Date: 20040603

Files: 161-2-1255

Citation: 2004 PSSRB 51

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

CARL REYNOLDS

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

RE: Complaint under Section 23 of the Public Service Staff Relations Act

Before: Ian R. Mackenzie, Board Member

For the Complainant: Himself

For the Respondent: Martin Ranger, Professional Institute of the Public Service of Canada

Heard at Ottawa, Ontario,
February 3 and 4, 2004.

DECISION

[1] Carl Reynolds filed a complaint under section 23 of the *Public Service Staff Relations Act* (*PSSRA*) against his bargaining agent, the Professional Institute of the Public Service of Canada (PIPSC), on April 28, 2003. Mr. Reynolds alleges that his bargaining agent breached its duty of fair representation, contrary to subsection 10(2) of the *PSSRA*. In particular, he alleges that the PIPSC:

> . . .
>
> *(a) violated Clause 34.21 of the Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada . . . .*
>
> *(b) colluded with the employer, Public Works and Government Services Canada;*
>
> *(c) was grossly negligent in the administration of the Member's grievances;*
>
> *(d) supported the employer where it breached Section 97(4) of the Public Service Staff Relations Act;*
>
> *(e) failed to respond to not less than four (4) relevant e-mails from the Member;*
>
> *and, by these acts, failed to observe the provisions called up under Section 10(2) of the Public Service Staff Relations Act (PSSRA).*

[2] Mr. Reynolds is seeking the following remedies: payment of $2,615.10; expenses and costs of up to $1,700; an indemnification against any claim by a third party, as a result of the complaint; and the publication of the following notice, in four separate issues of a PIPSC's newsletter or communiqué of the complainant's choosing:

> *In the matter of certain grievances presented by a member, the Professional Staff at the Professional Institute of the Public Service of Canada acknowledged that it violated the Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada, that it colluded with an employer, that it was grossly negligent in the administration of the said grievances, that it committed other wrongful acts too numerous to mention here, and by these acts failed to observe the provisions of Section 23 of the Public Service Staff Relations Act.**
>
> **Past performance may be indicative of future performance.*

[3] His full complaint, with supporting documentation, is on file with the Board.

[4] The PIPSC replied to the complaint on May 20, 2003, stating that it was its position that the complaint was without merit and should be dismissed without a hearing. Mr. Reynolds advised the Board that he wished the complaint to proceed to a hearing. The Board advised the parties, on January 12, 2004, that the matter was to be set down for a hearing. At the commencement of the hearing, the representative for the respondent, Martin Ranger, submitted that the complaint should be dismissed without a hearing, as on its face the complaint had no merit.

[5] Mr. Ranger stated that he was struggling to reconcile this complaint with the grievance files. It was never a question of not representing Mr. Reynolds, who was represented throughout and continues to be represented on his third grievance that has been referred to the National Joint Council (NJC). He submitted that the role of the Board in a complaint pursuant to subsection 10(2) of the *PSSRA* is not to determine the quality or level of service, but to determine whether the employee was treated fairly. Nothing in the complaint justifies the allegation of a breach of the PIPSC's duty of fair representation. Mr. Ranger submitted that the complaint was premature, as one of the grievances is before the NJC. In conclusion, Mr. Ranger submitted that Mr. Reynolds had received and was continuing to receive full representation, and the complaint should be dismissed without a hearing.

[6] Mr. Reynolds submitted that the ground of the complaint was the lack of dialogue between the bargaining agent and him. The fact that two of the grievances were allowed was not through the efforts of the PIPSC, as he had to go through his Member of Parliament to obtain closure on those files.

[7] I ruled that the matter would proceed to a hearing on the merits.

[8] The employer was advised by the Board of the complaint and did not file any submissions.

[9] Mr. Reynolds testified on his own behalf and one witness testified for the respondent.

Evidence

[10] Mr. Reynolds is employed at Public Works and Government Services Canada (PWGSC) in the Audit, Commerce and Purchasing Group bargaining unit as a purchasing agent, and is subject to the Audit, Commerce and Purchasing group

collective agreement between the PIPSC and the Treasury Board (Codes 204, 309 and 311) (Exhibit R-1). On January 1, 2001, he was relocated from Charlottetown to Ottawa. His relocation was subject to the terms of the NJC Relocation Directive (Directive). Mr. Reynolds sold his house in Charlottetown, on July 26, 2001, and bought a new house in Ottawa, on October 1, 2001.

