

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

TREASURY BOARD
(Public Works and Government Services Canada)

Employer

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agent

RE: Identification of a managerial or confidential position after
certification of the Computer Systems Administration Group

Before: Yvon Tarte, Chairperson

For the Employer: J. Raymond Dionne

For the Bargaining Agent: Luc Quesnel

(Case decided without a hearing)

DECISION

Robert Jobin holds, on an acting basis, position No. 230-2084 A (CS-2), Site Manager, Technical Services Division, Regional Government Telecommunications and Informatics Services (GTIS) Branch, Quebec Regional Office, GTIS Directorate, Public Works and Government Services Canada (PWGSC) (the "position"). On July 10, 1996, the employer wrote to him informing him that he was "[. . .] designated as the person responsible for the (first) level of the grievance procedure and that [he was] authorized to reply, on behalf of the employer, to any grievance presented officially to this level by an employee reporting directly to [him]."

On November 10, 1997, pursuant to subsection 5.2(2) of the *Public Service Staff Relations Act*, the employer notified the Public Service Staff Relations Board and the bargaining agent that it had identified the position as "a managerial or confidential position" in accordance with paragraph 5.1(1)(b) of the *Act*, since Robert Jobin "was responsible for dealing, on behalf of the employer, with grievances at the first level".

On December 1, 1997, the Professional Institute of the Public Service of Canada exercised its right under subsection 5.2(3) of the *Act* to object to the identification of the position as a managerial or confidential position, giving as the reason that Robert Jobin's duties did not deal substantially with grievances.

On May 19, 1998, the parties asked the Board to allow them to submit their evidence and arguments in writing rather than call a hearing to decide this matter. On May 20, 1998, the Board granted the request.

The relevant provisions of the *Act* are as follows:

DEFINITIONS

2.(1) *In this Act*

[. . .]

"employee" means a person employed in the Public Service, other than

[. . .]

(j) a person who occupies a managerial or confidential position,

[. . .]

"managerial or confidential position" means a position

[. . .]

(g) identified as a position pursuant to section 5.1 or 5.2, the identification of which has not been terminated pursuant to section 5.3;

[. . .]

APPLICATION

[. . .]

Managerial or Confidential Positions

5.1(1) Where, in connection with the application for the certification of an employee organization as a bargaining agent, the Board is satisfied that any position of an employee in the group of employees for which certification is sought meets any of the following criteria, it shall identify the position as a managerial or confidential position:

[. . .]

(b) a position the occupant of which has substantial duties, responsibilities and authority over employees or has duties and responsibilities dealing formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act;

[. . .]

5.2(1) Where, before or after the coming into force of this section, a bargaining agent has been certified by the Board, the employer may, in the prescribed manner, identify any position described in subsection 5.1(1) of an employee in the bargaining unit for which the bargaining agent was certified as a managerial or confidential position, and for the purpose of that identification the reference in paragraph 5.1(1)(d) to the Board shall be construed as a reference to the employer.

(2) Where the employer identifies a position pursuant to subsection (1), it shall notify the Board and the bargaining agent in writing of the identification.

(3) Within twenty days after receiving a notice under subsection (2), the bargaining agent may file an objection to the identification with the Board.

(4) Where an objection to an identification is filed pursuant to subsection (3), the Board, after considering the objection and giving the employer and the bargaining agent an opportunity to make representations, shall confirm or reject the identification.

[. . .]

PART IV

GRIEVANCES

[. . .]

Regulations respecting Grievances

[. . .]

100.(4) For the purposes of any provision of this Act respecting grievances, the employer shall designate the person whose decision on a grievance constitutes the final or any level in the grievance process and the employer shall, in any case of doubt, by notice in writing, advise any person wishing to present a grievance, or the Board, of the person whose decision thereon constitutes the final or any level of the process.

The relevant provision of the collective agreement reads as follows:

ARTICLE 33

GRIEVANCE PROCEDURE

[. . .]

33.06 There shall be no more than four (4) steps in the grievance procedure. These steps shall be as follows:

(a) Step 1 - first level of management;

[. . .]

FACTS

The relevant facts of this case are simple and are not contested.

The position is located in Québec and Robert Jobin reports to the Regional Director of GTIS, Quebec Regional Office, GTIS Directorate, PWGSC; the Regional Director is located in Montréal.

