

Date: 20131101

File: 547-02-22

Citation: 2013 PSLRB 134

*Public Service
Labour Relations Act*



Before a panel of the Public
Service Labour Relations Board

BETWEEN

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2228

Applicant

and

TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA

Respondents

Indexed as

*International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board of
Canada and the Public Service Alliance of Canada*

In the matter of an application, under section 58 of the *Public Service Labour Relations Act*, for a determination of membership of an employee or a class of employees in a bargaining unit

REASONS FOR DECISION

Before: David Olsen, a panel of the Public Service Labour Relations Board

For the Applicant: James Shields

For the Respondents: Christine Diguer for the Treasury Board and Michael Fisher for the Public Service Alliance of Canada

Heard at Ottawa, Ontario,
January 14, 15 and 16, 2013.

REASONS FOR DECISION

I. Application before the Board

[1] On November 4, 2010, the applicant, the International Brotherhood of Electrical Workers, Local 2228 (IBEW), made an application pursuant to section 58 of the *Public Service Labour Relations Act* for a declaration that a position in the Department of National Defence with the title deputy aircraft engineering officer, CC 115 and CC 138 fleets, placed in the Technical Services Group pursuant to the staffing action of the “Department of the Environment” [I understand this reference to likely be an error as the present application is clearly related to a staffing action within the Department of National Defence], is more properly included in the Electronics Group, for which the IBEW local 2228 is the certified bargaining agent.

[2] On February 17, 2010, the Public Service Alliance of Canada (PSAC), as the current bargaining agent for the subject positions, requested party status. On March 16, 2011, the Board granted the request.

[3] Both the employer and the PSAC opposed the present application.

[4] At the commencement of the hearing, counsel for the applicant stated that the application concerned one position, that of the deputy aircraft engineering officer, CC 115 and CC 138 fleets.

[5] The applicant filed an exhibit book containing five exhibits and called one witness to support its case. The employer called one witness, and the respondent PSAC called no witnesses.

II. Summary of the evidence

A. Background

[6] The Treasury Board, exercising its power under the *Public Service Reform Act*, S.C. 1992, c. 54 (*PSRA*), specified and defined groups of employees employed in the public service for the purposes of collective bargaining. The groups of employees were specified and defined according to the duties and responsibilities of positions.

[7] The Treasury Board, pursuant to section 101 of the *PSRA*, specified and defined the occupational group known as the Electronics Group, effective March 18, 1999, notice of which was published in the *Canada Gazette* on March 27, 1999. The Public Service Staff Relations Board (“the former Board”) certified the International

Brotherhood of Electrical Workers, Local 2228, as the bargaining agent for all of the employees in the Electronics Group on May 11, 1999.

[8] Similarly, the Treasury Board, pursuant to section 101 of the *PSRA*, specified and defined the occupational group known as the Technical Services Group, effective March 18, 1999, notice of which was published in the *Canada Gazette* on March 27, 1999. The Technical Services Group was composed of six existing bargaining units, namely, Technical Inspection, Photography, Primary Products Inspection, General Technical, Engineering and Scientific Support, and Drafting and Illustration. The former Board, in its decision dated June 10, 1999, amalgamated the six bargaining units into one bargaining unit, the Technical Services Group bargaining unit. The former Board in that decision confirmed the certification of the PSAC as the bargaining agent for the employees in the bargaining unit.

[9] The Treasury Board defined the occupational groups in the following manner:

Electronics Group Definition

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 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.

...

Technical Services Group Definition

The Technical Services Group comprises positions that are primarily involved in the performance, inspection and leadership of skilled technical 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 planning, design and making of maps, charts, drawings, illustrations and art work;*
2. *the design of three-dimensional exhibits or displays within a predetermined budget and pre-selected theme;*
3. *the conduct of analytical, experimental or investigative activities in the natural, physical and applied sciences; the preparation, inspection, measurement and analysis of biological, chemical and physical substances and materials; the design, construction, modification and assessment of technical systems and equipment or the calibration, maintenance and operation of instruments and apparatus used for these purposes; and the observation, calculation, recording and the interpretation, presentation and reporting of results of tests or analyses, including:*
 - (a) *the performance of activities involving the application of the principles, methods, and techniques of engineering technology and a practical knowledge of the construction, application, properties, operation and limitations of engineering or surveying systems, processes, structures, buildings or materials, and machines or devices;*
 - (b) *the planning of approaches, the development or selection and application of methods and techniques, including computer software, to conduct analytical, experimental or investigative activities; the evaluation and interpretation of results; and the preparation of technical reports;*
 - (c) *the observation and recording of events and the analysis of information relating to such fields as meteorology, hydrography, or oceanography and the presentation of the results of such studies; and the provision of data and information relating to meteorology;*
 - (d) *the monitoring and investigating of environmental hazards or the provision of advice on those issues impacting upon compliance with public health legislation; and*
 - (e) *the design, development or application of tests, procedures and techniques in support of the diagnosis, treatment and prevention of human and animal diseases and physical conditions;*
4. *the application of statutes, regulations and standards affecting agricultural, fishery and forest products;*
5. *the capture and development of images involving the operation and use of cameras, accessories and photographic processing and reproduction equipment;*

