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Citation: 2005 PSLRB 155

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2228

Applicant

and

TREASURY BOARD

Respondent

and

THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Intervener

Indexed as *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*

In the matter of an application pursuant to section 34 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: Ian R. Mackenzie, Vice-Chairperson

For the Applicant: James Shields, Counsel

For the Respondent: Neil McGraw, Counsel

For the Intervener: Walter Belyea, Professional Institute of the Public Service of Canada

Heard at Ottawa, Ontario,
February 22 and 23, 2005.
(Written submissions filed on March 14, April 18 and May 10, 2005.)

Application before the Board

[1] An application for the determination of a bargaining unit pursuant to section 34 of the *Public Service Staff Relations Act* (*PSSRA*) was filed before the Public Service Staff Relations Board (PSSRB) by the International Brotherhood of Electrical Workers (IBEW), Local 2228, on August 26, 2003.

[2] On April 1, 2005, the *Public Service Labour Relations Act* (the "new *Act*"), enacted by section 2 of the *Public Service Modernization Act,* S.C. 2003, c. 22, was proclaimed in force and the PSSRB was replaced by the Public Service Labour Relations Board (the Board). Pursuant to section 39 of the *Public Service Modernization Act*, the Board continues to be seized with this application, which must be disposed of in accordance with the new *Act*. The relevant provision in the new *Act* is section 58.

[3] The employees in question are employed at the Department of Foreign Affairs and International Trade (DFAIT) and were formerly classified in the Electronics (EL) group in the Foreign Service Technologist position. As such, they are represented by the IBEW. A new position of Foreign Service Information Technology Professional (FSITP), classified in the Computer Systems (CS) group, was created by the DFAIT and the affected EL employees were put into acting CS positions pending the successful completion of training. The Professional Institute of the Public Service of Canada (PIPSC) is the bargaining agent for the CS group and is an intervener in these proceedings.

[4] Mediation was requested by the parties in October 2003, and took place in March 2004. After being advised that mediation was not successful, the application was then scheduled for a hearing in July 2004; however, the applicant asked that the hearing be postponed until late September or October 2004. The respondent agreed to the postponement, as long as it would not be prejudiced by the delay. The intervener also agreed to the postponement. The hearing was scheduled for October 14 and 15, 2004, but the applicant requested another postponement and the respondent and intervener again agreed with the request. The matter was then scheduled for a hearing on February 22 and 23, 2005, and the hearing proceeded as scheduled on those dates.

[5] Written submissions were filed by the parties commencing on March 14, 2005, with final written submissions filed on May 10, 2005.

Summary of the evidence

[6] Information technology (IT) support for the DFAIT, both in Canada and at missions abroad, was formerly performed by a combination of EL and CS positions. In addition, at missions abroad, locally-engaged staff (LES) assists in providing IT services. In 2003, the Enhanced Support Model Abroad Information Technology (ESMAIT) project was implemented by the DFAIT. The project involved the creation of the new position of Foreign Service Information Technology Professional (FSITP). The FSITP position was classified in the CS group by the employer. New recruits are classified as CS-1; CS-2 is the working level and Team Leaders are classified at the CS-3 level.

[7] The group definitions for both the EL and CS groups (Exhibit A-1) (*Canada Gazette,* Part 1, March 27, 1999) are set out below.

[8] The EL group definition is as follows:

> *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.*
>
> *Inclusions*
>
> *Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one or more of the following activities:*
>
> 1. *the inspection, certification and licensing of telecommunications, radio communications and broadcasting equipment installations;*
>
> 2. *the examination and certification of radio operators and related personnel;*
>
> 3. *the development and enforcement of international and domestic radio regulations, agreements and equipment standards, and the examination of related applications and technical briefs for radio and television stations;*
>
> 4. *the detection, investigation and suppression of radio and television interference;*

5. *the design, construction, installation, testing, inspection, maintenance, repair or modification of electronic equipment, systems or facilities, including the preparation of related standards;*

6. *the conduct of experimental, investigative or research and development projects in the field of electronics, under the leadership of an engineer or a scientist;*

7. *the planning and delivery of a quality assurance program for electronic systems and equipment;*

8. *the development, direction and conduct of training in the above activities; and*

9. *the leadership of any of the above activities.*

Exclusions

Positions excluded from the Electronics Group are those whose primary purpose is included in the definition of any other group or those in which one or more of the following activities is of primary importance:

1. *the operation of electronic equipment for the purpose of monitoring radio aids to navigation;*

2. *the use of manual and trade skills in the manufacture, fabrication and assembly of equipment;*

3. *the electrical and electronics work performed as part of the repair, modification and refitting of naval vessels and their equipment; and*

4. *the testing or inspection of electronic equipment to ensure fair measurement.*

[9] The CS group definition is as follows:

The Computer Systems Group comprises positions that are primarily involved in the application of computer systems knowledge to the planning, development, installation and maintenance of information technology processing systems to manage, administer or support federal government programs and activities.

Inclusions

Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one or more of the following activities:

1. *the conduct of analyses and design and programming activities for the development, implementation and maintenance of administrative, scientific and technological information processing systems; and the customization and maintenance of generalized application software and system software packages.*

2. *the conduct and control of emergency repairs to application and system software;*

3. *the analysis and design of business systems and supporting infrastructures and the construction and maintenance of the related software;*

4. *the design, implementation, installation and servicing of databases and database software, the control of the integrity, security and modification of the databases and the provision of database recovery/backup facilities;*

5. *the capacity management, configuration, performance measurement and optimization of hardware, software and network systems;*

6. *the development, application or enforcement of standards and procedures, and quality assurance pertaining to information technology processing systems and activities;*

7. *the development and conduct or determination of:*

   (a) the technical evaluation of information technology processing systems;

   (b) technical specifications for the evaluation, testing, acquisition, installation and acceptance of information technology processing goods and services, such as computer system and related hardware, computer or computer network hardware and software; and

   (c) associated support services;

8. *the provision of advice and consultation on information technology processing systems, facilities and applications including the evaluation of the technical security of these systems;*

9. *the conduct of planning and research into existing and future information technology processing systems capacity, capability, applications and requirements;*

10. *the development and delivery of training programs in the above activities; and*

11. *the leadership of any of the above activities.*

Exclusions

Positions excluded from the Computer Systems Group are those whose primary purpose is included in the definition of any other group or those in which one or more of the following activities is of primary importance:

1. *the support or provision of internal management and administrative services or the support or provision of scientific, professional or technical services that may involve limited or specific application of information technology processing skills and knowledge as an auxiliary in the performance of the primary activities or purpose of the position;*

2. *the planning, design, construction and maintenance of physical equipment and systems (electrical, electronic and electro-mechanical), the provision of advice, the conduct of studies and the development and application of related standards and procedures, such as may be involved in the development or modification of physical systems and equipment for use in special purpose computer systems applications and where a comprehensive knowledge of engineering, engineering technology or its specialized techniques is the prime requirement; and*

3. *the operation, scheduling or controlling of the operations of electronic equipment used in the processing of data for the purpose of reporting, storing, extracting and comparing information or for solving formulated problems according to prescribed plans.*

[10] Art Barrett, the Director of Technological Evolution and Organizational Planning at the DFAIT, testified on behalf of the employer. Mr. Barrett jointed the public service in 1967. He spent 14 years abroad on a series of postings, ending up as an EL-6. He then occupied a series of director-level positions in IT at the DFAIT. He testified that prior to the introduction of the new support model, the EL positions were mostly involved with technology infrastructure while the CS positions were mostly client services. Mr. Barrett testified that prior to the introduction of the ESMAIT, the CS group employees handled the desktop work stations, teaching and coaching, and all computer-related functions. The EL group employees were regionally based and performed most of the telecommunications functions and security-related technology aspects.

[11] William Boggs is the Team Leader in the Global Radio and Satellite Section at the DFAIT in an acting CS-3 position as part of the ESMAIT. He is currently being trained for the role of Team Leader and has been in training since the middle of October 2004. He was formerly an EL-6. He has worked for 14 years at the DFAIT at a number of missions abroad, in EL-4 up to EL-6 positions. He testified that as a rotational employee, he had to do "everything and anything". He testified that most installation work was done from Ottawa but that he was required to repair and maintain the equipment at the mission.

[12] The previous EL positions were those of Foreign Service Technologist at the EL-4 and EL-5 group and level. The key activities of a Foreign Service Technologist at the EL-5 group and level were described as follows in a 1998 job description (Exhibit A-1, tab M):

- *With no direct supervision, testing, installing, maintaining, modifying, evaluating, engineering, designing, troubleshooting and repairing a variety of secure international voice and data communications equipment and systems, as well as installing electronic systems and their components using building plans.*

- *Testing, installing and training mission staff in the use of IDACS and other personal security and general alarm systems, and planning and carrying out the secure installation of voice, data and alarm equipment and systems at the mission.*

- *Providing emergency service to base and satellite missions for systems breakdowns and malfunctions, making or arranging for repairs, and working with System Administrators at missions in diagnosing the causes of SIGNET and other system problems, including LAN, Ethernet connection/conversion problems, and PSATCOM and other radio-based emergency communications systems, often trouble-shooting problems remotely.*

- *Advising mission officers and staff on systems technologies, and training them on the use of various systems, such as LAN, Ethernet, PSATCOM voice services and WAN.*

- *Coordinating the implementation, operation and maintenance of VSAT (Very Small Aperture Terminal) systems with 128K-256K digital connectivity communications systems.*

- *Maintaining backup power supply equipment, and power conditioning equipment.*

- *Negotiating goods, services and prices with local, national and international consultants, suppliers, and vendors of voice, data and telecommunications components.*

- *Provides other support services, such as working with SA's to resolve Octel voice problems, working with security managers (IDACS, RSM's), and acting as an ad hoc diplomatic courier.*

- *Responsible for maintaining and upgrading PBXs, Multiplexers, crypto equipment, routers and voice messaging systems.*

- *Responsible for maintaining MITNET equipment that provides all connectivity on the WAN for voice and data.*

[13] Wayne Erskine testified for the applicant. He is classified at the EL-4 group and level and is non-rotational. He is not part of the ESMAIT program. In cross-examination by counsel for the employer, he admitted that he was not really familiar with the ESMAIT program. He was hired to work at the DFAIT in 2001, and is retired from the military where he received all his electronics training. Mr. Erskine reviewed the Statement of Qualifications for the EL-4 position (Exhibit A-2) prior to the introduction of the ESMAIT and described the duties that he performed. He testified that other than being non-rotational, he is doing the same work as those working in the FSITP position. He also testified that he had received an offer of a CS-1 position, with no additional training.

[14] He testified that as a Foreign Service Electronic Technologist he installed intrusion-detection security systems in embassies and missions abroad. He built up control panels and power supplies and did basic wiring. The testing he performed on equipment was mostly power testing. He also had to ensure that all the relays worked and he did this either through the use of software or a keypad. He also worked on the Chancery Security Alert System (CSAS), which is an emergency public address (PA) system that can be activated by the receptionist. This involved the use of an analogue telephone cross-connected to a telephone switch and then to a PA amplifier.

[15] Mr. Erskine testified that "repairs" referred to in the summary of duties of the Statement of Qualifications (Exhibit A-2) involved the replacement of relays or circuit cards in equipment. A circuit card has electronic components mounted on it and a relay switch is electronically controlled. Duties also included replacing cables from peripheral devices or the replacing of peripheral devices. Peripheral devices include motion detectors, door contacts, sirens and strobes. Mr. Erskine testified that the control panel was the main control for the security system. Installing the security system requires the placement of single or double cables from the security device to the control panel with a screw-type terminal connection. Mr. Erskine described a control panel as a computer with its own central processor.

[16] Mr. Erskine also testified that modifying ("modifies") referred to in the summary of duties involved getting the system ready for installation, including adding labels and doing the basic wiring, to save time in the field. In terms of "maintains" (set out in the summary of duties), Mr. Erskine testified that the duties of an Electronic Technologist included the maintenance of equipment in the field. It involved such things as replacing relays and cleaning them up and making them reusable.

[17] In terms of the IM/IT systems referred to in the summary of duties, Mr. Erskine testified that the duties included programming testing for security systems. He would hook the security system up so it could be connected to Ottawa. Duties also included the testing of control panels, which required the setting up of a test program and database. Testing would also be done at the mission. The listing of who is allowed to go through each door in the mission and generating the necessary code to allow them to go through the door were all generated through a personal computer.

[18] Mr. Erskine testified that "backbone integrated telecommunications infrastructure" contained in the summary of duties referred to the voice and data communications for a mission and the connection between the telephone switch and the routers.

[19] He also testified that "development" involved researching to find replacements for parts that were no longer available and modifying or changing the design of parts.

[20] With regard to the experience requirement contained in the Statement of Qualifications (Exhibit A-2), Mr. Erskine testified that experience in electronics technology was not as in-depth as in other kinds of EL jobs. The control panel was tied

into a personal computer and telecommunications were involved. He also testified that the work involved assessing, correcting and reporting on communication problems and monitoring telecommunication and data systems (Exhibit A-2). With regard to VHF/UHF radio systems, Mr. Erskine testified that this involved the setting up of base stations and repeaters for handheld radios used for emergency communications. It also involved the programming of the handheld radio using a software program on a PC and oscilloscopes. The duties also involved the setting up of portable satellite terminals, including the mounting of an antenna and making sure that they were connected through a telephone switch.