[11] The employer made a deduction to one of Mr. Reynolds' claims and he grieved this decision on November 8, 2001. Mr. Reynolds filed his first grievance initially without the required bargaining agent approval but the PIPSC provided its approval after the grievance was filed.

[12] Lucie Baillairgé was the PIPSC's labour relations officer responsible for the PIPSC's bargaining unit at PWGSC. She testified that she reviewed the text of the grievance prepared by Mr. Reynolds and concluded that it was complete and could be filed with the employer. She did not receive a copy of the grievance until January 8, 2002. She immediately sent a message to the employer's labour relations officer, Charles Vézina, asking for an update. Mr. Vézina called her and told her that the grievance would be allowed; however, he did not want her to advise Mr. Reynolds right away.

[13] On January 15, 2002, Mr. Reynolds advised Ms. Baillairgé that he wanted to file a second grievance relating to a refusal to pay another claim. Ms. Baillairgé replied that Mr. Vézina had left her a message concerning the first grievance (Exhibit C-2). She wrote that Mr. Vézina said: " . . . it looks more positive than negative for you, but that the decision is not official . . . ." Ms. Baillairgé suggested that Mr. Reynolds "hold" the second grievance and wait for the response to the first grievance. Mr. Reynolds responded to her message approximately 45 minutes later and told her that the second grievance had been submitted on January 14, 2002. Ms. Baillairgé testified that she had requested that Mr. Reynolds hold off on the second grievance because of some concerns that she had about some of the language used in the grievance. She did not later raise this matter directly with Mr. Reynolds, since the grievance had already been submitted.

[14] On January 22, 2002, Mr. Reynolds sent an e-mail to Ms. Baillairgé requesting confirmation of the date that the employer was required to respond to his first grievance (Exhibit C-3). Ms. Baillairgé forwarded his request to Mr. Vézina (Exhibit R-6). Mr. Vézina was on training and requested an extension of the time limit for the

response. Ms. Baillairgé agreed to the extension. She did not discuss the extension request with Mr. Reynolds before agreeing. She testified that it was usual practice at the PIPSC to extend deadlines if there was a valid reason, and that members are not routinely consulted on these extension requests.

[15] Mr. Reynolds sent an e-mail to Michel Charette of the PIPSC on January 28, 2002, requesting information on when the employer was required to respond to his first grievance (Exhibit C-4). Ms. Baillairgé contacted Mr. Reynolds by telephone to explain the extension of the deadline, but Mr. Reynolds told her that he did not want to talk on the telephone and asked that all communications be by e-mail. He then hung up on her.

[16] On January 29, 2002, Ms. Baillairgé sent an e-mail to Mr. Reynolds and told him that she and Mr. Vézina had agreed to an extension of the time limit for the response (Exhibit C-5). On that same day, Mr. Reynolds sent an e-mail to Michel Paquette, Ms. Baillairgé's supervisor, stating that Ms. Baillairgé had not communicated with him about the extension and that he had not agreed to or authorized the extension (Exhibit C-5). Ms. Baillairgé wrote an e-mail to Mr. Reynolds, on January 30, 2002, explaining how the PIPSC normally proceeds with extensions of time limits (Exhibit C-6/R-8). She explained that it was common to agree to extensions because the time limits are short and " . . . the workload on both sides is important." She noted that the grievance "belongs" to the PIPSC because it is a collective agreement grievance. She also noted that she had asked Mr. Vézina to put a priority on Mr. Reynolds' file.

[17] Ms. Baillairgé asked Mr. Reynolds, on February 8, 2002, if he was available to attend a hearing of his first and second grievances on February 21, 2002 (Exhibit R-9). Mr. Reynolds responded on February 11, 2002, as follows (Exhibit R-9):

. . .

> *(3) With reference to the Agreement between PIPSC and TB, Group: Audit, Commerce and Purchasing (all employees), expiry date 21 June 2003:*
>
> *(a) what is the authority to convene or hold, and the terms of reference governing, a hearing on grievances?*
>
> *(b) (i) What is the aim of a hearing on a grievance? (ii) Are the findings of a hearing expressed in the form of a determination or a ruling?*

