

## WORKER STATUS UNDER THE QUEBEC LABOUR CODE: TEAM LEADERS OR REPRESENTATIVES OF THE EMPLOYER?

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The proper legal status of workers remains an often contentious issue for employers in the modern workplace. The issue was recently considered by Quebec's Administrative Labour Tribunal in *Gouvernement de la nation Crie c. Association des policiers et policières d'Eeyou Eenou* (2018 QCTAT 53). After a hearing that lasted several days, with extensive evidence presented by the parties, and conflicting interpretations and testimonies, Administrative Judge Gérard Notebaert of Quebec's Administrative Labour Tribunal ruled in favour of the employer - the Government of the Cree Nation - and concluded that the lieutenants in its police service are not employees within the meaning of the Quebec Labour Code, but rather representatives of the employer. Under the Quebec Labour Code, the term "employee" does not include a person who is employed as manager, superintendent, foreman or "representative of the employer" in their relations with employees.

In its eloquent judgment, the Tribunal found that the lieutenants in the Eeyou Eenou Police Force were representatives of the employer. This is surprising if we compare the situation to "big city" police services in Quebec, but the particular geographical situation of the Cree Nation police service, as well as the structure and organization of the police service itself, distinguished it from other agglomerations.

It was indeed proven that each agglomeration, or community, is serviced on a full-time basis by a lieutenant and police officers, while the captain, who is the lieutenants' immediate supervisor, would cover as much as three communities that he each visits once every month.

The lieutenants themselves are each exclusively stationed in their respective community. They exercise a degree of supervision and control over the police officers, work under the same terms of employment as staff officers, and represent the employer in its relations with the community.

According to the Tribunal, the lieutenants also:

1. Set the police officers' work schedules
2. Authorize overtime
3. Find replacements if officers are absent
4. Approve timesheets
5. Authorize certain expense forms
6. Perform work that is distinct from the police officers' work and do very little patrol work
7. Authorize vacation times

The fact that the lieutenants have significant influence in disciplinary matters, although they do not make final decisions, and that they are nearly always the sole representatives on site in most of the communities, nonetheless appear to have been determining factors in the Tribunal's view in characterizing their status as representatives of the employer. The Tribunal endorsed the jurisprudence holding that the absence of hiring or firing authority is not decisive, and that employees who are "the employer's eyes and ears" are indeed its representatives.

The Tribunal therefore concluded that the lieutenants are representatives of the employer and are not employees within the meaning of the Labour Code, and consequently cannot be included in the bargaining unit represented by the recently certified union.

From an employer's perspective, the takeaway is that it appears that a determining criterion from which it can be concluded that an individual is really a representative of the employer - and not merely a team leader - is the fact that the individual can be considered to be "the employer's eyes and ears", even though said individual does not have the capacity to hire and fire other employees.

Gowling WLG represented the Government of the Cree Nation in this matter.

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