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*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 October 2 and 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 October 2, 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 Interpreter/Translator RCMP sub-group (SPS-TRL) of the Special Services (SPS) 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 Translation 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-TRL occupational sub-group at the RCMP are included in the bargaining unit.

[5] The definition for the Translation (“TR”) Group is set out as follows:

...

Translation Group Definition

The Translation Group comprises positions that are primarily involved in translation, simultaneous or consecutive interpretation and terminology, and the provision of language advisory services.

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 provision of translation, simultaneous or consecutive interpretation and terminology services;*
- 2. the revision of translated material, including text editing and the verification of the intent of the text;*
- 3. the conduct of terminological and linguistic research;*
- 4. the training or provision of consultative services to translators, interpreters, terminologists and others working in language-related fields;*
- 5. the provision of expert language advisory services; and*
- 6. the leadership of any of the above activities.*

Exclusions

Positions excluded from the Translation Group are those whose primary purpose is included in the definition of any other group or those in which the following activity is of primary importance:

- 1. the explanation, promotion and publication of federal government programs, policies and services.*

...

[6] The applicant submitted that the employees in question should fall within its bargaining unit for the following reasons:

...

23. Employees in SPS-TRL positions do work that is the same and/or substantially similar to work done by employees in TR position in the federal public service. This fact is demonstrated by SPS-TRL work descriptions, which are similar to the TR group definition and TR work descriptions. Attached as Exhibit H are the generic work descriptions for the positions of "Translator" (SPS-TRL-02) and "Senior Translator" (SPS-TRL-03) at the RCMP. Attached as Exhibits I are work descriptions for the positions of "Translator" and "Traducteur ou traductrice conseil," in the Translation

Bureau of the federal public service.

24. For example, the SPS-TRL work description for the position of Translator provides that the main responsibilities include translating French and English text, research to ensure that the translation conveys the intended meaning, and contributing to a Terminology Index. Similarly, the Translator work description for the Translation Bureau provides that translation, revision of the texts and terminology research are key activities. As well, all of these activities fall clearly within the TR group definition.

25. 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 Interpreter-Translator (SPS-TRL) positions properly belong in the Translation (TR) group, for which it is the bargaining agent.

...

[Sic throughout]

[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-TRL 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-TRL sub-group provide translation services in both official languages for the RCMP and the law enforcement community. The description of the main responsibilities of translators and senior translators, as contained in their work descriptions includes translating French and English texts, contributing to and assisting with preparing the Terminology Index, providing translation advice, revising the work of other translators, and supervising a team of translators. These activities fall squarely within the definition of the bargaining unit. It is also noted from the application that the Interpreter/Translator sub-group of the Translation Group at the RCMP has historically been matched for pay purposes to the bargaining unit.

[11] In light of the nature of their work and the community of interest that the employees at issue share with the TR group, 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.

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

(The Order appears on the next page)

Order

[13] The application is allowed.

[14] The Board declares that all employees in the Interpreter/Translator occupational sub-group (SPS-TRL) , other than those who are appointed to rank or reservists, are appropriately included in the bargaining unit composed of all employees of the Employer in the Translation 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**