

**Date:** 20180110

**Files:** 542-02-08, 09, and 11

**Citation:** 2018 FPSLREB 3

*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  
and Employment Board

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BETWEEN

**CANADIAN UNION OF PUBLIC EMPLOYEES**

Applicant

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Respondent

Indexed as

*Canadian Union of Public Employees v.  
Treasury Board (Royal Canadian Mounted Police)*

In the matter of an application for consent to alter the terms and conditions of employment under section 56 of the *Federal Public Sector Labour Relations Act*

**Before:** Margaret T. A. Shannon, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Applicant:** Devon Paul and Ella Henry, Canadian Union of Public Employees

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

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Decided on the basis of written submissions  
filed July 6 and August 16 and 28, 2017.

## REASONS FOR DECISION

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### **I. Background**

[1] On December 9, 2016, January 19, 2017, and March 28, 2017, the Canadian Union of Public Employees (“the applicant” or CUPE) filed three applications for certification (Board File Nos. 542-02-08, 09, and 11), seeking to represent three distinct bargaining units. By a decision dated October 19, 2017, these three files were consolidated into one (see 2017 FPLSLREB 36). It was also determined that a single bargaining unit would be appropriate for collective bargaining, composed of all employees within the Intercept Monitoring and Telecommunications Operations sub-groups of the Law Enforcement Support Group and in the Police Operations Support Group. The certification process is ongoing.

[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) 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 *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (“the Act”).

### **II. Application before the Board**

[3] On July 6, 2017, the Board received an application under s. 56 of the *Act* from the Treasury Board (“the employer”) requesting the Board’s consent to alter the terms and conditions of employment applicable to employees within the bargaining unit defined by the Board’s decision in 2017 FPRSLREB 36. Specifically, the employer made the following submissions:

...

*The adjustments to the rates of pay for the PO and these LES sub-groups would normally be implemented following the signing of the TC collective agreement, has [sic] happened as of June 14, 2017. However, as a consequence of the three applications for certification filed by CUPE (FPSLREB 542-02-08, FPLSLREB 542-02-09 and FPLSLREB 542-02-11) and pursuant to s.56 of the FPSLRA, the Employer may not alter the terms and conditions of employment for the employees in these groups unless the FPSLREB provides its consent.*

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*The Employer therefore respectfully requests that the Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act*

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*FPSLRB provide its consent to the following changes to terms and conditions of employment for the two PO sub-groups and the LES-TO and LES-IM sub-groups, which mirror what is included in the TC collective agreement:*

*1. Increase rates of pay as follows:*

- 1.25% pay increase, effective January 1, 2015;*
- 1.25% pay increase, effective January 1, 2016;*
- 0.5% wage adjustment, effective January 1, 2017;*
- 1.25% pay increase, effective January 1, 2017; and*
- 1.25% pay increase, effective January 1, 2018.*

*2. Provide a one-time lump-sum payment of \$650 to employees in the PO occupational group and to civilian members of the RCMP occupying positions in the LES-TO and LES-IM occupational sub-groups.*

...

[4] CUPE provided its response to the application on August 16, 2017. At paragraphs 4 and 5 of its submissions, it stated as follows:

*4. CUPE does not object to the pay increases effective January 1, 2015 and January 1, 2016. CUPE does object to the “wage adjustment” effective January 1, 2017 and the pay increases effective January 1, 2017 and January 1, 2018. CUPE reiterates that this position is without prejudice to the position it may take in other matters, and should not be taken as agreement by CUPE that the 2015 and 2016 increases represent the only amounts to which the employees it seeks to represent are entitled.*

*5. Should CUPE be successful in its applications for certification, it will be entitled to bargain on behalf of the employees in the bargaining units applied for. Rates of pay are a critically important term of employment, and the FPSLRB ought not to permit TB to tie CUPE’s hands with regard to bargaining pay increases for 2017 and 2018, which fall after CUPE [sic] the date of the first of the three applications for certification which CUPE has made and which are before the FPSLRB.*

[5] CUPE then went on to cite several decisions from this Board and labour boards

in other jurisdictions for the principle that pay and benefits are key issues central to the collective bargaining process. CUPE noted at paragraph 14 of its submissions as follows:

*14. TB has asked the Board to allow it to determine not only the pay increases that pre-date [sic] CUPE's first applications for certification, but also to determine the pay increases that would be in effect for the two years after CUPE sought certification. In effect, TB asks the FPSLREB to bind CUPE's hands in collective bargaining over a key economic provision of the collective agreement that is central to the collective bargaining process. The FPSLREB ought not to countenance such fettering of CUPE's prospective role as a bargaining agent.*

[6] CUPE made no submissions with respect to the employer's request for consent to provide a one-time lump-sum payment in the amount of \$650.

[7] The Treasury Board declined to provide any further comments following CUPE's written submissions.