6. *the operation of television cameras and video recording systems and equipment;*
7. *the inspection and evaluation of quality assurance systems, processes, equipment, products, materials and associated components including electronic equipment used in trade measurement; the development, recommendation or enforcement of statutes, regulations, standards, specifications or quality assurance policies, procedures and techniques; and the investigation of accidents, defects and/or disputes;*
8. *the construction and repair of prostheses and orthoses;*
9. *the writing of standards, specifications, procedures or manuals related to the above activities;*
10. *the performance of other technical functions not included above; and*
11. *the planning, development and conduct of training in, or the leadership of, any of the above activities.*

Exclusions

Positions excluded from the Technical Services 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 planning, conduct or evaluation of control, mapping or charting surveys, and the planning or conduct of legal surveys of real property;*
2. *the planning, design, construction or maintenance of physical or chemical processes, systems, structures or equipment; and the development or application of engineering standards or procedures;*
3. *the performance of manual tasks such as cleaning laboratory equipment, assisting in morgue and autopsy tasks, and the care and feeding of laboratory animals;*
4. *the performance of administrative activities such as program, human resources or financial management and planning that do not require the application of principles outlined in the inclusions; and the administrative management of buildings, grounds and associated facilities;*
5. *the conduct of experimental, investigative or research and development work in the field of electronics;*

6. *the leadership of activities related to maintenance and repair functions not requiring knowledge identified in the inclusions;*

7. *the operation of duplicating or reproduction machines, motion picture projection machines and accessories and process cameras in support of an offset printing or duplicating process;*

8. *the planning, development, installation and maintenance of information technology and processing systems to manage, administer or support government programs and activities; and*

9. *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.*

Also excluded are positions in which experience as an aircraft pilot and a valid pilot's license are mandatory.

III. Summary of the evidence

A. Pierre Côté

[10] Mr. Pierre Côté testified on behalf of the applicant. Mr. Côté is employed by the Department of National Defence in the position of deputy aircraft engineering officer, CC 115 and CC 138 fleets.

[11] By way of background, Mr. Côté spent 29 years in the military prior to applying for a position in the public service in 2008. While in the military, Mr. Côté became a radar technician in or about 1982-83. He then became a supervisor responsible for radar technicians. His trade was restructured, and he became an avionics technician and supervisor.

[12] As a supervisor, he assumed responsibility for production management in aircraft maintenance. His duties included responsibility for second-line maintenance on the CF18 aircraft at the DND facility in Bagotville, Québec.

[13] He was subsequently transferred to the position of deputy maintenance aircraft officer and assumed responsibility for the first-line maintenance of the CF-18 aircraft. In this position, he became responsible for the lifecycle for avionics equipment on the CF-18.

[14] The avionics equipment included fire control radar identification equipment utilized to identify aircraft and targets and radar altimeters.

[15] He testified that the meaning of the term “avionics,” as used in the Department of National Defence, is a term used to describe navigation and communications equipment. This equipment is mostly electronics, although some of the equipment might be electromechanical.

[16] The final position that Mr. Côté held in the Department of National Defence was that of the career manager for trade postings in the department.

[17] He joined the public service in April 2008 as an EL-06. He was hired to work on the frigate life extension project. His duties were to ensure that every engineering change in the refit had the proper logistic support. He had overall responsibility for the integrated logistic support, which required him to ensure that all of the right pieces of the puzzle were in place to support the modifications, including training the technicians on the new systems, ensuring that all drawing packages showing how the equipment was installed were maintained, and ensuring that all tools and test equipment were purchased to support the modifications.

[18] In September 2010, he was appointed to his current position as deputy aircraft engineering officer, CC 115 and CC 138 fleets, which position is classified as an EG-07.

[19] He testified that the work description dated April 8, 2010 described the duties of his position. He identified the organization chart for his department.

[20] He described the electronics equipment and systems that he was responsible for maintaining for the Buffalo and Twin Otter aircraft fleets. The equipment included all radios and all satellite radios used for communication and all navigation systems, including GPS (global positioning systems), AHRS (altitude and heading reference systems), Gyro systems, ILS (instrument landing systems instrumentation) and VOR (omnidirectional radio range) instrumentation radio navigation systems.

[21] He is also responsible for the maintenance of the air data computers that indicate the speed of the aircraft, the systems that indicate the altitude and headings of the aircraft, the flight data recorder, the cockpit voice recorder, the emergency beacon, as well as all standby instrumentation for use in the case of emergency.

[22] He is also responsible for the intercom system on board the aircraft, which is integrated with the radio.

[23] He was asked whether he was involved in design work with respect to the electronics equipment. He stated that when going for an avionics upgrade on the Twin Otter, his job as a project manager was to work with the contractor on modifications. His job was to approve the primary design for the upgrade, and he was also responsible for a review of the deliverables, including the technical drawing package for the certification of the aircraft for airworthiness.

[24] The upgrade on the Twin Otter included a review of all legacy communications and navigation equipment and instrumentation. The systems were upgraded with modern technology, going from 1960s technology to 2000-plus electronics technology.

[25] His role in the design work is to review and approve a prototype. He looks at the proposed modification to ensure that it is a sound proposal. He examines the human factor in terms of the location of the instrumentation in the cockpit. He reviews the technical drawing package that includes all of the electrical connections involved in the modification as well as all of the avionics databases that are interconnected.

