

Date: 20201126

Files: 547-02-39, 44, 47 and 49

Citation: 2020 FPSLRB 107

*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

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

TREASURY BOARD

Respondent

Indexed as

Public Service Alliance of Canada v. Treasury Board

In the matter of applications, 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: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Andrew Raven and Morgan Rowe, counsel

For the Respondent: Stefan Kimpton, counsel

Decided on the basis of written submissions,
filed November 30, 2017, January 15, 2018, June 12 and 26 and August 31, 2020.

REASONS FOR DECISION

I. Applications before the Board

[1] On November 30, 2017, the Public Service Alliance of Canada (“the bargaining agent”) filed 14 applications for the determination of questions of membership in bargaining units under s. 58 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *FPSLRA*”) concerning certain employees or classes of employees working at the Royal Canadian Mounted Police (“RCMP”) other than employees appointed to rank or reservists.

[2] This decision concerns four of those applications, which are for RCMP occupational sub-groups proposed for inclusion in the Technical Services (TC) Group bargaining unit represented by the bargaining agent. The remaining applications are addressed in four companion decisions.

[3] The Federal Public Sector Labour Relations and Employment Board (“the Board”) or its predecessors have confirmed the certification of the bargaining agent for the TC Group bargaining unit: *Public Service Alliance of Canada and Treasury Board*, PSSRB File No. 142-2-339 (19990610); *Treasury Board v. Public Service Alliance of Canada*, 2019 FPSLREB 14.

[4] The employees covered by these applications were appointed as civilian members of the RCMP under the *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10). They are currently unrepresented, as historically this group was 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 (“*Mounted Police Association of Ontario*”), the definition of “employee” in the *FPSLRA* changed. 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 (“the employer”) of these employees within the meaning of the *FPSLRA*.

[5] Before the Supreme Court of Canada’s decision in *Mounted Police Association of Ontario*, the federal government had indicated an intention to eliminate the civilian member category. In June of 2013, Parliament enacted the *Enhancing Royal Canadian Mounted Police Accountability Act* (S.C. 2013, c. 18). Section 86 of that legislation provided the employer with the power to publish in the *Canada Gazette* a date on

which the RCMP civilian members would be “deemed” to have been appointed to a position under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13).

Originally, the deeming date was scheduled as April 26, 2018 (*Canada Gazette*, Part I, Vol. 151, No. 6, p. 672) and later scheduled as May 21, 2020 (*Canada Gazette*, Part I, Vol. 152, No. 14, p. 1134), but it has since been delayed and has yet to be determined (*Canada Gazette*, Part I, Vol. 154, No. 18, p. 869). The transition from civilian members to public service employees is referred to in this decision as the “Categories of Employees” project.

[6] The employer provided its initial response to these applications on January 15, 2018, consenting to them in principle. Between March and May of 2018, another panel of the Board sought the parties’ clarification on a number of aspects of the applications. In May of 2018, that panel placed the applications in abeyance but invited the parties to contact it to propose dates for a teleconference, should they wish one.

[7] In January 2020, the employer contacted the Board to inquire on the status of the applications. I was then appointed a panel of the Board to hear them. An in-person case conference was held on February 13, 2020, at which time I determined that the parties would provide updated written submissions with respect to the applications.

[8] The applications are decided on the basis of the parties’ written submissions.

II. Summary of the facts

[9] This summary is based on materials included in the applications and in the written submissions.

[10] Some 4000 RCMP civilian members are affected by the Categories of Employees project. They have been structured into a number of RCMP occupational groups and sub-groups. In preparation for the deeming date, the employer engaged in a process of “matching” the RCMP sub-groups to existing public service occupational groups, as possible. A match to a represented occupational group was communicated to the affected bargaining agent.

[11] For the RCMP occupational sub-groups covered by these applications, the parties agree that their duties match the definition of an existing public service occupational group and classifications. The parties also note that the Categories of

Employees project involved “pay-matching” the salaries of RCMP civilian members to their equivalent public service classifications.

