

Date: 20180731

File: 425-PB-38768

XR: 448-PB-00009

XR: 472-PB-M1

Citation: 2018 FPSLREB 61

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



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

BETWEEN

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Applicant

and

OFFICE OF THE PARLIAMENTARY BUDGET OFFICER

Respondent

Indexed as

*Canadian Association of Professional Employees v. Office of the Parliamentary Budget
Officer*

In the matter of an application pursuant to section 17 of the *Parliamentary
Employment and Staff Relations Act*

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Applicant: Colleen Baumann, counsel

For the Respondent: Mark Mahabir, counsel

Decided on the basis of written submissions
filed May 25, 2018.

REASONS FOR DECISION

Background

[1] The Canadian Association of Professional Employees (“the applicant”) seeks a review of the decision of the Federal Public Sector Labour Relations and Employment Board (“the Board”) in 2018 FPSLREB 48 under s. 17 of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33; *PESRA*). In that decision, the Board certified the applicant as the bargaining agent for the bargaining unit described as follows: “All employees of the office of the Parliamentary Budget Officer”. The Board also designated 14 positions as managerial or confidential, on the basis of a list that both parties had agreed to. The designated positions were listed in an annex to the decision.

[2] After the decision was issued, the applicant made an application to the Board for a review of it. Specifically, it requested an amendment to the annex to remove the three positions with the title “Research Assistant/Adjoint”, on the grounds that it had not consented to their inclusion. The Office of the Parliamentary Budget Officer, which is the employer (“the respondent”), replied that those positions were listed in the annex as the persons in them work less than 700 hours in a calendar year. The parties agreed that if the positions were full-time, they would be included in the bargaining unit. The applicant suggested wording to be included in the annex, to which the respondent agreed.

Reasons

[3] The Board has concluded that the annex should be modified by removing from the list the three research assistants as well as the Parliamentary Budget Officer, who also appears on that list.

[4] As set out, the bargaining unit consists of “[a]ll employees of the office of the Parliamentary Budget Officer”. Under s. 39 of the *Parliamentary Employment and Staff Relations Regulations* (SOR/86-1140), the Board may determine whether an employee is to be excluded under subparagraphs (c)(i) to (v) of the definition “person employed in a managerial or confidential capacity” in s. 3 of the *PESRA*. The purpose of identifying positions as managerial or confidential is to exclude the employees occupying them from the bargaining unit. However, under the definition of “employee”, again in s. 3, a person not ordinarily required to work more than 700 hours in a calendar year is not an employee (paragraph b); nor is the Parliamentary Budget Officer, who is appointed by the Governor in Council (paragraph a).

The persons occupying these positions are not excluded from the bargaining unit for managerial and confidential reasons; they are excluded as they are not “employees”, within the meaning of the *PESRA*.

[5] To be clear, the research assistants working less than 700 hours in a calendar year are not to be subject to a managerial or confidential designation order and listed in the annex since they are not employees. Conversely, they are part of the bargaining unit if they work more than 700 hours. The Parliamentary Budget Officer is not an employee under the *PESRA*, is not part of the bargaining unit, and therefore is not subject to the managerial or confidential exclusion process.

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

(The Order appears on the next page)

Order

[7] The application is allowed.

[8] An amended annex is issued with this decision.

July 31, 2018.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**