[21] Mr. Erskine also reviewed the work description for the EL position of Foreign Service Technologist (Exhibit A-1, tab M) and testified that it described the work that he performed. He testified that the job content knowledge, including knowledge of Microsoft NT and Microsoft Exchange/Outlook, applied to his position as well.

[22] Mr. Barrett testified that prior to the new support model, the DFAIT could only provide full service to those missions that had two positions – either a CS and an EL, or an EL and an LES. He testified that this meant that full support was being provided to 46% of missions. If something went wrong with the electronic equipment, the Regional Manager would schedule a visit. If there was a CS at the mission, an EL might talk the CS through fixing the problem. Where there was a problem with the operating system and there was no CS present, they would use the Regional Manager who would either visit or talk someone at the mission through the problem.

[23] Mr. Barrett testified that now everybody has their own desktop and almost everything is computer-based. He testified that the DFAIT was moving all its technologies to internet-based "Voice over Internet Protocol" (VOIP). The EL work has evolved from working with electro-mechanical discrete components to systems that are run by computers and to using computer-based tools. The work is now more computer-oriented than electro-mechanical. It was his opinion that there were not enough resources to put people from each occupational group at each mission and that integration of the two positions was the only option.

[24] Thomas Tierney is in a FSITP position and was a CS employee prior to the introduction of the ESMAIT. He testified for the intervener, the PIPSC. Mr. Tierney testified that information systems have evolved from electromechanical, labour-intensive work that required a very specialized knowledge to PC-based electronic mail.

He testified that 99% of communication is e-mail, based with the remaining communication being done by phone, voicemail or fax. This change has had a large impact on EL work, according to Mr. Tierney. He testified that 90% of information systems equipment is some form of a computer. The equipment is programmable and has memory. The maintenance is mostly to the system and is not discrete. Repairing only involves replacing defective parts, such as motherboards. Parts are either under warranty, and if defective go back to the manufacturer, or are simply replaced with new ones.

[25] Mr. Tierney also reviewed the entry requirements for the DFAIT EL Internship Plan (Exhibit A-1, tab L) and commented on whether the listed requirements had traditionally been either CS or EL work. Of the 16 entry requirements, he testified that five were CS work, six were both CS and EL work, four were EL work and one was mostly EL work with some CS responsibility. Mr. Tierney also reviewed the Results Plan in the same document, which details the required results at the end of the EL internship period. He reviewed the sections on Systems Administration and Network Technology. He concluded that the majority of the tasks listed under Systems Administration were CS responsibilities. Under Network Technology, he identified two tasks as being traditionally EL responsibilities, five that were both CS and EL responsibilities and one that was a CS responsibility.

[26] Mr. Tierney also reviewed the EL Internship Program Manual (Exhibit A-1, tab L). With regard to the tasks outlined under "World-Wide Communications Systems Architecture", he identified four tasks as being CS work, five as being both CS and EL work and one as being EL work. He stated that the description of "Communications Security Principles and Applications" was of work done by both EL and CS employees. The section describing "Personal Safety and Chancery Security" was 70% EL and 30% CS work. The section describing workstations and servers was mostly CS work. Fifteen of the listed tasks were CS responsibilities, one was an EL responsibility and six were both CS and EL responsibilities.

[27] Mr. Tierney testified that there is still a demarcation between EL and CS work because there is still a need to maintain "legacy" equipment that is near the end of its life cycle. In Mr. Tierney's view, everything is converging to programmable IP (Internet Protocol) based architecture which falls under the CS "bailiwick". Mr. Tierney testified

that cryptographic equipment requiring extensive maintenance by ELs was being replaced by "ready to go" devices.

[28] The ESMAIT project was introduced by the DFAIT in 2003. However, discussions about its implementation started sometime in late 2001. Mr Barrett prepared an undated "white paper", sometime after September 11, 2001, on an IT support model abroad (Exhibit E-1). In the white paper, he noted that "convergence is everywhere":

> […]
>
> *… Yet we labour under the constraints of Job Descriptions (JDs) and Classifications that woefully lag the technology revolution. Duplication of effort prevails. Opportunities for career advancement, economies of scale, and improved client support and satisfaction fail to materialize. Recruitment is difficult, especially when you are competing with private industry.…*
>
> […]

[29] In his white paper, Mr. Barrett proposed the integration of the EL and CS positions into a single IT specialist function. The white paper described the general approach as follows:

> […]
>
> *This approach separates the generalist function of desktop support and client interaction/coaching functions, which can be performed by locally engaged staff, from that of the Canada based Foreign Service IT Specialist (FS-ITS) function where security plays an important role, and where integrated, cross functional expertise, and in-depth technical knowledge are required. It re-deploys those integrated FS-ITS positions so that almost double the number of missions are directly supported by ITS staff, and re-defines their area responsibilities so as to ensure that our FS Programs and other OGD clients get more responsive support from individuals more familiar with their environments.*
>
> […]

[30] The white paper also noted that there was considerable overlap, or potential for overlap, in the technology areas of the DFAIT EL and CS categories. The white paper referred to the fact, and Mr. Barrett testified to this as well, that a working group composed of EL and CS employees prepared a job description for an IT specialist

position in 2001 or earlier that was "illustrative" of the work performed by both groups abroad and it was "unofficially" classified at the CS-2 group and level.

[31] Mr. Barrett testified that the ESMAIT model was presented in a series of "town hall" meetings with staff in Ottawa and at regional conferences abroad. The presentation document he used for a presentation on December 12, 2002 (Exhibit A-1, tab D) sets out the underlying rationale for the approach, as well as the objectives. The document noted that skill set and functions overlap between the EL and CS groups and also that computers were now running "everything", including telephones and alarm systems.

[32] On May 28, 2003, the applicant was advised of the creation of a stream of rotational IT professionals called the "Foreign Service Information Technology Professional" (FSITP), which would be classified in the CS group (Exhibit A-1, tab C).

[33] The FSITP work description sets out the key activities of the new position as follows (Exhibit A-1, tab N):

> - *Troubleshoots, repairs and/or resolves, and documents problems or issues related to the assigned hardware, software, applications and systems at Headquarters and/or missions. Escalates problems in accordance with established departmental procedures.*
>
> - *Installs and tests hardware and peripherals, software and/or applications; modifies equipment configuration, network utilities, set up files, systems software default settings and work station configurations, etc., as required.*
>
> - *Operates and maintains a variety of equipment/hardware, software, systems and their components.*
>
> - *Provides policy/procedural interpretation, technical support, coaching and training to users and other technical staff in problem identification and resolution relating to the assigned hardware, software, applications and systems, including equipment installation, testing, etc., and physical, technical and IT security issues, to maintain the appropriate level of confidentiality, integrity and availability of departmental IT systems.*

- *Provides policy/procedural interpretation, and technical support, advice and training to mission staff in the use of equipment, hardware, software, applications and systems (e.g. LAN, WAN, SIGNET C/D, MITNET, Ethernet, PSATFOM, etc.,) and on physical, technical and IT security issues.*

- *Monitors and evaluates the performance of the assigned equipment, hardware, software, applications and systems, prepares reports to enable capacity planning, trend identification and traffic analysis, and/or recommends solutions, recovery plans and procedures, and related documentation, to ensure equipment and systems reliability and security profiles.*

- *Identifies potential sources of equipment/software supply, researches technical specifications and cost, assesses the technical usefulness of the equipment/software in meeting departmental requirements, provides technical advice for their acquisition, and negotiates goods, services and process with national and international consultants, supporters and vendors.*

- *Provides input to the development of annual budgets, plans (including training plans), equipment/system upgrade requirements, and policies and procedures.*

- *Manages the home loan programme, ensures accuracy of the inventory management data base, and coordinates equipment disposal.*

- *Leads and/or participates on project teams.*

- *As assigned, provides operational and client support, and emergency diagnostic and repair advice and guidance/supervision on a regional basis to one or more smaller missions on SIGNET and MITNET. Ensures hardware/software/systems are operational at all times and client issues are resolved in a timely manner. Conducts periodic site visits to identify and resolve problems related to IT security and the installation, operation, maintenance and problem resolution of equipment, software and systems.*

- *Participates at Mission Management meetings.*

[34] An Interdepartmental Classification Review Committee met on April 19, 2002, to review the Technical Specialist job description (minutes: Exhibit A-1, tab K) and concluded that the work was "primarily dominated by computer systems related duties". The report continued:

> […]
>
> *… It was noted that some electronic duties were required, however, these did not involve the designing or construction of complex equipment/systems and that for the most part, repair is confined to unit replacement. There are some passive electronic and even mechanical devices (IDACS) Alarm system, but they are at a minimum and problems are often resolved remotely from HQ, or are resolved by staff currently classified in the CS or EL groups, whichever is available or in some cases, are contacted out for resolution by local contractors.*
>
> *The committee members reached a consensus and agreed that the essential and primary requirement of the position is the application of computer systems knowledge and skills with some electronic training that can and is to be provided in-house….*
>
> […]

[35] Mr. Boggs was asked to identify areas of the CS work description (Exhibit A-1, tab N) that would have applied to his former EL position. He testified that it was difficult to separate the EL and CS functions from the description. In the FSITP Team Leader work description (Exhibit A-1, tab N), the reference to telecommunication systems and global electronic messaging systems had been an EL responsibility. Signet C and D had been primarily a CS responsibility. The Signet servers had been primarily a CS responsibility with EL as backup. Intrusion Detection and Access Systems (IDACS), CSAS, MITNET and PBK were primarily EL. If there was no EL at the mission, the CS would have provided a level of support. Telecommunication and LAN (Local Area Network) elements were formerly the primary responsibility of an EL with a CS as backup. Information Management services and personal computers were primarily CS responsibilities with EL as backup. In cross-examination, Mr. Boggs stated that the creation of the FSITP position legitimized what was happening at missions abroad. When at a post, IT employees would do everything. Both CS and EL employees would back each other up and would both be trained on everything. He also testified that EL jobs had evolved and all of the equipment they now use is PC-based. Most of the

diagnostics are done through a keyboard. EL employees are also becoming more and more conversant with computer programming.

[36] The Statement of Qualifications for the FSITP Internship Program, classified at the CS-1 group and level, sets out the following education and knowledge requirements (Exhibit A-4):

> […]
>
> *EDUCATION: Recent graduate from an acceptable post-secondary degree or certificate of two (2) or more years in a program in computer engineering and technology, electronic and telecommunication engineering and technology, OR another specialty relevant to the position.*
>
> […]
>
> *KNOWLEDGE:*
>
> - *Of electronic technology associated with telecommunication, such as voice switching and data transmission;*
> - *Of theory and practice of local-area networking; wide-area networking, inter-networking and tele-communications;*
> - *Of informatics hardware and software;*
> - *Of Microsoft operating systems.*
>
> […]

[37] Mr. Barrett testified that the Statement of Qualifications for the FSITP Internship Program (Exhibit A-4) sets out the education requirement of computer engineering and technology in order to equate the requirements to courses offered by community colleges. In cross-examination, Mr. Barrett reviewed descriptions of community college programs in IT and Electronic Engineering Technology at the Nova Scotia Community College (Exhibits A-5 and A-6). He testified that these programs would meet the educational requirements for an FSITP. The program descriptions listed courses relating to logic circuits and Mr. Barrett agreed in cross-examination that logic circuits were the "building blocks" of computers.

[38] The "FSITP First-Level Mission Support Task List" (Exhibit A-3) is a list of the tasks required for a minimum level of support to a mission (171 tasks). The document was prepared to assist in the design of the curriculum for the initial training of all FSITPs. Mr. Barrett was asked whether there was an expectation under the ESMAIT that

employees would have a comprehensive knowledge of electronics and he said no. He testified that the ESMAIT was based on first-level support. The Task List document defines the distinguishing characteristic of first-level mission support as "keeping things going" through the "day-to-day routine of preventative and corrective maintenance, as well as comparatively frequent moves, adds and changes". The FSITPs at missions work according to a four-level "escalation protocol". The on-site FSITPs are expected to handle the tasks listed in the Task List (Exhibit A-3) in addition to any other support they have the skills and knowledge to provide. Mr. Tierney testified that there is no troubleshooting of discrete components by the FSITPs but rather a complete replacement of defective parts. For example, an FSITP might replace a motherboard or power supply. If a problem arises that an FSITP cannot resolve within a reasonable period of time, the FSITP will call his/her Regional Manager who will assign a qualified subject matter expert (who could be another FSITP). If the problem cannot be resolved by the subject matter expert, the matter is referred to SXS (IT Services and Support) and if still unresolved at this level, would go to SXT (Infrastructure Technology Division).

