Date: 20211130

Files: 566-02-11075 to 11078
and 11080 to 11082

Citation: 2021 FPSLREB 132

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

GENEVIÈVE BERGERON

Grievor

and

TREASURY BOARD
(Department of Fisheries and Oceans; Canadian Coast Guard)

Employer

Indexed as
Bergeron v. Treasury Board (Department of Fisheries and Oceans)

In the matter of individual grievances referred to adjudication

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Herself

For the Employer: Karl Chemsi, counsel

Decided on the basis of the documentation on file,
November 5, 2021, and on written submissions,
filed September 17, 2021.
(FPSLREB Translation)

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Individual grievances referred to adjudication

[1] Geneviève Bergeron held an administrative assistant position classified at the AS-01 group and level. Until her termination on June 19, 2014, she was employed by the Department of Fisheries and Oceans (Canadian Coast Guard) ("the employer"). Between May 2011 and June 2014, she filed seven grievances, which were referred to adjudication.

[2] The employer objected to the Federal Public Sector Labour Relations and Employment Board's ("the Board") jurisdiction to hear the grievances because the parties reportedly had a binding agreement that ended their dispute. This decision deals with that objection.

[3] On May 25, 2011, Ms. Bergeron filed a grievance alleging that she had been harassed at work and challenging the discipline imposed on her of a one-day suspension without pay (file 566-02-11075). The employer dismissed the grievance at all levels of the internal grievance process.

[4] On July 15, 2011, Ms. Bergeron filed a grievance challenging the discipline imposed on her of a three-day suspension allegedly for disrespecting a colleague and a superior (file 566-02-11076). The employer dismissed the grievance at all levels of the internal grievance process.

[5] On April 16, 2012, Ms. Bergeron filed a grievance challenging the employer's decision to dismiss the harassment complaint that she had made (file 566-02-11078). The employer dismissed the grievance at all levels of the internal grievance process.

[6] On May 28, 2012, Ms. Bergeron filed a grievance alleging that the employer refused to accommodate her and to change the authority structure that applied to her, as recommended by her doctor (file 566-02-11080). The employer dismissed the grievance at all levels of the internal grievance process.

[7] On June 12, 2014, Ms. Bergeron filed a grievance alleging that the employer had breached its duty of procedural fairness during a transfer offer that had been made to her. Among other things, she requested that a third party investigate the situation (file

566-02-11082). The employer dismissed the grievance at all levels of the internal grievance process.

[8] On June 24, 2014, Ms. Bergeron filed a grievance requesting that annual leave that had been granted to her earlier be replaced by sick leave (file 566-02-11081). The employer dismissed the grievance at all levels of the internal grievance process.

[9] On June 24, 2014, Ms. Bergeron filed a grievance challenging the employer's decision to terminate her on June 19, 2014 (file 566-02-11077). The employer dismissed the grievance at all levels of the internal grievance process.

[10] On April 17, 2015, all the grievances were referred to adjudication with the support of the bargaining agent, the Public Service Alliance of Canada.

[11] The collective agreement that applies to the first grievance (file 566-02-11075) is the one for the Program and Administrative Services Group that expired on June 20, 2011. The collective agreement that applies to the other six grievances is the one for the Program and Administrative Services Group that expired on June 20, 2014.

[12] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board to replace the Public Service Labour Relations Board and the Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continued under and in conformity with the *Public Service Labour Relations Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[13] 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*, the *Public Service Labour Relations Act*, and the *Public Service Labour Relations Regulations* to,

respectively, the Board, the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* ("the *Act*"), and the *Federal Public Sector Labour Relations Regulations* ("the *Regulations*").

II. Background

[14] The grievances were scheduled with the Board for a hearing in November 2017.

[15] In the weeks leading to the adjudication hearing, the employer and the bargaining agent had exchanges aimed at settling the grievances. On October 10, 2017, the bargaining agent presented the employer's first comprehensive settlement offer to Ms. Bergeron. She refused the employer's offer. On October 13, 2017, the bargaining agent presented her with an improved offer from the employer. The offer in question included a salary period that the employer would pay, removing the disciplinary measures, and a reference letter that the employer would provide. Ms. Bergeron then reportedly insisted that the salary be paid based on the salary payable in 2017, not in 2014, the year of the termination. The employer agreed to pay the salary at the 2017 rate.

