

Board File Number

**IN THE MATTER OF the *Public Service Staff Relations Act*  
R.S.C. 1985, c. P-35 as amended, and a complaint filed pursuant to Section 21(1) alleging  
violations of sections 51 and 52 thereof**

BETWEEN

**CANADIAN FEDERAL PILOTS ASSOCIATION**  
(hereinafter "CFPA")

Applicant

-and-

**TRANSPORT CANADA and  
HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA AS RESPRESENTED BY  
TREASURY BOARD**

Respondents

**APPLICATION**

1. The full name and address of the Applicant is:

CANADIAN FEDERAL PILOTS ASSOCIATION  
130 Slater Street, Suite 330  
Ottawa, Ontario  
K1P 6E2

Telephone: (613) 230-5476

Facsimile: (613) 230 2668

**Attention: Gregory Holbrook, National Chair**

AND

SHIELDS & HUNT  
Barristers & Solicitors  
68 Chamberlain Avenue  
Ottawa, Ontario  
K1S 1V9

Telephone: (613) 230 3232  
Facsimile: (613) 230 1664

**Attention: Phillip G. Hunt/ Alison Dewar**

2. The full name and address of the Respondents are:

Transport Canada  
Safety and Security  
Civil Aviation  
330 Sparks Street 5<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0N8

Telephone: (613) 990 3838  
Facsimile: (613) 990 2947

**Attention: William, Elliot, ADM Safety and Security**

AND

Treasury Board Secretariat  
140 O'Connor Street  
Ottawa, Ontario  
K1A 0G5

Telephone: (613) 952 3011  
Facsimile: (613) 954 1018

**Attention: Marcel Nouvet, Chief Human Resources**

## **BACKGROUND FACTS**

3. The Canadian Federal Pilots Association (hereinafter "CFPA"), formerly the Aircraft Operations Group, is the bargaining agent for all employees in the Aircraft Operations Group, as described in the Canada Gazette Part I on March 27, 1999 and in the certificate issued by the Public Service Staff Relations Board (the "Board") on the eighteenth (18<sup>th</sup>) day of January 2001. Attached hereto at Tab 1 is a copy of the said certificate.

4. The CFPA and Treasury Board entered into a collective agreement on December 6, 1999, which expired on January 25, 2001.
5. On October 25, 2000, the CFPA gave the employer Treasury Board a written notice to bargain in accordance with section 50(2)(a) of the *Public Service Staff Relations Act* (the “Act”). A copy of the notice to bargain was sent to the Public Service Staff Relations Board (the “Board”) on October 25, 2000. Attached hereto at Tab 2 is a copy of the said notice to bargain.
6. On or about February 20, 2001, representatives from the CFPA, Treasury Board and Transport Canada negotiating committees met to exchange proposals for bargaining. Meetings were subsequently held on April 3-6, April 23-27, and June 5-8, 2001 to conduct negotiations for a new collective agreement. Attached hereto at Tab 3 is a copy of the said proposals.
7. The parties agreed that recruitment and retention were important issues in this round of collective bargaining. Transport Canada has had ongoing problems of recruiting and retaining individuals in the Aircraft Operations (“AO”) group and as a result Treasury Board agreed to assist Transport Canada, the Transportation Safety Board and the CFPA to conduct a joint study of recruitment, retention and compensation regarding positions in the AO group.
8. The parties formed a joint committee, which was made up of three members of the negotiation team from Transport Canada, one member from the Treasury Board negotiation team, a pay research analyst from Treasury Board and two members of the CFPA negotiating team. Attached hereto at Tab 4 is a copy of the minutes from the CFPA Transport Canada Management Issues Sub Committee meeting.
9. The committee met to review the findings of the 1998 Price Waterhouse Coopers Report on recruitment, retention and compensation for the Civil Aviation Inspector (“CAI”) community and submitted a joint report to all of the parties to the negotiations on April 26, 2001.
10. The joint report provided the negotiating teams with information on:
  - the industry standard for salaries and contracts;
  - pilots’ salaries in the Department of National Defence;
  - 1998 Price Waterhouse Cooper Report with updates to the data on industry salaries;
  - national and international economic forecasts regarding the projected growth in air transportation for the next 5-10 years;
  - departmental staffing recruitment and retention data;
  - employee turnover rates for the last three years;
  - departmental training costs; and

