**Date:** 20040827

**File:** 169-2-649

**Citation:** 2004 PSSRB 124

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

**PROFESSIONAL ASSOCIATION OF FOREIGN SERVICE OFFICERS**

Bargaining Agent

and

**TREASURY BOARD**

Employer

**RE:** Reference under Section 99 of the Public Service Staff Relations Act

***Before:*** Joseph W. Potter, Vice-Chairperson

***For the Bargaining Agent:*** Ron Cochrane, Professional Association of Foreign Service Officers

***For the Employer:*** John G. Jaworski, Counsel

Heard at Ottawa, Ontario,
June 24 and 25, 2004.

[1] On October 29, 2001, the Executive Director of the Professional Association of Foreign Service Officers (PAFSO), Ron Cochrane, sent a letter to the Public Service Staff Relations Board (the Board) claiming that a number of indeterminate employees in Foreign Service (FS) officer positions were not paying union dues to the PAFSO. Mr. Cochrane was seeking an order requiring the employer to remit the dues to his Association.

[2] The employer replied to this allegation by way of a letter to the Board dated December 14, 2001. In its correspondence, the employer stated that employees who were assigned or seconded to FS positions continued to remit dues to their "substantive" bargaining agent. Such employees "…do not gain incumbency into those FS positions." The employer stated that the employees maintain their substantive group and level, continue to be subject to the terms and conditions of their substantive group and level and consequently are not "employees in the (FS) bargaining unit" as set out in the collective agreement concluded between the Treasury Board and the PAFSO for the FS Group bargaining unit (Code 312).

[3] Further on in its letter to the Board, the employer stated that union dues should have been remitted to the PAFSO in certain cases where employees were "acting" in FS positions. In those situations, the department concerned intended "…to rectify this administrative error."

[4] Mr. Cochrane replied to the Board on March 18, 2002, and outlined the position that he took concerning the points raised in the employer's December 14, 2001 letter. Mr. Cochrane stated that the term "secondment" could not be found anywhere in the *Public Service Employment Act* (*PSEA*) as a recognized staffing action. Furthermore, Mr. Cochrane wrote: "It is our position that the employees described in these "secondment" agreements have in fact been appointed to these FS positions either in an (i) acting capacity…or by the acting pay provisions of their collective agreement."

[5] Mr. Cochrane went on to state, "…that the employees all occupy FS position [*sic*] and…they are expected to perform the work required of these positions…" A further request was made for the PAFSO to receive the dues for such employees.

[6] This matter was scheduled to be heard in April 2002, but was postponed at the request of the employer.

[7] Another hearing was scheduled for June 2002, but was postponed at the request of the PAFSO, and it was rescheduled for November 2002, but was postponed at the request of the employer.

[8] The matter was again scheduled for May 2003, but at the request of the parties, this hearing date was converted into a mediation. A number of issues were resolved, but one issue remained outstanding; therefore, the Board scheduled the matter for November 2003.

[9] Due to the fact that this matter had the potential to affect other bargaining agents, the Board sent out a letter on November 17, 2003, to those who were potentially affected, informing them that the matter was to be heard. One of the bargaining agents requested that the matter be postponed, as it did not have sufficient time to prepare for the hearing. This request was granted.

[10] The Board then scheduled the matter for a hearing on June 24 and 25, 2004, and the case proceeded. The Board sent a notice of hearing to all bargaining agents who could potentially be affected by this decision, but, at the hearing, none of the other bargaining agents chose to intervene.

[11] At the outset of the hearing, the parties submitted an Agreed Statement of Facts (Exhibit E-1). It states, in part:

. . .

1. *PAFSO is the certified bargaining agent for all employees in the Foreign Service ("FS") Bargaining Unit.*

2. *Of the employees in the Foreign Service (FS) Bargaining Unit, a portion report to the Department of Foreign Affairs and International Trade ("DFAIT") and a portion report to Citizenship and Immigration Canada ("CIC")*

. . .

> 6. *There are a number of persons who are employed in the Federal public service, in DFAIT and CIC and government departments other than DFAIT and CIC ("OGD"), who have been posted on a temporary basis to either DFAIT or CIC, into positions, which would ordinarily be "rotational" positions, or positions at foreign missions.*
>
> . . .