[16] On October 13, 2017, Ms. Bergeron accepted the employer's offer by email even though she stated that she was disappointed with the tax deductions to be made on the salary payable. On October 17, 2017, the bargaining agent received and accepted the memorandum of understanding. It then asked the Board to cancel the hearing scheduled for November 2017. On October 17, 2017, Ms. Bergeron also received the memorandum of understanding. She rejected it then because the reference letter was in fact only a confirmation-of-employment letter. She and the bargaining agent then had unsuccessful discussions that aimed at resolving the reference letter issue.

[17] On April 17, 2018, Ms. Bergeron made a complaint with the Board against the bargaining agent, alleging a breach of its duty of representation. The Board dismissed the complaint in a decision rendered on April 25, 2019 (see *Bergeron v. Public Service Alliance of Canada*, 2019 FPSLREB 48; "*Bergeron 2019*"). The facts reported in the two preceding paragraphs are also explained in more detail in that decision.

[18] After that, the bargaining agent decided to continue to represent Ms. Bergeron. A new hearing was scheduled for September 14 to 18, 2020. The bargaining agent then

informed the Board that Erin Sandberg, as counsel, would act on its behalf and provide representation to Ms. Bergeron.

[19] To facilitate the conduct of the mid-September hearing, I convened the parties to a pre-hearing conference on August 31, 2020. Ms. Bergeron was invited to participate, but she did not appear. Ms. Sandberg acted on behalf of her and the bargaining agent. In the conference, the employer objected to holding the hearing on the grievances on the grounds that the parties had had a binding agreement in 2017. The employer requested that I dispose of the objection before hearing the evidence on the merits. Having heard nothing from Ms. Sandberg, namely, whether the employer's proposal could be prejudicial to Ms. Bergeron, I accepted the proposal.

[20] On September 8, 2020, Ms. Sandberg informed the Board that the bargaining agent had ceased representing Ms. Bergeron. At the same time, the bargaining agent withdrew the grievances in files 566-02-11078, 11080, 11081, and 11082, for which its support was required, because they involved the interpretation or application of a collective agreement. However, the other grievances remained because they did not require the bargaining agent's support. Ms. Sandberg suggested that from then on, the Board should address Ms. Bergeron directly for the next steps.

[21] On September 9, 2020, the Board wrote to Ms. Bergeron and asked whether she was able to proceed with the hearing beginning on September 14, 2020, and whether she would be represented at that time. She replied that she would not be able to proceed with the adjudication of the remaining grievances on September 14, 2020, or in the following weeks. She then provided a medical certificate from her family doctor with respect to a temporary disability from March 6 to December 31, 2020.

[22] On September 11, 2020, the Board wrote to Ms. Bergeron and suggested that the employer's objection be dealt with based on written submissions from the parties. It also asked her, given her state of health, whether she was now able to proceed with written submissions or whether they would have to wait. On September 14, 2020, she replied that she refused "[translation] … to debate the objection in writing" and that she maintained her position that no agreement had been reached with the employer. She also wrote that she was unable to proceed with a hearing by videoconference, and she asked that a hearing be held in person.

[23] On September 16, 2020, the Board advised Ms. Bergeron that it noted her refusal to proceed by written submissions but stated that it would proceed on that basis all the same, to deal with the employer's objection. It also advised her that if she then decided not to make any submissions, it would have to rely solely on those of the employer. On September 18, 2020, she replied as follows: "[translation] My current state of health does not allow me to proceed with a debate about the validity of an agreement …". On September 22, 2020, the Board replied that it would postpone the exchanges on the employer's objection until January 2021.

[24] On January 11, 2021, the Board wrote to Ms. Bergeron and asked whether she was able to proceed by written submissions, to deal with the employer's objection. She replied by producing a certificate of medical disability that was valid until June 30, 2021.

