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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

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BETWEEN

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**

Applicant

and

**TREASURY BOARD**

Respondent

Indexed as

*Professional Institute of the Public Service of Canada 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 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:** Isabelle Roy, counsel

**For the Respondent:** Sean Kelly, counsel

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Decided on the basis of written submissions  
filed May 1 and June 19 and 23, 2017.

### **I. Application before the Board**

[1] The Professional Institute of the Public Service of Canada (“the Institute”) filed an application for the determination of questions of membership in a bargaining unit under s. 58 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *PSLRA*”) on May 1, 2017.

[2] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (“the Act”).

[3] The application filed by the Institute covered employees, other than those appointed to rank or reservists, employed by the Royal Canadian Mounted Police (RCMP) and occupying positions in the Computer Personnel (SPS-CP) RCMP sub-group of the Special Services occupational group. As the RCMP is listed in Schedule IV to the *Financial Administration Act* (R.S.C., 1985, c. F-11), 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, and as reflected in recent changes to the definition of “employee” in the *Act*, this group of employees has the right to collectively bargain.

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

### **II. Background**

[5] The Institute is the certified bargaining agent for the bargaining unit composed of all employees of the employer in the Computer Systems (CS) Group as defined in Part I of the *Canada Gazette* of March 27, 1999 (“the bargaining unit”). The Institute requests an order that all employees who occupy positions in the SPS-CP sub-group of the Special Services occupational group at the RCMP be included in the bargaining unit.

[6] The employer's definition for the CS Group 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.

[7] The Institute submitted that the employees covered by the application fall within the bargaining unit for the following reasons:

...

17. The Computer Personnel (SPS-CP) subgroup of the Special Services (SPS) Occupational Group has historically been matched to the Computer Systems Group, as defined in Part I of the Canada Gazette of March 27, 1999, where the Professional Institute of the Public Service of Canada is the recognized bargaining agent pursuant to the certificate issued on June 1, 1999...

18. *As part of its COE, the RCMP did define, in or around August 27, 2010, employees performing duties in the Computer Personnel (SP-CP) subgroup as those “involved in computer programming, development and/or supervision of related activities. i.e. Computer Programmer”.*

...

[8] By letter dated June 19, 2017, the employer indicated that it did not oppose this application.

### **III. Reasons for decision**

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

*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.*

[10] Thus, the responsibility to determine membership in a bargaining unit rests with the Board. In making its determination, the Board must look at the duties of the employees at issue and compare them with the definition of the bargaining unit. In this instance, the Board must look at the primary duties of the employees who occupy positions in the SPS-CP RCMP occupational sub-group and determine whether they are included in the bargaining unit.

[11] There is no dispute between the parties that the employees who occupy positions in the SPS-CP RCMP occupational sub-group provide computer programming and development services, and the supervision of these activities, for the RCMP. I find that the primary duties of these employees fall within the CS group definition. Accordingly, I find that the Institute has met its burden of establishing that the group of employees covered by the application are 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)*

**IV. Order**

[13] The application is allowed.

[14] The Board declares that all employees who occupy positions in the SPS-CP RCMP occupational sub-group, other than those appointed to rank or reservists, are included in the bargaining unit composed of all employees of the employer in the Computer Services Group as defined in Part I of the *Canada Gazette* of March 27, 1999.

April 13, 2018.

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