

**Date:** 20010717

**File:** 147-2-112

**Citation:** 2001 PSSRB 71



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2228**

Applicant

and

**TREASURY BOARD**

Employer

and

**PUBLIC SERVICE ALLIANCE OF CANADA**

Intervenor

**RE:** Application under section 34 of the  
Public Service Staff Relations Act

**Before:** [Joseph W. Potter, Vice-Chairperson](#)

**For the Applicant:** James L. Shields, Counsel

**For the Employer:** Harvey Newman, Counsel

**For the Intervenor:** David Landry, representative

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Heard at Halifax, Nova Scotia,  
June 12 and 13, 2001.

## DECISION

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[1] On November 14, 2000, the applicant filed an application under section 34 of the *Public Service Staff Relations Act* (Act) seeking a determination that “... *the Underwater Signatures and Ranges Technologists and Underwater Signatures and Ranges Technical Services Supervisor* [employed in the Department of National Defence at CFP Halifax and] *currently included in the [Engineering and Scientific Support (EG)] Group are more properly included in the [Electronics (EL)] Group for which the IBEW Local 2228 is [the] certified bargaining agent.*”

[2] Both the employer and the intervenor opposed the application.

[3] The applicant submitted four exhibits and relied on one witness to support its case. The employer submitted one exhibit and relied on one witness. The intervenor submitted two exhibits and relied on two witnesses.

[4] There are four technologist positions in question, together with one supervisory position.

### Background

[5] The International Brotherhood of Electrical Workers (IBEW), Local 2228 is the certified bargaining agent for all the employees of the employer in the Electronics Group as defined in the *Canada Gazette* of March 27, 1999 (see *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board* (142-2-325)).

[6] The Public Service Alliance of Canada (PSAC) is the certified bargaining agent for all employees of the employer in the Technical Services Group as defined in Part I of the *Canada Gazette* of March 27, 1999 (see *Public Service Alliance of Canada v. Treasury Board* (142-2-339) ).

[7] Employees who were previously comprised in the EG Group bargaining unit have been subsumed by the Technical Services Group bargaining unit; the bargaining agent for those employees was, and continues to be, the PSAC (see *Public Service Alliance of Canada v. Treasury Board* (142-2-339)).

[8] Jim Foster is a Weapons Systems Technologist in the Fleet Maintenance Facility with the Department of National Defence (DND). He is currently classified as an EL-6 and has been a shop steward with IBEW, Local 2228 since about 1992.

[9] Following an internal re-organization, Mr. Foster felt that all of the approximately 22 EL-5 positions in the area where he worked, titled the Service Delivery Department, Weapons/Electrical should be re-classified to the EL-6 level. Accordingly, he filed a grievance on January 15, 1999 making that request (see Exhibit A-2). Included in that request were the four Underwater Signatures and Ranges Technologist positions.

[10] A copy of the organization chart where all the EL positions in question were located can be found at Tab C of Exhibit A-1, last page.

[11] Management replied to the grievance saying that the work descriptions would be reviewed and, if appropriate, revised and submitted to classification to determine the appropriate level (see grievance replies in Exhibit A-2).

[12] Following this, a team which included Mr. Foster and Mr. David Conrod, Technical Services Manager, Weapons/Electrical, agreed on the contents of a revised job description which encompassed the variety of work done in the section (Exhibit A-3). This was a generic job description, together with an addendum that listed the specific duties the ELs were performing in their various sections. The work done by the ELs in the Underwater Signatures and Ranges System area is the addendum attached to Exhibit A-3.

[13] The job description was dated March 1999 and was forwarded to classification for review with the proposal that the positions be upgraded from EL-5 to EL-6.

[14] The results were that all EL-5 positions were upgraded to EL-6 positions, save and except for the Underwater Signatures and Ranges Technologist positions.

[15] Mr. Conrod testified that he understood that the reason why those four ELs were not reclassified like all the others was because they reported to an EL-7 and there were prohibitions against having an EL-6 report to an EL-7. Whether that was the real reason or not, the fact remained that there were four positions not reclassified, and management felt it needed to address this issue.

[16] In December 1999, Mr. Conrod signed off a revised job description for the four technologist positions in question, and the results from classification were that those positions became reclassified at the EG-6 level. The supervisory position was also made an EG.

[17] Mr. Foster testified that the Underwater Signatures and Ranges Technologists are each responsible for measuring the acoustic and magnetic characteristics of various ships they are tasked to look at. He explained that ships have characteristics, or signatures as they are called, that are peculiar to a certain ship, or class of ships.

[18] Each of those four technicians is responsible for gathering data used to measure the ships' signature, using a wide variety of technical equipment. Most of the equipment is electronic in nature, according to Mr. Foster.

[19] The data is gathered through a computer, analyzed and the technologists write a report on the results. Mr. Foster conceded, in cross-examination, that a significant portion of the technologists' time is spent gathering and analyzing data.