[12] The Agreed Statement of Facts also listed a number of employees, at both the DFAIT and the CIC, who had entered into secondment agreements and whose substantive position was either equivalent to or higher than the FS-1 or FS-2 position they occupied.

[13] Mr. Cochrane testified on behalf of the applicant and I heard from two witnesses for the employer. A total of 14 exhibits were filed on consent by the employer, and three on consent by the applicant.

The Facts

[14] Mr. Cochrane stated that, following a request that he made for particulars concerning staffing actions at the DFAIT, he received a document titled "Non FS in FS positions" (Exhibit G-1). This is a 10-page listing of individuals who are classified as something other than an FS but are working in FS positions, performing FS duties. In situations where the maximum salary of the employees' substantive position exceeds that of the FS position they are in, those employees do not pay dues to the PAFSO.

[15] In April 2001, the PAFSO served Notice to Bargain on the employer to enter into a new collective agreement. The dispute resolution process was conciliation/strike. As such, the parties had to agree on the issue of safety and security designations.

[16] Mr. Cochrane testified that all the positions shown in Exhibit G-1 were designated for safety and security purposes. In addition, the PAFSO and the CIC agreed that all overseas FS positions would be designated (Exhibit G-2). These safety and security designation lists contain the names of employees whose substantive position is non-FS, yet they perform the duties of an FS position. These documents show that the employer proposed non-FS employees who were occupying FS positions for designation during the FS negotiations.

[17] Robert Daoust is a staff relations advisor at the DFAIT and he testified that, in the 2001 round of collective bargaining, all FS positions abroad were designated. However, not all of the employees filling those positions were designated. Managers had been told not to deliver the designation letters to non-FS employees who had been seconded to FS positions. The reason for this was that, since the secondments did not constitute appointments, employees in that situation remained in their substantive bargaining unit.

[18] During cross-examination, Mr. Daoust acknowledged that the Board issued designation letters for all the DFAIT FS positions abroad, but the Department made the decision not to send out the designation letters to certain non-FS employees.

[19] Michael Siewecke is an assignment officer in the Assignment and Pool Division at the DFAIT. His function is to assist managers in finding employees with the right competencies for the positions that need to be filled. Mr. Siewecke explained that the FS positions overseas were rotational, with employees being in the position for between two to four years. Not all FS positions are filled with FS employees, as in some cases managers cannot find any FS employees with the particular skill sets needed for the vacant overseas position. In those cases, the DFAIT looks outside the FS stream to fill the available positions.

[20] In cross-examination, Mr. Siewecke explained that preference is given to FS employees to fill FS positions, and that when the assignment is made, there is no right of appeal. Consequently, when a non-FS employee is selected to fill an FS position, there is no appeal for the individual who did not get that assignment.

Arguments

For the Applicant

[21] The FS Group is different from any other in the Public Service. The FS employees are appointed to a level, not a position, and, as such, FS employees spend their careers in competitions for a series of assignments.

[22] In order to make the rotational posting system work, there is an exclusion order (Exhibit E-6), which, in essence, precludes appeals on the assignments. If appeals were permitted, the system would break down.

[23] In 2001, the PAFSO discovered that there were a large number of non-FS employees in FS positions who were not paying dues to the PAFSO. A reference to the Board under section 99 of the *Public Service Staff Relations Act* (*PSSRA*) was filed. Since then, the FS Group maximum rate of pay has changed and a number of the non-FS employees in secondment situations in the original application are now receiving acting FS pay. These employees now pay dues to the PAFSO. Nothing changed except salary; therefore, the salary meant that an employee was either in or out of the bargaining unit. The duties performed should determine whether someone is in or out of the bargaining unit.

[24] Non-FS employees in the two departments in question have been assigned to FS positions. Those whose substantive maximum rate of pay is less than the maximum rate of pay for the FS position they are assigned to (termed an "underfill") receive acting pay and pay dues to the PAFSO. Those whose substantive maximum rate of pay is greater than the maximum rate of pay for the FS position they are assigned to (termed an "overfill") do not receive acting pay and do not pay dues to the PAFSO. The issue is whether employees in this latter group should pay union dues to the PAFSO.

