



Public
Service
Labour
Relations
Board

Commission des
relations de
travail dans la
fonction
publique

P.S.L.R.B. File Number
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APPLICATION PURSUANT TO SECTION 58 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. Applicant 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
E-mail: phunt@shields-hunt.com

Attention: Phillip G. Hunt

2. Constituent employee organizations information:

N/A

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.

3. Employer 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

4. Detailed description of the class of employees for whom the Applicant makes this Application for a determination pursuant to section 58:

Employees occupying the position of Superintendent Enforcement Investigations (ACE 03366 / PRAL 18476) employed with Transport Canada who are presently included in the Technical Services ("TC") Group and who are more properly included in the Aircraft Operations ("AO") Group classification.

5. Estimated number of employees in the class of employees which is the subject of this Application pursuant to section 58:

1

6. Grounds on which the Applicant intends to rely in support of the proposal that the class of employees described in section 4 above should be determined to fall within the Applicant's bargaining unit:

(a) The Canadian Federal Pilots Association ("CFPA") is the certified bargaining agent for all employees of Transport Canada (the "Employer") in the Aircraft Operations Group as defined in the Canada Gazette on March 27, 1999. A copy of the bargaining certificate is attached as Schedule "A."

- (b) The CFPA, an employee organization within the meaning of the *Act*, applies pursuant to section 58 for a determination that the Superintendent Enforcement Investigations position presently reclassified in the TC Group is, in fact, properly included in the AO Group.
- (c) The Superintendent Enforcement Investigations position was included in the AO Group classification until reclassified by the Employer in or about 2001, when the Work Description was rewritten to remove all references to the requirement of being a pilot. Attached as Schedule "B" are the Work Descriptions, Classification Action Form and Organizational Chart which detail the 2001 reclassification of the Superintendent Enforcement Investigations position.
- (d) The Applicant respectfully submits that the work actually performed by those employees described in paragraph 4 involve duties which have traditionally placed, and continue to place, the Superintendent Enforcement Investigations position squarely within the AO Group and not the TC Group.
- (e) Despite the reclassification, the primary duties of the Superintendent Enforcement Investigations position continue to include the investigation of aviation occurrences, the conduct of safety studies, the identification of and the communication of information relating to safety deficiencies, and the enforcement of aviation legislation to ensure an adequate level of safety for the national civil air transportation system. These responsibilities require, according to the AO Group definition, "recent experience in piloting an aircraft." The positions are therefore excluded under the TC Group definition exclusions and included in the AO Group Definition inclusions. Attached as Schedule "C" and "D" are the group and category definitions and the relevant benchmarks for the AO and TC Groups at issue.
- (f) Additionally, the classification of the Superintendent Enforcement Investigations position which, by necessity, requires a pilot's licence and experience in piloting an aircraft, is in direct contravention of Transport Canada's stated guideline. By letter dated December 2, 2003, the Transport Canada Management Negotiating Team clearly stated that "Transport Canada will not create or classify any positions which require experience as an aircraft pilot and a valid pilots licence in other than the Aircraft Operations Group, with the exception of the Executive Category." Attached as Schedule "E" is a copy of a letter from Transport Canada to the CFPA, dated December 2, 2003.
- (g) Furthermore, the actions of Transport Canada effectively amend the Aircraft Operations Classification Standard. The Applicant respectfully submits that it is *ultra vires* the delegated authority of Transport Canada to modify or amend either the AO or Technical Inspection ("TI") Classification Standards, this being the sole prerogative of the Treasury Board. Attached as Schedule "F" is the Treasury Board's Classification System and Delegation of Authority Policy.
- (h) Finally, the concept of multi-group staffing used by Transport Canada since 2000 is not a valid classification process. Such a process necessitates that a position be evaluated and properly allocated to one group and one group only, as is indicated in the Treasury Board Classification System and Delegation of Authority Policy. The standpoint taken by Transport Canada to the effect that the Superintendent Enforcement Investigations position could be allocated to either of the AO or TC Groups is in violation of established Treasury Board policy.

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.

- (i) A determination under section 58 that the Superintendent Enforcement Investigations position is included in the AO Group, and not the TC Group, will not substantially alter the Employer's collective bargaining responsibilities as CFPA currently represents other employees engaged at Transport Canada in the AO Group.
- (j) A determination under section 58 that the Superintendent Enforcement Investigations position is appropriately included in the AO Group represented by CFPA will not necessitate the creation of a fragmented unit of specialized employees, but will simply cause a return to the status quo as existed prior to the reclassification of the Superintendent Enforcement Investigations position.
- (k) The Superintendent Enforcement Investigations position currently included in the TC Group shares a community of interest with the AO Group due to the highly similar nature of the work, the conditions of employment and knowledge and skills.
- (l) The Applicant requests that the Board conduct a hearing into this matter and make the following determination:
 - i. A declaration that the Superintendent Enforcement Investigations position currently included in TC Group is more properly included in the AO Group for which the CFPA is certified bargaining agent.
 - ii. Such further and other relief as the Board deems appropriate in the circumstances.

7. Information on the bargaining agent representing any of the employees in the class of employees described in section 4:

Union of Canadian Transportation Employees

Suite 702, 233 Gilmour Street
Ottawa, Ontario
K2P 0P2
Telephone: (613) 238-4003
Facsimile: (613) 236-0379

8. Other matters relevant to the application:

N/A

I, the undersigned, duly authorized representative of the Applicant, hereby file this *Application pursuant to section 58 of the Act.*

Date: _____
(dd/mm/yyyy)

(Signature of complainant or authorized representative)

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