[20] Mr. Conrod stated that the sole core function of the technologist positions is data gathering and data analysis. He explained that the technologists would gather data for about one week, spend three weeks analyzing the data and then write their report, which includes recommendations on how to reduce the magnetic and acoustic characteristics of the ship.

[21] Mr. Conrod agreed, in cross-examination, that the addendum outlining the duties of the four technologists, contained in the job description which came back from classification as an EG (Tab C of Exhibit A-1), is identical to the addendum to the EL-5 job description which went to classification (Exhibit A-3).

[22] Linda Demell is a classification officer with DND, located in the Headquarters area in Ottawa. She testified that she participated in a review committee that looked at the job description (Tab C of Exhibit A-1) following a request to do so from the Director General, Employee Relations, DND.

[23] The classification review committee concluded in its written report (Exhibit I-1) that the primary function of the technologist position was EG related, and not EL related.

[24] Ms. Demell stated that the classification review committee was not made aware of the job description that proposed increasing the positions from EL-5 to EL-6 (Exhibit A-3).

[25] Pierre Marleau is a classification officer with the PSAC and testified that he reviewed the EG job description and found that the primary purpose of the position was to gather information and report on it. As such, it fit the EG group.

#### Arguments for the Applicant

[26] All EL positions in the Service Delivery Department, Weapons/Electrical went forward for classification review in March 1999. A generic job description was developed, with an addendum that was particular to the various areas where the ELs worked.

[27] The results of the classification review were to increase all EL-5 positions to EL-6, save and except for the four Underwater Signatures and Ranges Technologist positions.

[28] The reason why the EL positions in the Underwater Signatures and Ranges Section were not reclassified did not relate to their duties, but rather related to the fact that an EL-6 could not report to an EL-7. Since the incumbents' supervisor was an EL-7, the reclassification of those four ELs could not be effected.

[29] The job description was then re-designed so the Underwater Signatures and Ranges Technologist positions could receive a re-classification, and the result was that the positions became EG positions.

[30] Classification reviewed the job description which was submitted (Exhibit A-1, Tab C), and determined the jobs fell within the EG classification standard. The problem here is that the addendum to the job description, which describes the duties of the Underwater Signatures and Ranges Technologist positions, is identical to the job description found in Exhibit A-3, which was put forward as an EL position.

[31] The job of the underwater signatures and ranges technologists is replete with references to the application of electronic technology and electronic systems. A review of the EL classification standard, found at page 821 of Exhibit E-1, clearly shows those types of positions should be classified in the EL bargaining unit.

[32] The core duties of the underwater signatures and ranges technologists are really those specified in the job description identified in Exhibit A-3, which shows the position in the EL bargaining unit. The revised job description at Exhibit A-1, Tab C,

was written to deliberately keep the Underwater Signatures and Ranges Technologist positions out of the EL bargaining unit.

[33] The positions in the Underwater Signatures and Ranges Section apply electronic technology and the EL group definition found in the *Canada Gazette* is the only one that mentions its positions are primarily involved in electronic technology.

#### Arguments for the Intervenor

[34] The evidence indicates that the main function of the underwater signatures and ranges technologists is an analysis and reporting function. They do not work in the field of electronics, but obviously they must know how the electronic equipment works so they can operate it properly.

[35] The job description for the Underwater Signatures and Ranges Technologist positions has been reviewed by a classification review committee, and it was unanimous in determining it fell within the inclusion of the EG standards.

[36] There has not been a suggestion that the new job description was ever grieved, and there was no suggestion that anything improper was done in defining the duties of the underwater signatures and ranges technologists.

[37] While the most recent job description for the underwater signatures and ranges technologists was designed to come out in the EG group, there has never been any suggestion that the duties described therein are not those actually performed by the incumbents.

#### Argument for the Employer

[38] There are three previous Board cases that set out the basic ground rules for this type of case (see *Federal Government Dockyards Trades and Labour Council (Esquimalt) v. Treasury Board* (147-2-25), *Public Service Alliance of Canada v. Treasury Board* (147-2-34) and *Public Service Alliance of Canada v. Treasury Board (Supply and Services Canada)* (147-2-35)).

[39] In such cases, the Board has to look at the duties of the employees in question and determine which group definition best fits.

[40] In making this determination it is necessary to look at the *Canada Gazette* definition of both the Electronics Group and the Technical Services Group. If the decision is that the employees fall within the Electronics Group definition, then the IBEW, Local 2228 would be the bargaining agent. Conversely, if the decision is that the employees fall within the Technical Services Group definition, then the PSAC would be the bargaining agent.

[41] The question to be answered is that, as of now, are the underwater signatures and ranges technologists properly identified as fitting within the definition of the Technical Services Group, or should they go to the Electronics Group?

[42] The answer to this question lies in determining what they primarily do, or, stated another way, what is their *raison d'être*.