[39] The Task List also notes what first-level support does not include:

> 1. *Major component installations. These are normally handled by teams of experienced staff (e.g. servers, voice switches, multiplexers, routers, and IDACS system controllers.)*
>
> 2. *Changes to switch or server configurations. These are normally handled remotely from Ottawa.*
>
> 3. *Correcting MITNET communications problems. There are normally handled by the MCC and/or carrier. The FSITP may act as the MCC's "eyes and hands" to fix a problem on equipment in the mission.*
>
> 4. *Setting up user or mail accounts. There are normally handled remotely from Ottawa.*
>
> 5. *Operating system or application updates for servers and workstations. These will normally be transmitted and installed from Ottawa.*

[40] Mr. Boggs reviewed the Task List (Exhibit A-3) to determine what tasks had been formerly performed by either EL or CS employees. The Task List is divided into the following topics: Admin/Super; Alarm System; Classified Systems; CSAS/Paging (Chancery Security Alert System); Network; Portable Satellite; Radio; Server; UPS

(Uninterrupted Power Supply); Voice; Voice Mail; VOIP (Voice over Internet Protocol); and Workstation. Mr. Boggs stated that under Admin/Super, 10 of the tasks were performed by both CS and EL employees and seven were performed by CS employees only. Alarm System had been covered by the EL group employees. The tasks relating to Classified Systems had been performed by a combination of EL and CS employees. Mr. Boggs described the duties in this area as "fluid". The CSAS and Paging tasks were formerly EL duties. The tasks related to Network were mostly EL duties. The tasks related to Portable Satellite were mostly EL duties previously, as were those tasks listed under the Radio heading. The tasks relating to Servers were predominantly performed by CS employees with EL employees as backup. The UPS tasks were traditionally an EL responsibility but lately had become a responsibility of whoever was available. The tasks listed under Voice were formerly EL duties. The tasks under Voice Mail were both CS and EL responsibilities, with CS employees handling the setting up of accounts and EL employees responsible for any hardware problems. VOIP was a new technology, and Mr. Boggs was not certain who would have been assigned this task. Mr. Tierney testified that problems with such a system could be with either the carrier or the software. He testified that fixing software is usually handled by the CS employees. The BCM (Business Communications Manager) described in the Task List was programmed like a computer and has a hard drive. He testified that it has no electromechanical connection. Mr. Boggs testified that the CS employees were responsible for the tasks listed under the Workstation heading, with the EL employees as backup.

[41] Mr. Boggs testified that the Task List (Exhibit A-3) does not capture the amount of time that would be spent on each task.

[42] Mr. Tierney was asked if problems with the DFAIT equipment were solely "hardware problems" and he replied that there could be software problems as well. He also testified on the tasks listed under the Radio heading in the Task List, an area in which he currently works. He testified that he "interfaced" a radio handset to a computer and the process was "software controlled". Mr. Tierney also worked on the installation of an IDACS (Intrusion Detection Alarm Control System). The system was prepared in Ottawa for a mission abroad (Beirut). His duties included terminating the end points into a control panel and testing it. He used a PC to test the system. Software is used to troubleshoot the system and is also used to control the system.

Mr. Tierney testified in cross-examination that he only performed duties that were formerly EL duties after he had been trained.

[43] Mr. Tierney testified that he had a certificate in database design and used it on a daily basis, including the creation of telephone directories. He testified in cross-examination that the FSITP duties included installing, upgrading and reinstalling software. He also testified that he did not use "source code" but reconfigured with Windows 98.

[44] Mr. Barrett testified that the FSITP position was primarily involved in computer technology. With regard to the EL group definition (see paragraph 8, above) he testified that the FSITP was not performing the work described in paragraphs 1, 2, 3, and 4. The FSITP was performing parts of the work described in paragraph 5: the design, construction and installation of electronic equipment, systems or facilities only. The FSITP was not performing the duties described in paragraph 6. With regard to the duties described in paragraph 7 ("the planning and delivery of a quality assurance program for electronic systems and equipment"), Mr. Barrett testified that all the DFAIT systems were all computer systems.

[45] Mr. Barrett testified that the FSITP position involves the performance of all of the duties listed in the CS group definition (see paragraph 9, above). With regard to the duties described in paragraph 1, he testified that all the duties were performed, excluding the scientific information processing. He also testified that there is not much customization. With regard to the duties described in paragraph 4, the duties of the position included creating some databases for internal use. With regard to the duties described in paragraph 6, the FSITP did develop policies on maintenance and support. With regard to the duties described in paragraph 7, the position was involved with technical evaluation and specifications.

[46] Mr. Barrett testified that before being required to perform the full duties of the FSITP position, all employees were being provided training in the full range of duties. The DFAIT revamped its interim training and did a gap analysis between the old CS positions and the old EL positions to determine what training was needed. Employees in the FSITP position have to have both technical skills and technical knowledge. The training of existing employees is being done through Algonquin College. The DFAIT is sending people for training as they are scheduled for posting or return from posting. The training of all existing employees is expected to be finished by 2007.

[47] Mr. Barrett testified that all those in the ESMAIT program were appointed into acting CS positions at the same time as the introduction of the ESMAIT until they finished the ESMAIT training and development program. He testified that this was done to be fair and equitable, since training is only completed when an employee returns from a posting. He testified that no acting pay grievances had been filed. Mr. Barrett also testified that there had been no job description grievances after the introduction of the new positions.

[48] Mr. Tierney received the ESMAIT training in May 2003. He received a two-month basic course in electronics with a focus on basic electronics, routers, servers and lightning protection. He was required to pass an exam and upon completion, he was appointed to the CS-2 group and level. He testified that those who were formerly EL employees were taking a different kind of training based on their needs. The training for these employees was four to five weeks on servers and desktops.

[49] Donald Carter testified for the applicant. He was formerly a rotational EL-4 and is now acting as a CS-2 in the ESMAIT program. He has not completed all of his ESMAIT training. Mr. Carter worked on the DFAIT's secure telecommunication system. Specifically, he worked on routers and switches and ran fibre optic cable for the telecommunication system. He testified that he used a PC to look at telecommunication systems.

[50] Mr. Carter reviewed the generic job description of an EL-4 Technologist (Exhibit A-1, tab M). He testified that he currently performs most of the duties in the description. Mr. Carter testified that he performed IDACS work, in particular, preparing equipment to be shipped and installed. At Headquarters, he was working on computer desktops, including repairs to printers, uninterrupted power supplies (UPS) and servers. For the UPS, he set them up for proper voltages. He also replaced resistors and fuses and main circuit breakers. In addition, he replaced drive units on tape systems. For PCs, he replaced mother boards and power supplies. He was asked in examination in chief how his work had changed under the ESMAIT program, and he replied that it had not. He testified that he was now in the process of preparing for the "software-side" of the FSITP position in order to do "CS assorted activities" such as maintaining the LAN and troubleshooting software.

[51] Mr. Carter reviewed the FSITP (CS-2) work description (Exhibit A-1, tab N). He testified that under the key activities (see paragraph 33 of this decision) he does the duties described in the first two bullets. He does not do many of the duties described in the third and fourth bullets and does not do any of the duties described in the remaining bullets. He described his understanding of CS duties as keeping a LAN system going and could not provide any further details.

[52] Mr. Carter testified that the UPS and Desktop sections of the organization were merged together under the ESMAIT. The former Desktop section had three ELs and one CS and UPS had four or five ELs.

[53] Norm Hokayem is a non-rotational EL-4 at the DFAIT and does not fall under the ESMAIT program. He currently works in the UPS, servers and printers section. He reviewed the summary of duties contained in the Foreign Service Electronic Technologist (EL-4) Statement of Qualifications (Exhibit A-2). He testified that in terms of "installation", he configured the UPS modules and then shipped them out to the missions. He also maintained and repaired them. He was also involved in configuring the UPS modules to different missions. The configuration process depends on the power supply. A 220-volt UPS requires the use of a PC to adjust the voltage. He is also required to open up the UPS and change switches, as well as to remove all the batteries and replace them. He then has to test the output voltage. Sometimes the capacitors have to be replaced. When the UPS goes to the missions, all the hook-up cables are prepared so that the persons at the missions installing the UPS have everything they need. He testified that he did not know who did the installation at the mission.

[54] Mr. Hokayem testified that he also had duties relating to printers. He testified that he maintained those printers that were not under warranty. He is sometimes required to troubleshoot printer problems such as replacing fuses or stripping down print heads. He described these duties as largely mechanical and sometimes electronic when the issue related to the power supply. With the PCs, his duties include troubleshooting. If the PC is still under warranty, the matter would be referred to the manufacturer. If it is not under warranty, spare parts are installed in order to get it running again. He also testified that he installed software and prepared the PC for use at the client's desk. His duties also included swapping the drives on servers. With backup units, there are sometimes mechanical issues involving the tape unit.

[55] Mr. Hokayem also testified as to how his current duties related to the work description for the Foreign Service Technologist position (pre-ESMAIT). He testified that he performed all of the key activities except for those that dealt with systems and equipment other than power backup supplies. He testified that most of the others in his shop were EL-4s and EL-5s.

Summary of the arguments

[56] Written arguments were submitted by the parties. These have been edited for style and length. The full submissions are on file with the Board.

Argument for the applicant

The issue raised in this application before the Board is whether or not the employees of the DFAIT, who have been reclassified into the FSITP position and placed by the employer into the CS group, are a better fit in the EL group. More specifically, do the employees in the FSITP position perform primary duties found within the EL group definition and are thereby within the bargaining unit represented by the applicant?

Jurisprudence

In a section 34 determination pursuant to the *PSSRA,* the Board's jurisdiction is clear. In this instance, the Board must determine whether the duties of the FSITP position are properly included in the CS group or if they would be more appropriately included in the EL group. As stated by the Board in *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board,* 2001 PSSRB 121:

> […]
>
> *… As it is well established in the Board's jurisprudence, to make this determination the Board must look at the primary duties of the positions in question and compare the definitions of the two groups and determine in which group the primary duties are best fitted.*
>
> […]

The Board has no authority to reclassify positions, but must assess all of the evidence presented concerning the duties of each position and must determine in which occupational group the position in question is best suited. Authority for the Board's jurisdiction in section 34 applications can be found in *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board* (*supra*) and *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2001 PSSRB 71; *The Professional Institute of the Public Service of Canada v. Treasury Board*, 2001 PSSRB 68; and *Federal Government Dockyards Trades and Labour Council (Esquimalt) v. Treasury Board*, PSSRB File No. 147-2-25 (1984) (QL).

The Board must make such a determination on the basis of a comparison of actual duties being performed by the employees in the groups, and by deciding based on the core and primary duties of each group, which group definition is the best fit.

The evidence to follow will demonstrate that the primary duties of the FSITP employees fall within the definition of the EL group and that, as such, the FSITP employees are a better fit within the bargaining unit of the applicant rather than within the CS group.

The evidence disclosed that the employer has taken two groups of employees, those within the EL group and those within the CS group, who held separate positions within the DFAIT and has amalgamated the two positions into a single classification referred to as FSITP.

The descriptions found in the occupational group definitions of both the EL group and the CS group (Exhibit A-1, tab A) clearly demonstrate the unique and separate functions of each group.

It should be noted that there is no provision within the EL group definition that prevents the employees in this group from working on or using computers or software-based technology. Further, as the evidence disclosed, the employees at the DFAIT within the EL group have been using such technology for years, as was described by both Mr. Boggs and Mr. Barrett.

It should be noted that the following are listed as a specific exclusion to the duties of the CS group:

> […]
>
> *2. the planning, design, construction and maintenance of physical equipment and systems (electrical, electronic and electromechanical)….*
>
> *3. the operation, scheduling or controlling of the operations of electronic equipment used in the processing of data for the purpose of reporting, storing, extracting and comparing information or for solving formulated problems according to prescribed plans.*
>
> […]

As the previous definitions of the EL and CS groups describe different duties and responsibilities for employees within the Public Service of Canada, it was the employer's evidence that the FSITP position was created by combining the duties being performed by the employees holding the former EL and CS positions. However, the evidence of the actual work being performed by the employees in the new FSITP position overwhelmingly demonstrates that the primary duties that are actually being performed in this position are the primary duties described in the EL group definition. This can be seen from the description of the FSITP position (Exhibit A-1, tab N, and Exhibit A-3). In addition, the actual duties being performed by the employees who have been trained in the new FSITP position clearly establish that they are performing the primary duties described in the EL group.

The Statement of Qualifications for an employee at the DFAIT in the EL group (Exhibit A-2) clearly identifies the summary of duties for an EL group employee. These duties are as follows:

> *Installs, repairs, modifies and maintains DFAIT's secure telecommunications and IM/IT Systems, including backbone integrated telecommunications infrastructure, voice (PBX Private Branch Exchange), VPS (Voice Processing System) Cellular, PSAT (Portable Satellite Terminal), LAN/WAN and data systems in Ottawa and abroad; participates in the development, design and implementation of these systems and performs other duties as required in the interests of operational efficiency.*

Further to the Statement of Qualifications, the testimony of Mr. Erskine, an EL-4, confirmed that he had worked as an employee at the DFAIT and had performed duties associated with IM/IT systems. He described those duties as including the programming and testing of security systems. He also defined "backbone integrated telecommunications infrastructure" as voice and data, communications, telephone switches and Mitnet routers (cables). Mr. Hokayem, an EL-4, gave evidence that, as an employee at the DFAIT, he had worked on systems, including LAN/WAN (local area networks). Mr. Carter, an acting FSITP, testified that as an employee at the DFAIT, he had performed work on the following equipment and systems: access control systems (security alarms); personal computers; telephones; faxes; LAN and WAN (local and wide area networks); multiplexers; VHF and UHF radio systems; VSAT and PSAT (satellite communications systems). The above evidence demonstrates that the primary duties identified in the Statement of Qualifications were actually performed by employees working within the EL group.

The Statement of Qualifications (Exhibit A-2) issued by the employer for an employee who would be classified within the EL group definition sets out the necessary educational requirements for a candidate. Such a person is required to have a minimum of a two-year post-secondary program in electronics technology or in another relevant specialty. Similarly, the candidate is required to have experience in the following:

1. electronic technology associated with computers and telecommunications systems;

2. assessing, correcting and reporting on communications problems relative to telecommunications and data networks;

3. monitoring telecommunications and data systems, applying appropriate diagnostic tests and other fault isolation techniques;

4. maintaining and upgrading equipment such as PBXs, multiplexers, alarm systems, crypto, VHF/UHF radio systems, VSAT (Very Small Aperture Terminal), PSAT, LAN equipment.