[25] On July 21, 2021, the Board asked Ms. Bergeron for an update on the status of her health and to let it know whether she was able to proceed with written submissions on the employer's objection. On July 23, 2021, she replied, "[translation] I have no medical note to submit to you." On July 27, 2021, the Board wrote this to her: "[translation] Are we to deduce from this that you are prepared to proceed?" On July 29, 2021, she replied, "[translation] As it is summer, please give me the month of August as 'vacation'".

[26] On July 30, 2021, the Board wrote to the parties to inform them that it had decided to deal with the employer's objection based on written submissions, unless during the process, it found that *viva voce* evidence was required. It then advised them that were the objection allowed, it would end the adjudication process. It also advised them that the employer had to provide its written submissions by no later than September 17, 2021, that Ms. Bergeron had to respond to the employer's written submissions by no later than October 1, 2021, and that the employer had to reply by no later than October 8, 2021.

[27] The Board received the employer's written submissions on September 17, 2021. On October 4, 2021, having received nothing from Ms. Bergeron, the Board wrote to her and asked her to provide her submissions by no later than October 6, 2021. Having still receiving nothing on October 6, 2021, the Board send her another reminder on

October 7, 2021, and asked her to provide her submissions by no later than October 8, 2021.

[28] Because Ms. Bergeron did not respond to the Board's October 4 and 7, 2021, reminders, it sent her a letter on October 12, 2021, by registered mail (domestic). The letter had to be picked up by no later than October 31, 2021. Otherwise, it would be returned to the sender; namely, the Board. Since it was not picked up, it was returned to the Board. Its essentials were as follows:

> [Translation]
>
> *On July 30, 2021, the Board issued the parties dates on which to make their submissions on the employer's objection. (See Attachment)*
>
> *The employer provided its submissions on September 17, 2021. Ms. Bergeron had until October 1, 2021, to provide her response to the employer's submissions. The Board did not receive her submissions.*
>
> *The Board sent two (2) reminders by email (October 4 & 7, 2021) to Ms. Bergeron to provide her submissions on the employer's objection.*
>
> ***The Board asked Ms. Bergeron to provide her response to the employer's submissions by no later than 4 p.m. on October 20, 2021.***
>
> *Please note: In the absence of a response from Ms. Bergeron, the Board Member will decide the objection based on what he already has on file.*
>
> [Emphasis in the original]

III. The facts according to the documents submitted and those on file

[29] On October 13, 2017, after the parties had discussions, the employer presented an offer to settle the grievances. Ms. Bergeron and the bargaining agent's representative discussed the employer's settlement proposal. In an email dated the same day and sent to the bargaining agent's representative, Ms. Bergeron wrote the following:

> [Translation]
>
> …
>
> *Pursuant to our conversation, which just ended. Given that it is not possible to obtain my doctor's cooperation to provide a medical note for a return to my position, I accept the offer … of salary and all the other conditions discussed previously; namely, clean the*

> *disciplinary file, the reference letter, and change the type of employment ending, among others. In addition, I wish the financial compensation paid to reflect the current 2017 salary. Finally, I think that's everything.*
>
> …

[30] Later the same day, the bargaining agent's representative forwarded Ms. Bergeron's email to the employer's counsel. On October 16, 2017, the employer's counsel replied as follows: "[translation] As discussed this morning, I am writing to you to confirm that my client accepts Ms. Bergeron's counter-offer. As discussed, I will send you the memorandum, for signature."

[31] The employer prepared a memorandum of understanding and sent it to the bargaining agent's representative on October 17, 2017, who responded by email the same day, as follows: "[translation] I checked the memorandum; everything is consistent with our discussions. I will forward the document to Ms. Bergeron. We will advise the Board that an agreement has been reached and to cancel the hearing dates next week."

[32] On October 17, 2017, the bargaining agent's representative asked the Board to cancel the hearing scheduled for the following week because the parties had reached an agreement. The Board cancelled the hearing dates. Then, on October 19, 2017, the bargaining agent's representative sent the memorandum of understanding to Ms. Bergeron and asked her to sign the different documents and then return them.