> *(c) Where may one find the procedures or terms of reference, or both, which govern the conduct of a hearing on grievances?*
>
> *(d) Is it common to hold a hearing on a grievance? In the last three years, at PIPSC, please provide the percentage of grievances for which hearings have been held.*
>
> *(e) Where a hearing is held, what is the member-composition at the hearing? Without limiting the scope of this question (3) (e), is there a 'neutral' third party present?*
>
> *(f) At hearings, is the employer normally or sometimes represented by legal counsel?*
>
> *(g) At hearings, is the complainant normally or sometimes represented by legal counsel?*
>
> *(h) Is the complainant liable for any costs incurred in the conduct of the hearing?*
>
> *(4) I raise these questions because the Agreement between TB and PIPSC makes no provision under Article 34.08, or anywhere else so far as I can determine, for a hearing on a grievance. Further, to ensure that due process shall not be compromised, hearings are normally undertaken and presided over by a third party who is, to the extent possible, neutral.*
>
> *(5) Before I can agree to attend, or participate in a hearing, satisfactory answers to the questions at para (3) are nondiscretionary.*
>
> *Thank you.*

. . .

[18] Ms. Baillairgé testified that she had a conversation with Mr. Reynolds on February 18, 2002, and he refused to meet with her to discuss the grievances. Mr. Paquette wrote an e-mail to Mr. Reynolds that same day confirming a telephone conversation that he had with Mr. Reynolds (Exhibit R-9). He stated that, faced with his refusal to meet with Ms. Baillairgé to discuss and prepare for his grievances, the PIPSC would ask the employer to answer the grievances in writing based on the evidence it had, without a presentation.

[19] The first two grievances were allowed on March 19, 2002 (Exhibit R-11), and Mr. Reynolds received payment on April 9, 2002. Mr. Reynolds testified that no interest was provided, although both grievances requested the payment of interest. Ms. Baillairgé testified that she did not know why it took so long for the employer to respond to the grievances and that she was frustrated by the delay.

[20] On July 31, 2002, Mr. Reynolds filed a third grievance against a decision by the employer not to allow a further claim under the Directive. The grievance was scheduled for a hearing on September 6, 2002. Mr. Reynolds received an electronic scheduling notice for the hearing from Mr. Vézina, asking him if he was available on that date. In the notice, Mr. Vézina noted that Ms. Baillairgé would be present, and that she was available to meet with Mr. Reynolds to discuss the grievance prior to the hearing. Mr. Reynolds asked that the grievance proceed without a hearing.

[21] The third grievance was denied at the final level on November 1, 2002. The employer denied the grievance on the basis of timeliness. The grievance was referred to the NJC on November 27, 2002. Mr. Reynolds met with Ms. Baillairgé and Mr. Paquette on January 15, 2003, to discuss the grievance. Ms. Baillairgé testified that the purpose of the meeting was to discuss the issue of timeliness. She testified that the meeting cleared up the issue of timeliness and that after the meeting, the bargaining agent understood why Mr. Reynolds filed the grievance when he did.

[22] Mr. Reynolds wrote an e-mail to the President of the PIPSC, Steve Hindle, after his meeting with Ms. Baillairgé and Mr. Paquette, asking for the appointment of a representative " . . . who has . . . competency in the administration of grievances and who is . . . also informed on the subject matter under the grievance . . . ." (Exhibit C-11). In the e-mail, he wrote that he was overwhelmed at the January 15, 2003 meeting to learn that Ms. Baillairgé and Mr. Paquette had no knowledge of the third grievance, were unfamiliar with the facts and were unfamiliar with the Directive. He also alleged that there was documented evidence of "collusion" between the PIPSC and the employer. The e-mail was directed to Georges Nadeau, the Manager of Representational Services for the PIPSC, for his response (Exhibit C-11).

[23] At the time of the hearing of Mr. Reynolds' complaint, the NJC had not yet heard the third grievance.

Arguments

For the Complainant

[24] Mr. Reynolds submitted that the PIPSC violated the collective agreement (Article 34) by seeking by intimidation or threat to prevent him from filing a second grievance. In particular, he referred me to the e-mail message from Ms. Baillairgé, dated January 15, 2002 (Exhibit C-2). Mr. Reynolds submitted that Article 34 of the collective agreement applies to the employer and its representatives, to the PIPSC and its representatives, and to employees. The section is an absolute prohibition, with zero tolerance for any breach. Under no circumstances should this provision be set aside. It was Mr. Reynolds' submission that filing a grievance is a form of non-violent protest and if this non-violent protest is denied or suppressed, individuals may seek another method that is not as peaceful. Therefore, the right to submit a grievance is sacred and should not be violated. Mr. Reynolds submitted that the e-mail (Exhibit C-2) was evidence that there was a direct contravention of Article 34 of the collective agreement. If a breach is allowed to survive, Mr. Reynolds submitted, individuals who are already the weaker party would have no rights to present a grievance and therefore no voice.

