



Public
Service
Labour
Relations
Board

Commission des
relations de
travail dans la
fonction
publique

P.S.L.R.B. File Number
FOR OFFICE USE ONLY

Form 16
(Section 57)

COMPLAINT UNDER SECTION 190 OF THE ACT

Public Service Labour Relations Act

NOTICE: The original and one copy of this complaint must be filed with the Executive Director of the Board.

1. Complainant information:

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

Name of authorized representative:

SHIELDS & HUNT

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

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

Attention: Phillip G. Hunt/ Daria Strachan

Where information on more than one person is required in a section or the space provided is not sufficient, please attach additional pages of same-sized paper.

2. Respondent information:

Transport Canada
Civil Aviation
330 Sparks Street
Ottawa, Ontario
K1A 0N5

Telephone: (613) 990-1322
Facsimile: (613) 957-4208

Attention: Merlin Preuss, Director General

AND

Treasury Board Secretariat
400 Cooper Street
Ottawa, Ontario
K1A 0R5

Telephone: (613) 952-3000
Facsimile: (613) 952-3009

Attention: Helene Laurendeau, Assistant Secretary

3. Paragraph of the *Public Service Labour Relations Act* on which the complaint is based:

- 190(1)(a) Failure to comply with section 56 (duty to observe terms and conditions).
- 190(1)(b) Failure to comply with section 106 (duty to bargain in good faith).
- 190(1)(c) Failure to comply with section 107 (duty to observe terms and conditions).
- 190(1)(d) Failure to comply with subsection 110(3) (duty to bargain in good faith).
- 190(1)(e) Failure to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award).
- 190(1)(f) Failure to comply with section 132 (duty to observe terms and conditions).
- 190(1)(g) Unfair labour practice within the meaning of section 185.

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4. Concise statement of each act, omission or other matter complained of, including dates and names of persons involved:

1. 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 former "Board") on the eighteenth (18th) day of January 2001.
2. On April 1, 2005, the new *Public Service Labour Relations Act* ("PSLRA"), enacted by section 2 of the *Public Service Modernization Act* ("PSMA"), S.C. 2003, c. 22, was proclaimed in force. Pursuant to subsection 48(1) of the *PSMA*, the bargaining agent continues to be certified as the bargaining agent for the bargaining unit.
3. On December 11, 2003, prior to the expiry date of the collective agreement between the CFPA and Treasury Board, the CFPA caused a Notice to Bargain to be delivered with a view to entering into negotiations for a new collective agreement. The collective agreement between the parties expired on January 25, 2004. Attached hereto at Tab 1 is a copy of the Notice to Bargain.
4. Negotiations have taken place between the parties, but no new collective agreement has been reached.
5. The parties have not met since July of 2005.
6. The CFPA's efforts to progress the discussions to a Conciliation Board have been frustrated by Transport Canada's demand to substantially increase the number of designated positions by comparison to the last round of collective bargaining, as detailed in correspondence dated March 30, 2006, from the CFPA to Ms. Helene Laurendeau of the Treasury Board, a copy of which is attached hereto at Tab 2.
7. The proposals advanced by the CFPA in collective bargaining include proposals dealing with Article 18.01 – Hours of Work. These particular CFPA proposals were made in response to periodic and persistent threats by Transport Canada management to schedule employees for normal scheduled hours that vary from day to day.
8. In email directives dated February 8 and March 22, 2006, copies of which are attached hereto at Tabs 3 and 4 respectively, Transport Canada Management in the Quebec region proceeded with the implementation of normal scheduled hours of work for employees that vary from day to day.
9. The scheduling of employees for normal scheduled hours of work that vary from day to day constitutes a clear departure from long standing practice respecting the administration of hours of work, and thus constitutes a breach of the statutory freeze on terms and conditions of employment.
10. Moreover, insofar as the newly implemented change goes directly to a particular collective bargaining proposal that remains unresolved in negotiations, the unilateral implementation of new terms and conditions of employment amounts to a breach of the duty to bargain in good faith.

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11. By email memorandum dated April 3, 2006, the CFPA recorded its objection to the aforementioned violations.

12. In his email response dated April 4, 2006, Merlin Preuss, Director General, Civil Aviation, Transport Canada, advised that, in his view, the changes implemented by Transport Canada were "appropriate". The exchange of emails between the CFPA and Transport Canada is attached hereto at Tab 5.

5. Date on which the complainant knew of the act, omission or other matter giving rise to the complaint:

On or about April 3, 2006

Complete sections 6 and 7 only if the complaint alleges an unfair labour practice prohibited by paragraph 188(b) or (c) of the Public Service Labour Relations Act and if the employee organization has established a grievance or appeal procedure.

6. Date on which a grievance or appeal was presented in accordance with any procedure that has been established by the employee organization:

(dd/mm/yyyy)

7. Date on which the employee organization has provided the complainant with a copy of a decision to the grievance or appeal referred to in section 6:

(dd/mm/yyyy)

8. Steps that have been taken by or on behalf of the complainant for the resolution of the action, omission or other matter giving rise to the complaint:

As noted in paragraphs 11 and 12 above, the CFPA has recorded its objection to the aforementioned violations by email dated April 3, 2006. The respondent has refused to remedy the situation, as is evidenced by the April 4, 2006 email of Merlin Preuss, Director General, Civil Aviation, Transport Canada, in which he advised that, in his view, the changes implemented by Transport Canada were "appropriate". The exchange of emails between the CFPA and Transport Canada is attached hereto at Tab 5.

9. Corrective action sought under subsection 192(1) of the *Public Service Labour Relations Act*:

The CFPA requests the following relief:

- a. a declaration that the Treasury Board of Canada and Transport Canada have failed to comply with section 106 of the Act, specifically the requirement to bargain in good faith;
- b. a declaration that the Treasury Board of Canada and Transport Canada have failed to comply with section 107 of the Act, specifically the requirement to maintain the terms and conditions of employment during the freeze period;
- c. that an order be issued requiring the Treasury Board of Canada and Transport Canada to forthwith cease and desist from the practice of scheduling employees for normal scheduled hours that vary from day to day;
- d. that an order be issued requiring the Treasury Board of Canada and Transport Canada to meet with the CFPA and bargain collectively and in good faith the issues that remain outstanding in collective bargaining; and
- e. such further and other relief as to the Board may seem just.

10. Other matters relevant to the complaint:

I, the undersigned, (duly authorized representative of the complainant,) hereby file this *Complaint under Section 190 of the Act*.

Date: April 18, 2006



Phillip G. Hunt/Daria A. Strachan
Solicitors for the Applicant CFPA.