[33] Without going into detail, the memorandum of understanding provided retroactive pay for four days of annual leave in addition to a lump-sum payment subject to the required deductions. It also provided that the employer cancelled Ms. Bergeron's termination and that she resigned and withdrew her grievances. Finally, the employer committed to providing a confirmation-of-employment letter, which was attached to the memorandum of understanding.

[34] On November 23, 2017, the Board wrote to the bargaining agent's representative. It asked for an update on the agreement that the parties were supposed to have reached.

[35] On January 4, 2018, the bargaining agent sent the Board a letter from Ms. Bergeron dated December 22, 2017, in which she stated that she rejected the

memorandum of understanding because according to her, it did not comply with the agreement in principle that the parties had reached. In her letter, she explained her refusal by the fact that according to the agreement in principle, the lump-sum amount that she was supposed to receive was equivalent to net salary and not salary before deductions. She also explained her refusal by the fact that she expected to receive a reference letter that described her accomplishments for the employer in positive terms, instead of what she characterized as a "[translation] banal" confirmation of employment.

IV. The employer's arguments

[36] The employer asked that the grievances be dismissed because a valid and binding agreement was in place with respect to them. According to the employer, the parties have no outstanding differences, and the Board no longer has jurisdiction to hear Ms. Bergeron's grievances on their merits.

[37] The Board has always recognized that a valid and binding agreement between parties prevents grievors from adjudicating their grievances. The case law also confirms that complying with agreements is important and that even verbal agreements are binding. In addition, a signature is not necessary to validate such agreements, provided that an agreement in principle is in place on the key issues.

[38] In this case, the parties were duly represented, and they explicitly negotiated an agreement in principle, which all the stakeholders accepted; namely, Ms. Bergeron, the bargaining agent's representative, and the employer's representative. The bargaining agent and employer also prepared and finalized a written memorandum of understanding, which was sent to Ms. Bergeron for her signature.

[39] Ms. Bergeron's reasons for cancelling the agreement two months later mainly concern the form and content of the reference letter that she expected. Yet, it cannot, in any circumstances, be a valid reason for cancelling the agreement.

[40] Ms. Bergeron's allegation that the memorandum of understanding did not reflect her wishes when she accepted the agreement is unfounded. For one thing, the issue of the reference letter was clearly not one of the main issues of the agreement in principle that was reached. For another, the Board had already determined in *Bergeron 2019* that the final memorandum of understanding was fundamentally the same as the

one that Ms. Bergeron had agreed to by email on October 13, 2017. The only difference between them was that the employer provided a confirmation-of-employment rather than a true reference letter.

[41] Important reasons have compelled the courts to refrain from ruling on grievances when the parties have entered into an agreement. In fact, allowing an agreement to be challenged would irreparably damage labour relations and compromise attempts to enter into agreements because the parties could never count on the agreements that were supposedly reached. Were the Board to allow parties to cancel agreements that they freely negotiated, it would lead to a waste of resources and a loss of confidence in the mediation process. Parties that enter into a binding agreement should not be permitted to challenge it; otherwise, they would never know whether in fact an agreement was in place. That would irreparably damage labour relations and compromise any attempt to reach an agreement.

[42] Therefore, the employer submitted that the parties entered into a valid and binding agreement on October 17, 2017. Consequently, the Board no longer has jurisdiction over grievances 566-02-11075 to 11077, and they should be closed.

[43] The employer referred me to the following decisions: *Bergeron 2019*; *Skandharajah v. Treasury Board (Employment and Immigration Canada)*, 2000 PSSRB 114; *Castonguay v. Treasury Board (Canada Border Services Agency)*, 2005 PSLRB 73; *Chaudhary v. Deputy Head (Department of Health)*, 2013 PSLRB 160; *Jadwani v. Treasury Board (Federal Economic Development Agency for Southern Ontario)*, 2015 PSLREB 22; *Godbout v. Treasury Board (Office of the Co-ordinator, Status of Women)*, 2016 PSLREB 5; *MacDonald v. Canada*, [1998] F.C.J. No. 1562 (QL); *Estée Lauder Cosmetics Ltd.*, [2012] O.L.R.D No. 1111 (QL); *Lafarge Canada Inc.*, [2001] O.L.R.D. No. 2153 (QL); and *Alberta Gaming and Liquor Commission v. Alberta Union of Provincial Employees*, 2016 CanLII 3226.