As stated above, the witnesses who had experience working as electronic technologists within the EL group gave evidence that the above experience was necessary for the performance of the primary duties of a position within that group.

The employees in the FSITP position are currently classified in the CS group; however, employees in the FSITP position perform duties relating to the above-referenced equipment and systems, more particularly described in the FSITP First-Level Mission Support Task List (Exhibit A-3). Mr. Boggs testified that the majority of these tasks had been specifically performed by the former electronic technologists prior to the

reclassification activities of the employer. Although the employer has stated in its evidence that employees in the FSITP position are more suited to fall within the CS group because of the use of computers and the computer programming involved in the position, the evidence disclosed that the former electronic technologists have been working with computers and software programs for at least 20 years. This can be demonstrated by the knowledge required of an Electronic Technologist, as set out in the Statement of Qualifications (Exhibit A-2). Such knowledge includes that of *Microsoft NT* or other operating systems. In addition, as mentioned above, the experience required for this position includes extensive experience in electronic technology associated with computers and telecommunications systems. Mr. Erskine confirmed in his testimony that electronic technology with respect to computers and computer-based equipment was used by him in the course of the duties he was required to perform. He explained that his duties as an Electronic Technologist required him to work with control panels, which he further explained is a computer with its own central processor.

The testimony of Mr. Erskine demonstrated that the former electronic technologists typically worked with computers and computer systems. For example, Mr. Erskine testified that during the course of maintaining equipment and systems, it is necessary for an Electronic Technologist to test such equipment and systems. In doing so, Mr. Erskine explained that the test equipment used is a personal computer. Similarly, the use of a personal computer was necessary in order to set up databases related to some systems. The Statement of Qualifications states that employees must perform work on "data systems", which Mr. Erskine defined as including personal computers. He explained that "data networks" refer to personal computers and LAN/WAN. Similarly, Mr. Erskine testified that he had programmed hand-held radios with a personal computer program and test equipment in the course of his duties as an Electronic Technologist. As described by Mr. Boggs, the new position of FSITP still requires the employees to perform the identical duties.

Further, Mr. Hokayem testified that as an Electronic Technologist, he performed work relating to UPS, servers, printers and personal computers. The above-mentioned evidence clearly demonstrates that the primary duties of an employee in the EL group did include work relating to computers and software programs.

Despite the fact that some of the electronic equipment and systems are programmable and are controlled by a computer, there was no evidence to demonstrate that the duties of the FSITP position require an employee to perform the primary duties found in the CS group. The evidence clearly shows that the primary duties performed by employees in the FSITP position fall within the duties described in the EL group definition. Moreover, it has already been noted that while the employees in the EL group performed work relating to computers, employees in the CS group would not have had the knowledge of the hardware and software of such equipment, and further would be excluded from doing such work based on the occupational group definitions. The work performed by employees in the FSITP position includes the installation and maintenance of electronic equipment and requires the knowledge of how to correct mechanical and electrical problems, such as those associated with power supply. An employee within the CS group would not have the knowledge or training to perform those duties; however, employees in the FSITP position need to know how to maintain the equipment when it is out of service. As stated by the various witnesses, the former electronic technologists at the DFAIT would have had this knowledge and training. This clearly demonstrates that the primary duties of the FSITP position would be more

properly fitted within the EL group, where it is contemplated that employees would have knowledge and training with respect to both electronic and computer technology.

Due to the fact that some equipment and systems are programmable and computer based, Mr. Barrett suggested, in his evidence, that new technologies have transformed the duties of the employees within the EL group. He stated that the duties of the electronic technologists have become "more a computer job than an electronics job". However, simply because computers and programmable software and diagnostic tools have became more prevalent, is not a sound reason to suggest that the duties of the FSITP position are a better fit in the CS group. It is important to remember that computers and diagnostic tools with software programs have been used for at least the last 13 years at the DFAIT, as per the testimony of Mr. Boggs. To suggest that employees who hold the FSITP position should fall within the CS group simply because the equipment is now programmable is not a sound or reasonable argument. Equipment has been programmable for longer than a decade, and had not prevented the electronic technologists from maintaining distinct duties and responsibilities from the CS group employees before the ESMAIT project came into existence. If anything, the evidence demonstrated clearly that the former CS group employees had been performing work that falls clearly within the group definition for the electronic technologists.

Further, electronic technologists are required to have a basic understanding of computer systems and electronics. The program at a community college for Electronic Engineering Technology (Exhibit A-6) indicates the necessary courses to successfully complete the program. Included in these courses, along with electrical principles and telecommunications, are courses relating to logic circuits, which Mr. Barrett agreed were the "building blocks of computers". There are also courses to be completed in computer programming. However, the employees in the CS group are specifically excluded from performing tasks involving electronics. An employee in the FSITP position is required to have knowledge of computers, in addition to electronics and telecommunications, in order to perform the primary tasks required by the occupational definition of the job. As such, the EL group definition is clearly a more appropriate "fit" for the employees in the FSITP position.

FSITP duties

The evidence regarding the primary duties of the electronic technologists clearly demonstrated that employees performing duties in the new FSITP position places them within the EL group definition and not within the definition of the CS group. In this section, it will be demonstrated that the evidence regarding primary duties performed in the FSITP position will show an identical result.

Exhibit A-1, tab N, refers to the work description of an FSITP position classified at the CS-1 group and level. Similarly, Exhibit A-4 describes a Statement of Qualifications for an FSITP position under the same classification, and requires that an employee in this position have knowledge of the following:

1. electronic technology associated with telecommunications, such as voice switching and data transmission;

2. theory and practice of local-area networking; wide-area networking; inter-networking and telecommunications;

3. informatics hardware and software;

4. Microsoft operating systems.

It is clear from this Statement of Qualifications that knowledge of electronics and telecommunications is a fundamental component for the duties of the job, and a CS group employee would be excluded from performing such duties.

It was established during the testimony of Mr. Barrett that the descriptions of the duties for an FSITP position in Exhibit A-4 are essentially the same duties that are set out in the work description for an FSITP in Exhibit A-1, tab N. Later in his testimony, Mr. Barrett confirmed that the duties in Exhibit A-1, tab N, are more specifically set out in Exhibit A-3, the FSITP First-Level Mission Support Task List.

The evidence provided by Mr. Boggs with regard to the FSITP Task List (Exhibit A-3) was helpful to demonstrate the specific duties of the employees in the FSITP position. Further, Mr. Boggs' evidence clearly showed the large number of tasks that were performed by the former electronic technologists, but that are now performed by an employee in the new FSITP position. Through his evidence, it became obvious that, if anything, there are more substantial duties within the EL group that constitute the primary duties of the FSITP than those duties within the CS group. Although several of the duties described in the FSITP Task List could have been performed historically by an employee either in the EL group or the CS group if one or other was absent, the fact remains that a majority of those tasks were attributed to the Electronic Technologist. The evidence clearly demonstrated that employees in the FSITP position are performing the primary duties of the EL group functions and, as such, the duties of the FSITP position should be more properly included in the EL group.

Further to the evidence of Mr. Boggs, although both groups were able to perform some of the same duties referred to in the Task List, there were many primary duties that only an employee within the EL group would be able to perform. Mr. Boggs testified that more than half of the duties associated with "Admin/Super" tasks could have been performed by an employee within either the EL group or the CS group. It was clear that the duties of the FSITP position that involve working with equipment such as crypto, LAN, TEMPEST, and SIGNET C, are duties requiring an employee to perform work within the EL group definition, as per Exhibit A-1, tab M. With regard to the duties associated with alarm systems, the former electronic technologists would have performed these duties exclusively. The Task List duties referring to CSAS/Paging were attributed to duties performed solely by electronic technologists, as were the duties referring to network systems, portable satellite, radio, UPS and voice. The tasks associated with voicemail were typically duties within the CS group; however, Mr. Boggs stated that the former electronic technologists could be used for "back up", and were able to perform the tasks as well. Similarly, Mr. Boggs testified that for the duties associated with servers and workstations, the employees within the CS group were the first line of contact; however, the former electronic technologists were able to perform the tasks as well. The Task List viewed in its entirety demonstrates that the majority of the tasks listed are those performed by former electronic technologists and are the primary duties found within the EL group definition.

Mr. Barrett suggested in his testimony that the duties of the FSITP position were more properly included in the CS group rather than the EL group, based on the occupational definitions at Exhibit A-1, tab A. However, it was later established that Mr. Barrett was only expressing his opinion on this matter, based on his own experience, despite the fact that he had not performed "hands on" work since 1982. In determining that the duties of the FSITP position were more suited in the CS group definition, Mr. Barrett

was not using the tasks listed in Exhibit A-3, which refer to the actual tasks that an employee in the FSITP position would be required to perform. Evidence given later by Mr. Boggs, which was confirmed by his actual experience, demonstrated that the tasks as set out in Exhibit A-3 are predominately the primary duties that would be performed by an Electronic Technologist within the EL group definition.

Notwithstanding Mr. Barrett's opinion, it should be noted that the ESMAIT program was his creation and his responsibility. His opinion as to whether the FSITP position should be in the CS group or the EL group based on his interpretation of the occupational definitions is irrelevant. It is the jurisdiction of the Board to examine the actual duties being performed and then to conclude which group is appropriate.

Mr. Barrett also gave evidence of the structure of EL and CS groups prior to ESMAIT. He suggested that there was an overlap in the functions performed by each group, which eventually led to the creation of the FSITP position through the ESMAIT program. While it may be true that there is some degree of overlap between the functions of the groups, such that each could perform some of the other's duties, it is clear that the primary duties that an employee is required to perform in this integrated FSITP position are within the EL group definition.

The recent Statement of Qualifications for an FSITP position classified as a CS-1 (Exhibit A-4) also demonstrates the predominance of EL group duties in the FSITP job definition. The Statement of Qualifications provides that the employer would be looking for a candidate with a strong background in, among other things, electronics. According to Exhibit A-4, the education required to become an employee for the FSITP program includes at least two years in a program in computer engineering and technology, electronic and telecommunication engineering and technology, or another specialty that is relevant. This requirement indicates that knowledge of computer technology is required to the performance of the duties as is the knowledge of electronic technology. If knowledge of electronics and telecommunications, typically needed for duties within the EL group, is fundamental to perform the tasks of an FSITP, it cannot be said that the duties of the FSITP position are better suited within the CS group. The tasks performed by an employee in the FSITP position involve technology and electronics, which is the reason that an employee must possess extensive knowledge of electronics, as per Exhibit A-4.

While computers may be a component of the FSITP position, there is no question that knowledge of electronics is still a necessary requirement for an employee in an FSITP position. The Statement of Qualifications confirms that knowledge of electronic technology associated with telecommunications, such as voice switching and data transmission, and local area networking, are required to perform the job. While the FSITP position may involve some minor computer work, this recent Statement of Qualifications confirms that the employer still deems knowledge of electronics and telecommunications as fundamental to an FSITP position.

Further, Mr. Barrett confirmed in his testimony that the Statement of Qualifications does not indicate that any particular experience is necessary. This was precisely because the employer had anticipated training new recruits in telecommunications, voice switching and other relevant areas. This confirms that telecommunications and electronic duties within the EL group are still relevant and fundamental to an FSITP position.

Training

Mr. Barrett suggested that the duties of the FSITP position are properly included in the CS group because the duties of the Electronic Technologist had been transformed from electromechanical work to computer work. The evidence before the Board does not support this conclusion. In using the phrase "computer work", Mr. Barrett did not describe the duties being performed as being the primary duties one finds within the CS group. The fact that the FSITP position requires an employee to use computer-based equipment does not mean that that employee is performing the primary duties found within the CS group definition.

In addition, if it were true that the duties of the Electronic Technologist were no longer necessary due to the "prevalence of computers", then it would not be necessary for the employer to provide extensive training in electronics to the new FSITP employees.

While electronic work is specifically excluded from the CS group definition (Exhibit A-1, tab A), the electronic technologists have knowledge of, and performed work relating to computers and computer systems. In determining whether the duties of the FSITP position should be more properly included in the EL group definition, the amount of training required to become an FSITP employee is very telling. The employees within the CS group who were offered an FSITP position were in need of training to gain knowledge in electronics and electronic equipment. These employees were required to attend training courses at Algonquin College to obtain such knowledge. This was confirmed by the testimony of Mr. Tierney, who stated that employees within the CS group, who became part of the ESMAIT project, were required to take a two-month training course for electronics, soldering, routers, servers and lighting protection. They were also required to take a telecommunications course at the department based on BCM and PBX. This equipment was described by Mr. Erskine earlier as referring to telephone switches, and was also confirmed as being tasks performed by the former electronic technologists.

Notably, the former electronic technologists who were assigned to an FSITP position clearly were not in need of such extensive training. Although Mr. Tierney testified that the former electronic technologists were trained for the ESMAIT program on servers and desktops, these employees already had some of the necessary knowledge from their schooling and the work that was performed while an Electronic Technologist. This can be further demonstrated from the EL Internship Plan (Exhibit A-1, tab L), which sets out the training and knowledge that an Electronic Technologist would encounter during his/her internship training. The evidence given by Mr. Tierney with regard to the duties listed in the Internship Plan simply demonstrated that the employer is requiring that many of the tasks that an employee within the EL group would normally be trained for is now being performed by an employee within the CS group. This only strengthens the argument that the duties of the FSITP position should be included in the EL group because these tasks are part of the duties within the EL group definition.

