



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.**

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**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**

## 2. Respondent information:

Director General, Human Resources  
330 Sparks Street  
Ottawa, Ontario  
K1A 0N5

Telephone: (613) 991-6317  
Facsimile: (613) 990-1880

**Attention: Linda Brouillette, Director General, Human Resources**

AND

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

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

**Attention: H el ene 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.

## 4. Concise statement of each act, omission or other matter complained of,

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.

**including dates and names of persons involved:**

1. The Canadian Federal Pilots Association (the "CFPA") is the certified 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 (18<sup>th</sup>) 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. The CFPA and Treasury Board are parties to a Collective Agreement signed on or about October 10, 2006, with a scheduled expiry date of January 25, 2008 (the "Collective Agreement").
4. On or about September 27, 2007, 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. Attached hereto at Tab 1 is a copy of the Notice to Bargain.
5. Pursuant to the statutory freeze provisions of the PSLRA, the terms and conditions of employment of the employees in the bargaining unit were effectively frozen following the service of the Notice to Bargain.
6. Negotiations have taken place between the parties, but no new collective agreement has yet been reached.
7. Prior to this round of negotiations, and indeed for the past several rounds of bargaining, the CFPA has maintained that certain of its members' positions are improperly classified. There have been ongoing discussions with the Employer regarding accurate Statements of Duties, job evaluations and classification. The CFPA has consistently maintained that approximately 150 to 200 of its members, classified at the AO-CAI-02 group and level, have for many years been performing the duties of and ought to be classified at the AO-CAI-03 group and level.
8. During the last round of collective bargaining, which resulted in the signing of the October 10, 2006 Collective Agreement, new language was agreed to and included as Article 33.01 of the Collective Agreement. Article 33.01 states:

33.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.
9. Numerous grievances have been filed with respect to the Employer's breach of Article 33.01 of the Collective Agreement. Attached hereto at Tab 2 is Article 33.01 of the Collective Agreement.

10. On or about April 1, 2008, Transport Canada began a process of issuing offers of employment to a select group of indeterminate employees for a newly created term "position" of Civil Aviation Safety Inspector – Fixed Wing (Large Aircraft). The position has been classified at the AO-CAI-03 group and level. Attached hereto at Tab 3 is a compilation of employment offers made by the Employer in this regard.
11. The new "position" has been offered to a selected group of approximately 22 indeterminate employees on a term basis only. At the end of the approximately two-year appointment, the employee may either be found another position at the AO-CAI-03 group and level or an equivalent group and level, or the employee may be declared surplus. Furthermore, the letter of offer makes clear that the employee's services may be required for a shorter period of time than specified.
12. Attached to the offers of employment are letters informing the employees that remuneration for "identified" personnel has been actioned and, as a result, the employee in question is entitled to retroactive pay for the period during which he or she was performing inspection duties with respect to large aircraft. In some cases, up to twenty (20) years' retroactive pay is being offered. Attached hereto at Tab 4 is a compilation of letters from the Employer respecting retroactive pay.
13. The Employer's actions with respect to the offers of term employment and the retroactive pay to approximately 22 employees are clear breaches of the statutory freeze provision as set out in section 107 of the *Act*.
14. The purpose of the statutory freeze provision is to permit the parties to bargain collectively with a fixed set of working conditions in place from which to commence negotiations. In conjunction with the requirement to bargain in good faith, the statutory freeze is essential to the establishment of successful collective bargaining.
15. The statutory freeze provision requires the Employer to negotiate all changes to rates of pay, hours of work and other conditions of employment with the CFPA and to cease any direct dealings with individual employees over the terms and conditions of their individual employment.
16. The "position" being "offered" to a small group of employees is simply a reflection of the work currently performed by this same small group, and other CFPA members, and by whom numerous grievances have been filed under Article 33 of the Collective Agreement. The selective incentive offered to the employees in this case constitutes a breach of the statutory freeze provisions under the *Act*. Furthermore, the Employer's actions serve to divide the membership and undercut the authority of the CFPA.
17. Recent experience has been that Transport Canada alters terms and conditions of employment every time collective bargaining with the CFPA commences. In 2001, the commencement of bargaining was followed by the filing of an unfair labour practice complaint alleging breach of the statutory freeze provisions of the *Act*. Attached hereto at Tab 5 is a copy of the Complaint, dated July 13, 2001. The complaint was settled with the assistance of the Vice-Chair of the Public Service Staff Relations Board. Attached hereto at Tab 6 are the Minutes of Settlement dated February 15, 2002.
18. On April 18, 2006, again following commencement of collective bargaining, an unfair labour practice complaint was filed, again alleging breach of the statutory freeze

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provision of the Act. Attached hereto at Tab 7 is a copy of the said Complaint. A hearing ensued, resulting in a July 12, 2006 decision by the Board (File 561-02-106) that the Employer had breached section 107 of the Act (Tab 8). The Employer sought judicial review of the Board's decision, but discontinued its Application two days prior to the hearing before the Federal Court of Appeal.

19. Once again, during the current round of collective bargaining and in breach of the statutory freeze, the Employer has altered the terms and conditions of employment of employees in the bargaining unit.

20. The Employer's actions in this regard demonstrate a pattern, over successive rounds of collective bargaining, of attempting to disrupt negotiations and drive a wedge between members of the bargaining unit, in violation of its duty to bargain in good faith under section 106 of the Act.

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

On or about April 1, 2008

*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:**

The Bargaining Agent has actively encouraged the Employer to refrain from its stated plan to proceed with the implementation of its plan to offer the subject "positions" during the life of the statutory freeze period.

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

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.

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 offering the subject term positions and retroactive pay adjustments with respect to the Regional Inspector (Large Aircraft) "position" during the remainder of the freeze period;
- d. a declaration that any and all agreements of offer and acceptance, purportedly entered into between Transport Canada and individual employees, as described herein, are null and void;
- e. such further and other relief as to the Board may seem just.

**10. Other matters relevant to the complaint:**

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

Date: April 24, 2008

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**Phillip G. Hunt**

Solicitors for the Applicant CFPA

**Shields & Hunt**

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