The position's work description, submitted by the employer in support of the identification of the position as a managerial or confidential position, indicates that Robert Jobin must "supervise and train informatics employees in the areas of user support, systems operations and the communications network" and that, to this end, he devotes 15% of his time to "[managing], controlling and monitoring the budgets allocated to him and supervising the computer services technicians. There are no

other human resource management duties identified in the work description. Robert Jobin supervises eight employees for whom he is the first level of management.

On July 10, 1996, the employer informed Robert Jobin that it had designated him to deal, at the first level of the grievance procedure, with grievances filed by his subordinates. Robert Jobin has not had to deal with any grievances since that date.

ARGUMENT FOR THE EMPLOYER

The employer submitted its written argument on May 29, 1998. It reads as follows:

In November 1997, the employer submitted for exclusion from the CS group bargaining unit, position No. 2302084A, Site Manager, Technical Services, CS-2. Mr. R. Jobin has held this position since June 10, 1996. On December 1, 1997, the Professional Institute of the Public Service of Canada (PIPSC) objected to the proposed exclusion based on the second part of paragraph 5.1(1)(b) of the definition of a managerial or confidential position, which reads as follows:

"[the occupant of which] has duties and responsibilities dealing formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act;"

Hierarchically, Mr. Jobin reports to the Regional Director, Informatics Services, Ms. Crevier-Leclerc, EX-1, who in turn reports to the Regional Director General for the Quebec Region, Mr. Crête, EX-3. Both Ms. Crevier and Mr. Crête are located in Montréal, while Mr. Jobin is physically located in Québec where he manages the Technical Services office of Government Services Canada, Quebec Region.

As Site Manager, Mr. Jobin manages and supervises the work of 8 employees, five of whom hold indeterminate positions and three of whom are term employees appointed for terms of more than six months. In addition, he is responsible for (1) ensuring the functional orientation of the members of his team regarding the coordination and performance of tasks affecting one or more facilities, project management (implementation of new e-mail systems, installation of new computers, migration of networks); (2) managing, controlling and monitoring budgets follow-up; (3) making recommendations for the issuing of new policies, (4) providing his staff with information on policies and guidelines dealing mainly with security or any other field; and lastly (5) evaluating his staff on a regular basis in order to take any corrective action that may be needed, etc.

Mr. Jobin has been delegated level 3 authority for financial and human resources as indicated in the accompanying documents. He also has substantial authority that he exercises when required. However, in the human resources area, he has not had to deal with any grievances nor take any disciplinary action with respect to his staff.

In light of the functional utility of making the grievance process as accessible as possible to employees, the employer identified and designated Mr. Jobin's position as the first level of the departmental grievance procedure for all employees reporting to him. The grievance procedure consists of the following four levels:

- 1. Mr. R. Jobin, Site Manager, Technical Services, Québec;*
- 2. Ms. G. Crevier-Leclerc, Regional Director, GTIS, Montréal;*
- 3. Mr. R. Crête, Regional Director General, Montréal;*
- 4. Mr. R. A. Quail, Deputy Minister, Ottawa
Delegation to the Assistant Deputy Minister, Human Resources.*

On July 10, 1996, Ginette Crevier-Leclerc, Regional Director, GTIS sent Mr. Jobin a letter designating him as the first level of the grievance procedure to receive grievances and conferring on him the authority to reply, on behalf of the employer, to grievances from employees reporting to him. The authority to reply delegated to him complies with the requirements of section 5.1 and subsection 100(4) of the Public Service Staff Relations Act and with the wording of Article 33 of the collective agreement for the CS Group given that Mr. Jobin is the first level of management.

The employer is also of the opinion that this proposed exclusion meets the essential conditions set forth by the Board in the following decisions:

The Professional Institute of the Public Service of Canada and Treasury Board (File 174-2-220)

The Public Service Alliance of Canada and Treasury Board (File 174-2-250)

The International Brotherhood of Electrical Workers, Local 2228 and Treasury Board (File 173-2-258)

The Economists', Sociologists' and Statisticians' Association and Treasury Board (File 172-2-356)

The Public Service Alliance of Canada and Treasury Board (File 174-2-499)

The Public Service Alliance of Canada and Treasury Board (File 173-2-500)

The Public Service Alliance of Canada and Treasury Board (File 174-2-553)

The Professional Institute of the Public Service of Canada and Treasury Board (File 172-2-668)

The Public Service Alliance of Canada and Treasury Board (File 172-2-831)

The Social Science Employees Association and Treasury Board (File 172-2-957)

The whole of the documentary evidence appended and that previously submitted by the employer supports the conclusion that Mr. Jobin was in fact assigned the duties and responsibilities of the first level of the grievance procedure. To this end, he is authorized to make decisions on his own authority and to reply to grievances presented by employees under his jurisdiction.