In fact, it should be noted that on cross-examination, Mr. Tierney admitted that he had performed duties that were primary duties within the EL group definition only after he had been trained and commenced work in the new FSITP position.

Evidence given by Mr. Erskine demonstrated that he had been offered a transition from an Electronic Technologist to the FSITP position, yet he had not been required to take further training in order to make the transition into the CS group. The fact that in Mr. Erskine's case the position he was offered within the CS group was not part of the

ESMAIT program should have little bearing on the relevance of his evidence. The duties that Mr. Erskine would now be required to perform are fundamentally the same as he had been performing as an Electronic Technologist and as such would be within the EL group. As stated previously, the CS group definition specifically excludes the performance of the electronic technology as described in the occupational group definitions.

Similarly, Mr. Carter testified that he was part of the ESMAIT program, and had been assigned from an Electronic Technologist position to the new FSITP position in June 2003. Since that time, he had not been involved in any training courses. Further, Mr. Carter gave evidence that his work had not changed since becoming an FSITP, yet he was able to function in the new position with only the knowledge obtained by being an Electronic Technologist. As an employee in the FSITP position, Mr. Carter's job duties had essentially not changed from the duties performed while an Electronic Technologist. Mr. Carter testified that while he was an Electronic Technologist, he had worked in the UPS/Server shop. Currently, as an FSITP employee, Mr. Carter testified that he is working in the UPS/Desktop/Server shop, which is a combination of the Desktop shop and UPS/Server shop. Mr. Carter further testified that before the two shops were combined, the Desktop shop consisted of three employees who were electronic technologists and one employee within the CS group. The UPS/Server shop consisted of only electronic technologists. It is clear that the duties of an employee in an FSITP position, especially in this instance, place that employee properly in the EL group.

It is reasonable to assume that no further training was immediately necessary for the former electronic technologists to perform the duties of the new FSITP position. The former electronic technologists have much of the requisite knowledge to perform the duties found within the FSITP position. If the duties of the FSITP position so fundamentally relied upon computer knowledge and programming, and so little on electronics and telecommunications, it would seem illogical to transfer the Electronic Technologist to an FSITP position without further training. While Mr. Tierney testified that some computer training is important for the ESMAIT program, it is clear that what is also fundamental to the job is knowledge of electronics and electronic technology. This knowledge is not considered to be less valuable than the computer knowledge; it is a necessary component in the ability of an employee to perform the duties of an FSITP position. One should not underestimate the importance of electronics and telecommunications duties in fulfilling the tasks required of an FSITP as set out in Exhibit A3.

Conclusion

Evidence has been established regarding the work descriptions and duties performed by the Electronic Technologist and CS group, as well as the newly classified FSITP position. The Board heard evidence regarding the duties of the EL group and the CS group employees prior to the inception of the ESMAIT program, and the FSITP position, as well as subsequent to that. After reviewing the FSITP Task List, in conjunction with the Statements of Qualifications for both a position within the EL group as well as for an FSITP position, it is clear that the primary duties of an employee holding the FSITP position are fundamentally those primary duties that fall within the EL group definition. As such, employees performing duties in the FSITP positions are performing the primary duties found in the EL group definition and would more properly be included in the applicant's bargaining unit.

For the respondent

The respondent's case is fairly straightforward: the primary duties of the new FSITP position fall squarely within the group definition for the CS group and not the EL group.

Facts and evidence

After years of having a rotational group of EL employees and a rotational group of CS employees, the respondent chose to incorporate the responsibilities of both positions into one: the FSITP position. The reasons for creating this new unified position were clearly enunciated by Mr. Barrett. Some missions abroad would have a rotational CS; some would have a rotational EL; some had both; and some had none. Unfortunately, this type of arrangement was both unpractical and costly.

While in some situations an EL employee could guide a CS employee over the telephone, or vice-versa, this was not always practical. Some employees would therefore be required to travel to other missions in order to service those missions.

Therefore, as is within the employer's purview, a decision was made to combine the duties and responsibilities of both positions into a single rotational FSITP position. Further, this FSITP position constituted a new position, for which all employees occupying either the former EL or CS positions were appointed to, on an acting basis, as of June 1, 2003. Therefore, contrary to the terms used in the applicant's written submissions, no employees have been reclassified. Rather, the employees in question were (or will be) appointed without competition to the new positions, which were classified at various levels of the CS group, based on individual merit and successful completion of the requisite training.

As explained by Mr. Barrett, and clear from the testimony of Messrs. Carter, Boggs and Tierney, all individual employees who were part of the ESMAIT project were given acting assignments, even though they had not been trained or begun substantially performing the duties of the new position.

While the employer does not question that, in normal circumstances, an employee who is not substantially performing the duties of a position is not entitled to an acting assignment, these are not normal circumstances.

One must consider, as explained by Mr. Barrett, that the employees affected by the ESMAIT were on rotational assignments. This meant that, when the program was first launched, some employees were able to begin the requisite training immediately and begin to substantially perform the duties of the FSITP position, such as Mr. Tierney. On the other hand, some employees, like Mr. Boggs, were on posting when the program was launched and are only receiving the training now, or in the near future. Those employees would only have been entitled to the new position three to five years after some of their colleagues.

This scenario would clearly have led to discontent among employees. The employer could not have brought all employees back from their posting to be trained at the same time. Therefore, the actions taken by the employer were clearly the most equitable solution possible.

Further, as underlined by Mr. Tierney's testimony, a significant portion of the EL internship program (see Exhibit A-1, tab L) includes training in areas that clearly fall within the CS group, such as the configuration of servers, desktops, operating systems

and e-mail applications. As explained by Mr. Barrett, the ESMAIT program was, in part, created to address this overlap. Further, he found that, since the ESMAIT program was initiated, it has led to greater cooperation between the former EL and CS employees in the missions, creating a greater team dynamic. In his opinion, many EL employees have already been performing some of the "CS duties" of the FSITP position.

It is also important to note that the vast majority of the evidence of Messrs. Erskine and Hokayem were clearly irrelevant since neither formed part of the ESMAIT program. Both Mr. Erskine and Mr. Hokayem are non-rotational EL employees. The only relevant information offered by their testimony is their opinion as to the functions of an EL. Neither could speak to the training or functions performed by an FSITP. Neither one occupies one of the positions in question. Neither is listed in the application. The fact that Mr. Erskine has been offered a CS position, which is not an FSITP position, only underscores the fact that his testimony is not relevant to the determination to be made by the Board in this application.

Further, while the applicant is correct that Mr. Barrett was expressing his opinion when examining the group definitions for the EL and CS groups, it is inappropriate for the applicant to attempt to disparage his opinion by underlining the fact that he has not performed "hands-on" work since 1982. Mr. Barrett has been directly involved in the provision of IT services, including electronics services, for nearly 40 years. As one of the key developers of the ESMAIT project, Mr. Barrett has direct knowledge, garnered from actually visiting the missions in question, of the needs of Canada's missions abroad in IT services. The respondent submits that, of all the witnesses who testified, Mr. Barrett's opinions carry a great deal of weight.

Training

The applicant states that it is reasonable to assume that no further training was necessary for electronic technologists to perform the duties of the FSITP position. This assumption is in direct contradiction with the evidence of Mr. Boggs, the applicant's own witness. He spoke specifically to the fact that, as a former rotational EL, he was actually receiving training, at the time of the hearing, to perform the tasks of the new FSITP position.

Mr. Tierney explained that, as a pre-ESMAIT CS, he had also received training in order to allow him to perform the electronics-based tasks of the new position. Clearly, after considering the testimony of Messrs. Boggs, Tierney and Barrett, it is clear that the fusion of the two positions required both groups of employees to undergo additional training in order to fulfill the requirements of the new job description.

Task List

As stated by Mr. Boggs in his own testimony, counting the number of tasks found at Exhibit A-3 that were primarily performed by one group or the other offers nothing to this process. Mr. Boggs explained that a majority of the tasks listed may only be actually performed a fraction of the time, while a few tasks may actually be performed a majority of the time. For example, even if 70% of the tasks listed are defined as EL tasks, they may only account for a small portion of the actual tasks performed on a regular basis by an FSITP employee.

Since Mr. Boggs has yet to begin performing the duties of the FSITP position, the only relevant testimony on the actual tasks performed is that of Mr. Tierney, who clearly stated that the vast majority of his work is "CS work". Further, after reviewing the

tasks listed, Mr. Boggs felt that approximately 68 of the tasks were primarily EL tasks, 57 were primarily CS tasks, and 46 were regularly performed by either of the two groups, with a few of the latter being primarily EL tasks and approximately 17 as primarily CS tasks. (These counts are, however, only approximate, since the entire list was read through only cursorily.)

Two important conclusions can be drawn from this analysis. First, the evidence tendered by Mr. Boggs was only his opinion, and certain tasks which he felt were primarily CS tasks could, in fact, be EL tasks, or vice-versa. Secondly, and more importantly, this exercise proved nothing. The FSITP position is a fusion of two positions: one a CS position and one an EL position. Obviously, any listing of the duties performed would contain a mixture of tasks that would fall under both group definitions. Analysing the Task List does not further the debate as to which of the two group definitions is the best fit.

Statement of Qualifications and education

The applicants also spent a great deal of time examining the Statement of Qualifications of both the former EL position and the new FSITP position. Much like the analysis of the Task List above, the Statement of Qualifications only underscores the fact that the new position is a combination of the two old positions. As explained by Mr. Barrett in his testimony, the respondent, through its Statement of Qualifications, is clearly open to accepting applications from people who have either a computer science background or an electronics background.

Also, while the evidence presented by the applicant with regard to the programs offered by the Nova Scotia Community College was informative, it bore no relevance to the determination of this application. The respondent does not question the fact that an individual studying in an "electronic engineering technology" program will obtain more specialized electronics knowledge than a student in an "information technology" program. However, on its surface, both students would meet the education requirements of the FSITP position, subject to additional training in the other discipline, as evidenced by both Messrs. Boggs and Tierney.

Group definitions and primary duties

On one point, the respondent agrees with the applicant; as demonstrated by the case law, the Board must determine, with regard to the group definitions found in the *Canada Gazette*, which definition is the best fit for the position in question. The burden of proof here lies with the applicant to show that the FSITP position is a better fit in the EL definition than in the CS definition.

However, one point does merit clarification. When looking at the inclusions and exclusions of both positions, the central question lies with the primary duties of the position in question, not whether the duties of the position include the primary duties of one of the group definitions. To be clear, contrary to the allegation of the applicant's written representations, electronic work is not specifically excluded from the CS group definition. Positions excluded from the CS group definition are "those whose *primary purpose* is included in the definition of any other group or those in which *one or more of the following activities is of primary importance*" [emphasis added]. Among the activities listed are:

[…]

2. *the planning, design, construction and maintenance of physical equipment and systems (electrical, electronic and electro-mechanical), the provision of advice, the conduct of studies and the development and application of related standards and procedures, such as may be involved in the development or modification of physical systems and equipment for use in special purpose computer systems applications and where a comprehensive knowledge of engineering, engineering technology or its specialized techniques is the prime requirement; and*

3. *the operation, scheduling or controlling of the operations of electronic equipment used in the processing of data for the purpose of reporting, storing, extracting and comparing information or for solving formulated problems according to prescribed plans.*

[…]

There is no question that among the duties of the new FSITP are some activities which may be classified as "electronic" in nature, as outlined above. However, the burden of proof lies with the applicant to demonstrate that the primary purpose of the FSITP is those "electronic" tasks, or that those tasks are "of primary importance". The respondent respectfully submits that the applicant has failed to do so.

The only witness who has actually performed the duties of the FSITP position was Mr. Tierney. He clearly stated that the vast majority of his work involves computer support. He stated that the duties have evolved from electro-mechanical to computer-based. Contrary to the assertion of the applicant, the duties of the FSITP position do not involve "some minor computer work". Rather, "computer work" is the main function and responsibility of the position.

The applicant appears to take issue with the fact that, as stated by both Mr. Barrett and Mr. Tierney, the functions have evolved. This evolution is not one in which computers have become the primary tool of the position, such as in the case of an administrative assistant or a lawyer. As stated by Messrs. Barrett and Tierney, the FSITP position is less concerned with designing and constructing electronic equipment. The primary duty of the FSITP position is clearly the maintenance and service of computer systems, which includes both the hardware and the software components of the system.

<u>Conclusion</u>

The applicant has not met its burden in proving that the "best fit" or the "pith and substance" of the FSITP position is the EL group definition. The vast majority of the evidence called by the applicant was entirely irrelevant, since it dealt with the situation pre-ESMAIT. Mr. Boggs' testimony demonstrated that he was in the process of transferring to the new model, as evidenced by the training he was undergoing.

Only Messrs. Barrett and Tierney presented any evidence with relation to the duties actually performed by employees in the FSITP position. With the exception of Mr. Boggs, the applicant called no former EL employee who had actually been trained and had begun performing the duties of the new position.

It is also important to note that, as explained by Mr. Barrett, all affected employees were given acting assignments of FSITP positions on the same date, June 1, 2003. The respondent admits that these employees, both the former EL and the pre-ESMAIT CS employees, would only begin performing the full range of duties outlined in the work description once they had received the requisite training and been posted abroad. Because of the rotational nature of the DFAIT, the respondent believes that this was the only equitable solution that would treat all employees fairly. Otherwise, some individuals would be forced to wait up to five years before they could receive the same benefits as their colleagues.