[12] The following four applications concern employees in the noted RCMP occupational groups and sub-groups, which have been matched to the indicated public service classifications:

- 547-02-39 covers employees in the Technical Consultant sub-group of the RCMP’s Special Police Services occupational group (SP-TC), which has been matched to the Engineering and Scientific Support Services (EG) public service classification;
- 547-02-44 covers employees in the General Technical sub-group of the RCMP’s Special Police Services occupational group (SP-GTEC), which has been matched to the General Technical (GT) public service classification;
- 547-02-47 covers employees in the Photographer/Technician sub-group of the RCMP’s Special Police Services occupational group (SP-PTC), which has been matched to the Photography (PY) public service classification; and
- 547-02-49 covers employees in the Forensic Science Laboratory Technologist sub-group of the RCMP’s Forensic Laboratory and Identification occupational group (FLI-FSLT), which has been matched to the Engineering and Scientific Support Services (EG) public service classification.

[13] The EG, GT, and PY public service classifications apply to the TC public service occupational group as defined in the *Canada Gazette*, Part I, Vol. 133, No. 13, at pages 807 to 809, on March 27, 1999. That definition was in effect as of the date of application. A new definition for the TC public service occupational group was published in the *Canada Gazette*, Part I, Vol. 152, No. 22, at pages 1732 to 1734, on June 2, 2018.

[14] The March 27, 1999, definition for the TC public service occupational group is as follows:

Technical Services Group Definition

The Technical Services Group comprises positions that are primarily involved in the performance, inspection and leadership of skilled technical 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 planning, design and making of maps, charts, drawings, illustrations and art work;
2. the design of three-dimensional exhibits or displays within a predetermined budget and pre-selected theme;
3. the conduct of analytical, experimental or investigative activities in the natural, physical and applied sciences; the preparation, inspection, measurement and analysis of biological, chemical and physical substances and materials; the design, construction, modification and assessment of technical systems and equipment or the calibration, maintenance and operation of instruments and apparatus used for these purposes; and the observation, calculation, recording and the interpretation, presentation and reporting of results of tests or analyses, including:
 - a. the performance of activities involving the application of the principles, methods, and techniques of engineering technology and a practical knowledge of the construction, application, properties, operation and limitations of engineering or surveying systems, processes, structures, buildings or materials, and machines or devices;
 - b. the planning of approaches, the development or selection and application of methods and techniques, including computer software, to conduct analytical, experimental or investigative activities; the evaluation and interpretation of results; and the preparation of technical reports;
 - c. the observation and recording of events and the analysis of information relating to such fields as meteorology, hydrography, or oceanography and the presentation of the results of such studies; and the provision of data and information relating to meteorology;
 - d. the monitoring and investigating of environmental hazards or the provision of advice on those issues impacting upon compliance with public health legislation; and
 - e. the design, development or application of tests, procedures and techniques in support of the diagnosis, treatment and prevention of human and animal diseases and physical conditions;
4. the application of statutes, regulations and standards affecting agricultural, fishery and forestry products;
5. the capture and development of images involving the operation and use of cameras, accessories and photographic processing and reproduction equipment;
6. the operation of television cameras and video recording systems and equipment;

7. the inspection and evaluation of quality assurance systems, processes, equipment, products, materials and associated components including electronic equipment used in trade measurement; the development, recommendation or enforcement of statutes, regulations, standards, specifications or quality assurance policies, procedures and techniques; and the investigation of accidents, defects and/or disputes;
8. the construction and repair of prostheses and orthoses;
9. the writing of standards, specifications, procedures or manuals related to the above activities;
10. the performance of other technical functions not included above; and
11. the planning, development and conduct of training in, or the leadership of, any of the above activities.

