

April 19, 2018

BY E-MAIL

Martine McFarlane
Case Management Officer
Federal Public Sector Labour Relations and Employment Board
P.O. Box 1525, Station B
Ottawa, ON, K1P 5V2

Dear Ms. McFarlane:

Re: *National Police Federation and Association des Membres de la Police Monté du Québec and Treasury Board*
Board File Nos. 542-02-12 and 542-02-13
Our File No.: 37664-3

I am writing on behalf of the Applicant National Police Federation (“NPF”) in the above-noted matter. I am writing to follow up on the Board’s decision and order dated April 17, 2018.

The Board’s recent decision acknowledged that RCMP members’ interests are paramount – ahead of the interests of the NPF or AMPMQ. RCMP regular members have informed the NPF that their paramount interest is that this certification process be completed as soon as possible. RCMP regular members are contacting the volunteer executive of the NPF on a daily basis to complain that this certification process has dragged on for a full year. RCMP members are frustrated that the Supreme Court of Canada ruled in January 2015 that they could join an association, but three years later they still have not been able to exercise their freedom of association.

With that principle in mind, I am writing to request that the Board take various measures to ensure that RCMP regular members may exercise their freedom of association in a timely fashion.

The NPF is also sending this letter now so that it may raise these issues at the case conference that will be scheduled in accordance with the Board’s order.

Availability for Case Conference

The NPF is available for the case conference mentioned by the Board in its reasons at any time April 24-27, 2018.

Voting Procedure and Extent of Stay

The NPF requests that the Board consider the following voting procedure in these two applications.

For RCMP regular members stationed in “C” Division (i.e. the bargaining unit proposed by the AMPMQ), the NPF requests that both the NPF and the AMPMQ appear on the ballot. In other words, the ballot would have three alternatives: that the NPF become the bargaining agent, that the AMPMQ become the bargaining agent, or that there be no bargaining agent.

The NPF also requests that the Board tally the votes cast by RCMP regular members stationed in “C” Division.

If the NPF obtains more than 50% of the votes cast in this ballot, the Board may decide to reconsider its decision to stay the certification process (i.e. tally the remaining ballots). The stay would no longer serve any labour relations purpose if the NPF obtains more than 50% of the votes cast in “C” Division. If the NPF obtains 50% or more of the ballots cast in “C” Division (and of the remaining ballots), then the bargaining unit issue becomes less pressing because collective bargaining can commence immediately. The AMPMQ is free to continue its constitutional challenge after that result, but the Board can address the result of that challenge through the normal process that occurs when the Board reconsiders bargaining unit structure under s. 70 of the *FPSLRA*.

To put this point another way, while the constitutional challenge may not be legally moot, there will no longer be any practical benefit to the stay if the NPF has majority support within “C” Division.

Managerial Exclusions

The employer has applied for approximately 1140 positions to be excluded under s. 59 of the *FPSLRA*. The NPF would like clarity from the Board about whether it will certify the NPF before deciding those managerial exclusion applications. Sections 58 and 62 of the *FPSLRA* require the Board to decide this issue, but those sections are vague about whether the Board must decide the issue before issuing a certificate.

The NPF’s position is that, provided that the Board is satisfied that the NPF has 50% support regardless of the result of the employer’s application for managerial exclusions, the Board may certify a bargaining agent and then deal with the managerial exclusion applications.

Hearing Dates

The NPF and Employer are currently scheduled in a four-day hearing from May 28-June 1, 2018 before Mr. Bertrand (a statutory freeze violation). The NPF is prepared to adjourn that hearing and hold the hearing on this constitutional challenge, or any other issues relating to certification, on those dates. That hearing is scheduled for Whistler; the NPF suggests that the constitutional hearing take place in Ottawa, but is willing to travel to the location most convenient for the Board.

Other procedural issues

The NPF would like to discuss other procedural issues in the case management conference, including:

- Pre-hearing disclosure: the NPF suggests an order that the parties exchange the documents they intend to rely upon one week prior to the first date of the hearing;
- Time limits: the NPF suggests that the Board order time limits on the parties' submissions in the constitutional hearing.
- Bottom-line decision: the NPF requests that the Board issue a "bottom-line decision" on the constitutional challenge and then lift the stay if the challenge is unsuccessful, with reasons to follow. I note that the Canada Industrial Relations Board has issued "bottom-line decisions" with reasons to follow in constitutional cases.¹ This issue may more properly be dealt with at the hearing, but I wanted to put the parties and the Board on notice that the NPF will be making this request.

I look forward to discussing these issues, among others, at the pre-hearing conference scheduled by the Board in this matter.

Yours truly,



Chris Rootham

cc: Service List
Brian Sauve

¹ See, for example, *Sioux Lookout Meno-Ya-Win Health Centre*, 2005 CIRB 326 at para 33; *UFCW v MedReleaf Corp.*, 2016 CIRB 829 at para 3; and *Association of employees of Northern Quebec v Matimekush-Lac John Innu Nation Band Council*, 2016 CIRB 843 at para 3.