[25] The employer says that these are secondment agreements. In reality, they are disguised appointments. A secondment agreement is not a recognized staffing action under the *PSEA*. No legal authority for these agreements exists. A secondment agreement is really a situation where an indeterminate employee accepts a term appointment with the understanding that he/she will cease to be employed in the secondment position and guaranteed that he/she can return to his/her substantive position.

[26] If the employee is in an FS position, doing FS work, then by the PAFSO bargaining certification, the employee is in the FS Group bargaining unit and should pay dues to the PAFSO.

[27] The employer's witness testified that there was an agreement in the 2001 negotiations to designate all FS positions abroad. This agreement was registered with the Board, and the Board issued letters of designation to all those employees. Form 13 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* is the letter sent to the employees. It contains a section for the bargaining agent, and clearly the bargaining agent is the PAFSO. The Department decided arbitrarily not to send these letters to

certain non-FS employees, but the fact that the Board issued the letters means that the bargaining agent is the PAFSO.

[28] All indicia show that the individuals in FS positions got there via appointments and, as such, they should be members of the PAFSO bargaining unit.

[29] The PAFSO requests that the Board order the employer to pay the union dues that these employees would otherwise have been paying to the PAFSO.

[30] Mr. Cochrane referred me to the following cases: *Doré v. Canada*, [1987] 2 S.C.R. 503; *Canada (Attorney General) v. Brault*, [1987] 2 S.C.R. 489; and *Professional Institute of the Public Service of Canada v. Senate of Canada*, [1993] F.C.J. No. 1426 (FCA) (QL).

For the Employer

[31] The FS positions are rotational and are generally for a period of two to four years in duration. The secondment agreements, entered into by the employees, are seen at Exhibits E-12 and E-13. These agreements include the location the person is going to and the duration.

[32] In the first secondment agreement in Exhibit E-12, the document shows that the participating officer is Gilles Couturier. The document shows that he has been seconded from Natural Resources Canada for a two-year period. Mr. Couturier's classification is ES-6 and that is his position. If this employee did something untoward while on secondment and his employment was terminated, he would be terminated from his ES-6 position. If Mr. Couturier were missing a benefit provided in his ES Group collective agreement, the bargaining agent for the ES Group would bring the dispute to the Board for determination. Therefore, dues should be paid to the bargaining agent for the ES Group in this particular case.

[33] The issue of designation has no relevance. It is the position that is designated, and Form 13 issued by the Board says this, as well. If a position is designated, the incumbent cannot go on strike. If that same position were filled by someone from outside the FS Group, that person could not go on strike either, as the person's substantive position is in another bargaining unit.

[34] Counsel for the employer referred me to the following cases: *Keenan v. Canada (Public Service Commission)*, [1989] 3 F.C. 643 (C.A.); *Sinclair v. Canada (Treasury Board)*, [1991] F.C.J. No. 1266 (FCA) (QL); *Professional Institute of the Public Service of Canada and Senate of Canada*, PSSRB File No. 469-S-3 (1992) (QL); *Langlois v. Canada* (1991), 46 F.C.R. 305; *Virany v. Treasury Board (Consumer and Corporate Affairs Canada)*, PSSRB File No. 166-2-24019 (1993) (QL); *Roberts v. Canada (Attorney General)*, [1999] F.C.J. No. 323 (FCA) (QL); and *Elmore v. Canada (Attorney General)*, [2000] F.C.J. No. 2028 (FCA) (QL).

Reply for the Applicant

[35] For the period of time that the employees are assigned to FS positions, they should pay dues to the PAFSO. Employees pay dues to the PAFSO in acting pay situations and should in all other situations, as well.

[36] In this case, the employees are performing duties different from those of their substantive position. They are doing the work described in the FS Group definition. This is different from the case law cited by the employer.

[37] If employees are in an FS position, they have to pay FS Group dues. If there are any negative consequences, such as benefits being greater in their substantive position than in the FS position, the employer has to come to the PAFSO to ensure that their benefits are protected.

Reasons for Decision

[38] The applicant submits, among other reasons, that because there was agreement in 2001 at the DFAIT that all positions overseas be designated, and that the Form 13 sent by the Board contains an area titled “bargaining agent”, there can be no doubt that the bargaining agent for all these positions is the PAFSO. As such, dues should flow to the PAFSO.

[39] The employer says that the issue of safety and security designations is not relevant to the issue in this case.