[26] Nothing can be implemented without certification for airworthiness.

[27] He also reviews the modification to ensure it does not affect the aircraft structure. He also ensures that the modification does not create electromagnetic interference with the engine.

[28] Every aircraft has a standard established by the manufacturer. The Federal Aviation Administration standards for aircraft are developed with regulators.

[29] Mr. Côté's duties do not involve the construction of systems, as they are bought off the shelf, but he is involved in the integration and installation of the electronic equipment. As the project manager, he is responsible for ensuring that the project is on time and on schedule and that all deliverables are all OEM (original equipment manufacturer) approved.

[30] Mr. Côté's role is to ensure that all of the necessary requirements are put into a statement of work with the funding available. Once the statement of work has been completed and approved, his job is then to work with the contractor on the day-to-day

implementation of the statement of work to resolve technical issues. He ensures that the installation is in accordance with the original equipment manufacturers standards. He ensures that all of the electronics are properly installed. He also ensures that the contractor complies with the Department of National Defence wiring regulations.

[31] He has a significant role in project management. If the department does not have the necessary expertise, he must obtain support from external agencies. For some of the deliverables, the department has the expertise to approve them. The department has the expertise internally to approve the drawing packages for the electronics wiring diagrams.

[32] His involvement in the (ILS) instrument landing systems instrumentation program includes reviewing the planned training packages for technicians, ensuring that support parts are available, and ensuring that tools and test equipment are available, as well as ensuring that all drawings for parts are available to perform the necessary maintenance on the systems.

[33] He receives proposals from contractors for the maintenance of the systems. He develops and approves maintenance manuals, updates parts lists, and develops and approves part of the end-service support.

[34] He updates information pertaining to the weight and balance of the various aircraft to ensure that the installation of new equipment has not affected the centre of gravity.

[35] His role with respect to inspecting and testing electronic equipment is to put a maintenance plan in place. If there are problems, it may be necessary to go back and modify the maintenance plan by seeking external support or arranging for testing to be performed.

[36] He has responsibility with respect to the conduct of maintenance reviews, which he performs with the contractors, and with the operating squadrons, which are involved in technical reviews.

[37] He described the difference between first- and second-line maintenance. First-line maintenance is where you change a part of a system. Second-line maintenance is where you repair a component. The department employs the necessary personnel to perform second-line maintenance.

[38] He was asked whether he had a role in the development of standards. Most standards in the aircraft industry already exist. His role is to select the appropriate standard and to implement it. When an aircraft modification is undertaken, the standards are reviewed to determine the appropriate approach.

[39] In a proposed modification to a communication system, his role is to develop a base for certification. He examines all of the relevant standards to provide regulatory review and approval.

[40] With respect to training of technicians on electronic equipment, his role is to provide training to the initial cadre of technicians, who in turn become the trainers who train technicians down the road. If there is a training package developed by an outside agency, he reviews the package to ensure that all of the teaching points are present. The teaching requirements must line up with the maintenance plan.

[41] He identified the work description dated June 17, 2008 as the work description for his predecessor, Mr. Hedley Ledrew. He testified that the key activities in the work description of his predecessor were similar to his current work description.

[42] He was asked what percentage of his time was devoted to avionics. He testified that since September of 2010, 95% of his time has been devoted to an avionics upgrade on the Twin Otter aircraft and the Buffalo aircraft. The remaining 5% of his time has been related to finance management, control systems and other related duties.

[43] In cross-examination, he acknowledged that as he progressed in the military, he learned more than one trade beyond avionics.

[44] He acknowledged that he has authorized/approved maintenance changes under the *Aeronautics Act* to aircraft engines. He stated that in those roles, he supervised other staff doing the mechanical approvals.

[45] He acknowledged that when he applied for the position, he knew that it was classified as an EG. He acknowledged that he had not grieved the accuracy of the job description.

[46] The employer called Captain Pinkie as a witness.

B. Captain Pinkie

[47] Captain Pinkie has spent 34 years in the military. He initially served in the army and subsequently became an aviation technician in the air force. In 2002, he was commissioned as an aerospace engineering officer. Between 2004 and 2007, he was employed at the Directorate of Technical Airworthiness.

[48] In July 2007, he was posted as the aircraft engineering officer for the Buffalo and Twin Otter fleets. This section is a technical organization for the air force and is responsible for two distinct aircraft fleets, the Buffalo Twin otter and the old Labrador fleet.

[49] In the fall of 2012, he was posted to another major project division, concerning the Hercules aircraft.

[50] Captain Pinkie completed an official aerospace engineering course at Canadian Forces Base Borden. Prior to receiving his commission, he worked in all trades, servicing the Buffalo aircraft.

[51] He described the organizational chart for the Department of National Defence sub-organization entitled the “Director General Aerospace Equipment and Program Management,” dated April 10, 2012. The organizational chart depicts three hierarchical columns. The left-hand column depicts those personnel responsible for the maintenance of the Griffin utility helicopter fleet. The middle column depicts those personnel responsible for the Cormorant aircraft fleet, and the right-hand column depicts those personnel responsible for the Buffalo and Twin Otter aircraft fleets.