In light of existing case law, the employer argues that the role of the Board is limited to deciding, as a question of fact, whether Mr. Jobin was in fact assigned responsibility to deal with grievances filed pursuant to the Act. If the Board finds that this is the case, then it must decide the question in favour of the employer and exclude Mr. Jobin's position.

ARGUMENT FOR THE BARGAINING AGENT

The written argument of the bargaining agent was submitted on June 17, 1998 and reads as follows:

Introduction:

PIPSC wishes to object to the application for exclusion (230-2084A) of a CS-2 position currently occupied by Mr. R. Jobin on an acting basis as requested by the Treasury Board as the employer.

As the bargaining agent for the bargaining unit concerned, PIPSC objects to the application for exclusion for the following reasons.

The facts:

On July 10, 1996, the Regional Director, GTIS, Ginette Leclerc informed Robert Jobin that the employer considered him henceforth to be designated as the "person responsible for the first level of the grievance procedure". In this letter, the Regional Director informed Mr. Jobin that he was authorized to reply, on behalf of the employer, to any grievance submitted by AN EMPLOYEE WHO REPORTS DIRECTLY TO HIM.

Still according to Ms. Leclerc's letter, the authority thus delegated would be at the permanent authorization level held pursuant to the position occupied (CS-2 acting). The director strongly advised the new holder of this delegation to seek information and to request advice before making a decision.

The work description given to the bargaining agent stipulates that, among the duties devolved to the incumbent of this site manager position (CS-2), he is required to supervise and train informatics employees in the areas of user support, systems operations, the network and telecommunications.

The same document provides information on the alleged percentage of time devoted to the various tasks that make up the whole of the incumbent's responsibilities. We note that only Item 4 indicates responsibilities that might be related to management functions possibly giving rise to exclusion from the bargaining unit.

4. Managing, controlling and monitoring the budgets allocated to him and supervising computer services technicians

% of time: 15%

The organization chart given to the bargaining agent shows that the supervision associated with this position extends to eight (8) employees, most of whom are at the CS-1 level.

Lastly, the file indicates that the only reason for excluding this position from the bargaining unit would be that the incumbent of the position has "responsibility for dealing, on behalf of the employer, with grievances at the 1st level."

The law:

The Public Service Staff Relations Act allows the employer to apply for exclusion. More specifically, pursuant to paragraph 5.1(1)(b), the employer may request the exclusion of positions "the occupant of which has **substantial** management duties, responsibilities and authority over employees or has duties and responsibilities dealing formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act;"

The concept is clear; however, it is important to point out that such duties must be substantial and that the employer must demonstrate this fact to the Board's satisfaction.

Argument:

Although the file submitted to the bargaining agent indicates that the incumbent will be responsible of supervising employees at the CS-1 level, there is nothing in the employer's submission to show that the incumbent will exercise substantial human resource management duties other than the simple supervision referred to in the work description in Item 4. Simply stating the delegation of authority to represent the employer at the first level of the grievance procedure does not, in itself, constitute the performance of the duties.

The application for exclusion must demonstrate that the duties and responsibilities dealing formally on behalf of the employer with grievances must be substantial.

What does this expression mean?

First, we must agree that the onus is on the employer to demonstrate that this is the case, as the Board has previously indicated in such matters:

"The onus of justifying the exclusion of these employees from the bargaining unit rested with the employer. The evidence on which it relied does not convince me

that these employees ought to be excluded from the bargaining unit." Extract from PSAC and TB, Board file 174-2-497, paragraph 62.

There is nothing in the application or in the documentation received by the bargaining agent to allow it to conclude that this duty will be a substantial duty. At the most, part of the responsibilities might hypothetically be reserved for this duty and would certainly not exceed 15% if we are to rely on the work description (Item 4, cited in the Introduction). In reality, this percentage is probably closer to 0% absolute if we consider the amount of time that would remain from this 15% of his total work time after "managing, controlling and monitoring the budgets allocated to him" and "supervising the computer services technicians".