- data on the number of qualified licensed pilots in Canada available to fill current and projected requirements.
11. The CFPA viewed the joint effort as an important element in negotiating the issues of recruitment, retention and compensation at the bargaining table.
  12. On or about March 8, 2001 and prior to the recommencement of negotiations, Gregory Holbrook, national chair of the CFPA, was contacted by Claire Lavoie at Transport Canada and invited to attend a consultation with Art LaFlamme, Director General, Civil Aviation, Transport Canada, on April 20, 2001 to discuss recruitment difficulties in the Department. On April 9, 2001, Claire Lavoie, followed up on this conversation with fax containing a brief written synopsis of the Department's proposed consultation request. Attached hereto at Tab 5 is a copy of the said fax.
  13. Negotiations continued on April 3, 2001. A focus of the negotiations at this time was the issue of job security and its relationship to recruitment and retention. The CFPA submitted a proposal to amend Article 47 of the collective agreement, which was as follows:
 

*Article 47 – Job Security*

*47.1 Renew Current language*

*47.XX Functions which are presently performed by members of the Aircraft Operations group will not be assigned to members of other bargaining units or delegated to other persons or groups.*

*47.XX Where either party deems it desirable to deviate from this understanding the parties agree to enter into discussions to consider such proposals and may mutually agree to make exceptions to the foregoing.*
  14. The CFPA attended the April 20, 2001 consultation at Transport Canada, as scheduled, along with a representative of the Union of Canadian Transportation Employees. At the consultation Transport Canada raised the issue of opening up CAI positions to applicants outside of the CAI bargaining unit. The CFPA objected to this proposal and stated that, as the issue was being addressed at the bargaining table, it was a matter for negotiations. The unions requested that Transport Canada provide them with specific details of this initiative in writing.
  15. In the meantime, the parties continued their negotiations for a new collective agreement and the CFPA's proposal on job security remained a subject of serious negotiations between the parties.
  16. On May 22, 2001, the CFPA received a letter from Mr. LaFlamme, dated May 16, 2001, outlining the specifics of his initiative for recruitment to CAI positions within the AO

group. The proposal contained an example of a multi-group recruitment process, a statement of qualifications, a competition deployment document and a CAI-03 and TI-07 work description, which were to apply to the same CAI position. Attached hereto at Tab 6 is a copy of the said letter and documents.

17. The May 16, 2001 letter from Mr. LaFlamme indicated that there were “urgent staffing needs in the TI/AO community, which calls for a more flexible approach than has been the tradition in the past”. Mr. LaFlamme indicated that the information that had been provided was “a sample case where this new practice could be introduced” and indicated that this practice would be considered for use in several functional areas across Transport Canada’s Civil Aviation Branch. The letter concluded by setting a deadline of June 1, 2001 for a response from the CFPA otherwise Transport Canada would move ahead with the initiative.
18. The CFPA responded to Transport Canada’s proposal by letter on June 1, 2001. In its response the CFPA reminded Mr. LaFlamme that the proper forum for dealing with the proposed initiative was through negotiations at the bargaining table, which were scheduled to resume on June 5, 2001. Attached hereto at Tab 7 is a copy of the said response.
19. On June 4, 2001, the day before negotiations were to reconvene, the CFPA obtained a copy of a competition poster that had been released by Transport Canada on May 29, 2001. The poster was for Selection Process 01MOTCCEDM006855 and was identical to the sample case contained in Mr. LaFlamme’s May 16, 2001 letter. Attached hereto at Tab 8 is a copy of the said competition poster.
20. On June 5, 2001, the CFPA wrote to Mr. LaFlamme objecting to the unilateral implementation of the May 16, 2001 proposal and Transport Canada’s attempts to frustrate negotiations by implementing a recruitment strategy aimed at eroding the bargaining unit. The CFPA also expressed concern that the department’s unilateral action had been undertaken prior to the date by which the CFPA had been asked to respond. The CFPA concluded with a request that the job posting be rescinded immediately. Attached hereto at Tab 9 is a copy of the June 5, 2001 letter.
21. Negotiations commenced the week of June 5, 2001 and the parties returned to issue of job security. The CFPA tabled the following amendment to their proposal on job security:

*Article 47 –Job Security*

*47.01 Renew current language*

*47.XX Functions which are presently performed by members of the Aircraft Operations group will not be assigned to members of other bargaining units except for temporary acting assignments in accordance with the Public Service Employment Act.*

22. During these negotiations a member of Treasury Board's negotiating team and a member of Transport Canada's negotiating team inquired whether the CFPA's proposal on Article 47 included the issue of the multi-group recruitment process that had been raised by the May 29, 2001 job posting. The CFPA made it clear to the parties that the issues with respect to the job posting were an integral part of the ongoing negotiations on recruitment and retention between the parties. The CFPA also advised the parties that this unilateral change in the manner in which jobs were being posted was extremely damaging to the negotiation process, as this was a change to the longstanding practice for posting positions and constituted an erosion of the bargaining unit during the process of collective bargaining.
23. Notwithstanding the CFPA's objections to Transport Canada's posting, the disputed job posting was resubmitted to the system on June 18, 2001. In addition Transport Canada posted another position (Selection Process 01MOTCCEDM008104) on June 18, 2001 that opened up the CAI position to qualified CAI's and TI's. Attached hereto at Tab 10 is a copy of the said posting.
24. On June 26, 2001, the CFPA received a response from Mr. LaFlamme to its June 5, 2001 letter, in which the Employer stated that a decision had been made to proceed with the initiative (Selection Process 01MOTCCEDM006855). In this letter Transport Canada raised, for the first time, the fact that "the areas of opportunity for this approach are at the EX1 and EX 2 levels in the System Safety, Air Navigation Systems and Airspace and Aerodrome Safety functions". It is important to note that EX 1 and EX 2 classifications are for senior management positions that are outside of the scope of the bargaining unit. Attached hereto at Tab 11 is a copy of the said response
25. Negotiations are scheduled to resume on July 17, 2001.

#### **BREACH OF THE DUTY TO BARGAIN IN GOOD FAITH**

26. The CFPA states that the Respondents unilateral implementation of the pilot project job postings and its refusal to negotiate this issue constitutes a breach of section 51 of the *Act*.
27. Section 51 of the *Act* imposes a duty on parties to bargain in good faith. The Board has adopted a view of the duty to bargain in good faith that is consistent with that taken by the Ontario Labour Relations Board and has held that the refusal to negotiate constitutes a violation of the duty to bargain in good faith.
28. Transport Canada's insistence on unilaterally implementing its proposal for opening up job postings to non bargaining unit members and refusing to refer this matter to the bargaining table constitutes a violation of the duty to bargain in good faith. The fact that all of the parties agreed that recruitment and retention were key issues in this round of bargaining and worked together to produce a joint report on the issues as a foundation for bargaining makes Transport Canada's conduct more egregious.

29. Transport Canada's decision to unilaterally post one position prior to the completion of the consultation process with the applicant and its subsequent refusal to withdraw this posting and refer the matter to the bargaining table, which the parties had jointly agreed was the proper forum for addressing recruitment and retention issues, constitutes bad faith bargaining. Transport Canada's conduct is clearly designed to weaken the CFPA's position at the bargaining table by unilaterally implementing measures specifically designed to erode the bargaining unit.
30. The Respondents' conduct away from the bargaining table is a deliberate attempt to undermine the bargaining process by attempting to remove the recruitment issue from the bargaining table, when the Respondents had full knowledge of the fact that the Applicant had tabled a proposal regarding job security of its members. The fact that the Respondents had agreed to make the issues of recruitment and retention central issues at the bargaining table and had full knowledge of the fact that proposals were being negotiated at the bargaining table with respect to job security at the time they unilaterally implemented the new job postings, is an indication that the Respondents had no intention of negotiating with the Applicant in good faith. This conduct is a clear violation of the duty to bargain in good faith as it has effectively removed a key issue in the recruitment process from the bargaining table.