[52] The right-hand column is in turn split into two sub-columns reporting to a major (engineering officer). Immediately below the major (engineering officer) on the left-hand sub-column is the position of captain Pinkie, and immediately below the major (engineering officer) on the right-hand side column is Mr. Côté’s EG-07 position. Immediately below and reporting to Mr. Côté’s position on the chart is an EL-06 position.

[53] Captain Pinkie testified that in 2007 the previous incumbent of Mr. Côté’s position, Mr. Hedley Ledrew, was below his position on the organization chart.

[54] Capt. Pinkie testified that his staff do not do the actual work on the aircraft but rather review the paperwork. More complex work may involve going directly to the manufacturer.

[55] There is a difference in how the work is done in each unit. The Griffin relies on a contractor for maintenance on account of its weapons systems. The organization, however, is responsible for the maintenance for the Buffalo and Twin Otter aircraft fleets.

[56] The prime contractor, Kelowna, performed the major overhaul of the Buffalo aircraft fleet and performs the repairs that the organization cannot do. There are also engine contracts with General Electric. There is a contract with DAC of Montréal, which overhauls the engines on the Buffalo aircraft. Pratt and Whitney look after the engines on the Twin Otter aircraft. IMP, based in Halifax, takes care of the majority of the publications. Certain components for these fleets are piggybacked on other aircraft to take advantage of economies of scale.

[57] Mr. Hedley Ledrew was a long-time public servant who had worked in the section for many years. In 2007, he approached Captain Pinkie, seeking to review the classification of his position due to his time in the position and his skill level. His skill level and qualifications were equivalent to that of an aircraft engineering officer.

[58] This position was classified as an EG-07. He was seeking that the position be classified as an EG-08 as he claimed there had been scope creep in his job as a supervisor.

[59] His work description was revised and was submitted for reclassification. A classification board reviewed the revised work description and concluded that it was properly classified as an EG-07 position. Mr. Ledrew had previously asked that his position be revised, which had also been denied. When his request for a reclassification of his position was denied, he retired.

[60] At or about the same time, the director of Air Requirements learned that the department had allocated a significant sum of money to do an avionics upgrade to the Buffalo Aircraft and Twin Otter fleets. Both planes had been due to retire in 2010.

[61] The branch needed manpower for the new project. A major Butcher was posted into the section in 2009, which helped to alleviate the workload.

[62] The branch contemplated reclassifying Mr. Ledrew's EG-07 position to an ENG-04 position as there was no engineering capability in the section which would allow the section to do avionics work. Management said that it would take too long to reclassify the position and instructed the branch to staff the position as an EG-07.

[63] Captain Pinkie did not consider classifying the position an EL position because he was looking for a broad-based knowledge and breadth of experience across the aircraft engineering spectrum. His rationale was that when he was replaced, the branch would have someone who had a corporate knowledge of the section.

[64] Before the avionics review of the Buffalo and the Twin Otter aircraft, Mr. Ledrew was doing both avionics and aviation reviews, involving standard repairs and replacement items. As both aircraft were on the retirement block, he wanted this position to have the knowledge over both aviation and avionics to take the section through to final retirement of the aircraft.

[65] Military personnel (officers) rotate out of the section after serving between three and five years. The department has hired a deputy weapon systems manager, who assists the business manager. This person holds the rank of a Lieutenant Colonel and holds the financial budgets.

[66] There is another public servant in the organization whose position is classified as an EL-06. This position reports to Mr. Côté.

[67] The previous incumbent of Mr. Côté's position had signing authority with respect to both avionics and aviation projects and provided continuity in the section. That is why Capt. Pinkie sought to reclassify Mr. Côté's position.

[68] When the branch sought to staff the vacant EG-07 position, they looked for someone primarily to assist with avionics but also someone with a background who could assume management responsibility when an officer was rotated out. The branch was looking for a senior non-commissioned officer with a background in avionics or a retired aircraft engineering officer.

[69] There were three candidates for the position, all with an avionics and a military background. One of the candidates withdrew. The two remaining candidates were successful on the initial test and interview. It was a point-rating system, and

Mr. Côté was the successful candidate primarily because he had project management experience.

[70] He acknowledged that Mr. Côté is managing the project upgrade for the Buffalo and Twin Otter aircraft and acknowledged that he needed a manager with avionics experience to fill that role.

[71] He stated, however, that as a manager, you rely on people reporting to you for their technical skills. He stated that there are weight and balance issues and structural issues that do not have to do with avionics but with the fitness of the aircraft. There are a lot of avionics, but it is also critical that the position oversees applicable sub-directorate technical and airworthiness and engineering support.

[72] The branch wanted a technologist with expertise in avionics and an understanding of how these systems would integrate. In his view, the organization was too small to hire into a specialized field.

[73] After the position was staffed, a major was posted into the branch as aircraft engineering officer. This allowed Captain Pinkie to look after aviation issues and Mr. Côté, avionics. Subsequently, a Capt. Fisher took over as responsible for aviation and Mr. Côté, avionics. Capt. Fisher was to be replaced subsequent to the hearing by someone with a background in aerospace aviation.

[74] During cross-examination, Captain Pinkie acknowledged that Mr. Côté during his testimony described accurately the work that he was performing in the branch.