[40] In my view, the fact that all overseas positions at the DFAIT were agreed to as being designated during the 2001 collective bargaining process has no bearing on the issue before me. The *PSSRA* sets out a process at section 78 whereby the parties agree, or not, that certain positions be designated for safety or security purposes. It is the position that is designated. In the instant case, there is no disagreement that the positions in questions are FS positions. The only question is whether the incumbents of the positions should pay union dues to the PAFSO or to their substantive bargaining agent.

[41] Another argument advanced by the applicant is that the term "secondment" is not found in the *PSEA* and that this staffing action is, in reality, an appointment. As such, when an employee is appointed to an FS position, dues are owing to the PAFSO.

[42] The secondment agreements with the DFAIT signed by the individuals (Exhibit E-12) contain a statement that, for the duration of the secondment, the individual remains "…an employee and on the payroll…" of the substantive department. For want of a better term, the individual is being "loaned" to the DFAIT for the duration of the assignment. Such an assignment can be for a term of two to four years.

[43] The issue of "secondment" was dealt with in *Keenan v. Canada (Public Service Commission)* (*supra*), where the Federal Court of Appeal stated, at paragraph 4 of the Quicklaw version:

. . .

> *For purposes of this judgment, it is unnecessary to attempt to define the terms "secondment", "assignment" and "appointment" in a comprehensive way. The material distinction between the first two is that a secondment involves the installation, to adopt a neutral term, of a person from another department or agency in a position while an assignment involves a person from within the same department or agency. The jurisprudence makes it amply clear that either may, or may not, be an appointment depending on the particular circumstances, vid. Canada (Attorney General) v. Brault, [1987] 2 S.C.R. 489; Doré v. Canada, [1987] 2 S.C.R. 503; and Lucas v. Canada (Public Service Commission Appeal Board), [1987] 3 F.C. 354 (C.A.). I cite these decisions only to demonstrate that the question is an arguable one very much dependent on the circumstances of each case.*

. . .

[44] As we see, the specific circumstances of each case determine whether it is a secondment, appointment or assignment.

[45] Mr. Cochrane submitted that, because these secondment agreements were so lengthy in duration, namely, two to four years, they acquired the character of an assignment, as outlined in the Supreme Court of Canada decision in *Doré v. Canada (supra).*

[46] My reading and understanding of *Doré* (*supra*) indicate that it is vastly different from the instant case. In *Doré*, it was a "one of" situation whereby the employing department assigned an individual to the function of supervisor and kept the individual there for some nine months. The unsuccessful candidate, Ms. Doré, appealed the assignment. The Department claimed that the assignment was not an appointment to a position giving rise to a right of appeal. The Supreme Court of Canada did not agree with the Department, ruling, in part, at page 511:

. . .

> *…while it must be possible for the administration to assign a person in the Public Service to new functions on a temporary basis without giving rise to the application of the merit principle and the right of appeal, that reasonable flexibility should no longer be available where, as in the present case, the assignment is permitted to become one of such significant and indefinite duration as may be presumed to place the occupant of the position at a distinct advantage in any subsequent selection process….*

. . .

[47] The Supreme Court of Canada ruled that the assignment could have placed the "…occupant of the position at a distinct advantage in any subsequent selection process…" and it could be considered an appointment with appeal rights. In other words, the individual assigned the function of supervisor for some nine months would have had a distinct advantage when the supervising position was open to competition.

[48] In the case of FS positions, they are rotational. No one "owns" a position as such. Employees are rotated through various positions; therefore, being assigned to an FS position for two to four years does not put the incumbent at any advantage in the subsequent selection process for that position because there is only a "selection" when the incumbent leaves. Therefore, no subsequent selection advantage accrues to an

individual who is assigned the position for the two- to four-year duration. As such, I do not find that these are appointments and the specific circumstances of this case indicate to me that these are, in fact, secondments as described by the Federal Court of Appeal in *Keenan* (*supra*).

[49] Mr. Cochrane also said that, under the current *modus operandi* of the employer, it is the maximum rate of pay of an individual's substantive position that drives the issue of where an individual's union dues are directed. If the individual's maximum rate of pay of his or her substantive position exceeds the maximum rate of pay for the FS position to which he or she is seconded to ("overfill"), the employer says that the dues remain with the substantive position's bargaining agent. On the other hand, if the maximum rate of pay of the substantive position is less than the maximum rate of pay for the FS secondment position ("underfill"), he or she receives acting FS pay and the dues go to the PAFSO. Mr. Cochrane argued that salary should not determine where the dues are channelled.

