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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

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

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

REASONS FOR DECISION

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 Forensic Laboratory and Identification (FLI-FSLS) 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 Applied Science and Patent Examination (SP) Group as defined in Part I of the *Canada Gazette* of August 13, 2005 (“the bargaining unit”). The Institute requests an order that all employees who occupy positions in the FLI-FSLS sub-group of the Special Services occupational group at the RCMP be included in the bargaining unit.

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

...

17. *The **Forensic Laboratory and Identification (FL-FLS)** subgroup of the Special Services (SPS) Occupational Group has historically been matched to the **Applied Science and Patent Examination (SP) Group**, as defined in Part I of the Canada Gazette of August 13, 2005, where the Professional Institute of the Public Service of Canada is the recognized bargaining agent pursuant to the certificate issued on October 12....*
18. *As part of its COE, the RCMP did define, in or around August 27, 2010, employees performing duties in the **Forensic Laboratory and Identification (FL-FLS)** subgroup as those “involved in performing analysis, research and equipment evaluations.”*
19. *The Treasury Board has applied the following definition to the **Applied Science and Patent Examination (SP) Group**, effective August 13, 2005:*

“The Applied Science and Patent Examination Group comprises positions that are primarily involved in the application of comprehensive scientific and professional knowledge to one of the applied science programs involving the following: actuarial science, agriculture, biology, chemistry, forestry, meteorology, physical sciences, which include physics, planetary and earth sciences, scientific regulation and patents.”
20. *Notwithstanding the generality of the foregoing, for greater certainty, employees performing duties in the **Forensic Laboratory and Identification (FL-FLS)** Group meet Treasury Board’s inclusion definition of the **Applied Science and Patent Examination (SP) Group** as they are performing duties that have, as their primary purpose, responsibility for one of the following activities:*
 - i. *the application of comprehensive scientific and professional knowledge to one of the applied science programs involving the following: actuarial science, agriculture, biology, chemistry, forestry, meteorology, physical sciences, which include physics, planetary and earth sciences, and scientific regulation;*
 - ii. *the regulation and control of Canadian Patents; the preparation, processing, classification and*

examination of applications for patents; the allowance, refusal or rejection of applications for patents; the promotion of the commercial and technological aspects of the patent system; and the dissemination and interpretation of technological information contained in patent systems; and

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

21. *Positions included in the **Applied Science and Patent Examination Group** may also be engaged, in part, in research in one of the programs involving the following: agricultural or related sciences, biology, chemistry, forestry, meteorology and the physical sciences including physics, planetary and earth sciences.*

...

[Emphasis in the original]

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

III. Reasons for decision

[8] 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.

[9] In this instance, the Board must look at the primary duties of the employees who occupy positions in the FLI-FSLS RCMP occupational sub-group and determine whether they are included in the bargaining unit. Having reviewed the documentation presented by the Institute, including the relevant definitions, and considering there is no dispute between the parties, I find that the primary duties of these employees come within the definition of the bargaining unit.

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

(The Order appears on the next page)

IV. Order

[11] The application is allowed.

[12] The Board declares that all employees who occupy positions in the FLI-FSLS 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 Applied Science and Patent Examination (SP) Group as defined in Part I of the *Canada Gazette* of August 13, 2005.

April 13, 2018.

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