IV. Summary of the arguments

A. Argument of the applicant

[75] All of these cases are fact driven. The affected employee's position should properly be included in the Electronics (EL) Group as opposed to the Technical Services Group (EG). The critical duties performed by Mr. Côté are primarily duties in the EL group.

[76] Section 58 of the *PSLRA* states as follows:

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.

[77] The Federal Court of Appeal, in *Public Service Alliance of Canada v. Canadian Federal Pilots Association and Attorney General of Canada*, 2009 FCA 223, at paragraph 64, has stated that:

[t]he text of section 58 contains no explicit direction about the basis on which the Board “must determine every question that arises as to whether an employee . . . is included in the bargaining unit determined by the Board to constitute the unit appropriate for collective bargaining”.

[78] In determining whether a position falls within a competing bargaining unit, the Board is not bound by the classification assigned to the position by the employer.

[79] The Board must determine whether the primary duties of the position fall within one occupational group or another.

[80] In the *Federal Government Dockyards Trades v. Treasury Board (National Defence)*, [1984] C.P.S.S.R.B. No. 74, the former Board stated at paragraphs 31 and 32:

31. It follows that, in making a determination under section 33, the Board cannot involve itself in the classification process. Rather, the authority of the Board is restricted to making a determination on the basis of a comparison of the duties actually performed by the employees and the duties described in the group definition referred to in the certificate of the Bargaining Agent for the bargaining unit concerned.

32. In making its determination in the present application, the Board is called on to examine the duties that the employees actually perform and to compare those duties with the duties set out in the group definitions of the General Labour and Trades Group and the Ship Repair Group. The Board would then make its determination on the basis of whether the primary duties performed by the employees come within the duties described in the General Labour and Trades Group definition or within the duties described in the Ship Repair Group definition. This determination is not dependent on the classification that the Treasury Board has seen fit to give to the positions in which the two employees are employed.

[81] The evidence of Captain Pinkie with respect to the reclassification request for the previous incumbent's position is all window dressing and irrelevant. The Board is to look at the primary duties of the position to determine the best fit.

[82] The Board must determine the best fit between the current bargaining unit and the proposed bargaining unit using the primary duties actually performed together with community of interest criteria. See *Canadian Federal Pilots Association v. Treasury Board*, 2008 PSLRB 42, at page 2, paragraph 9.

[83] The intervener, as bargaining agent for the position, did not call any evidence on the primary duties performed or the presence of any community of interest criteria between the incumbent and the current bargaining unit.

[84] There is no need for a change in duties and responsibilities for the Board to find that an employee more properly falls within a bargaining unit different from that identified by his formal classification. See *Public Service Alliance of Canada v. Treasury Board (Department of National Defence)*, [1993] C.P.S.S.R.B. No. 134.

[85] The goal should be to determine the best fit in order to place these positions into their proper bargaining units and not necessarily a perfect fit. See *Canadian Federal Pilots Association v. Treasury Board*, 2008 PSLRB 42.

[86] These various tests have been applied consistently by the Board. The matter must be resolved by examining the duties of the employees concerned against the relevant group definitions. See *Public Service Alliance of Canada v. Treasury Board*, [1989] C.P.S.S.R.B. No. 199, at page 20.

[87] The Board has recognized that you cannot have a position's duties and responsibilities fall within more than one group definition. The Board will resort to established methodology to assign the position to the bargaining unit comprising the duties most similar to the position in question.

[88] The Board has held that one looks at the job description to determine the primary purpose of the job in question, including the job title, client service results and the tasks included in other key activities.

[89] Captain Pinkie drafted the advertisement for the position, which set out the merit criteria and conditions of employment. Wherever the word "avionics" is used, it

is referring to electronics. One of the essential qualifications recited in the advertisement for the position is that the incumbent have Canadian Forces avionics training as well as the ability to evaluate avionics data to determine conformance to acceptable standards. Mr. Côté testified about airworthiness certification and the necessity to use avionics data to ensure compliance. Other qualifications relate to circumstances where avionics technology is to be applied. The asset qualifications refer expressly to the incumbent having experience working on the Buffalo and Twin Otter avionics systems.

[90] Three of the seven asset qualifications refer expressly to experience with avionics systems. Based solely on qualifications recited in the statement of merit criteria, it appears that the position falls within the EL group definition.

[91] Ninety-five percent of the client service results described in the work description for his position are related to providing support for avionics systems as set out in the work description. He was not cross-examined on any of these key activities. He manages major avionics and electronic projects on both aircraft fleets. He testified that his duties and responsibilities fall totally within the avionics portion of those fleets.

[92] The preamble to the Electronics Group's definition states that the 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. The list of inclusions refers specifically (5) to the design, construction, installation testing, inspection, maintenance, repair or modification of electronic equipment systems or facilities, including the preparation of related standards. Also of relevance are activities 7, 8, and 9: (7) the planning and delivery of a quality assurance program for electronics 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.

[93] The Technical Services Group excludes positions whose primary purpose is included in the definition of any of the groups or those in which one or more of the following activities is of primary importance: (9) 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.

