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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

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

TREASURY BOARD

Respondent

Indexed as

Public Service Alliance 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 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. Application 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 one of those applications, which is for an RCMP occupational sub-group that is proposed for inclusion in the Education and Library Science 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 Education and Library Science Group bargaining unit: *Public Service Alliance of Canada and Treasury Board*, PSSRB File No. 142-02-340 (19990607).

[4] The employees covered by this application 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 this application on January 15, 2018, consenting to it in principle. Between March and May of 2018, another panel of the Board sought the parties’ clarification on a number of aspects of the application. In May of 2018, that panel placed the application 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 application. I was then appointed a panel of the Board to hear it. 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 application.

[8] The application is decided on the basis of the parties’ written submissions.

II. Summary of the facts

[9] This summary is based on materials included in the application and 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-group covered by this application, the parties agree that its 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] This application concerns employees in the Educational sub-group of the RCMP’s Special Police Services occupational group (SP-EDU), which has been matched to the Education Services (ED) public service classification.

[13] The ED public service classification applies to the Education and Library Science public service occupational group as defined in the *Canada Gazette*, Part I, Vol. 133, No. 13, at pages 822 and 823, on March 27, 1999.

[14] The March 27, 1999, definition for the Education and Library Science public service occupational group is as follows:

Education and Library Science Group Definition

The Education and Library Science Group comprises positions that are primarily involved in the instruction of people of different age groups in school or in out-of-school programs; the application of a comprehensive knowledge of educational techniques to the teaching and counselling of students in schools and to the education, training and counselling of youths and adults in out-of-school programs, to the conduct of research and to the provision of advice related to education; and the application of a comprehensive knowledge of library and information science to the management and provision of library and related information services.

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 instruction of students of all ages in the following, where the application of a comprehensive knowledge of educational techniques is not required: cultural matters and academic subjects as part of an elementary or secondary school curriculum; a second language; or an organized program of physical education;*
- 2. the application of a comprehensive knowledge of educational techniques to teach, train or counsel students in schools or in out-of-school programs;*
- 3. the application of a comprehensive knowledge of educational techniques to plan, develop, conduct or evaluate specialized educational programs such as language training, vocational training, adult education, literacy education and health education;*

4. the application of a comprehensive knowledge of library and information science to:

a. select, acquire, organize, preserve and dispose of library materials;

b. catalogue, classify, index and analyze information and library materials;

c. provide reference, referral, bibliographic, advisory, information retrieval, and document delivery services, and perform other functions to assist users in accessing library materials; and

d. evaluate, develop, select, implement and use manual and automated systems and networks to record, organize, store, search, retrieve and make accessible information in library or information management operations; and

5. the leadership of any of the above activities.

Exclusions

Positions excluded from the Education and Library Science Group are those whose primary purpose is included in the definition of any other group or those in which the following activity is of primary importance:

1. the planning, development and presentation of courses of study for undergraduates and graduates in universities.

[15] The parties noted that updates to the definition to some EB sub-groups were published in the *Canada Gazette* on July 17, 2014 (*Canada Gazette*, Part I, Vol. 138, No. 29, pages 1973-1975) but submitted that the Board described the bargaining unit to reflect the public service occupational group definition contained in Part I of the *Canada Gazette* published March 27, 1999.

III. Reasons

[16] 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.

[17] I must consider this application in relation to the bargaining unit described by the Board in *Public Service Alliance of Canada and Treasury Board*, PSSRB File No. 142-02-340 (19990607), which refers to the Education and Library Science public service

occupational group definition published in the *Canada Gazette*, Part I, Vol. 133, No. 13, at pages 822 and 823, on March 27, 1999.

[18] There is no dispute between the parties that the employees occupying positions in the SP-EDU RCMP occupational sub-group perform duties that fall within the Education and Library Science public service occupational group definition.

[19] Accordingly, I find that the employees covered by this application are included in the Education and Library Science Group bargaining unit.

[20] The bargaining agent requested that as part of its order allowing the application, 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.

[21] 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 this application, once the Board orders them included in the Education and Library Science Group bargaining unit. It took the position that there is no need for an order from the Board in this respect.

[22] The employer has taken a clear position that it intends to provide the bargaining agent with the contact information of the employees covered by this application once they are included in the Education and Library Science 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.

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

(The Order appears on the next page)

IV. Order

[24] The Board declares that the employees, other than those appointed to rank or reservists, occupying positions in the Royal Canadian Mounted Police's Educational (SP-EDU) occupational sub-group are included in the bargaining unit composed of "[a]ll employees of the Employer in the Education and Library Science Group as defined in Part I of the *Canada Gazette* of March 27, 1999."

[25] 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 this application.

November 26, 2020.

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