The positions that are the object of this application, the FSITP positions, were formed by combining the duties of both rotational CS and EL employees. Clearly, there will be overlap between the job description in question and the two *Canada Gazette* group definitions. However, the determining factor in this application is whether the applicant has demonstrated that the EL group definition is a better fit. The respondent submits that it has not.

While the application only targets the former EL positions, the respondent submits that to allow this application would effectively impact all employees within the FSITP program, both the former EL and CS positions. The fusion of the duties into one position falls squarely within the employer's right to organise its workforce, and this application cannot be used to attempt to undo the ESMAIT program.

In short, the respondent submits that the FSITP position has been properly determined to fall within the CS group definition and asks this Board to reject this application.

<u>For the intervener</u>

The most appropriate place to begin is with the report of the Interdepartmental Classification Review Committee (Exhibit A-1, tab K). The report deals with the working level of a new position of "technical specialist". In the section entitled: "Classification Committee deliberation", we learn that "...members concluded that the work was **primarily dominated by computer systems related duties"** (emphasis in the original). The section goes on to say that "...some electronic duties were required, however, these do not involve the designing or construction of complex equipment/systems and that for the most part, repair is confined to unit replacement. There are some passive electronic and even mechanical devices (IDACS) Alarm system, but they are at a minimum and problems are often resolved remotely from HQ, or are resolved by staff currently classified in the CS or EL groups, whichever is available or in some cases, are contracted out for resolution by local contractors."

Since the nature of the dispute is group allocation, let us turn to this section of the Committee's report. We are told that the "primary duty" is … "the daily operations, maintenance, troubleshooting and problem resolutions support to hardware, software, applications..." "The work requires to install and test hardware and peripherals, software and/or applications, modify equipment configurations, network utilities, set up files, systems software default settings and workstation configurations..."

Jurisprudence

In *Public Service Alliance of Canada v. Treasury* Board, PSSRB File No. 147-2-34 (1989) (QL), the Board was grappling with the evolution of a job falling within one occupational group and determined that, in fact, a better fit was found within another PSAC occupational group. The Board stated:

> […]
>
> *… Surely it must be recognized that the functions and duties of a group of employees can evolve over a period of 20 years so that they are no longer described by the Group, or indeed the Category definitions to which they were originally assigned in 1967. Surely that is at least in part the raison d'être for a provision such as section 34 of the* Public Service Staff Relations Act.
>
> […]

The decision in *International Brotherhood of Electrical Workers, Local 2228 v. Treasury* Board, 2001 PSSRB 71, is distinguishable from other decisions in that the Technologist at issue only utilized electronic equipment and simply needed to know how it worked. In that decision, we discover that the new position was never grieved, as is the case here, nor was there any suggestion that the duties described were not those performed. The decision stated: *"*...the Board must look at the primary duties..." In the case before the Board for determination, we have the advantage of *viva voce* evidence from an employee who does the job.

Finally, the decision in *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2001 PSSRB 121, is interesting in its analysis of much of the equipment we will be discussing. *"*The reasoning is that ... it is more efficient to replace the equipment.*"* This approach is mirrored by DFAIT in the missions. Counsel for the applicant argued that "the Board should examine the duties described by the witnesses who actually performed the duties." We would only add the caveat that it be witnesses who perform the FSITP duties. The decision addresses the evolution of the electronic equipment where instead of repairing equipment, parts are swapped or equipment is returned to the manufacturer. The decision describes repairs done in Privy Council shops as: "the problems involve either passive electronic equipment or a mechanical problem, which does not necessitate the application of electronic technology as found in the definition for the EL Group." The evidence in the instant case will prove a similar de-skilling of the electronic technologists in terms of their traditional skills.

CS inclusions

The Classification Committee decided the proposed position met Inclusion 1 of the CS group definition and noted this as primary. Inclusion 1 deals with, among other functions, the conduct of "analyses and design and programming activities" of the following:

> a) the development, implementation and maintenance of (in our case) administrative and technological information processing systems;

and

b) the customization and maintenance of generalized application software and system software packages.

In his testimony in chief, Mr. Boggs, a witness for the applicant, indicated that the CS-2 position description "accurately reflects the work where there is no Team Leader". He then went on to say that "policy reverts to the CS-3 at Headquarters". Mr. Barrett testified in relation to the first inclusion under the CS group definition that the ESMAIT employees "do generally the first inclusion, but no scientific".

Mr. Tierney in his testimony in-chief described how radios were "completely software controlled". In relation to the IDACS alarm systems, he testified that these systems were controlled by a personal computer that "opened and closed doors" depending on "an individual's access code". The installation involved determining who "had access to which parts of the embassy". He further testified that "most telephones are digital and can be programmed". He described the BCM "as a computer hard drive".

In cross-examination by counsel for the applicant concerning servers, Mr. Tierney described the software as "commercial off-the-shelf" by Nortel or Alcatel. When questioned by counsel for the applicant about direct work on the software, he testified that he did not touch the "source code", but could be called on to "reconfigure software". He elaborated by analogy to using an "operating system" where he said it was "akin to programming with Windows 98". When questioned about maintenance, Mr. Tierney replied that he was required "to install, upgrade and often reinstall".

Messrs. Boggs and Tierney in testifying in relation to the Task List in Exhibit A-3, identified sections 1 through 17 (Admin/Super) as being CS tasks or at best both given interdependence in the missions. The "Classified Systems" section contained tasks that were also both with the exception of task numbers 25 and 26.

The Server sections of the Task List were all the CS and the VOIP section was the subject of considerable testimony where it is clear that this internet technology is replacing the old PBX telephony, which was primarily the task of EL employees. The workstation tasks were all CS tasks.

The testimony of Mr. Boggs was particularly interesting as he pointed out the inadequacy of this rote listing in relation to a question asked by counsel for the applicant concerning the network section. He observed that the list "doesn't cover the percentage of time on these items".

In cross-examination by the employer, he explained that in relation to the missions or "the field" as he described it "...the technology is no longer the same". He described his ESMAIT training as being focussed on "today's equipment" and he referred to "servers, software and printers". He described the evolution of EL work as being "PC based and done through the keyboard, diagnostics are done through the keyboard" and he further ventured: "an increased involvement in programming."

Counsel for the applicant would have us believe that since EL have been incrementally doing more and more programming that this somehow means that this work doesn't fall under Inclusion 1 in the CS group definition. Mr. Boggs' description of what the ESMAIT program represents is both truthful and pertinent. The osmosis of the IT work

done by EL and CS employees into one CS classification and the recognition of this by the DFAIT is, as he expressed it, "being legitimized".

Through the testimony of these witnesses, we see that the CS-2 and CS-3 positions carry out "analysis and programming" for "development, implementation and maintenance" of "administrative" and "technological information processing systems" as described in Inclusion 1 of the group definition. Further Messrs. Tierney and Boggs testified to "customization" and "maintenance" of "generalized application software" and "system software packages".

Mr. Tierney, in examination-in-chief, indicated, when asked if the problems of the DFAIT's equipment were "solely hardware problems": "No, there could be software problems." In other words, ESMAIT employees need comprehensive computer software knowledge as set out in the CS-2 position description (Exhibit A-1, tab N) under the Job Content Knowledge. Mr. Tierney further testified in response to a question in-chief about "whether it would be possible to do the ESMAIT job without a broad knowledge of computer systems and theory", "that it would be impossible to do the job." This testimony was uncontested by the applicant's witnesses. This is a far cry from what counsel for the applicant attempts to impute to Mr. Tierney in his argument that only "some computer knowledge" is needed.

In relation to point two of the Inclusions, in the CS group definition there can be no dispute about the testimony of Messrs. Boggs, Barrett and Tierney concerning the necessity to "conduct emergency repairs to application and system software". There was frequent reference to LAN and WAN systems and to MITNET, the DFAIT system. Mr. Tierney was not contradicted in his testimony about employees as "individuals" or "all Department employees" at missions or Headquarters being unable to communicate unless the "software diagnostics" were used to troubleshoot problems.

Mr. Barrett indicated in his testimony on MITNET in response to counsel for the applicant's query about ESMAIT being the "eyes and hands" in the mission that "remote diagnostics are used" and that "the FSITP will change the piece of equipment". Change that is; not repair. Mr. Barrett further elaborated that "the fault is not necessarily where indicated". This is precisely the point from Mr. Tierney that there could be "software" and "system bugs" that require the "analysis" and "programming" skills of CS employees to "conduct" "emergency repairs" under Inclusion 2 of the CS group definition.

Inclusion 3 of the CS group definition talks about "analysis" of "business systems and supporting infrastructures" and the "construction and maintenance of the related software".

Mr. Barrett in his testimony-in-chief related how he worked in technical infrastructure and then moved to the Internet Project and the ESMAIT. Mr. Barrett testified that prior to the ESMAIT, the EL group were in SXT and dealt primarily with "infrastructure" and were more "regionally based and handled telecommunication and security". According to Mr. Barrett, the CS group did "client service" such as "desk top, teaching, and coaching along with LES" (or locally engaged staff). Mr. Barrett described the change in the past 15 years as a "revolution". The ELs formerly dealt with "electro-mechanical devices with discrete components".

Mr. Barrett testified that "everyone has a PC" and "almost everything is computer based". He testified that the "telephony" or telephone system is "going the way of the Internet". He then talked about "IP telephony" or an Internet Protocol System. Reference was made to Voice over Internet Protocol (VOIP) systems, which was echoed in the testimony of Messrs. Boggs and Tierney. Voice and data are combined, as Mr. Tierney explained. The major business of communication within the in-chief is transforming the infrastructure from old PBX telephone systems handled by ELs to computer-driven systems.

Mr. Boggs, under cross-examination by the employer concerning his training under ESMAIT, stated that "the technology was no longer the same" and that he is being "trained on today's equipment". He later responded to the question of counsel for the applicant about how long software diagnostic tools have been around by responding that: "When I got involved with the SIGNET system in 1992, I didn't have software tools".

When counsel for the applicant asked about what had happened over the last 13 years, Mr. Boggs replied that "our systems became more and more PC based".

The testimony of Messrs. Barrett, Boggs and Tierney, the only witnesses who were actively involved in the planning and development of the training or the actual work of the ESMAIT, all confirm that the "business systems" and "supporting infrastructure" are in rapid evolution from electronic to PC-based systems where the "construction and maintenance of related software" is primary as described in Inclusion 3 of the CS group definition. This point is also made by the Classification Review Committee and was not contradicted by the testimony of any witness actually involved in the ESMAIT.

Inclusion 4 of the CS group definition covers, among other things, "implementation, installation and servicing of databases and database software, the control of the integrity, security...of the databases..." The Classification Review Committee cites this Inclusion and Mr. Tierney in response to the question in cross-examination from counsel for the applicant about his experience with databases, indicated he had a certificate in database design and "used it on a daily basis". In fact, earlier in his testimony he referred to its use to "create a telephone directory" or "anything dealing with storing and sending data". This evidence was not contradicted by any witness or evidence led by the applicant.

Inclusion 5 of the CS group definition was also cited by the Classification Review Committee as applying to the FSITP position. It covers "the capacity management, configuration, performance measurement and optimization of hardware, software and network systems". This point was addressed earlier but bears repeating. Mr. Tierney indicated that the tasks listed in the Task List (Exhibit A-3) under "Voice" that the software used was "off the shelf from Nortel or Alcatel" and that his maintenance tasks were that he "installed, upgraded and reinstalled the software".

The intervener earlier mentioned Mr. Tierney's testimony about work on software. He stated*:* "No, not directly but you could reconfigure". Counsel for the applicant disputed the use of "source code" and he replied: "No, it would be akin to reconfiguring with Windows 98." Whether we are talking about "source code" that would be used by programmers or reconfiguring with a "software environment" like Windows, this is CS work and falls clearly under Inclusion 4.

Likewise, when counsel for the applicant moved on to explore Task 70 on the Task List (Exhibit A-3) concerning programming radios, Mr. Tierney indicated that the installation and upgrades were done from a PC. As with Mr. Tierney's testimony in-examination-in-chief, it is clear that "telephony" and radio work formerly associated with the ELs is no longer driven by "discrete electronic devices" but is now PC driven and programmable. The support to these devices therefore falls into the domain of CS work and expertise as set out in Inclusion 4 of the CS group definition.

The testimony of Mr. Tierney in examination–in-chief, about IP (Internet Protocol) taking over the telephone system and being used for information and data bundling, was echoed by Mr. Boggs. Mr. Boggs commented that the duties of an EL-4 (contained in Exhibit A-2) did not reflect the duties as, in his words, the "position has evolved considerably...no LAN...no MSIT". Mr. Boggs observed that the duties described in Exhibit A-2 were "overall in perspective (with) technology of the day". In other words, pertinent to the diminishing "legacy" equipment mentioned by Mr. Tierney.

He further testified in relation to the FSITP position descriptions (Exhibit A-1, tab N), that "it was difficult to separate telecommunications systems between EL and CS", that SIGNET was "primarily CS", that chancery or alarms were EL but CS employees in missions would "have provided a level of support".

In terms of Inclusions 8 and 9 of the CS group definition, Mr. Boggs in his testimony referred to "policy decisions" being done by the CS-3 and this is consistent with the "Interim Escalation Procedures" document provided by the DFAIT after the hearing (Exhibit A-8). Mr. Barrett, in cross-examination on the issue of the escalation procedure, indicated that the CS-2 FSITP would "do the task, then calls his Regional Manager (a CS-3) who will assign a subject-matter expert, then core services, then SXT, who are the owners who would use experienced staff or revert to the vendor". The duties as they relate to these Inclusions are found in the position descriptions for CS-3s and CS-4s (Exhibit A-1, tab N).