[94] Captain Pinkie testified that his position was at the same level on the organization chart as Mr. Côté's. Capt. Pinkie's position was responsible for aviation, and Mr. Côté's for avionics. Captain Pinkie acknowledged that the duties described in the job description met the requirements primarily to assist in the avionics work that had to be performed, including the ability to backfill on the aviation side. Both Mr. Côté and Capt. Pinkie agreed that Mr. Côté's responsibilities were split 95% on avionics and 5% on aviation and other. Captain Pinkie acknowledged that once the position was staffed, he looked after the aviation side and Mr. Côté, the avionics.

[95] Mr. Côté described the avionics systems that he worked on, including communication, navigation and anything electronically related to the Buffalo and Twin Otter fleets.

[96] Taking all of the evidence into account, including the documentary and viva voce evidence, Mr. Côté's key activities, duties and responsibilities are with respect to the avionics upgrade of the Buffalo and Twin Otter fleets. His primary role is solely with avionics, and his position should be allocated to the EL bargaining group.

B. Argument of the respondent PSAC

[97] The onus is on the applicant to adduce clear and compelling evidence that Mr. Côté, the deputy engineering officer, does not belong in the Technical Services bargaining unit.

[98] Mr. Côté has been in the position of an EG-07 for two and one-half years. His predecessor, an employee of long-standing, had also been in the position with the same classification.

[99] There is no doubt that the job requires electronics expertise. Mr. Côté was hired on account of his having that expertise.

[100] Captain Pinkie testified that the position requires an extensive range of skills, not just electronics. Mr. Côté acknowledged that as he rose in the ranks of the military, he gained other skills, including knowledge and experience in aviation and in

management. Captain Pinkie testified that Mr. Côté would not be able to do the job without aviation experience, as there is a need to work both sides of the unit.

[101] It is important to examine section 58 in the context of the *Act* as a whole. Section 57 creates a statutory presumption concerning units appropriate for collective bargaining. Subsection 2 mandates the Board to have regard to the employer's classification of persons and positions, including the occupational groups or subgroups, in determining units appropriate for collective bargaining. Mr. Côté's position is classified as an EG, which is an amalgamation of the old Engineering and Scientific Support group. This presumption not only applies on initial certification but also on a review of bargaining units, as reflected in section 70 of the *Act*.

[102] In *Professional Institute of the Public Service of Canada v. Treasury Board*, [2006] C.P.S.L.R.B. No. 63, the Board stated at paragraphs 62 through 66 as follows:

62 The responsibility to determine membership in bargaining units rests with the PSLRB. Under section 58 of the new Act (section 34 of the former Act), parties may, at any time ask that the PSLRB determine to which unit a group of employees would appropriately belong . . .

63 This new Board is also guided by paragraphs 57(2) and 57(3)

. . .

65 The key element and essential purpose behind the determination of the appropriateness of the bargaining unit and of its composition is collective bargaining and representation. For this reason, this Board is guided by the community of interest behind group members, by the duties performed, as well as the employer's determination of occupational groups.

66 The onus is on the applicant to demonstrate that the medical adjudicators' primary duties would better fit within the description of the Health Services group, rather than the Program and Administrative Services group.

[103] It cannot be said that the statutory context and the current classification of the position is irrelevant here. Section 58 requires the Board to make a determination having regard to the duties of Mr. Côté's position, consistent with section 57.

[104] The Technical Services Group definition is very broad, on account of the fact that it is an amalgamation of a number of occupational subgroups. The occupational group is primarily involved in the performance, inspection and leadership of skilled technical activities.

[105] The express inclusion directly relevant to this application is section 3, subparagraph (a), that reads in part:

... the design, construction modification and assessment of technical systems and equipment or the calibration, maintenance and operation of instruments and apparatus used for these purposes . . . including:

(a) the performance of activities involving the application of the principles, methods, and techniques of engineering technology and a practical knowledge of the construction, application, properties, operations and limitations of engineering or surveying systems, processes, structures, buildings or material, and machines or devices

[106] Mr. Côté was hired to oversee the technical modifications of the Buffalo and Twin Otter fleets. His duties included the integrated logistical support to the fleet modifications. The fact that Mr. Côté's evidence focused on avionics is not surprising, given the avionic modifications to the Buffalo fleet. He can and does perform as primary duties both avionics and aviation support to the unit, consistent with his job description. The client services results in the work description refer to his providing support to software and aviation mechanical systems.

[107] The statement of criteria listed in the staffing notification was multidisciplinary, referring to experience in an aerospace engineering environment as well as experience in airworthiness programs, policies and standards. Capt. Pinkie testified that the incumbent required knowledge of both avionics and aviation in order to carry out airworthiness certification activities. He must work with the standards that require knowledge of both disciplines. Mr. Côté acknowledged that he possesses the qualifications for both avionics and aviation and can certify for both aviation and avionics projects.

[108] The job posting requires that he have experience in supervising a diverse technical workforce. The Technical Services Group definition includes responsibility for the planning, development and conduct of training in, or the leadership of, any of the above activities (referring to the list of inclusions in the Technical Services Group

definition). Capt. Pinkie testified that the position is basically that of the project manager for the unit whether on the aviation or the avionics side. Mr. Côté's position requires more than expertise in electronics technology, at least when it comes to providing leadership.

[109] Mr. Côté applied for the position knowing what the duties were.