#### **BREACH OF THE STATUTORY FREEZE**

31. The CFPA states that the Respondents unilateral implementation of the new job postings is a violation of section 52 of the *Act*.
32. Section 52 of the *Act* requires, once a notice to bargain has been given, all parties to maintain a freeze on the terms and conditions of employment during negotiations for a collective agreement.
33. The statutory freeze applies to **any** working condition applicable to members of the bargaining unit in respect of which the notice to bargain was given. The purpose of the statutory freeze is to encourage the parties to address themselves exclusively to bargaining while negotiations continue. The provision is intended to encourage on going negotiations between the parties by preventing parties from unilaterally changing the terms and condition of employment during the period of negotiations.
34. Thus, section 51 imposes an obligation on the parties to abide by the terms and conditions of employment during the "freeze" period in order that the parties can address themselves to the settlement of a new collective agreement.
35. A term and condition of employment for CAI positions is that these positions will be filled with qualified candidates who meet the minimum standards as defined in the Standards for Selection and Assessment for the AO group. Attached hereto at Tab 12 is a copy of the said standards.

36. It has been the Respondents' longstanding practice to fill CAI positions with qualified aircraft pilots. This practice has continued notwithstanding the significant recruitment and retention problems in the CAI group.
37. All the parties recognized the seriousness of the recruitment and retention issues in the CAI group and agreed that these issues would form a central aspect of the negotiations for a new collective agreement, as had been the case in the previous round of collective bargaining when a recruitment and retention allowance was negotiated.
38. In order to assist the parties in the negotiations, a joint committee, with representatives from all of the parties' bargaining committees, was formed. This committee tabled a joint report on the issues, which was then used as the basis for negotiating the issues of recruitment and retention at the bargaining table.
39. The issue of job security became an integral part of the CFPA's negotiations on recruitment and retention and proposals were being discussed during negotiations prior to Transport Canada's proposal to implement its initiative for opening up recruitment to CAI positions.
40. Notwithstanding the Respondents' knowledge that recruitment and job security were being negotiated at the bargaining table, and the CFPA's objection to the proposal on the ground that it was an issue to be addressed at the bargaining table, the Respondents unilaterally implemented the initiative and posted two CAI positions in which applications were invited from qualified members of the TI group and other applicants with "an acceptable combination of training and experience". The Respondents knowledge of the issues can be demonstrated by the fact that Merlin Preuss, a senior member of the Transport Canada's bargaining committee, also acted as chair of the joint committee (CFPA/Transport Canada Management Issues Sub-Committee) and was the Transport Canada representative at the April 20, 2001 meeting.
41. The CFPA objected in writing to Transport Canada and advised the negotiating committee for the Respondents that any proposal to open up the competition for CAI positions was a matter for negotiations unless Transport Canada made an application to reclassify the CAI positions in question in accordance with rules governing the classification of public service positions. This objection was raised by the CFPA at both the April 20, 2001 meeting and at the negotiating table during the week of June 5, 2001. The CFPA also advised the Respondents that it considered the unilateral implementation of the initiative to be a violation of the longstanding practice of hiring qualified aircraft pilots to CAI positions.
42. The CFPA placed the Respondents on notice that their refusal to withdraw the postings constituted an erosion of the bargaining unit and a violation of the obligation to maintain the terms and conditions of employment during the freeze period. The Respondents continued with their unilateral implementation of the job postings and, as such, this conduct constitutes a clear and deliberate violation of the Respondents' obligations under section 52 of the Act.

**RELIEF SOUGHT**

43. The CFPA requests the following relief:
- a. a declaration that the Treasury Board of Canada and Transport Canada have failed to comply with section 51 of the Act, specifically the requirement to bargain in good faith;
  - b. that an order be issued requiring the Treasury Board of Canada and Transport Canada to forthwith comply with the provisions of section 51 by rescinding the job posting 01MOTCCEDM008104 and job posting 01MOTCCEDM006855 and referring the initiative to the bargaining table for negotiations and to commence bargaining in good faith;
  - c. a declaration that the Treasury Board of Canada and Transport Canada have failed to comply with section 52 of the Act, specifically the requirement to maintain the terms and conditions of employment during the freeze period;
  - d. that an order be issued from the Board immediately rescinding job posting 01MOTCCEDM008104 and job posting 01MOTCCEDM006855; and
  - e. that an order be issued from the Board restraining Treasury Board and Transport Canada from posting any further positions under this recruitment program.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13th DAY OF JULY, 2001

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**Phillip G. Hunt/Alison M. Dewar**  
Solicitors for the Applicant CFPA.