[43] Employees in the Underwater Signatures and Ranges Section use electronic knowledge to gather data on underwater signatures emitted by ships. The technologists analyze the data and issue written reports, with a view towards helping the Navy reduce those signatures.

[44] These jobs are very technical in nature. However, their main function is not to work on the equipment, but rather to use the equipment to get a specific result.

[45] No allegations have been asserted that the most current job description for those employees (identified as Exhibit A-1, Tab C) is deceptive. That job description has been found to fit within the Technical Services Group definition, not the Electronic Group definition.

[46] The function of an EL, as specified in the group definition is to design, construct, install, inspect, maintain and repair electronic equipment. This is not the primary function of the underwater signatures and ranges technologists, but, rather, the technologists use electronic equipment to write reports.

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Decision

[47] This is an application filed pursuant to section 34 of the Act. This section states:

*34. Where, at any time following the determination by the Board of a group of employees to constitute a unit appropriate for collective bargaining, any question arises as to whether any employee or class of employees is or is not included therein or is included in any other unit, the Board shall, on application by the employer or any employee organization affected, determine the question.*

[48] The question to be determined then is as follows: are the duties and responsibilities of the underwater signatures and ranges technologist more appropriately aligned with the Electronics Group definition as detailed in the *Canada Gazette* of March 27, 1999 as asserted by the applicant, or contrarily are they better described in the Technical Services Group definition as contended by the intervenor and the employer.

[49] The Electronics Group definition, as stated in the *Canada Gazette (supra)* states:

*The Electronics Group comprises positions that are primarily involved in the application of electronics technology to the design, construction, installation, inspection, maintenance and repair of electronic and associated equipment, systems and facilities and the development and enforcement of regulations and standards governing the use of such equipment.*

[50] The Technical Services Group definition, as stated in the *Canada Gazette (supra)* states:

*The Technical Services Group comprises positions that are primarily involved in the performance, inspection and leadership of skilled technical activities.*

[51] In *Federal Government Dockyards Trades and Labour Council (Esquimalt) v. Treasury Board (supra)*, § 30-32, Chairperson Brown wrote:

*30. It is well established by virtue of section 7 of the Financial Administration Act and section 7 of the Public Service Staff Relations Act that classification is a matter within the exclusive authority of the Employer. However, just as the Employer has exclusive authority*



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*in matters of classification, this Board has exclusive authority under section 34 to determine the appropriateness of a bargaining unit and the exclusive authority under section 33 to determine the question as to which bargaining unit an employee is included.*

31. *It follows that, in making a determination under section 33, the Board cannot involve itself in the classification process. Rather, the authority of the Board is restricted to making a determination on the basis of a comparison of the duties actually performed by the employees and the duties described in the group definition referred to in the certificate of the Bargaining Agent for the bargaining unit concerned.*
32. *In making its determination in the present application, the Board is called on to examine the duties that the employees actually perform and to compare those duties with the duties set out in the group definitions of the General Labour and Trades Group and the Ship Repair Group. The Board would then make its determination on the basis of whether the primary duties performed by the employees come within the duties described in the General Labour and Trades Group definition or within the duties described in the Ship Repair Group definition. This determination is not dependent on the classification that the Treasury Board has seen fit to give to the positions in which the two employees are employed.*

[52] This sets out the manner in which the Board must decide the issue of which bargaining unit is the appropriate one for the employees in question to fall into. Namely, the Board must look at the primary duties of the underwater signatures and ranges technologists in answering the question as to which bargaining unit is more appropriate.

[53] I concur with the statement made by the representative of the employer, when he said it is necessary to determine the “raison d’être” of the underwater signatures and ranges technologists. Stated in other ways, I must determine the very pith and substance of their functions, or the core duties technologists perform.

[54] What is interesting here is that none of the evidence was provided by the technologists themselves, so I must assess the *viva voce* evidence of those who claim to know what the technologists do, as well as the documentary evidence tendered by all parties.

[55] After reviewing all of the above, I am satisfied that the positions more properly fall within the Technical Services Group definition. Mr. Conrod testified that the sole core function of the technologists was to gather and analyze data. The job description does not refute this.

[56] There is no question that those positions are very technical and complex in nature and there is an abundance of electronic equipment that is used. However, I find that the pith and substance of the technologists' duties is to gather and analyze the data, then issue a report on their findings. As such, those employees properly fall within the Technical Services Group definition.

[57] Employees which fall within the Electronics group, I believe, are those whose main duties require the application of electronic technology to the design, construction, installation, inspection, maintenance and repair of electronic equipment. The evidence in this case indicates that is not the main function of the underwater signatures and ranges technologists. As such they cannot fall within the Electronics Group definition.

[58] Accordingly, for the reasons cited above, I find that the employer has properly placed the underwater signatures and ranges technologists in the Technical Services Group and, as such, the application submitted by the IBEW is hereby dismissed.

**Joseph W. Potter,  
Vice-Chairperson.**

OTTAWA, July 17, 2001.