[25] Mr. Reynolds submitted that the e-mail from Ms. Baillairgé (Exhibit C-2) was also evidence of collusion between the PIPSC and the employer. In this e-mail, Ms. Baillairgé conveyed a communication from the employer as to the possible outcome of the first grievance. Mr. Reynolds noted that the employer had used as grounds for denying his second grievance the fact that he already had a grievance against it. Mr. Reynolds also submitted that the e-mail from Ms. Baillairgé to Mr. Reynolds, dated January 30, 2002 (Exhibit C-6), was further evidence of collusion between the employer and the PIPSC. Mr. Reynolds argued that the PIPSC granted an extension of time to the employer without any end date. As of January 30, 2002, the employer would have been in breach of the collective agreement time limits had the PIPSC not granted the extension. The only party left injured was a dues paying member. Mr. Reynolds submitted that there was no duty on the PIPSC's part to defend or justify the actions of the employer. In this case, Ms. Baillairgé referred to the workload of the employer as partial justification for the extension of the time limits. Mr. Reynolds submitted that the extent of collusion was highlighted in the e-mail sent by Mr. Vézina with regard to the grievances' hearing (Exhibit C-10). In this e-mail, the employer speaks on behalf of Ms. Baillairgé, indicating her availability to meet with Mr. Reynolds. Mr. Reynolds

submitted that this correspondence led him to believe that he did not know if his representative was the employer or the PIPSC, as they were speaking with one voice. Mr. Reynolds submitted that he was forced to conclude that he had no representation at all, and certainly none acting in his interest.

[26] Mr. Reynolds submitted that the failure of the PIPSC to insist on the payment of interest for his claims was also a form of collusion. It was Mr. Reynolds' submission that, in allowing the first and second grievances, there was no condition put on the requested remedies. It was Mr. Reynolds' submission that if a grievance were allowed unconditionally, unless the remedy is illegal, it has to be given effect. In fact, the grievances were not allowed; they were allowed in part only. When the employer insisted that no interest would be paid, the PIPSC aligned itself with the employer to make null and void that part of the grievances that had been allowed.

[27] Mr. Reynolds submitted that the amount owing under the grievances dated back to August 2001, when there was no great energy on the part of the PIPSC to bring closure to those grievances. By failing to apply pressure for a quick resolution, the PIPSC had allied itself against him.

[28] Mr. Reynolds submitted that in the meeting of January 15, 2003, with the PIPSC's representatives, he was disappointed to learn that the PIPSC did not know the issues surrounding his third grievance. He also submitted that no new evidence was ever brought forward at that meeting. The employer had responded through the prior levels of the grievance process on the sole basis of timeliness. Mr. Reynolds submitted that there was no evidence that the PIPSC protested to the employer that it was not responding to the grievance. In Mr. Reynolds' opinion, this constituted gross negligence.

[29] Mr. Reynolds submitted that what was even more serious was that no end-date was given to the employer for the extension of the time limit to respond to the first two grievances. This meant, Mr. Reynolds stated, that there was no means whatever to advance toward the closure of these grievances. With unlimited time to respond, Mr. Reynolds submitted, his grievances could be open to allegations of abandonment. Mr. Reynolds submitted that he had to find some other means to advance those grievances to closure, and he submitted that it was as a result of a third party that those grievances were eventually brought to closure.

[30] Mr. Reynolds stated that, at first, he had confidence in the PIPSC. After repeated requests for due dates for the grievances, his confidence diminished, until he had none left, which he considered unfortunate.

For the Respondent

[31] Mr. Ranger submitted that, in a complaint under section 23 of the *PSSRA*, the complainant bears the onus of demonstrating that the bargaining agent has acted in bad faith, discriminatorily or arbitrarily. It was Mr. Ranger's submission that the complainant had not met this burden of proof, and that he had not demonstrated that there had been any breaches of the duty of fair representation. The sole question to be determined, he submitted, was whether the bargaining agent acted reasonably. The evidence clearly establishes that the grievances were handled with care and due diligence. There was no evidence that Ms. Baillairgé acted in bad faith. Mr. Reynolds' accusation that the extension of time limits was an act of collusion is a frivolous accusation. Mr. Ranger referred me to the decision of this Board in *Reid v. Professional Institute of the Public Service of Canada,* 2001 PSSRB 48.

