

**Date:** 20171011

**Files:** 542-02-12 and 13

**Citation:** 2017 FPSLREB 34

*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

**NATIONAL POLICE FEDERATION**

Applicant

and

**TREASURY BOARD OF CANADA**

Respondent

and

**ASSOCIATION DES MEMBRES DE LA POLICE MONTÉE DU QUÉBEC**

and

**CANADIAN POLICE ASSOCIATION**

Intervenors

Indexed as

*National Police Federation v. Treasury Board of Canada*

In the matter of an application for certification under section 54 of the *Federal Public Sector Labour Relations Act* and a motion to consolidate files 542-02-12 and 13

**Before:** Catherine Ebbs, Stephan Bertrand, and Marie-Claire Perrault, a panel of the  
Federal Public Sector Labour Relations and Employment Board

**For the Applicant:** Christopher Rootham, counsel

**For the Respondent:** Sean Kelly, counsel

**For the Intervenor AMPMQ:** Marco Gaggino, counsel

**For the Intervenor CPA:** Gabriel M. Somjen, counsel

---

Decided on the basis of written submissions,  
filed June 22, July 28, and August 2 and 11, 2017.

### **I. Motion before the Board**

[1] On April 5, 2017, the Association des membres de la police montée du Québec Inc. (AMPMQ) filed an application for certification under s. 54 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*). It seeks to represent all Royal Canadian Mounted Police (RCMP) regular members based in Quebec (excluding officers and civilian members). On April 18, 2017, the National Police Federation (NPF), the applicant, also filed an application for certification under s. 54 as the bargaining agent for all RCMP regular members (excluding officers and civilian members) throughout Canada.

[2] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9; “Bill C-7”) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board, the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (*FPSLRA*).

[3] To ease reading this decision, the term “Board” refers to the Public Service Labour Relations and Employment Board and the Federal Public Sector Labour Relations and Employment Board. In the same way, the term “*FPSLRA*” includes the *PSLRA*.

[4] The amendments in Bill C-7 also provide for the RCMP’s new bargaining regime. The NPF submits that under the new regime, the Board can certify only a single, national bargaining unit to represent the RCMP’s regular members. In order for the Board to deal with the two applications coherently, the NPF has made a motion for the Board to consolidate the files and to deal with the remaining issues in writing.

[5] For the purposes of the two applications, the NPF and the AMPMQ were given intervenor status in each other’s applications. The Canadian Police Association (CPA) was also given intervenor status in both applications.

[6] This decision deals with the NPF’s motion to consolidate the two applications, bearing Board file numbers 542-02-12 (the AMPMQ application) and 542-02-13 (the NPF

application). The motion is worded as follows:

*The Applicant National Police Federation seeks the following relief:*

- 1. An order that the Federal Public Sector Labour Relations and Employment Board (the “Board”) consolidate two applications for certification in Board file numbers 542-02-12 and 542-02-13;*
- 2. A declaration that the appropriate bargaining unit is the unit defined in s. 238.14 of the Federal Public Sector Labour Relations Act (the “FPSLRA”);*
- 3. An order that the following issues be heard in writing at the Board’s earliest convenience:*
  - a. whether the applicants in those two applications are “employee organizations”;*
  - b. whether the applicants meet the requirements of s. 63(1)(b) of An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures, SC 2017, c 9; and*
  - c. whether the persons representing the employee organizations have been duly authorized to make the application; and*
- 4. That the Board determine whether the applicants in both files have the requisite level of support within the appropriate bargaining unit for the Board to order a representation vote.*

## **II. Summary of the arguments**

### **A. For the NPF**

[7] Consolidating the two applications is appropriate to ensure an expeditious resolution of the issues they raise. They deal with the same subject matter, namely, the certification of a bargaining agent for RCMP members and reservists. Both raise common legal and factual issues of defining the appropriate bargaining unit, determining whether the applicants are “employee organizations” under the *FPSLRA*, and determining whether they exclusively represent RCMP members and reservists.

[8] Finally, and most importantly, both applications cannot be granted — the resolution of one is determinative of the other. This is because Bill C-7 creates a new

bargaining regime for RCMP members and imposes the obligation on the Board to recognize a single, national bargaining unit to represent them.