[110] In *Professional Institute of the Public Service of Canada v. Treasury Board*, [2001] C.P.S.S.R.B. No. 49, a case involving members of the Trade-Marks Opposition Board whose positions were classified in the Program Administration group and who sought a determination that the positions more appropriately belonged in the LA group, the former Board had to deal with a situation where at first glance, the positions fell within two distinct group definitions. The former Board stated as follows:

...

Accordingly, in this matter, the Board must decide upon examination of the primary duties of the TMOB member positions whether they are more properly covered by PA or LA group definitions. Group definitions, by their very nature, are very sketchy and merely give an overall impression of the general nature of the primary duties to be performed in order to be included in any given definition.

Given the generality of group definitions there may arise conflicts with particular positions, as in this case, at least at first glance, appear to fall within two distinct group definitions. The Board's responsibility in such cases is to assess the evidence presented concerning the duties of the position and determine in which occupational group it is best suited. [paragraphs 29 and 30]

...

[111] Having a certain background or trade is not determinative of what bargaining unit the employee should fall into.

[112] The job description is a balance of electronic, mechanical and other supervisory duties.

[113] In *International Brotherhood of Electrical Workers, local 2228 v. Treasury Board*, [2005] C.P.S.L.R.B. No. 142, the Board had to determine the appropriateness of the bargaining unit in a situation where employees who were formally classified in the EL group were assigned to a new position classified in the Computer Systems Group (CS).

[114] The Board stated at paragraph 67 that:

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 [Department of Foreign Affairs and International Trade]. 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

[115] The Board concluded in part at paragraph 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 . . . 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.

The Board in that case concluded that on balance the CS group definition was a better fit and that the primary duties of the position came within the duties described in that group definition.

[116] Mr. Côté testified that the activities that he performs are similar to those set out in the current work description. Captain Pinkie testified that avionics were required for the position because of the upgrade to the aircraft but the position required more than that. He stated that because members of the Forces rotate in and out of their positions every 2 to 3 years, there is a requirement for the public service to manage both the aviation and avionics programs as needed.

[117] The work description indicates that the department needed a generalist. Just as one can find a home for avionics in the work description, one can also find a home for aviation. It may be that at any given time, because of the projects being worked on, a significant amount of time is devoted to avionics; however, the primary purpose of this job is a performance of general duties involving a mixed bag of all engineering work, which more properly falls in the Engineering and Scientific Support Group.

[118] Section 57 of the applicable collective agreement enables employees to demand a complete current list of the duties of their position.

[119] In *Breckenridge v. The Library of Parliament*, [1996] C.P.S.S.R.B. No. 69, a number of employees alleged that their statement of duties was incomplete, contrary to the provisions of the collective agreement, as the employer has not provided a complete and current statement of the duties and responsibilities of the position. The former Board allowed the grievances and stated as follows at paragraph 70, page 7:

The job description, or, to use the expression enshrined in the collective agreement, "the statement of duties and responsibilities," is the cornerstone of the employment relationship between these employees and the Library of Parliament. It is a fundamental, multipurpose document which is referred to with regard to classification, staffing, remuneration, discipline, performance evaluation, identification of language requirements, and career planning. . . .

[120] If Mr. Côté had a problem with his work description that identified EG duties, he could have grieved. He acknowledged that the key activities that he performed were consistent with those set out in the job description. The primary purpose of the position is to manage the project, which involves both electronic and mechanical maintenance of the Twin Otter and Buffalo fleet.

C. Argument of the employer

[121] The employer adopted the argument of the respondent, the Public Service Alliance of Canada. The job description for the position of the deputy aircraft engineering officer sets out the duties for the position. There is no particular emphasis in the description on avionics. The Board must be careful not to cherry pick the qualifications. There are a number of qualifications that are not specific to avionics. It

is not a quantitative analysis. Despite the factual reference to avionics, that does not make it an EL position.

D. Rebuttal of the applicant

[122] When you have a position that looks like it includes a mix of duties of one or more groups, the Board's methodology is to assign the position to the occupational group based on the evidence of the incumbent. We know in this case that Mr. Côté described his duties as being devoted to avionics 95% of the time. He only performs other responsibilities for less than 5% of the time. There was no specific evidence by Mr. Côté; nor was he asked to describe what percentage of the 5% involved aeronautics. In any event, it was minimal.

V. Reasons

[123] The applicant is seeking a declaration from the Board that the position in the Department of National Defence with the title of deputy aircraft engineering officer, CC 115 and CC 138 fleets, placed in the Technical Services Group, is more properly included in the Electronics Group, for which the IBEW local 2228 is a certified bargaining agent. On application by the employer or the employee organization affected, the Board must determine every question that arises as to whether any employee is included in the bargaining unit determined by the Board to constitute a unit appropriate for collective bargaining or is included in any other unit.

[124] Board jurisprudence has clearly established that the Board cannot involve itself in the classification process.

[125] As stated in *Federal Government Dockyards Trades and Labour Council (Esquimalt) v. Treasury Board (National Defence)*, PSSRB File No. 147-02-25 (19840524):

...

31. It follows that, in making a determination . . . the Board cannot involve itself in the classification process. Rather, the authority of the Board is restricted to making a determination on the basis of a comparison of the duties actually performed by the employees and the duties described in the group definition

32. 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 Labor 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.