[32] The grievances filed by Mr. Reynolds were all collective agreement grievances. It is up to the bargaining agent to determine how to handle such grievances, Mr. Ranger submitted. The complainant was not in any way prejudiced by the mutual agreement to extend time limits, Mr. Ranger submitted. It was quite to the contrary. The employer requested an extension in order to properly research the grievances, which resulted in the allowance of those grievances. There was no harm suffered as a result of the extension.

[33] Mr. Ranger argued that there was no evidence tendered that the intervention of a third party was necessary for the resolution of those grievances. He therefore submitted that this argument must be dismissed. The bargaining agent was not remotely motivated by bad faith, but was motivated by the complainant's best interest, Mr. Ranger submitted. Mr. Reynolds' assertion that there was no consideration given for the extension was false. Ms. Baillairgé testified that she already had knowledge that the first grievance would be allowed. The Treasury Board administers the Directive and when a department disagrees with an interpretation, it must get Treasury Board approval. Mr. Ranger submitted that, unfortunately, Mr. Reynolds did not understand this. The reason to grant an extension to the employer was a tactic to ensure that the reply, when issued, would be in his best interests. Ms. Baillairgé had

already received assurances that his first grievance would be allowed. Mr. Ranger referred me to the decision of *Archambault v. Public Service Alliance of Canada,* 2003 PSSRB 56. Mr. Ranger submitted that the delays in the processing of the grievances did not have any negative impact on Mr. Reynolds. [Note: The reference to negative input was to Mr. Reynolds as a grievor.]

[34] Mr. Ranger submitted that the allegation that Mr. Reynolds was prevented from filing a second grievance was a serious allegation. He also submitted that the claim was quite frivolous. The language used in Mr. Reynolds' grievance was inappropriate and when a grievance relates to the interpretation of a collective agreement, the bargaining agent is entitled to a say in how that grievance is worded. Ms. Baillairgé testified that this is all she meant with regard to her suggestion that he not file the grievance at the time.

[35] Mr. Ranger submitted that the PIPSC was struggling to reconcile the complaint with the fact that two of the grievances were allowed and the third grievance is waiting to be heard and the complainant will continue to be represented by the PIPSC. Mr. Ranger submitted that there was no evidence adduced by Mr. Reynolds on his allegation that the PIPSC had no knowledge of the basis of his third grievance at the January 15, 2003 meeting. The meeting was requested in order to address the preliminary objection of the employer on the time limits of the grievance. The PIPSC agreed with Mr. Reynolds' explanation for the delay and, as a result, it agreed to represent Mr. Reynolds in this grievance. In fact, the meeting was a very productive meeting. The delays in the employer's response to the third grievance were not the PIPSC's fault. Ms. Baillairgé testified that she was also upset and frustrated by the delays in the grievance process.

[36] Mr. Ranger noted that Mr. Reynolds' claim that subsection 97(4) of the *PSSRA* was breached is not relevant here. This section of the *PSSRA* deals with decisions from the Board and therefore has no application to this complaint.

[37] Mr. Ranger submitted that the allegation that, by not pursuing the issue of interest, the bargaining agent was aligning itself with the employer was baseless, groundless and frivolous. The bargaining agent must be allowed to evaluate whether a claim can be pursued and this is based on experience and the knowledge of the legislation. On this basis, the PIPSC decided not to proceed because there is no authority under the *PSSRA* to order the payment of interest. The PIPSC would not be

doing any favours to Mr. Reynolds by pursuing actions that would not result in a desired outcome.

[38] Mr. Ranger submitted that Mr. Reynolds produced no evidence to show that the PIPSC failed to apply any pressure on the employer. There was evidence to the contrary, Mr. Ranger submitted. Mr. Ranger submitted that none of the PIPSC's actions could be said to be motivated by inappropriate consideration. He referred me to the decision of this Board in *Savoury v. Canadian Merchant Service Guild,* 2001 PSSRB 79.

[39] In conclusion, Mr. Ranger submitted that the complaint should be dismissed. He also submitted that this Board has no jurisdiction to order the corrective measures requested by Mr. Reynolds.

Reply

[40] In his reply, Mr. Reynolds referred me to *Hakansson v. Service Employees International Union*, *Local 268*, [2003] O.L.R.D. No. 7 (QL) (OLRB), where the Board concluded that delay in processing grievances was inimical to effective labour relations.