Exclusions

Counsel for the applicant in his submissions refers to the exclusions applicable to the CS group. He engages in an exercise of "sleight of hand" where he fails to provide the entire text of Exclusion 2 in the CS group definition. The pertinent section comes at the end where it states: "...where a comprehensive knowledge of engineering, engineering technology or its specialized techniques is the prime requirement". Clearly, this exclusion does not apply in this case, as we are dealing with first level IT support backed up by subject-matter experts and shops back in Headquarters.

Exclusion 3 of the CS group definition can be found as Inclusion 1a) of the PA group definition and finds its particular application primarily with the CR group. Once again, counsel for the applicant is engaged in a "sleight of hand" as this exclusion has no relevance.

Training

Mr. Tierney testified concerning the EL Internship Program (Exhibit A-1, tab L), that in terms of the entry requirement, points 1 to 6 were CS based and 9, 11, 12, 15 and 16 were for both. He testified at length that most of section 5.4 was CS work and section 5.5 was both. On section 9.0, Workstations and Servers, most of the content was CS and the remaining content was both. He stated that section 9.3 was CS. In terms of section 10.0, C4 Workstations Standard, securing Network PC, and securing modems,

mice, printers etc., was CS. Section 11.0 was both. In terms of section 12.7 on Workstation and Servers, one was both but 5 through 12 were CS. In terms of section 12.9, Wide Area Network, 8 and 9 were CS. For Personal Safety and Chancery Security it was half and half. This Internship Program is three years in length and some sections are merely "soft" non-technical training.

Why is it that the ELs receive a three-year apprenticeship and the CSs only received two months "general electronic training" for the ESMAIT program? The answer is two-fold.

First, as Mr. Tierney described it during his testimony in-chief, the DFAIT has some "legacy equipment" or outmoded electronic component equipment that requires EL expertise. The reasons for a 36-month Apprenticeship Program become obvious when the applicant can only find seemingly supportive Community College training in Nova Scotia. The existence of the Canadian Naval Operational Headquarters in Halifax with 30-year-old obsolete British submarines explains why there remains a market for such training.

It is curious that the applicant could find no such courses in any of the other major urban centres in Canada in spite of referring to Algonquin College during cross-examination of Mr. Tierney. Mr. Barrett was cross-examined on the program description (Exhibit A-6). In reference to Electronic Circuits III, in response to a query about whether this course was on "enhanced telecommunications", Mr. Barrett replied: "On some pretty old technology".

Earlier, Mr. Barrett had similarly commented about the course "Communication Systems I" (Exhibit A-6) when counsel for the applicant described the course by claiming "it gives the principles of telecommunications". Mr. Barrett replied: "I don't see the relevance".

The declining relevance of expertise on "discrete electronic components" was amply demonstrated when Mr. Tierney described his installation of the alarm system in Beirut with only a two-month course on the relevant EL functions at the DFAIT. Mr. Hokayem's testimony on the "UPS" revealed the same as he described "changing the batteries" and to test the components, he remarked: "We have to use a PC and hook it up to the UPS". He further testified that as far as the missions: "I haven't gone to install..." "Once we get there, I don't know who goes for the installation."

Mr. Tierney in examination-in-chief in response to a question about the evolution of communications and security systems in the last 15 years stated: "They have gone from slow speed analog systems to high speed computer controlled digital devices". Mr. Tierney further testified as to the elimination of "cryptographic devices" that involved "intensive maintenance" by the ELs and their replacement by "ready to go devices". The systems have moved from "analog or electro-mechanical to IT speed digital" according to Mr. Tierney who is the only witness to have started the training in 2003 and actually done the FSITP job.

In response to the question in examination-in-chief about the nature of the training, Mr. Tierney stated that: "It gives a general background in all equipment used by the Department. To enable us to install it or make repairs or call an expert to guide us when we cannot describe what the problem is." He stated it was "general electronics training". This is a far cry from the assertion of counsel for the applicant that "an employee must possess extensive knowledge of electronics as per Exhibit A-4 "FSITP Internship Statement of Qualifications". Exhibit A-4 simply says "knowledge of electronic technology"; it is Exhibit A-2 (EL-4 Statement of Qualifications) that says

"extensive knowledge." Likewise, the Statement of Qualifications does not deem knowledge of electronics and telecommunications to be "fundamental", as counsel for the applicant asserts. Nor can it reasonably describe two months as "extensive training in electronics" as is asserted in the applicant's written submissions.

The inability of the DFAIT to find this EL expertise in the marketplace was demonstrated by the testimony of Mr. Carter. He testified in examination-in-chief that he became "indeterminate in June 2003". In response to questions from counsel for the applicant about his work "before DFAIT" he replied that he had been "35 years in the military". Earlier, he stated that he began as a "contractor in 1997".

What are we to make of the in-chief hiring someone with 41 years of service in 2003? Mr. Barrett testified that the program would culminate in 2007. By then, Mr. Carter would have 45 years of service.

Mr. Carter testified he was hired as an "EL 4" in response to a question about "when he was first indeterminate". When he was asked what his position under ESMAIT was, he replied: "Acting CS-02, but I haven't had any courses yet". He was then asked how his work had changed and he replied: "It didn't".

Yes of course Mr. Carter is still doing the work of an EL. He admitted to the employer in cross-examination that he had received a pay increase; that he had never been posted abroad nor had he requested the ESMAIT training or a posting. How else can we interpret his response to the question "What would be CS duties; keep a LAN system going". When he was asked if there was anything else, Mr. Carter replied: "No". Clearly, he has no idea of what is involved in an FSITP position.

The testimony of Mr. Carter stands in stark contrast to that of Messrs. Boggs, Tierney and Barrett who testified as to the interchangeability of duties in the missions. The purpose of the ESMAIT program, as set out in Exhibit A-1 and in Exhibit E-1 "SXD Support Model Abroad - A White Paper", is clearly to provide "enhanced support" to missions and all the FSITP employees are rotational. Mr. Carter was hired to "hold the fort" on "legacy equipment" and dismantle obsolete PCs. He is not a credible witness on the ESMAIT program.

The testimony of Mr. Erskine is not relevant, as he is a "non-rotational EL" and therefore not in the ESMAIT program. Moreover, contrary to what is asserted in the applicant's submissions, there was no evidence that Mr. Erskine had been offered a transition to the FSITP position, nor that he had not been required to take CS training for such a transition. In fact, when he was asked by counsel for the employer whether he was familiar with the ESMAIT program, he replied "not really" and confirmed that he was an EL.

However, even he stated, in examination-in-chief by counsel for the applicant, in response to the question "Are you using electronic knowledge?" that: "Not as in-depth as some other areas". He continued to elaborate that in terms of the alarm system, "the control panel is a computer tied to a PC" and that in turn is "tied to the Internet".

In fact, he is clearly a "subject-matter expert" that was referred to in the testimony of Messrs. Barrett, Boggs and Tierney. His area of speciality is alarm systems and he will continue as second level support to the ESMAIT program. Mr. Erskine admitted to using "software diagnostics".

The same must be said of Mr. Hokayem, as he is a "non-rotational EL-4" by his own admission. His testimony is not credible on the ESMAIT program. He also admitted to using "software diagnostics" and "programming" devices; however, so even the remaining non-rotational ELs are using rudimentary computer systems knowledge to run simple tests and charge batteries on off-the-shelf electronic devices.

The above two witnesses provide second level support to the ESMAIT CS-2 doing first level work. In spite of counsel for the applicant's strenuous efforts to embellish the electronic work of some of his witnesses, they barely meet the test of being in the EL group as they are not building and maintaining electronic equipment with discrete parts but merely testing off-the-shelf equipment and replacing modular units. If anything, the EL aspects of this work has been reduced to simple maintenance tasks.

Mr. Barrett, in response to cross-examination by the intervener, declared that there had been no grievances or complaints about the creation of the FSITP position. The reason is quite simple: these employees realize their career path is integration into the CS group, as the evolution of the work of the in-chief requires computer-related skills to perform the maintenance required. Likewise, the planning and development of the communication and business systems is focussed on IT and computer technological change.

Conclusion

The evidence before the Board clearly demonstrated that over the last decade the IT work of the in-chief was relentlessly transformed by the introduction of software controlled, software diagnosed and software repaired equipment. The "legacy equipment" that required electronic technologist experience was and is being phased out so that even the applicant's witnesses admit to the predominance of the primary duties being found in the CS group definition.

Counsel for the applicant would have the Board believe that the primary duties of the FSITP employees fall under Inclusion 5 of the EL group definition. Can the Board seriously entertain the notion that the use of "discrete electronic components" in the equipment of the in-chief is remaining static? We have only to posit the converse argument to demonstrate the absurdity: the use of discrete electronic components is increasing. The evidence demonstrated the exact opposite. PC-based programmable devices are increasingly taking over all aspects of the work of the in-chief and with it the necessity and opportunity to remotely maintain and troubleshoot these devices.

If the Board bases itself on the evidence of Messrs. Boggs and Tierney, the only employees actually in the program, and the testimony of Mr. Barrett, who had responsibility for the program, the conclusion the Board must draw is that the Classification Review Committee correctly placed the FSITP employees under the CS group definition. Mr. Barrett did not decide the issue of the group allocation but rather this was done by an Interdepartmental Classification Committee. Members from other departments could see the logic of the placement based on their knowledge of the evolution of the technology, as corroborated by the jurisprudence in the Privy Council Office case (*International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board,* 2001 PSSRB 121).

To conclude otherwise flies in the face of the relevant evidence and produces a labour relations result that assigns the primary duties of CS work to another group. Moreover, it condemns a large group of employees to a declining occupational group with no real career development possibilities. This is demonstrated by the evidence

that there were no grievances filed by any employees as a result of the reclassifications. The employees realized that from the point of view of compensation and career development, they must follow the technology and develop the skills and experience falling under the CS occupational group.

For all of the above and enumerated reasons, the Board should reject the application under section 34 of the *PSSRA* (now the *PSLRA*) and confirm the placement of the FSITP employees in the CS group.

Reply of the applicant

The applicant would initially like to address the statements of the respondent where it attempts to minimize the effect of the former electronic technologists losing their status as EL group employees with the creation of the ESMAIT program. The respondent suggested that the affected employees were "appointed" to an FSITP position, and therefore to CS group classifications, and that they were not "reclassified" from the EL to the CS group definition.

Although the FSITP position is considered by the respondent to be a "new position", the fact remains that employees formerly in the EL group were effectively stripped of that designation and became employees under the CS group once they became FSITP employees. The former electronic technologists were deemed to be CS group employees under the ESMAIT program, despite the fact that their skills as electronic technologists were still necessary to fulfill the core duties of the FSITP position. As such, in the applicant's submission, "reclassification" is an appropriate term to describe the change in classification from the EL group to the CS group definition.

Further, the applicant submits that there is no basis for the intervener to suggest that simply because there were no grievances filed with regard to the reclassification that there was acceptance by former electronic technologists of the transition from the EL to the CS group under the ESMAIT program. In fact, in bringing this application there was a large degree of support from the affected employees who wished to remain part of the EL group.

It is interesting that in classifying the FSITP position under the CS group definition that the employer did not take into consideration the fact that the CS group employees have little or no knowledge of electronics and electronic technology, knowledge which clearly remains fundamental to satisfy the requirements of the FSITP position. While electronic technologists required minimal training for the FSITP position, they also held valuable knowledge regarding electronics and electronic technology. This, if anything, strengthens the applicant's position that not only are the core duties of an FSITP position found in the EL group definition, but that electronic technologists are in fact more qualified overall to perform the essential duties of the FSITP position.

The applicant submits that contrary to the submissions of both the respondent and the intervener, the testimonies of Messrs. Erskine and Hokayem are not irrelevant. Although they were not specifically part of the ESMAIT project, their testimonies were fundamental to demonstrate the work that an EL group employee would normally perform prior to the ESMAIT program. Although neither could speak to the training or functions performed by an FSITP employee, this was not their role as witnesses.

It has already been confirmed that the duty of the Board is to determine which group definition, the EL group or the CS group, is a better fit for the FSITP position. Without the testimony of electronic technologists, this would be impossible. It is irrelevant that

these witnesses were not part of the ESMAIT program. The EL group definition and the duties of an Electronic Technologist under that definition would not change regardless of whether the witnesses were part of the ESMAIT program or not. Messrs. Erskine and Hokayem testified regarding their work as electronic technologists and, as such, their testimony is very relevant with regard to the occupational definitions that are the subject of this application. As such, the testimonies of Messrs. Erskine and Hokayem should not be disregarded. The applicant submits that this evidence should be given equivalent weight, as compared to the testimony of other witnesses, in an aid to determine whether the FSITP position is better suited as a CS or EL group definition.

In making a determination of which group the FSITP position is better suited to, the applicant submits that the Task List (Exhibit A-3) is relevant. Although the respondent has submitted that this Task List "proves nothing", the applicant disagrees and submits that the Task List is necessary to demonstrate the number of FSITP tasks that were primarily performed by former electronic technologists, as compared to CS group employees. As the FSITP position was a fusion of two positions, analyzing the Task List provides evidence of the many primary duties of the FSITP position that were formerly performed by electronic technologists.