V. Ms. Bergeron's response to the preliminary objection

[44] Ms. Bergeron did not participate in the written submissions process.

[45] Be that as it may, according to the documents she submitted and that were already on file, Ms. Bergeron refused the memorandum of understanding and never signed it because the amounts to be paid corresponded to salary before deductions,

and the letter that the employer was to provide was a confirmation-of-employment and not a reference letter. Therefore, according to her, the parties had no agreement.

[46] In her September 10, 2020, email to the Board, Ms. Bergeron wrote that the Board had already dealt with the issue of her rejecting the memorandum of understanding (see *Bergeron 2019*) and that putting it back on the agenda was an "[translation] abuse of administrative authority". On the issue of her rejecting it, she referred to her email to the bargaining agent's representative sent at 9:12 a.m. on October 16, 2017, in which she wrote as follows:

> [Translation]
>
> …
>
> *During our telephone call.*
>
> *PLEASE IMMEDIATELY SEND ME THE ORIGINAL EMAIL THAT SEAN KELLY SENT YOU AT 9:12 A.M. ON OCTOBER 13, 2017.*
>
> *IF I DO NOT IMMEDIATELY RECEIVE THE ORIGINAL EMAIL, I WILL WITHDRAW FROM THE AGREEMENT OUT OF COURT.*
>
> *NO ALTERATIONS WILL BE ACCEPTED.*
>
> …

VI. Analysis and reasons

[47] The employer objected to the Board's jurisdiction to hear Ms. Bergeron's grievances on the grounds that the parties had a valid and binding agreement with respect to the grievances. From the start, it should be mentioned that the only grievances over which the Board could still have jurisdiction are those that concern the disciplinary measures or Ms. Bergeron's termination; namely, files 566-02-11075, 11076, and 11077. The other files require the bargaining agent's support, according to s. 208(4) of the *Act*, because they concern the interpretation or application of a collective agreement. Yet, on September 8, 2020, the bargaining agent informed the Board that it no longer represented Ms. Bergeron.

[48] Therefore, the issue before me is very simple. Did the parties have a valid and binding agreement with respect to Ms. Bergeron's grievances? On one hand, she never signed the memorandum of understanding submitted to her. On the other, on October 13, 2017, she emailed the bargaining agent to inform it that she accepted the agreement in principle. However, on December 22, 2017, after receiving the draft

memorandum of understanding, she told the bargaining agent that she rejected it because it did not comply with the agreement in principle. Does that mean that a valid and binding agreement had been reached?

[49] The Board already dealt in part with the facts involving Ms. Bergeron in *Bergeron 2019* with respect to the unfair-labour-practice complaint she made against her bargaining agent and its representative, Guylaine Bourbeau. At paragraphs 47 to 50 of that decision, the Board summarized part of the evidence that Ms. Bergeron and the bargaining agent submitted at the time. The bargaining agent was the responding party in that case. The paragraphs read as follows:

> *[47] On October 13, Ms. Bourbeau forwarded a new offer from the employer to the complainant. She indicated to the complainant that she felt that the offer was particularly generous. As the complainant understood, she would receive a tax-free amount. Ms. Bourbeau testified that she never said that the amount, based on the salary, would be tax-free, as such a condition had never been granted.*
>
> *[48] The complainant insisted that the salary be at the 2017 rate instead of the rate for 2014, which had been the year of the termination. The employer agreed. The offer also included striking the disciplinary measures, along with a reference letter.*
>
> *[49] By email on October 13, the complainant agreed to the settlement offer in principle, even though she was unhappy about the imposed tax. When Ms. Bourbeau received the memorandum of agreement on October 17, she found the negotiated conditions in it. She agreed to it in principle and sent a notice to the Board to cancel the hearing, according to the usual procedure.*
>
> *[50] However, when the complainant received the memorandum of agreement by email on October 17, 2017, she rejected it, because the reference letter was in fact a simple confirmation-of-employment letter. On October 19, 2017, the PSAC sent her the memorandum of agreement by express post. From October 19 to November 30, 2017, the complainant ceased all contact with Ms. Bourbeau. She was convinced that she had been deceived. The hearing did not take place because of the memorandum of agreement.*