The only thing that can be concluded from the format used by the employer for the said work description is that the employee in question will **manage, control and monitor a pre-set budget. The action of the employee in question is limited to supervising a group** of CS-1s with whom he works very closely in day-to-day operations. There is nothing that would lead one to conclude, in any way, that the employee will have management duties relating to these same human resources. Moreover, the submission by the employer's representative indicates that no grievance has been filed and no disciplinary action has been taken since the delegation was made.

"However, in the human resources area, he has not had to deal with any grievances nor take any disciplinary action with respect to his staff."
Extract from the submission of the employer's representative at page 2.

Note that more than 22 months have passed since the letter of July 10, 1996. This confirms that the time devoted by the employee to the grievance procedure is non-existent. Clearly, the conceptual basis for the employer's application for this exclusion is strictly theoretical, despite the concrete and practical impact that such an exclusion would have for the employee in question.

Why reach this conclusion?

Parliament made a substantial change to the relevant text in 1992. The original wording contained the following definition of a "person employed in a managerial or confidential capacity" in section 2 (Ch. P-35):

"(c)(iii) who is required by reason of the duties and responsibilities of that person to deal formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act,"

It was amended to read specifically in a new provision devoted to the issue of "Managerial or Confidential Positions" at subsection 5.1(1):

"(b) a position the occupant of which has substantial management duties, responsibilities and authority over employees or has duties and responsibilities dealing formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act;"

The addition of the word "substantial" ["dans une proportion notable" in the French version] changes the mandate conferred on the Board so that it must ensure that this requirement is demonstrated in the application for exclusion.

Below is what Le petit Robert (extracts appended hereto) gives as a definition for the terms used in the French version of this definition [proportion notable]:

PROPORTION 1. Rapport de grandeur entre les parties d'une chose, entre une des parties et le tout... 2. Rapport ou ensemble de rapports de grandeur... 3. Rapport quantitatif (entre deux ou plusieurs choses).

This definition is in keeping with the note that appears in the margin of subsection 5.1(1) indicating that the subsection deals with the "Identification by the Board" ["Qualification par la Commission" in French] and implies that the Board must evaluate, assess or identify the proportion of exclusionary duties and responsibilities. The virtually automatic exclusion that resulted from the designation of an employee as a representative in the grievance process, as appears to have applied in the decisions cited by the employer's representative, no longer exists. The rule has changed.

The dictionary defines the adjective used in the French version of the definition as:

*NOTABLE 1. Qui est digne d'être noté, remarqué => remarquable. Un fait notable. Des différences notables, de notables progrès. => **appréciable, important, sensible.***

Webster's Third New International Dictionary defines the adjective used in the English version of the definition as:

Substantial: [. . .] c: being of moment: IMPORTANT, ESSENTIAL ; [. . .] 4a: being that specified to a large degree or in the main; [. . .]

Attachments: Extracts from the Le petit Robert, 1996 and Webster's Third New International Dictionary.

From the submission as a whole, it does not appear that the employer has shown that a SUBSTANTIAL, considerable, significant or appreciable percentage of the duties of the position are devoted to representing the employer in the grievance process. The statement by the employer's representative that in two (2) years, no grievance had been submitted to the incumbent, Mr. Jobin, clearly confirms that the duty suggested by the employer is theoretical in nature and that this designation for the purpose of representing the employer in the grievance procedure does not, in this specific instance, meet the new wording adopted by the House of Commons in 1992. Moreover, any conclusion to the contrary would deprive an employee of his right to collective bargaining and his right to involvement in union business by claiming that Parliament amended the Act without consequence, that nothing changed. The consequence is in fact that of clearly imposing a more demanding burden of proof on the employer in order to exclude employees from the bargaining unit. The employer has not discharged its

burden of proof by showing on the weight of the evidence that the incumbent of this position would exercise substantial duties justifying his exclusion.

CONCLUSION

The application for the exclusion (230-2084A) of a CS-2 position - Computer Systems Administration Group - occupied on an acting basis by Robert Jobin must be rejected.

[Emphasis in the original]

EMPLOYER'S RESPONSE

The employer's representative submitted the following response to the argument of the bargaining agent on June 24, 1998:

I have reviewed and examined the submissions of June 17, 1998 of Mr. L. Quesnel, representing the Professional Institute of the Public Service of Canada, concerning the above file. Attached are the employer's comments in response to the arguments of the bargaining agent with respect (1) to the role of Mr. Jobin as manager, (2) the absence of grievances since July 10, 1996, (3) the interpretation of paragraph 5.1(1)(b) by PIPSC and (4) the Board's case law since 1993.