[50] The employer's action would appear to contravene the provisions of clause 3.01 of the FS Group collective agreement. The provision states:

> *Subject to the provisions of this Article, the Employer will, as a condition of employment, deduct an amount equal to the membership dues for the monthly pay of all employees in the bargaining unit.*

[51] I do not see anything in clause 3.01 or anywhere else in the collective agreement that says that the channelling of union dues is dependent on the employee's substantive rate of pay. This is, in effect, what is occurring.

[52] The bargaining unit has been defined as follows in *Professional Association of Foreign Service Officers v. Treasury Board*, PSSRB File No. 142-2-326 (1999) (QL):

> *All employees of the Employer in the Foreign Service Group as defined in the* Canada Gazette *on March 27, 1999.*

[53] Part I of the *Canada Gazette* published on March 27, 1999, contains the following definition of the Foreign Service Group, at pages 820 and 821:

*Foreign Service Group Definition*

*The Foreign Service Group comprises positions that are primarily involved in the planning, development, delivery and promotion of Canada's diplomatic, commercial, human rights, cultural, promotional and international development policies and interests in other countries and in international organizations through the career rotational foreign service.*

*Inclusions*

*Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one or more of the following activities:*

1. commercial and economic relations and trade policy – *the planning, development, delivery or management of policies, programs, services or other activities directed at Canada's economic or trade relations with foreign countries, including the development, promotion or strengthening of Canada's economic or trade interests in bilateral or multilateral forums;*
2. political and economic relations – *the planning, development, delivery or management of policies, programs, services or other activities directed at Canada's political relationships with foreign countries;*
3. immigration affairs – *the delivery or management of immigration policies, programs, services or other activities in support of the Canadian immigration program abroad;*
4. legal affairs – *the provision of legal advice to the federal government on Canada's international rights and obligations; the interpretation and application of international legal obligations; the negotiation of various bilateral and multilateral agreements, treaties and conventions; and the defence of Canada's position respecting those obligations and agreements including dispute settlement;*
5. communications and culture – *the planning, development, delivery or management of communications and cultural policies, programs, services or other activities in Canada and abroad to promote Canada's foreign service role to Canadians and to promote Canada in the world; and*
6. *the provision of related advice.*

*Also included are positions occupied by members of the group on assignments in Canada.*

> *Exclusions*
>
> *Positions excluded from the Foreign Service Group are those whose primary purpose is included in the definition of any other group or those in which one or more of the following activities is of primary importance:*
>
> *1. the provision of administrative or information services as described in the Program and Administrative Services Group; and*
> *2. the representation in other countries of Canadian interests in a specialized field when the incumbent is not a career rotational foreign service officer.*

[54] In the situation covered by this application, the employees in question are doing FS work. The employees are in FS positions and the work they are performing clearly fits within the Foreign Service Group definition (Exhibit E-4). This fact is not in dispute.

[55] The other fact not in dispute here is the duration of the secondments. These are not three or four-month assignments where it may be easier for bargaining agents to agree with each other that union dues will not transfer from one bargaining unit to another. Rather, all of these are lengthy secondments.

[56] When Mr. Cochrane first looked at the issue of where the union dues were flowing to, his reaction was like the individual who ordered steak but received shaved beef; it was a lot less than expected!

[57] The employer states that Mr. Cochrane should not have been surprised by this, because a similar situation arose in 1992 and was dealt with by the Board in *Professional Institute of the Public Service of Canada v. Senate of Canada* (*supra*). The Board outlined the dispute as follows:

. . .

> *This is a reference to adjudication pursuant to section 70 of the Parliamentary Employment and Staff Relations Act by the Professional Institute of the Public Service of Canada ("the Institute") requesting the Board to order the Senate of Canada to deduct and remit membership dues for a Ms. Lank, pursuant to Article 11 of a collective agreement between the Senate of Canada and the Institute (expiry date September 1992). What is unique about this particular case is that Ms. Lank is working at the Senate pursuant to a secondment agreement between her normal employer, the*

> *Treasury Board, and the Senate. The issue before the Board, simply put, is whether Ms. Lank is an employee of the Senate covered by the collective agreement.*
>
> . . .