[50] In the same case, the Board found as follows in its analysis at paragraphs 97 and 98:

> *[97] One of the key elements in the complaint is the fact that Ms. Bourbeau accepted the memorandum of agreement and requested a hearing postponement before presenting the final version of the memorandum of agreement to the complainant. Had the*

> *memorandum of agreement been significantly different from what the complainant had agreed to, there might have been cause for criticism. But the agreement was the same as the one the complainant had already accepted. The only difference was that the employer offered only a confirmation-of-employment letter instead of a true reference letter.*
>
> *[98] Ms. Bourbeau thoroughly explained the patient steps that she took to obtain a letter that would satisfy the complainant. The letter was changed to include an omitted part of the complainant's employment history. That said, the complainant could not suggest the name of a manager who could sign a true reference letter. Given the complainant's numerous short-term assignments, the confirmation-of-employment letter seemed an acceptable compromise.*

[51] In *Bergeron 2019*, the Board found that the parties had had a verbal agreement in principle and that the proposed written memorandum of understanding that Ms. Bergeron refused to sign did not differ significantly from the verbal agreement in principle that she accepted on October 13 by email. The only difference involved the reference letter, which I will return to later.

[52] Initially, Ms. Bergeron refused the employer's offer on the grounds that the salary rate to be paid to her should be the one from 2017, not 2014. She also wanted to be paid the amounts before or without deductions. The first of these issues was settled, with the employer agreeing that the salary paid would be based on the 2017 rate. As for the second issue, I believe that it was resolved on October 13, 2017, but that Ms. Bergeron later put it back on the table as grounds for refusing to sign the memorandum of agreement. Nothing in the documentation dated October 2017 mentions such an issue. In addition, at paragraphs 47 and 49 of *Bergeron 2019*, after hearing the parties on the same issue, the Board found that Ms. Bergeron had accepted the October 13, 2017, offer "… even though she was unhappy about the imposed tax" and that the bargaining agent had never told her that she would receive the amount tax-free.

[53] Based on the foregoing, can I find that the parties had an agreement, even though they signed no written memorandum?

[54] In *Godbout*, the Board determined that a signed memorandum of understanding was not required to find that the parties had a binding agreement. In that case, the

parties had exchanged emails indicating agreement with respect to their dispute. At paragraphs 51 and 52, the Board justified its decision as follows:

> *[51] I am convinced that the parties had a binding agreement as of April 6, 2015. The* viva voce *evidence of the employer, together with the documentary evidence tendered by the employer, leaves no question that the parties had reached a binding agreement. The two key documents are the emails from Ms. O'Young to Mr. Alcock (Exhibit 4, tab 1), both with the subject heading: "Grievor has accepted, waiting final instructions from Union." The first email was dated April 3, 2015, and it reads as follows: "I am writing to advise you that the grievor has accepted the Employer's final offer of … I still need to obtain final instructions from my client, and will let you know as soon as I do." This was followed by her email dated April 6, 2015, which reads: "We have a deal. Thank you for advising the board that we have reached a settlement." It is important to emphasize that not only did the grievor not testify on the preliminary objection, the bargaining agent led no evidence at all to refute the position of the employer that the parties had reached a settlement of the grievance.*
>
> *[52] A verbal agreement had been struck. Verbal agreements are enforceable. There is no need for a signature for an agreement to be binding. Parties can be bound by an oral agreement. Signatures are merely evidence of the binding nature of the agreement (*Ontario*, at para. 33). MOSs are not necessary to settle a grievance as long as there is a meeting of the minds on the substantive issues (*Air Canada*, at paras. 20 to 25, and* Tulli*, at para. 40). The uncontradictory evidence is that the primary terms of the agreement were that that the employer would pay a cash payment, characterized in a specific fashion at the grievor's request, in exchange for the withdrawal of the grievance bearing PSLREB File No. 566-02-4853.*