Role of the manager

The employer maintains that it is incorrect and wrong to say that Mr. Jobin allegedly devotes 0% absolute of his time to managing, controlling and monitoring the budgets allocated to him (travel costs, purchases and authorizations of computer equipment, analysis of discrepancies, planning, annual and five-year plans, employee training plan, departmental strategy with respect to objectives, etc.) and to supervising the computer services technicians. After checking with Mr. Jobin, the latter informed me that a more accurate representation of reality with respect to the time devoted to function #4 would be to increase the time from 15% to 30%.

As for the generic term "supervising", it should read "overseeing and managing all of the staff in the Quebec District". In his capacity as manager, Mr. Jobin not only provides function direction and orientation to a team of computer specialists responsible for installing, administering, maintaining and providing technical support for computer systems, but he must also resolve disputes between the various managers, attend coordinating and planning meetings, and represent the Director, Informatics Services on certain matters specific to the District's operations.

Absence of grievances

The bargaining agent indicated that because Mr. Jobin has not had to respond to any grievances since July 1996, his position does not include substantial human resource responsibilities, including the resolution of grievances, and consequently, it should not be excluded. This argument contradicts present and past Board case

law. The absence of grievances is not a factor to be taken into consideration for the purpose of excluding a person as a level in the grievance process pursuant to paragraph 5.1(1)(b) of the Act.

The role of an informed manager is in fact to be a moderator during potential conflict and to try, to the extent possible, to find solutions in order to avoid grievances and, where applicable, to reach an agreement. An effective manager is one to defuse critical and conflicting situations and who puts in place corrective measures to re-establish harmony and understanding between staff and to foster team work. This is the mission that Mr. Jobin set for himself in his capacity as manager.

Interpretation of paragraph 5.1(1)(b)

Paragraph 5.1(1)(b) is divided into two totally separate parts. The employer argues that a review of the structure of this paragraph shows that the word "substantial" [dans une proportion notable] applies only to the first definition, that is:

"the occupant of which has substantial management duties, responsibilities and authority over employees . . ."

and not to the second part, which reads:

"or has duties and responsibilities dealing formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act;"

The employer is of the opinion that the conjunction "OR" has a disjunctive function that isolates and separates the two definitions. Consequently, the word "substantial" does not qualify in any way the duties and responsibilities of a person who replies to grievances on behalf of the employer in accordance with the grievance process provided for by the Act.

The employer further argues that, in paragraph 5.1(1)(b), Parliament did not consider it necessary, as it did in paragraph 5.1(1)(d), to explicitly give the Board the discretionary authority to evaluate and assess the reasons and quality of the employer's decisions in identifying and delegating to a person the authority to reply to grievances submitted by employees.

Case law since 1993

In its submissions, PIPSC mentioned that the duties and responsibilities leading a person to deal formally on behalf of the employer with grievances must be substantial. It is our position that this suggestion is contrary not only to the case law developed by the Board, but also to the letter and spirit of paragraph 5.1(1)(b).

Mr. L. Tenace, Deputy Chairperson of the Board, stated at page 8 of his decision of April 26, 1996 (File No. 172-2-831) as follows:

"As can be seen, despite different wording, there is little substantial difference between the "old" and the "new" criteria."

In her decision No. 172-2-957 of February 17, 1997, Marguerite-Marie Galipeau makes no mention, nor implies, that the Act amended in June 1993 imposes any additional conditions with respect to a person being legally appointed to one of the levels of the grievance procedure. It would appear that there is no significant amendment of the former exclusion criteria in 2c(iii)[sic] or 2(e)[sic] that would invalidate the current case law.

Lastly, the employer would like to draw the Board's attention to the copy of a letter dated June 2, 1998, signed by Paula Shaver of the Professional Institute addressed to R. Jobin, advising him that he had probably been informed of his designation as a person occupying a managerial or confidential position. According to the employer, this document speaks for itself and is explicit. It should be sufficient to bring the current matter to a close.

