

Date: 20190314

File: 547-02-32

Citation: 2019 FPSLREB 34

*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 and Simon Ferrand, counsel

For the Respondent: Sean Kelly, counsel

Decided on the basis of written submissions,
filed May 1, June 19 and 23, and December 15, 2017,
and February 26 and August 9, 2018.

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; *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, as amended on April 25, 2018, covered employees, other than those appointed to rank or reservists, employed by the Royal Canadian Mounted Police (RCMP) and occupying positions in the Purchasing and Supply (SPS-PUR) 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*. Historically, the employees that are the subject of this application 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*, these employees have the right to bargain collectively.

[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 the employees of the employer in the Audit, Commerce and Purchasing 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-PUR RCMP 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:

...

18. *The Treasury Board has applied the following definition to the **Audit, Commerce & Purchasing (AV) Group**, effective March 18, 1999:*

“The Audit, Commerce and Purchasing Group comprises positions that are primarily involved in the application of a comprehensive knowledge of generally accepted accounting principles and auditing standards to the planning, delivery, and management of external audit programs; the planning, development, delivery and management of economic development policies, programs, services and other activities; and the planning, development, delivery and management of policies, programs, systems or other activities dealing with purchasing and supply in the public Service.”

19. *Notwithstanding the generality of the foregoing, for greater certainty, employees performing duties in the **Purchasing and Supply (SPS-PUR) Group** meet Treasury Board’s inclusion definition of the **Audit, Commerce & Purchasing (AV) Group** as they are performing duties that have, as their primary purpose, responsibility for one or more the following activities:*

- i. *audit the application of a comprehensive knowledge of generally accepted accounting principles and auditing standards to the auditing of the accounts and financial records of individuals, businesses, non-profit organizations, or provincial or municipal governments to determine their accuracy and reasonableness, to establish or verify costs, or to confirm the compliance of transactions with the provisions of statutes, regulations, agreements or contracts;*
- ii. *commerce 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 including:*
 - a. *the promotion of the more efficient use of resources in particular geographic areas through the conduct of studies and investigations and the implementation of*

- programs and projects for this purpose;*
- b. *the promotion of the development and use of modern industrial technologies;*
 - c. *the promotion of economic development directed towards groups, regions, industries or the Canadian economy as a whole;*
 - d. *the promotion of the export of Canadian goods and services, including the tourist industry; the expansion of Canada's share of global trade by providing advice to Canadian companies, trade associations or other agencies of government, by safeguarding and promoting Canadian trading relationships, or by bringing the export aspects to bear in Canada's aid and financing programs;*
 - e. *the study and assessment of developments in international trade and trading arrangements, and their implications for the Canadian economy;*
 - f. *the administration and enforcement of competition legislation and legislation relating to restraints of trade; and*
 - g. *the examination of records and reports of registered insurance, trust and loan companies, money lenders and small loan companies, fraternal benefit societies and co-operative credit associations to ensure their solvency and compliance with legislation and regulations controlling their operations;*
- iii. *purchasing the planning, development, delivery and management of purchasing and supply policies, programs, services and other activities to meet the needs of Public Service departments and agencies including one or more subsidiary activities, such as in the areas of asset management and disposal, contracting, procurement of goods or services, inventory management, cataloguing, warehousing or traffic management;*
- iv. *the provision of advice in the above fields; and*
- v. *the leadership of any of the above activities.*

20. The **Purchasing and Supply (SPS-PUR)** positions further fall within the **Purchasing and Supply (PG)** Group which

includes: “purchasing the planning, development, delivery and management of purchasing and supply policies, programs, services and other activities to meet the needs of Public Service departments and agencies including one or more subsidiary activities, such as in the areas of asset management and disposal, contracting, procurement of goods or services, inventory management, cataloguing, warehousing or traffic management; the provision of advice in the above fields; and the leadership of any of the above activities.”

21. The **Purchasing and Supply (SPS-PUR)** positions clearly fall within the definition of the Audit, Commerce and Purchasing Group which includes: “the planning, development, delivery, and management of economic development policies, programs, services and other activities.”
22. Positions excluded by the Treasury Board from the **Audit, Commerce & Purchasing (AV)** 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:
 - i. the evaluation of actuarial liabilities and the determination of premiums and contributions in respect of insurance, annuity and pension plans;
 - ii. the planning and conduct of internal financial audits;
 - iii. the planning, development, delivery or management of the internal comprehensive audit of the operations of Public Service departments and agencies;
 - iv. the application of a comprehensive knowledge of agriculture to the promotion, development and regulation of the agricultural industry and trade;
 - v. 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;
 - vi. the planning, development, delivery and promotion of Canada’s diplomatic, commercial, human rights, cultural, promotional and international development policies and interests in other countries and in international organizations through the career rotational foreign service;
 - vii. the design of trade exhibits or displays or activities dealing with the explanation, promotion and

publication of federal government programs, policies and services;

viii. *the writing of specifications and technical descriptions that require the continuing application of technical knowledge; and*

ix. *the receipt, storage, handling and issue of items held in stores.*

...

[7] 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] Thus, the responsibility to determine membership in a bargaining unit rests with the Board. Generally, 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.

[10] In this instance, the Board must look at the primary duties of the employees who occupy positions within the SPS-PUR RCMP occupational sub-group and determine whether they are included in the bargaining unit.

[11] Having reviewed the documentation presented by the parties, including the relevant definitions and work descriptions, and considering that there is no dispute between the parties, I find that the primary duties of these employees come within the definition of 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 Purchasing and Supply (SPS-PUR) 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 Audit, Commerce and Purchasing Group as defined in Part I of the *Canada Gazette* of March 27, 1999.

March 14, 2019.

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