[58] The decision, at pages 7 and 8, stated, in part:

> . . .
>
> *I find that at all times Ms. Lank was and remains an employee of the Treasury Board and therefore she is not an employee of the Senate, as defined in section 3 of the Parliamentary Employment and Staff Relations Act.*
>
> *It is clear from the agreed statement of facts and the secondment agreement that factually Ms. Lank was to, and does, remain an employee of the Treasury Board employed by the Correctional Service of Canada. Paragraphs 5 and 6 of the agreed statement of facts make this abundantly clear. I would also note that by paragraph 10 of that agreed statement of facts, Ms. Lank was, and still is, on maternity leave. The request for leave was made, and presumably granted, pursuant to her terms and conditions with the Correctional Service (see Exhibit 3).*
>
> *On a legal basis, I also have difficulty, in light of the Supreme Court of Canada decision in Econosult, [1991] 1 S.C.R. 614 in finding that Ms. Lank, just because of her secondment, has become an employee of the Senate, for to do so might result in my determining that she ceased to be a public servant, that is that she somehow acted in such a way as to revoke her appointment pursuant to the Public Service Employment Act, and the evidence of such is to the contrary.*
>
> . . .

[59] The matter was referred to the Federal Court of Appeal, and the judicial review application was dismissed.

[60] Mr. Cochrane submitted that the current application is different from the "Senate" case cited above in that, with respect to the PAFSO case, there is only one employer, the Treasury Board, and one applicable piece of legislation, the *PSSRA*. Counsel for the employer stated that the same principles apply here. After reviewing the evidence in this case, I agree with Mr. Cochrane that the current case is different. In this case, we have only one employer and that employer has determined that union dues are channelled to the bargaining unit with the highest substantive rate of pay. This practice contradicts this collective agreement.

[61] The Foreign Service Group definition excludes certain positions as outlined in paragraph 53 of this decision. It states that:

> . . .
>
> *Positions excluded from the Foreign Service Group are…those in which one or more of the following activities is of primary importance:*
>
> . . .
>
> *2. the representation in other countries of Canadian interests in a specialized field when the incumbent is not a career rotational foreign service officer.*

[62] Neither party presented any argument on this point. However, at first blush, it would appear that, for positions outside Canada where there is a secondment, those positions may be excluded from the FS Group. If so, no dues for those positions would be owing to the PAFSO until such time as they were staffed with a career rotational foreign service officer. It is possible that the parties operate on a different understanding with respect to this portion of the group definition and, consequently, I suggest that they meet and discuss its application to the current situation.

[63] It would appear from the exhibits that there are at least some positions in Canada for which this exclusion would not apply. After reviewing all of the evidence in this application, I see no justification for not providing the PAFSO with the union dues it is seeking in those Canadian positions. The employer has argued that to do so may place employees in a position worse than they were otherwise in. Mr. Cochrane addressed this point by stating that the employer could seek the protection of a benefit that an employee was receiving prior to finalizing the secondment agreement. I see this suggestion as one way to protect the employee's benefit and there may be other ways to ensure this happens as well. It would not be in anyone's interest to have an employee accept a secondment only to find out that he/she is not as well off as he/she would have been had the employee remained in his/her substantive position.

[64] Mr. Cochrane has argued that, if the employee is in an FS position, doing FS work, then, by the PAFSO certification, the employee is in the FS Group bargaining unit and should pay dues to the PAFSO to the extent outlined above. I agree with this position, except for the reservations that I have expressed above concerning the

possible exclusion from the FS Group of non-career rotational foreign service officers in FS positions outside of Canada.

[65] The employer and the PAFSO are to meet and determine the amount of dues owed to the PAFSO in accordance with this decision, effective the date of the application, which was October 29, 2001. The amount owing will be remitted to the PAFSO. In light of the uncertainty that I expressed with respect to possible positions excluded from the FS Group, I will retain jurisdiction on this application, if requested to do so by either party on or before October 29, 2004.

**Joseph W. Potter,**
**Vice-Chairperson**

OTTAWA, August 27, 2004.