The respondent notes that Mr. Boggs' interpretation of the Task List was only his opinion, in an effort to discredit his testimony. However, the other witnesses confirmed that his evaluation of the tasks, and of which employees performed them, was accurate.

While Mr. Boggs' testimony was instructive on that point, it was noted in the respondent's submissions that his testimony was less helpful in determining how frequently each of the tasks was performed. The respondent implied that although a majority of tasks were specified as being performed by the former electronic technologists, that these tasks were performed during a minority of the time and were therefore not primary duties. However, there was no conclusive evidence from Mr. Boggs or from any other witness to suggest which of the tasks specified as former electronic technologist duties were performed less often than other tasks mentioned. Further, no conclusive evidence was given to suggest that such tasks were not equally as important as other tasks.

The respondent submits that the applicant has not met its burden to establish that the FSITP position is a better fit within the EL group definition than in the CS group definition. As already stated, the Board must decide, based on the primary duties of each group, in which group the FSITP position is best suited. As such, the analysis of the occupational group definitions (paragraphs 8 and 9 of this decision) is an important exercise.

While the respondent states that the primary duty of the FSITP position is "clearly the maintenance and service of computer systems", on the contrary, the applicant submits that the primary duties of the FSITP position include the installation and maintenance of electronic and telecommunications equipment and require the knowledge of how to correct mechanical and electrical problems that arise in the maintenance of such equipment. An employee within the CS group would not typically have the knowledge or training to perform those duties, which are fundamental to the FSITP position. As such, not only do the primary duties of the FSITP position resemble duties that fall within the EL group definition, the electronic technologists are more qualified, without further training, to fill the FSITP position.

In addition to the occupational group definitions, the training involved for the FSITP position also demonstrates that the former electronic technologists are better qualified to perform the duties that are involved in the FSITP position. Contrary to the respondent's assertion that the majority of Mr. Tierney's work is "computer work", Exhibit A-4 refers to the Statement of Qualifications for an FSITP position and clearly demonstrates that the FSITP position is not just computer work, but involves telecommunications and electronics work as well. These are duties that were primarily performed by the former electronic technologists.

Further, although the Statement of Qualifications (Exhibit A-4) does not specifically state that a candidate must have "extensive knowledge" of electronic technology, this can be implied by the two-year educational requirement in electronics and telecommunications that a candidate must possess if he/she does not have other necessary training. In the applicant's view, a two-month training period to gain knowledge of electronics is and should be considered an extensive amount of training, especially as compared to the much shorter training period in computers that was extended to former electronic technologists to prepare them for employment in an FSITP position.

The applicant disputes and resents the implication of the intervener where it is stated that Mr. Carter was hired as an FSITP employee to "hold the fort" on "legacy equipment". If former electronic technologists were only needed in order to care for outmoded electronic equipment, an educational requirement in electronics would not be necessary to be employed in an FSITP position. If such equipment was so outdated, new courses in electronics technology would likely not even address the needs of the outdated equipment used by the DFAIT. Further, the requirement for electronic technologists is also fundamental to the work in telecommunications that is a necessary component of the FSITP position.

In further response to the intervener's submissions regarding the training course from Nova Scotia Community College, the applicant submits that this evidence was led in order to demonstrate that the courses for electronic engineering technology offered in community colleges would be equivalent to the entry requirement for an FSITP position as shown in the Statement of Qualifications (Exhibit A-4), and to demonstrate the types of training given in those courses. The course description from this college was merely an example of those found in other institutions. Moreover, the intervener has not submitted any evidence to support its assertion regarding the marketing for such training in Halifax.

In reference to the intervener's submission that it would be impossible to do the ESMAIT job without broad knowledge of computer systems and theory, the applicant argues that it would be equally as impossible to do the job of an FSITP position without broad knowledge of electronics, as can be demonstrated by both the Task List (Exhibit A-3) and the Statement of Qualifications of the FSITP position (Exhibit A-4).

The applicant submits, regarding paragraph 18 of the respondent's submissions, that both the Statement of Qualifications (Exhibit A-4) and the requirements for programs of the Nova Scotia Community College serve to demonstrate not that the FSITP position is a combination of both the EL and the CS groups, but that the electronic technologists skills are equally as valuable to the FSITP position as computer knowledge. This, taken into consideration with the primary duties of the FSITP position, which was formerly performed by electronic technologists, and the fact that

they were already substantively trained to perform duties of the FSITP position, are key in determining which group is most appropriate.

The applicant does not dispute the employer's ability and right to organize its workplace; however, the applicant submits that the employer in the ESMAIT project has effectively wrongly classified the positions of the FSITP under the CS group definition.

For these reasons, and those submitted in the original written argument, the applicant submits that it has met its burden of proving that the FSITP position is wrongly classified as a CS group definition and would be better suited under the EL group definition.

Reasons

[57] The applicant is seeking a declaration from the Board that the "affected employees reclassified into the CS Group pursuant to the implementation of DFAIT's ESMAIT project are more properly included in the EL Group."

[58] The responsibility to determine membership in bargaining units rests with the Board. Section 34 of the *PSSRA* reads as follows:

> *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.*

[59] The provision in the *PSLRA* is identical in intent, although worded differently:

> *58. On application by the employer or the employee organization affected, the Board must determine every question that arises as to whether any employee or class of employees is included in a bargaining unit determined by the Board to constitute a unit appropriate for collective bargaining, or is included in any other unit.*

[60] It has been well established in Board jurisprudence that the Board cannot involve itself in the classification process. As stated in *Federal Government Dockyards Trades and Labour Council (Esquimalt),v. Treasury Board* (*supra*):

> […]

> *… 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 prescribed in the group definition…*
>
> *In making its determination…, 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… 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.*
>
> […]

[61] In this case, the Board is required to look at the primary duties of the FSITP position and compare those duties with the duties set out in the group definitions for the EL and CS groups. Where those primary duties best fit will determine what the appropriate bargaining unit is. In *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2001 PSSRB 71, the Board referred to determining the "pith and substance" of the functions or their core duties. The jurisprudence has also referred to the occupational category definition that is the "best fit" for the duties (*International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2000 PSSRB 52, and *Communications, Energy and Paperworkers Union of Canada v. House of Commons*, 2000 PSSRB 108).

[62] The purpose of an appropriate bargaining unit analysis pursuant to the *PSLRA* is not to interfere with the employer's right to determine its organizational structure nor to second guess the classification of the positions.

[63] In its application, the applicant describes the class of employees for whom it is making the application as:

> *Employees occupying the positions of…FSITP employed with the DFAIT who are presently included in the…CS Group and were formerly included in the…EL Group.*

[64] The applicant requests in its application a declaration that the affected employees reclassified into the CS group pursuant to the implementation of the ESMAIT project are more properly included in the EL group. The application also

states that a determination that the affected employees are more appropriately in the EL group will "simply cause a return to the status quo as existed prior to the recent reclassification". It is possible to interpret the applicant's approach, as set out in its application, as requiring a return to the former classification for its former bargaining unit members (ELs) only. Such an interpretation is problematic, as this would not only interfere with the right of the employer to classify positions but would also interfere with the employer's right to determine the organization of the workplace. However, in its written submissions, the applicant recognizes that the role of the Board is to determine whether the duties of the FSITP position are properly included in the CS group or are a better fit within the EL group. In its conclusion in its written submissions, the applicant submits that "employees performing duties in the FSITP positions are performing the primary duties found in the EL group definition and would more properly be included in the applicant's bargaining unit." In light of these comments in its written submissions, I have interpreted the application as one that applies to all employees in the FSITP position, not just those who were formerly in the EL classification.

[65] There was some suggestion at the hearing and in the submissions of the intervener that CS positions offered better pay and opportunities for advancement than EL positions. There was no evidence to support such a sweeping generalization. In any event, these are irrelevant factors.

[66] There was a dispute in the written submissions as to whether the EL employees were reclassified or appointed to the FSITP position. The mechanism used to effect the change in occupational group for these employees is not relevant to this application. The starting point for the analysis is the current duties being performed by those in the FSITP position.

[67] The evidence was clear that the new FSITP position was an amalgamation of the functions formerly performed by those in the EL group and those in the CS group at the DFAIT. It is, therefore, understandable that one can see elements of each group definition in the new FSITP position. Group definitions are general descriptions of a range of jobs and this can lead to conflict when, as is the case here, elements of both group definitions appear in the same job description. However, the role of the Board is not to determine whether the positions are properly classified. Rather, the Board's responsibility is to assess the evidence presented concerning the duties of the position

and determine in which occupational group it is best suited (see *Professional Institute of the Public Service of Canada v. Treasury Board*, 2001 PSSRB 68).

[68] The Task List (Exhibit A-4) was the subject of much testimony. First, I note that there was no direct evidence that the duties performed in the FSITP position included all those set out in the Task List. The Task List represents the expectations of the employer with regard to the duties of the position. I accept, however, that the Task List likely captures the range of duties expected of someone in an FSITP position. Secondly, an accounting of each duty and its original classification (CS or EL) does not necessarily capture the "pith and substance" of the actual duties being performed. There was no evidence led by the applicant as to how often each duty was performed or the proportion of time spent on duties that were formerly EL duties. Mr. Boggs testified that the Task List does not capture the amount of time that would be spent on each task. There was no evidence to counter this.

[69] In order to determine the "best fit" for the FSITP position, it is necessary to closely examine the group definitions and the relevant inclusions and exclusions.

[70] The EL 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…." It is clear from the evidence that, with respect to the FSITP position, there is little or no work involved in the designing of electronic equipment, and very little in the way of construction of electronic equipment. The duties of the FSITP position do involve the installation, inspection, maintenance and repair of electronic equipment and systems. Most of the inclusions for the EL group are not relevant for the FSITP position. Paragraph five of the inclusions is largely a repetition of the definition, with the addition of "modification" of electronic equipment, systems or facilities. There are some duties of the FSITP that involve the modification of equipment.

[71] The exclusions for the EL group include positions "whose primary purpose is included in the definition of any other group". The other exclusions are not relevant for the FSITP position.

[72] The CS group comprises positions that are "primarily involved in the application of computer systems knowledge to the planning, development, installation and maintenance of information technology processing systems…" It is clear from the

evidence that there is very little planning or development of IT processing systems involved in the FSITP position. The duties of the FSITP position do involve the installation and maintenance of IT processing systems. The following inclusions for the CS group definition are also relevant to the FSITP position:

> 1. *the conduct of analyses and design and programming activities for the development, implementation and maintenance of administrative, scientific and technological information processing system; and the customization and maintenance of generalized application software and system software packages;*
>
> 2. *the conduct and control of emergency repairs to application and system software;*
>
> 3. *the analysis and design of business systems and supporting infrastructures and the construction and maintenance of the related software;*
>
> 4. *the design, implementation, installation and servicing of databases and database software, the control of the integrity, security and modification of the databases and the provision of database recovery/backup facilities;*
>
> 5. *the capacity management, configuration, performance measurement and optimization of hardware, software and network systems;*

[73] To a lesser extent, the following inclusions for the CS group also apply to the FSITP position*:*

> 8. *the provision of advice and consultation on information technology processing systems, facilities and applications including the evaluation of the technical security of these systems;*
>
> 9. *the conduct of planning and research into existing and future information technology processing systems capacity, capability, applications and requirements;*

[74] The exclusions for the CS group that are relevant include those positions whose primary purpose is included in the definition of any other group, as well as those in which the following activities is of primary importance: "the planning, design, construction and maintenance of physical equipment and systems (electrical,

electronic and electro-mechanical)." The applicant has raised the issue of the CS exclusion for the maintenance of physical equipment. While it is the case that the duties of the FSITP involve some aspects of the maintenance of physical equipment, this is not the main or primary function of this position.

[75] The main duties of the FSITP position are set out in paragraph 33 of this decision. There was only one witness (Mr. Tierney) who was in a substantive FSITP position (in other words, not in an acting FSITP position). The evidence of duties performed by those who are in the substantive FSITP position shows that the key activities section of the work description (Exhibit A-1, tab N) captures the full range of duties performed. It is clear from the evidence that the duties of the FSITP position include elements of both group definitions. There are duties itemized that involve the repair and maintenance of electronic equipment, duties that would fall squarely within the EL group definition. However, the overall duties listed have more of a focus on desktop, software and systems installation, maintenance and "troubleshooting", which is squarely within the CS group definition.

[76] It is true, and conceded by the employer, that there are a number of employees who are in acting FSITP positions who are not performing any of the new duties; in other words, who are still only performing the duties that they performed when they were classified in the EL group (including Mr. Carter). This was explained by the employer as necessary to maintain employee morale, since the performance of the new duties requires appropriate training, which cannot be offered to all employees at once. At first examination, this poses some interesting questions about the merits of acting FSITP employees being included in a CS bargaining unit, considering that they are, at this time, only performing their former EL duties. However, I find that the application is best understood as being aimed at that class of employees who are performing the new duties contained in the FSITP work description (in other words, those who have been appointed to a substantive FSITP position after having successfully completed the required training). The applicant did not submit that those in an acting FSITP position should be treated differently than those employees who are in the substantive FSITP position. The issue of whether these acting employees meet the collective agreement requirements for receiving acting pay is not before the Board.

[77] In my view, looking at the totality of the duties of the FSITP position, on balance, the CS group definition is the better fit. I find that the primary duties of the FSITP position come within the duties described in the CS group definition.

[78] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page.)

Order

[79] The application is dismissed.

November 2, 2005.

Ian R. Mackenzie,
Vice-Chairperson