Exclusions

Positions excluded from the Technical Services 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 planning, conduct or evaluation of control, mapping or charting surveys, and the planning or conduct of legal surveys of real property;
2. the planning, design, construction or maintenance of physical or chemical processes, systems, structures or equipment; and the development or application of engineering standards or procedures;
3. the performance of manual tasks such as cleaning laboratory equipment, assisting in morgue and autopsy tasks, and the care and feeding of laboratory animals;
4. the performance of administrative activities such as program, human resources or financial management and planning that do not require the application of principles outlined in the inclusions; and the administrative management of buildings, grounds and associated facilities;
5. the conduct of experimental, investigative or research and development work in the field of electronics;
6. the leadership of activities related to maintenance and repair functions not requiring knowledge identified in the inclusions;
7. the operation of duplicating or reproduction machines, motion picture projection machines and accessories and process cameras in support of an offset printing or duplicating process;
8. the planning, development, installation and maintenance of information technology and processing systems to manage, administer or support government programs and activities; and

9. the application of electronics technology to the design, construction, installation, inspection, maintenance and repair of electronic and associated equipment, systems and facilities and the development and enforcement of regulations and standards governing the use of such equipment.

Also excluded are positions in which experience as an aircraft pilot and a valid pilot's licence are mandatory.

[15] The June 2, 2018, definition for the TC public service occupational group is as follows:

Technical Services (TC) Group Definition

The Technical Services Group comprises positions that are primarily involved in the performance, inspection and leadership of skilled technical 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 planning, design and making of maps, charts, drawings, illustrations and art work;*
- 2. the design of three-dimensional exhibits or displays within a predetermined budget and pre-selected theme;*
- 3. the conduct of analytical, experimental or investigative activities in the natural, physical and applied sciences; the preparation, inspection, measurement and analysis of biological, chemical and physical substances and materials; the design, construction, modification and assessment of technical systems and equipment or the calibration, maintenance and operation of instruments and apparatus used for these purposes; and the observation, calculation, recording and the interpretation, presentation and reporting of results of tests or analyses, including:*
 - the performance of activities involving the application of the principles, methods, and techniques of engineering technology and a practical knowledge of the construction, application, properties, operation and limitations of engineering or surveying systems, processes, structures, buildings or materials, and machines or devices;*
 - the planning of approaches, the development or selection and application of methods and techniques, including computer software, to conduct analytical, experimental or investigative activities; the evaluation and interpretation of results; and the preparation of technical reports;*

- the observation and recording of events and the analysis of information relating to such fields as meteorology, hydrography, or oceanography and the presentation of the results of such studies; and the provision of data and information relating to meteorology;
- the monitoring and investigating of environmental hazards or the provision of advice on those issues impacting upon compliance with public health legislation; and
- the design, development or application of tests, procedures and techniques in support of the diagnosis, treatment and prevention of human and animal diseases and physical conditions;

4. the application of statutes, regulations and standards affecting agricultural, fishery and forestry products;

5. the capture and development of images involving the operation and use of cameras, accessories and photographic processing and reproduction equipment;

6. the operation of television cameras and video recording systems and equipment;

7. the inspection and evaluation of quality assurance systems, processes, equipment, products, materials and associated components including electronic equipment used in trade measurement; the development, recommendation or enforcement of statutes, regulations, standards, specifications or quality assurance policies, procedures and techniques; and the investigation of accidents, defects and/or disputes;

8. the construction and repair of prostheses and orthoses;

9. the writing of standards, specifications, procedures or manuals related to the above activities;

10. the performance of other technical functions not included above; and

11. the planning, development and conduct of training in, or the leadership of, any of the above activities.