[9] Bill C-7 adds the following provisions to the *FPSLRA*:

**238.13 (1)** *Subject to section 55, an employee organization within the meaning of paragraph (b) of the definition employee organization in subsection 2(1) that seeks to be certified as the bargaining agent for the group that consists exclusively of all the employees who are RCMP members and all the employees who are reservists may apply to the Board, in accordance with the regulations, for certification as bargaining agent for that group. The Board must notify the employer of the application without delay.*

**(2)** *The Board may certify an employee organization referred to in subsection (1) as the bargaining agent for the group only if it determines that the employee organization — and, in the case of a council of employee organizations, each employee organization forming the council — meets the following requirements:*

**(a)** *it has as its primary mandate the representation of employees who are RCMP members;*

**(b)** *it is not affiliated with a bargaining agent or other association that does not have as its primary mandate the representation of police officers; and*

**(c)** *it is not certified as bargaining agent for any other group of employees.*

...

**238.14** *If an application for certification is made under subsection 238.13(1), the Board must determine that the group that consists exclusively of all the employees who are RCMP members and all the employees who are reservists constitutes the single, national bargaining unit that is appropriate for collective bargaining.*

[10] Bill C-7 also includes transitional provisions. The following provision is relevant to applications for certification that were filed under the *FPSLRA*, as is the case for the two applications at issue:

**63 (1)** *If, before the day on which section 238.13 of the Federal Public Sector Labour Relations Act, as enacted by section 33, comes into force, an employee organization makes an application under section 54 of the former Act to*

*be certified as bargaining agent for a group of employees that includes employees who are members appointed to a rank, or employees who are reservists, the employee organization must not be certified as bargaining agent for the group, unless*

*(a) the group consists exclusively of all the employees who are members appointed to a rank, other than officers as defined in subsection 2(1) of the Royal Canadian Mounted Police Act, and all the employees who are reservists; and*

*(b) the employee organization — and, in the case of a council of employee organizations, each employee organization forming the council — meets the following requirements:*

*(i) it has as its primary mandate the representation of employees who are members appointed to a rank, other than officers as defined in subsection 2(1) of the Royal Canadian Mounted Police Act,*

*(ii) it is not affiliated with a bargaining agent or other association that does not have as its primary mandate the representation of police officers, and*

*(iii) it is not certified as the bargaining agent for any other group of employees.*

...

*(3) If an employee organization is certified as the bargaining agent for a bargaining unit contrary to subsection (1), that decision or any decision made on a review of the decision is deemed never to have had effect.*

[11] Section 238.14 of the *FPSLR*A and s. 63(1)(a) of Bill C-7 together define the appropriate bargaining unit and leave no discretion to the Board. There remain only factual determinations, which the Board can deal with in writing. The NPF lists as follows the issues to be determined:

- (1) whether both applicants or either one is an employee organization;
- (2) whether each applicant's primary mandate is representing RCMP members;
- (3) whether each is affiliated with a non-police association;

- (4) whether each has already been certified as the bargaining agent for another unit of employees;
- (5) whether each has been duly authorized to file its application; and
- (6) whether each has the requisite 40% membership support.

[12] The NPF acknowledges that both applicants seem to meet the first five criteria, which could be established before the Board by way of sworn written statements and copies of the respective by-laws of the two employee organizations. The Board should deal with membership support *in camera*.

[13] *An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act* (S.C. 2017, c. 12; “Bill C-4”) was also enacted on June 19, 2017. In its transitional provisions, it provides as follows:

**16** *If the Public Service Labour Relations and Employment Board has, during the period beginning on June 16, 2015 and ending immediately before the day on which section 8 comes into force, received an application for certification referred to in paragraph 64(1.1)(a) of the Public Service Labour Relations Act or an application for a declaration made under subsection 94(1) of that Act, and the application has not been finally disposed of before that coming into force, that application is to be dealt with and disposed of in accordance with that Act as it read immediately before that coming into force.*

[14] This means that the Board must follow the procedure as stated in s. 64(1.1) of the *FPSLRA*, which reads as follows:

**64 (1.1)** *After having determined a unit appropriate for collective bargaining, the Board must order that a secret ballot representation vote be taken among the employees in the unit if it is satisfied;*

*(a) on the basis of evidence of membership in the employee organization that, as of the date of the filing of the application, at least 40% of the employees in the unit wish to have the employee organization represent them as their bargaining agent;*

*(b) that the persons representing the employee organization in the making of the application have been duly authorized to make the application; and*

*(c) if the applicant is a council of employee organizations, that each of the employee organizations forming the council has vested appropriate authority in the council to enable it to discharge the duties and responsibilities of a bargaining agent.*

[15] Therefore, once the Board has ascertained whether one of the employee organizations in these applications has the requisite support, it must order a vote by secret ballot.

[16] In its submissions, the NPF responds summarily to the constitutional arguments raised by the AMPMQ, stating that as long as legislative provisions have not been invalidated, they continue to be in force. Therefore, the Board must follow the provisions as they now exist.