[55] In *Tulli v. Symcor Inc.*, 2005 FC 1440, the Federal Court of Canada found that a signed memorandum of understanding was not necessary to find that the parties had a binding agreement. In that case, which involved a termination in an environment that was not unionized, the parties asked the adjudicator for an adjournment at the beginning of the hearing to discuss the possibility of a settlement. They returned later the same day and informed the adjudicator that they had reached an agreement, the written details of which would follow. Just over a month later, the employer sent a copy of the memorandum of understanding to the complainant. After a few months and additional exchanges, the complainant decided not to sign it. The adjudicator again convened the parties. After reviewing the documents and the facts submitted, he found that the verbal agreement that the parties had reached was binding and that the agreement was a contract within the meaning of ss. 2631 and 2633 of the *Civil Code of*

Québec, CQLR, c. CCQ-1991. The complainant challenged the adjudicator's decision before the Federal Court, which confirmed it.

[56] Based on the submitted facts and the law, I find that the parties had an agreement in principle, even though after the agreement, Ms. Bergeron refused to sign the memorandum of understanding.

[57] That said, in its written submissions, the employer neglected to elaborate on a detail of great importance to Ms. Bergeron; namely, the reference letter. It simply submitted this: "[translation] The only difference between the two was that the employer provided a confirmation-of-employment letter rather than a true reference letter." Recall that the absence of the letter is the reason I point out to explain Ms. Bergeron's refusal to sign the memorandum of understanding.

[58] The employer could not simultaneously claim that the parties' agreement in principle of October 13, 2017, was binding and then unilaterally decide to amend one part of it in the memorandum of agreement submitted for Ms. Bergeron's signature. It is clear that the parties' binding agreement is the one in principle to which Ms. Bergeron gave her explicit consent by email and not the memorandum of agreement that she refused to sign. The agreement in principle that binds the parties includes a reference letter and not a confirmation-of-employment letter. Therefore, the employer will have to comply and produce the type of letter agreed to in the agreement in principle to which Ms. Bergeron acquiesced.

[59] Since I have determined that the parties had a binding agreement, I have no further jurisdiction to deal with the grievances on their merits. Therefore, I order the files closed because the parties are deemed to have settled them.

[60] From there, my role is to order that both parties comply with the agreement in principle. The closure of Ms. Bergeron's grievance files clearly resolves the issue of withdrawing the grievances. As for the employer, it will have to pay her the amounts she is still owed under the agreement in principle and fulfil its other obligations. Among other things, it will have to provide her with a reference letter. Such a letter usually emphasizes an employee's key accomplishments. Yet, Ms. Bergeron quit her job in 2014. Out of necessity, she will have to cooperate with the employer by informing it about who can attest to her accomplishments, without which it will be

difficult if not impossible to produce such a letter. Obviously, I cannot impose any wording on the employer, but I can certainly order it to respect its commitments.

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

(The Order appears on the next page)

VII. Order

[62] The employer's preliminary objection is allowed.

[63] I order the Board's Registry to close the files of the seven grievances that Ms. Bergeron and the bargaining agent referred to adjudication on April 17, 2015. The files are numbered 566-02-11075 to 11078 and 566-02-11080 to 11082.

[64] I order the employer to pay Ms. Bergeron the amounts set out in the binding agreement of October 13, 2017, based on the terms agreed with her. They must be paid within 60 days of this decision.

[65] I order the employer to provide Ms. Bergeron with a reference letter within 60 days of this decision.

[66] I remain seized of the matters comprising my order for a period of 90 days, to deal with any disputes that may arise during their implementation.

November 30, 2021.

FPSLREB Translation

Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board