSMC-NJHSC" which leaves no doubt that it was "specifically" for this employee group. As a result, I believe that this could not be mistaken as being a "general" policy committee.

[70] Furthermore, prior to 2006, from the uncontested testimony of Ms Bossenberry, it was apparent that the RSMC employee group was not represented whatsoever at the policy committee level from the time of the collective agreement coming into force in 2004 until early 2006 when the RSMC-NJHSC was established despite CPC's claim that a "general" committee existed during that period.

[71] For the above reasons, I find that the employer established two distinct policy committees. One for the RSMC employee group and another for the UPO employee group.

[72] Having determined that CPC established more than one policy committee for employees represented by CUPW, I will continue with the second question.

2) In the affirmative, was an agreement reached between the employer and the trade union to establish more than one policy committee for the RSMC and UPO employee groups?

[73] On this issue, the appellant held the position that the employer and the trade union agreed to separate committees during the exploratory talks held in 2003 that subsequently led to the rural and suburban mail carriers being granted employee status and a negotiated collective agreement. The respondent's position was the opposite.

[74] The Code under s. 134.1 does not require that any agreement that is reached between the employer and the trade union be reduced to writing or be included in a collective agreement. The collective agreement for the RSMC employee group does not specifically reference the establishment of two distinct policy committees.

[75] The interpretation of the word "agreement" in ss. 134.1(3) is vital to this issue however; it is not defined in the Code. As a result, I will use a common dictionary² definition of the word which reads as follows:

² Canadian Oxford Dictionary – second edition – 2004

Agreement: **1.** the act of agreeing; the holding of the same opinion (reached agreement) **2.** mutual understanding **3. a** an agreement between parties as to a course of action etc. **b** a document outlining such an agreement. **4.** the condition of having the same number, gender, case, or person. **5.** a state of being harmonious.
[my underline]

[76] The above definition of the term “agreement” indicates clearly that it is not limited to something written. There are other aspects within the definition that obviously could demonstrate an agreement between the parties. Since there was no express written agreement in the present case, I will take other requisites of the definition into consideration.

[77] Therefore, I will determine whether or not the parties exhibited the following aspects of the term’s definition, notably, did they:

- a) hold the same opinion?; and
- b) mutually understand each other?

[78] My first remark is that an excellent opportunity presented itself for the employer and the trade union to unequivocally agree on the issue during the 2003 negotiations. The parties had an example of explicit wording in article 33.03(a) of the UPO collective bargaining agreement with regards to the establishment of a policy committee that they proceeded to identify as the UPO-NJHSC. However, CPC did not agree with CUPW’s proposal to use the same language. As a result, the opportunity to define the status of RSMC employee regarding a policy committee slipped away.

[79] Instead, the new RSMC collective agreement, under article 24 addressed the issue of health and safety committees but not the issue of a policy committee. The entire realm of health and safety was covered in four short paragraphs within the collective agreement. The first paragraph is all encompassing stating that the provisions of the Code shall apply to employees. What follows is wording about health and safety committees but nothing about the establishment of a policy or a national committee for this employee group.

[80] It is clear to me that the negotiations in 2003 were very intense and that the negotiators had a huge mandate to undertake under extreme time restraints. I’m convinced that the parties did not see eye to eye regarding the issue of establishing a policy committee these employees. Given the importance of entering into that “first” collective agreement versus one article about a policy committee, I can understand that only items that were crystal clear were explicitly written into the agreement at that time.

[81] Consequently, I find that the omission of an article similar to the one in the UPO collective agreement about policy or national committees was indicative of a clear gap on the issue between the lead negotiators. An opportunity for precise and unambiguous commitment on the issue existed but, for whatever reason, it was not spelled out. It is apparent to me that CPC and CUPW did not have the same opinion nor did they come to a mutual understanding on the issue of the establishment of a policy committee for the

[82] In addition, Ms Bossenberry testified that on numerous occasions she objected to the employer's unilateral establishment of the RSMC-NJHSC, this is another reason for me to find a lack of mutual understanding on the issue between CPC and CUPW following the 2003 negotiations. This fact also demonstrates to me that the trade union did not provide its agreement to the establishment of the policy committee.

[83] Therefore, I find from the evidence presented to me that CPC violated para. 134.1(3)(a) of the Code when they established the RSMC-NJHSC for the RSMC employee group without obtaining the agreement of their trade union, CUPW.

Decision

[84] For these reasons, I confirm the direction issued by HSO McKeigan on December 17, 2009. The employer will now have until April 15, 2011, to comply with the direction.

Michael Wiwchar
Appeals Officer