

Date: 20180323

File: 547-02-36

Citation: 2018 FPSLREB 21

*Federal Public Sector Labour
Relations and Employment Board
Act and Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Applicant

and

TREASURY BOARD

Respondent

Indexed as

Canadian Association of Professional Employees v. Treasury Board

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

Before: Stephan J. Bertrand, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Peter Engelmann, counsel

For the Respondent: Sean Kelly, counsel

Decided on the basis of written submissions,
filed August 15 and October 23, 2017.

REASONS FOR DECISION

Application before the Board

[1] An application for the determination of questions of membership in a bargaining unit pursuant to s. 58 of the *Federal Public Sector Labour Relations Act* (“the Act”) was filed by the Canadian Association of Professional Employees (CAPE) on August 15, 2017.

[2] The application filed by CAPE covered employees, other than those who are appointed to rank or reservists, employed at the Royal Canadian Mounted Police (RCMP) occupying positions in the Economics, Social and Research RCMP sub-group (SPS-ESS) of the Special Services occupational group. As the RCMP is listed in Schedule IV of the *Financial Administration Act*, the Treasury Board is the employer within the meaning of the Act. These employees are currently unrepresented. Historically, they were excluded from collective bargaining; however, as a result of the Supreme Court of Canada’s decision in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, as reflected in recent changes to the definition of “employee” in the Act, this group of employees has the right to bargain collectively.

[3] The matter was heard by way of written submissions filed by the parties.

Summary of the evidence

[4] The applicant is the certified bargaining agent for the bargaining unit composed of all employees of the Employer in the Economics and Social Sciences Services Group as defined in Part I of the Canada Gazette of March 27, 1999 (the “bargaining unit”). The applicant requests an order that all employees other than those who are appointed to rank or reservists, occupying positions in the SPS-ESS occupational sub-group at the RCMP are included in the bargaining unit.

[5] The definition for the Economics and Social Sciences Services Group (“EC”) group (Schedule F to the application) is set out as follows:

...

Economics and Social Science Services Group Definition

The Economics and Social Science Services Group comprises positions that are primarily involved in the conduct of surveys, studies and projects in the social sciences; the identification, description and organization of archival, library, museum and gallery materials; the editing of

legislation or the provision of advice on legal problems in specific fields; and the application of a comprehensive knowledge of economics, sociology or statistics to the conduct of economic, socio-economic and sociological research, studies, forecasts and surveys; the research, analysis and evaluation of the economic or sociological effects of departmental or interdepartmental projects, programs and policies; the development, application, analysis and evaluation of statistical and survey methods and systems; and the development, analysis and interpretation of qualitative and quantitative information and socioeconomic policies and recommendations.

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 surveys, studies, projects and tests requiring a practical knowledge of a specialized field such as economics, history, law or psychology and requiring the development of specialized techniques and procedures, or the development and use of related processing applications, or the interpretation of findings;*
- 2. the identification, description, classification, organization and location of archival, gallery, library or museum materials; or the creation, manipulation, verification, analysis and transmission of descriptive records pertaining to such materials, both of which require a practical knowledge of the subject matter;*
- 3. the editing of legislation or the conduct of studies in matters such as land conveyancing, expropriation, litigation and labour relations requiring a practical knowledge of the specific legal area to interpret findings or prepare submissions;*
- 4. the application of a practical knowledge of a specialized field such as economics, history, law or psychology to the use and modification or adaptation of computer systems, utilities or software;*
- 5. the application of a comprehensive knowledge of economics, sociology or statistics to economic, socio-economic or sociological studies, forecasts and surveys in a variety of subject areas in domestic and/or international settings;*
- 6. the application of a comprehensive knowledge of*

economics, sociology or statistics to the development, application and evaluation of statistical and survey methods and indicators for use in natural or social science research projects, or in the planning of surveys and censuses or in the determination of statistical measures and techniques for data analysis and reporting;

- 7. the provision of advice in the fields of economics, sociology and statistics; and*
- 8. the leadership of any of the above activities.*

Exclusions

Positions excluded from the Economics and Social Science 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 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;*
- 2. the collecting, recording, arranging, transmitting and processing of information, the filing and distribution of information holdings, and the direct application of rules and regulations;*
- 3. the planning, development, delivery or management of policies, programs, services or other activities directed to the public or to the Public Service;*
- 4. the explanation, promotion and publication of federal government programs, policies and services;*
- 5. the application of a comprehensive knowledge of mathematics to the development or application of mathematical and analytical methods, including those of mathematical statistics; and*
- 6. the planning, development, delivery and management of economic development policies, programs, services and other activities designed to promote the establishment, growth and improvement of industry, commerce and export trade and the regulation of trade and commerce.*

...

[6] The applicant submitted that the employees in question should fall within its

bargaining unit for the following reasons:

...

25. Employees at the RCMP in the SPS-ESS group and in the EC group currently work side by side performing the identical work for the same pay. They even have an identical Generic Work Description that applies equally to SPS-ESS members and EC members. Attached as Exhibits [sic] I is the Generic Work Description for the position of "Intelligence Analyst" for both the EC and ESS groups.

26. A review of the key activities in this work description, with its focus on research, evaluation and analysis, further confirms that these positions fit within the EC group description.

27. As a result, In light of the similarities and overlap between the key activities and responsibilities as set out in the group description and work description, CAPE submits that the Economics, Social, Research (SPS-ESS) positions properly belong in the Economics and Social Science Services (EC) group, for which it is the bargaining agent.

...

[7] By letter dated October 23, 2017, the respondent indicated that it consented to the application.

Reasons for decision

[8] Section 58 of the Act provides as follows:

Determination of questions of membership in bargaining units

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.

[9] Thus, the responsibility for determining membership in bargaining units rests with the Board. In making its determination, the Board must look at the duties of the positions at issue and compare them with the group definition of the proposed bargaining unit. In this instance, the Board must look at the primary duties of the employees of the SPS-ESS RCMP occupational sub-group and determine whether they

are included in the bargaining unit or whether they are to be included in any other unit.

[10] Members of the SPS-ESS sub-group provide analytical services for the RCMP and the law enforcement community. The description of their key activities, as contained in their work description, which are identical to those performed by members of the bargaining unit, clearly fall squarely within the EC group definition. The uncontradicted evidence before me is that members of the SPS-ESS group and the EC group perform identical work and at the same rates of pay. I find that the applicant has met its burden of establishing that the group of employees subject to the application should be included in the bargaining unit.

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

(The Order appears on the next page)

Order

[12] The application is allowed.

[13] The Board declares that all employees who occupy positions in the Economics, Social and Research (SPS-ESS) RCMP occupational sub-group, other than those who are appointed to rank or reservists, are included in the bargaining unit composed of all employees of the Employer in the Economics and Social Science Services Group as defined in Part I of the Canada Gazette of March 27, 1999.

March 23, 2018.

**Stephan J. Bertrand,
a panel of the Federal Public Sector
Labour Relations and Employment Board**