Exclusions

Positions excluded from the Technical Services 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 planning, conduct or evaluation of control, mapping or charting surveys, and the planning or conduct of legal surveys of real property;

2. the planning, design, construction or maintenance of physical or chemical processes, systems, structures or equipment; and

the development or application of engineering standards or procedures;

3. the performance of manual tasks such as cleaning laboratory equipment, assisting in morgue and autopsy tasks, and the care and feeding of laboratory animals;

4. the performance of administrative activities such as program, human resources or financial management and planning that do not require the application of principles outlined in the inclusions; and the administrative management of buildings, grounds and associated facilities;

5. the conduct of experimental, investigative or research and development work in the field of electronics;

6. the leadership of activities related to maintenance and repair functions not requiring knowledge identified in the inclusions;

7. the operation of duplicating or reproduction machines, motion picture projection machines and accessories and process cameras in support of an offset printing or duplicating process;

8. the application of comprehensive computer systems knowledge to the development, implementation and/or maintenance of IT systems and infrastructure; and

9. the application of electronics technology to the design, construction, installation, inspection, maintenance and repair of electronic and associated equipment, systems and facilities and the development and enforcement of regulations and standards governing the use of such equipment.

Also excluded are positions in which experience as an aircraft pilot and a valid pilot's licence are mandatory.

[16] The employer submitted that the new TC definition published in Part I of the *Canada Gazette* on June 2, 2018 is a consequential amendment as a result of the new Information Technology (IT) occupational group that is to replace the Computer Systems (CS) occupational group. It indicated that the new TC definition will be applied at the time the CS group is converted to the IT group, and that until that time the employer continues to apply the TC occupational group definition published in Part I of the *Canada Gazette* of March 27, 1999.

[17] I note that in *Treasury Board v. Public Service Alliance of Canada*, 2019 FPSLRB 14, the Board modified the description of the TC Group bargaining unit to reflect the June 18, 2018, definition of the TC public service occupational group.

III. Reasons

[18] Section 58 of the *FPSLRA* provides the following:

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.

[19] I must consider these applications in relation to the bargaining unit described by the Board in *Treasury Board v. Public Service Alliance of Canada*, 2019 FPSLRB 14, which refers to the TC public service occupational group definition published in the *Canada Gazette*, Part I, Vol. 152, No. 22, at pages 1732 to 1734, on June 2, 2018, despite that the new definition may not be fully in effect.

[20] There is no dispute between the parties that the employees occupying positions in the SP-TC, SP-GTEC, SP-PTC, and FLI-FSLT RCMP occupational sub-groups perform duties that fall within the TC public service occupational group definition that was in effect as of the date of application.

[21] I am satisfied that new TC public service occupational group definition published in the *Canada Gazette* of June 2, 2018 contains only consequential amendments that do not impact on the allocation of the relevant RCMP sub-groups to the TC Group bargaining unit.

[22] I therefore find that the employees covered by the applications are included in the TC Group bargaining unit.

[23] The bargaining agent requested that as part of its order allowing the applications, the Board make an order for the disclosure of employee contact information. It argued that bargaining agents have a well-established right to such information, citing *Bernard v. Canada (Attorney General)*, 2014 SCC 13 at paras. 24 to 33 and 40. It proposed that the Board remain seized of any issues encountered in disclosing it.

[24] For its part, the employer did not dispute that a bargaining agent has the right to employee contact information. It committed to providing that information for the employees covered by these applications, once the Board orders them included in the TC Group bargaining unit. It took the position that there is no need for an order from the Board in this respect.

[25] The employer has taken a clear position that it intends to provide the bargaining agent with the contact information of the employees covered by these applications once they are included in the TC Group bargaining unit. If the bargaining agent encounters any difficulties in this regard, it has legal recourses available. I do not believe that an order to provide employee contact information is required at this time, but I do confirm the commitment made by the employer.

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

(The Order appears on the next page)

IV. Order

[27] The Board declares that the employees, other than those appointed to rank or reservists, occupying positions in the Royal Canadian Mounted Police's Technical Consultant (SP-TC), General Technical (SP-GTEC), Photographer/Technician (SP-PTC), and Forensic Science Laboratory Technologist (FLI-FSLT) occupational sub-groups are included in the bargaining unit composed of "[a]ll employees of the Employer in the Technical Services Group as defined in Part I of the *Canada Gazette* of June 2, 2018."

[28] The Board confirms the Treasury Board's commitment to providing the Public Service Alliance of Canada with employee contact information for the employees covered by these applications.

November 26, 2020.

**David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**