*In conclusion, it is the employer's position that Mr. Jobin has been properly delegated the authority to reply to grievances and to exercise that authority on his own, that he has the appropriate status of manager, that he is the first level of management, and that the duties and responsibilities described in the generic position No. **OG032** and in position **230-2084A** amply reflect the duties and responsibilities of a manager. The employer therefore requests that the Board designate the position of Site Manager, Informatics Services, as a position to be excluded under paragraph 5.1(1)(b) of the Act.*

[Emphasis in the original]

REASONS

The reason given by the employer for identifying the position as a managerial or confidential position pursuant to paragraph 5.1(1)(b) of the Act is that Robert Jobin must deal formally on behalf of the employer with grievances filed at the first level of the grievance procedure by any employee reporting directly to him. The case before the Board shows that the employer did in fact designate Robert Jobin to deal with grievances filed by his subordinates at the first level of the grievance procedure and that the position represents the first level of management for these employees.

In support of its objection to the identification of the position, the representative of the bargaining agent put forward an argument relating to the human resource management duties of Robert Jobin with respect to the eight employees he supervises. I note however that the decision of the employer to identify this position as a managerial or confidential position is not based in any way on this management function. I therefore find this argument to be irrelevant for the purpose of the decision the Board must rendered.

The representative of the bargaining agent also argues that paragraph 5.1(1)(b) of the *Act* limits cases of identification to positions the occupants of which have substantial duties and responsibilities dealing formally with grievances. This argument is based on the amendments to the *Act* adopted on June 1, 1993.

Prior to June 1, 1993, section 2 of the *Act* defined as follows a "person employed in a managerial or confidential capacity":

"person employed in a managerial or confidential capacity" means any person who

[. . .]

(c) is employed in the Public Service and, [. . .] is designated by the Board, [. . .] to be a person

[. . .]

(ii) whose duties include those of a personnel administrator or who has duties that cause that person to be directly involved in the process of collective bargaining on behalf of the employer,

(iii) who is required by reason of the duties and responsibilities of that person to deal formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for in this Act,

[. . .]"

On June 1, 1993, the *Act* was amended. Now, the French version of subsection 5.1(1) stipulates that:

5.1 (1) La Commission [...] qualifie de postes de direction ou de confiance ceux qui [...] répondent, à son avis, à l'un ou l'autre des critères suivants :

[...]

b) leurs occupants exercent, dans une proportion notable, des attributions de gestion à l'égard de fonctionnaires ou des attributions les amenant à s'occuper officiellement, pour le compte de l'employeur, de griefs présentés selon la procédure établie en application de la présente loi;

[...]

[underlining added]

It is the wording of this new paragraph 5.1(1)(b) of the *Act* that leads the representative of the bargaining agent to claim that, for the position to be identified

as a managerial or confidential position, Robert Jobin must deal substantially with grievances at the first level of the grievance procedure.

I do not share this interpretation of paragraph 5.1(1)(b) of the *Act*. To accept the interpretation of the bargaining agent's representative would lead to uncertainty in the identification process, whereby the same positions might or might not be identified under the *Act* depending on fluctuations in the volume of grievances with which their incumbents must deal. Such an interpretation would also unreasonably limit the employer's ability to delegate to the first level of management, in accordance with clause 33.06 of the collective agreement, its authority to deal with grievances at the first level of the grievance procedure. I am even more convinced that the interpretation made by the bargaining agent's representative of paragraph 5.1(1)(b) is contrary to the intent of Parliament when I read the English version of this paragraph:

5.1 (1) Where [...] the Board is satisfied that any position of an employee [...] meets any of the following criteria, it shall identify the position as a managerial or confidential position:

[...]

(b) a position the occupant of which has substantial management duties, responsibilities and authority over employees or has duties and responsibilities dealing formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for by this Act;

[...]

[underlining added]

While it may be possible to argue that the French version of paragraph 5.1(1)(b) of the *Act* contains an ambiguity or is worded imprecisely, the same cannot be said of the English version, which does not in any way require the occupant of a position to deal substantially with grievances for his position to be identified as a managerial or confidential position under the *Act*. On this point, the amendments made to the *Act* on June 1, 1996 [sic] did not change the rules, contrary to the arguments of the representative of the bargaining agent.

For all these reasons, I find that the position occupied by Robert Jobin to be a managerial or confidential position in accordance with the *Act* and the Board confirms the identification.

**Yvon Tarte
Chairperson**

OTTAWA, July 21, 1998.

Certified true translation

Serge Lareau