### **III. Reasons**

[8] The employer's application was submitted under s. 56 of the Act, which sets out as follows:

*56 After being notified of an application for certification made in accordance with this Part or Division 1 of Part 2.1, the employer is not authorized, except under a collective agreement or with the consent of the Board, to alter the terms and conditions of employment that are applicable to the employees in the proposed bargaining unit and that may be included in a collective agreement until*

*(a) the application has been withdrawn by the employee organization or dismissed by the Board; or*

*(b) 30 days have elapsed after the day on which the Board certifies the employee organization as the bargaining agent for the unit.*

[9] Before determining the issue of whether to grant the employer's proposal, it is incumbent upon me to determine whether this application is properly before the Board and whether consent is in fact required; that is, whether the proposed pay increase, wage adjustments, and lump-sum payment would in fact constitute an alteration of the terms and conditions of employment. I will consider the application for consent in three parts, as follows: (a) the application for pay increases, which are effective before

the date of the application for certification; (b) the application for a wage adjustment and for pay increases which are to take effect after the date of the application for certification; and (c) the lump-sum increase.

**A. Application for pay increases, which are effective before the date of the application for certification**

[10] The employer applied for consent to implement a pay increase on January 1, 2015, in the amount of 1.25%, and a pay increase on January 1, 2016, in the amount of 1.25%. CUPE indicated to the Board that it consented to this proposal. As there is no live issue between the parties, it is not necessary to address whether an application under s. 56 of the *Act* is necessary with respect to the pay increases for before 2017.

[11] Section 12 of the *Act* provides that the Board "... may exercise the powers and perform the functions that are conferred or imposed on it by this Act, or as are incidental to the attainment of the objects of this Act ...". I have considered the preamble of the *Act*, which recognizes as follows that:

...

*the public service labour-management regime must operate in a context where protection of the public interest is paramount;*

*effective labour-management relations represent a cornerstone of good human resource management and that collaborative efforts between the parties, through communication and sustained dialogue, improve the ability of the public service to serve and protect the public interest;*

...

*commitment from the employer and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service ...*

...

[12] Accordingly, to give effect to the preamble and to promote the continuation of these principles, the Board, exercising its power under s. 12 of the *Act*, authorizes the pay increases, each in the amount of 1.25%, which have been proposed to take effect on January 1, 2015, and January 1, 2016.

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**B. Application for pay increases for which the wage adjustment is to take effect after the date of the application for certification**

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[13] The employer applied for consent to apply a wage adjustment in the amount of 0.5% on January 1, 2017, a pay increase on January 1, 2017, in the amount of 1.25%, and a pay increase on January 1, 2018, in the amount of 1.25%.

[14] I have considered CUPE's submissions, and I agree with its stand that negotiating wages is a fundamental part of the collective bargaining relationship. I also agree that pay is a fundamental term and condition of employment as stated by the arbitrators in *Serco Facilities Management Inc. v. Public Service Alliance of Canada*, 2008 CIRB 426, and in *Siddiqui v. Canadian Merchant Service Guild*, 2015 CIRB 769, and the adjudicator in *United Food and Commercial Workers Union, Local 401 v. Staff of the Non-Public Funds, Canadian Forces*, 2016 PSLREB 57.

[15] In its submissions, the Treasury Board noted that adjustments to the rates of pay for the PO and the LES sub-groups would normally be implemented following the signing of the TC collective agreement. However, the employer's relationship with these sub-groups fundamentally changed once CUPE made the application for certification on their behalf, and what might have been business as usual before is that no longer.

[16] The previously unrepresented employees have expressed their desire to be represented and to bargain collectively, and the process of determining their representative is ongoing. Once that completes, they may have a bargaining agent who will negotiate their terms and conditions of employment, including pay increases.

[17] Accordingly, I find that an application under s. 56 is required to alter the terms and conditions with respect to pay for the employees covered by the application for certification. As CUPE has not consented to the employer's proposal and has expressed its desire, should it be certified, to bargain this matter, I do not consent to the employer's proposal for a wage adjustment and pay increases to take effect following the application for certification.

**C. The lump-sum payment**

[18] In its application, the Treasury Board also requested the Board's consent to a lump-sum payment to the employees in question in the amount of approximately \$650. Since the Treasury Board has not provided any detail as to what the lump-sum

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*Federal Public Sector Labour Relations and Employment Board Act and  
Federal Public Sector Labour Relations Act*

payment relates to or the time frame to which it applies, and since CUPE did not address the lump-sum payment in its submissions to the Board, the Board does not consent to its payment.

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

*(The Order appears on the next page)*

**IV. Order**

[20] The Board authorizes the employer to provide a pay increase in the amount of 1.25%, effective January 1, 2015, and a pay increase in the amount of 1.25%, effective January 1, 2016, to the employees subject to the application for certification.

[21] The Board does not consent to the employer providing any further pay increase or wage adjustment, as proposed by the employer in this s. 56 application.

[22] The Board does not consent to the employer's request to provide a one-time lump-sum payment in the amount of \$650 to the employees subject to the application for certification.

January 10, 2018.

**Margaret T. A. Shannon,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**