**B. For the respondent**

[17] The employer, the Treasury Board of Canada, agrees that the two certification applications should be consolidated. It also states that the appropriate bargaining unit is the one defined in s. 238.14 of the *FPSLRA*. The respondent takes no position on the other issues to be decided.

**C. For the AMPMQ**

[18] The AMPMQ acknowledges that Bill C-7 legislates a single bargaining unit for all RCMP members throughout Canada. The AMPMQ opposes this legislation, as it deprives the AMPMQ of the opportunity to represent its members in Quebec and to demonstrate the appropriate and necessary nature of the bargaining unit it proposes. The legislation seems to contradict the Supreme Court of Canada's intent in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, which affirms the freedom of employees to create, join, or leave an employee association.

[19] The AMPMQ reserves its right to challenge the constitutional validity of the new regime created by Bill C-7. It believes the interests of the Quebec members are not sufficiently represented in the NPF's present structure.

[20] However, the AMPMQ is open to mediation, to be offered by the Board's mediation services, not only as a means to resolve the procedural issues raised by the NPF's motion but also more importantly as a way to ensure a better representation of

the RCMP's francophone members within the employee organization that will be certified to represent them.

#### **D. For the CPA**

[21] The CPA restates the legal requirements set in place by Bill C-7 in its amendments to the *FPSLRA* and its transitional provisions. This leads it to the following conclusion (paragraph 10 of its submissions):

*These requirements make clear that the new legislative framework brought about by Bill C-7 contemplates only one bargaining unit, which is national in scope and acts on behalf of all RCMP members and reservists. Necessarily, this means that both Applications cannot be successful; the Board can only certify one, national, bargaining unit.*

[22] Since the outcomes of the applications are mutually exclusive, the CPA argues that they should be consolidated and that the Board should consider them together. The CPA recognizes the AMPMQ's unique interests but believes that a single national unit can include all members throughout Canada while taking into account the unique interests of RCMP members and reservists in Quebec. Since there are no factual issues to resolve, the issues can be determined based on written submissions.

#### **III. Reasons**

[23] The main object of the motion is to consolidate the two certification applications that have been made to represent the RCMP's ranked members and reservists, excluding officers and civilian members. The AMPMQ has not pronounced itself directly on the motion to consolidate. Its submissions go to the representation of the specific group for which it wants to be certified as bargaining agent, the RCMP officers and reservists in the "C" division operating in Quebec.

[24] Bill C-7 and the new regime created by the legislator make it clear that there can be only a single, national bargaining unit for RCMP members and reservists. Therefore, the Board must consider both applications together to resolve the matter, as the applications cannot both be successful.

[25] Files 542-02-12 and 542-02-13 will therefore be consolidated.

[26] The NPF has asked for a declaration that the appropriate bargaining unit is the one defined in s. 238.14 of the *FPSLRA*. The language of the *FPSLRA*'s new provisions



and of the transitional provisions is clear. The appropriate bargaining unit for RCMP members and reservists is defined in the *FPSLRA*, and there is no latitude for the Board to consider whether another bargaining unit may be more proper, as would be the case for other bargaining units under s. 57.

[27] Under s. 238.14 of the *FPSLRA*, "... the Board must determine that the group that consists exclusively of all the employees who are RCMP members and all the employees who are reservists constitutes the single, national bargaining unit that is appropriate for collective bargaining" [emphasis added].

[28] Therefore, the Board declares that the group that consists exclusively of all the employees who are RCMP members and all the employees who are reservists constitutes the single, national bargaining unit that is appropriate for collective bargaining.

[29] Before ruling on the certification of RCMP members and reservists, a momentous occasion that will follow a long and arduous legal struggle, the Board's view is that it would be worthwhile for both applicants to discuss the measures that can be taken to ensure the best representation for all RCMP members and reservists, in Quebec and throughout Canada, given the declaration that confirms a single, national bargaining unit.

[30] The files will be consolidated, and the applicants are invited to discuss further how best to serve the interests of RCMP members and reservists. Of course, the Board's mediation services are available to help in such an endeavour.

[31] The applicants may contact the Board at any time to pursue the certification process.

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

*(The Order appears on the next page)*

**IV. Order**

[33] Files 542-02-12 and 542-02-13 are consolidated.

[34] The group that consists exclusively of all the employees who are RCMP members (excluding officers and civilian members) and all the employees who are reservists constitutes the single, national bargaining unit that is appropriate for collective bargaining.

[35] The applicants are invited to further discuss measures to ensure representation of all RCMP members and reservists throughout Canada.

October 11, 2017.

**Catherine Ebbs, Stephan Bertrand, and Marie-Claire Perrault,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**