. . .

[126] In *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2001 PSSRB 71, at paragraph 53, it was expressed another way that it was necessary to determine the raison d'être for the pith and substance of the core duties and functions of the positions.

[127] As in common in these applications, the evidence with respect to Mr. Côté's duties is not significantly in dispute; rather, the factual conclusions and their application to the group definitions are in contention. The Board has reached the following conclusions on the facts.

[128] In September 2010, Mr. Côté was appointed to his position as deputy aircraft engineering officer, CC 115 and CC 138 fleets, which position is classified as an EG-07.

[129] In that position, he is responsible for the maintenance of all of the electronics equipment and systems for the Buffalo and Twin Otter aircraft fleets, as more particularly recited in the review of the evidence.

[130] The work description for Mr. Côté's position was prepared at the urging of his predecessor, Mr. Hedley Ledrew, who was seeking an upward reclassification of the position based on the duties he performed in 2007. The request for reclassification was denied, and Mr. Ledrew retired.

[131] Mr. Ledrew was doing both avionics and aviation reviews involving standard repairs and replacement items. Both of these fleets of planes had been due to be retired in 2010.

[132] At or about the time Mr. Ledrew retired, the director of air requirements learned that the department had allocated a significant sum of money to perform an avionics upgrade to the Buffalo aircraft and Twin Otter fleets.

[133] It was not seriously contested that since his appointment to the position in September of 2010, 95% of his time has been devoted to the avionics upgrade on the Twin Otter aircraft and the Buffalo aircraft. The remaining 5% of his time has been related to finance management control systems and other related duties. Mr. Côté was not asked to describe what percentage of the 5% was devoted to aviation duties.

[134] The Board's responsibility is to assess the evidence presented concerning the duties of the position and determining which occupational group is best suited.

[135] The Respondents argued that section 58 of the *Act* requires the Board to make a determination having regard to the duties of Mr. Côté's position in a manner consistent with section 57 of the *Act*. As the position at issue in this matter is classified as an EG, it follows that the Board's determination that the position is properly included in the Technical Services bargaining unit would be the only conclusion consistent with section 57.

[136] Subsections 57(2) and (3) create a statutory presumption concerning units appropriate for collective bargaining and read as follows:

57. (2) In determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board must have regard to the employer's classification of persons and positions, including the occupational groups or subgroups established by the employer.

(3) The Board must establish bargaining units that are co-extensive with the occupational groups or subgroups established by the employer, unless doing so would not permit satisfactory representation of the employees to be included in a particular bargaining unit and, for that reason, such a unit would not be appropriate for collective bargaining.

[137] This argument was dealt with and rejected by the Federal Court of Appeal in *Public Service Alliance of Canada v. Canadian Federal Pilots Association and Attorney General of Canada*, 2009 FCA 223. The Court states as follows at paragraphs 64 to 66 of its judgment:

[64] The text of section 58 contains no explicit direction about the basis on which the Board “must determine every question that arises as to whether an employee ... is included in a bargaining unit determined by the Board to constitute a unit appropriate for collective bargaining”.

[65] In contrast, when the Board is initially establishing appropriate bargaining units under section 57, or is subsequently reviewing their appropriateness under section 70, it must ensure that bargaining units “are co-extensive with the occupational groups established by the employer”, unless that “would not permit satisfactory representation of the employees to be included in a particular bargaining unit”: subsections 57(3) and 70(2).

[66] In order for the applicants in this case to succeed, they must establish that the Board’s interpretation of section 58 was unreasonable because it did not read into it the above direction contained in subsection 57(3) and 70(2). I appreciate that there may be “tensions between a ‘reclassification’ and a ‘bargaining unit review’”: Christopher Rootham, *Labour and Employment Law in the Federal Public Service* (Toronto: Irwin Law Inc., 2007) at 171 (“Rootham”). Nonetheless, a decision made under section 58 is primarily focussed on whether an employee or class of employees is included in a bargaining unit, not on a comprehensive review of the appropriateness for collective bargaining purposes of an established unit. Hence, it would not seem unreasonable for the Board to decline to read into section 58 the statutory directions that the Board must follow when establishing or reviewing bargaining units under sections 57 and 70. It is always open to PSAC or the employer, or both, to apply to the Board under section 43 for a section 70 bargaining unit review.

[138] Applying the findings of fact that I have set out above to the Electronics Group definition, it is apparent that Mr. Côté devotes approximately 95% of his time to the performance of avionics-related duties. I conclude that the primary duties of the position involve the application of electronics technology to the design, construction, inspection, maintenance and repair of electronic and associated equipment duties, which are expressly set out in the Electronics Group Definition, in its introduction section and at paragraph 5. Furthermore, those duties are specifically excluded from the Technical Services Group Definition, at paragraph 9 of the “Exclusions” section.

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

(The Order appears on the next page)

VI. Order

[140] After reviewing all the evidence, it is my determination that the position titled “Deputy Aircraft Engineering Officer, CC 115 and CC 138 fleets” with the Department of National Defence, is more properly included in the Electronics Group (EL) bargaining unit and as such, the application submitted by the IBEW-2228 is allowed.

November 1, 2013.

**David Olsen,
a panel of the Public Service
Labour Relations Board**