[41] Mr. Reynolds submitted that it was the PIPSC that afforded the employer the opportunity for perpetual delay and it was the PIPSC that gave the employer whatever time it wished to respond to the first and second grievances. Mr. Reynolds submitted that this was very much the pith and substance of his complaint. He submitted that I should allow the complaint on the basis of the time that the PIPSC afforded to the employer to bring closure to the events.

Reasons for Decision

[42] The duty of fair representation is set out in subsection 10(2) of the *PSSRA*:

> ***10.*** *(2) No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.*

[43] The Supreme Court of Canada, in *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509, set out the basic requirements for the duty of fair representation. Although most of the test set out by the Court related to the refusal of a bargaining

agent to take a grievance to adjudication, which is not the case here, the Court did set out in general terms the criteria for fair representation:

. . .

> *. . . The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

. . .

[44] Mr. Reynolds has raised a number of allegations in support of his complaint, and I will address each of those allegations. However, it is important to note at the beginning that the bargaining agent did not refuse to represent Mr. Reynolds in his grievances and continues to provide representation in the one outstanding grievance. Also, Mr. Reynolds was successful in two of his grievances and the third grievance is still in the grievance process after being referred to the NJC. While the successful outcome of a grievance does not resolve a complaint of a breach of the duty of fair representation, such an outcome is a factor in determining whether the bargaining agent has met its duty. In this case, the evidence showed that the result obtained through the grievance process was the best that could be achieved. Mr. Reynolds suggested that the result was not through the efforts of the bargaining agent. However, the bargaining agent representative supported the grievance and communicated with the employer's representative in order to move the grievance through the process. There was no direct evidence on how the employer came to its decision to allow the grievance. The manner in which a decision is reached is totally out of the bargaining agent's control and therefore not relevant in determining the bargaining agent's duty.

[45] Mr. Reynolds alleged that the bargaining agent used threats or intimidation to prevent him from filing a second grievance. The e-mail on which Mr. Reynolds relies (Exhibit C-2) is simply a suggestion on the timing of the filing of a grievance. The bargaining agent had legitimate concerns about the language used in the grievance. Mr. Reynolds was obviously not intimidated, as he had already filed his grievance when he received the e-mail. Accordingly, this allegation is unfounded.

[46] Mr. Reynolds alleges that the bargaining agent colluded with the employer. This is a serious allegation to make against a bargaining agent. Mr. Reynolds relies on the fact that the bargaining agent agreed to an extension of time to reply to his grievances, as well as comments made by the employer's representative when the latter attempted to schedule a grievance hearing. An extension of time limits is a common occurrence in labour relations, and there is no evidence that the extension granted was abusive. The first and second grievances were filed in November 2001 and January 2002, and the Department responded by March 2002. While not ideal, a six-month delay is not excessive. The bargaining agent's representative did make reasonable efforts to get the employer to respond in a timely fashion. Furthermore, the extension was granted with the understanding that the grievor could expect a favourable result. Under such circumstances, objecting to an extension of the time limit would have served no purpose. Mr. Vézina's comments in his e-mail to Mr. Reynolds (Exhibit C-10) were innocent and meant to facilitate the grievance process. The comments merely indicated that the relationship between Mr. Vézina and Ms. Baillairgé was a cooperative one. Effective labour relations require cooperative working relationships between representatives and are not evidence of "collusion" by a bargaining agent.

[47] Mr. Reynolds alleges that the bargaining agent breached subsection 97(4) of the *PSSRA*. Section 97 of the *PSSRA* applies to decisions of adjudicators and is not applicable here. I understand that Mr. Reynolds' concern here is that the bargaining agent did not support his view that all the requested remedies in his grievances should have been granted. In particular, he feels that interest should have been paid. The bargaining agent's view on the payment of interest was not unreasonable. In any event, in light of the requirement that the bargaining agent approve all collective agreement grievances, the bargaining agent retains the ultimate authority over the remedies sought for a breach of a collective agreement.

[48] In conclusion, the evidence clearly shows that the bargaining agent acted fairly in representing Mr. Reynolds and did not act in a manner that was arbitrary, discriminatory or in bad faith. I am confident that the bargaining agent will continue to represent Mr. Reynolds fairly in his grievance before the NJC.

[49] Mr. Ranger submitted that the Board did not have the jurisdiction to award the remedies sought by Mr. Reynolds in his complaint. In light of the fact that I have determined that the complaint is unfounded, I do not need to determine the Board's jurisdiction to award the requested remedies.

[50] This complaint is therefore dismissed.

Ian R. Mackenzie,
Board Member

OTTAWA, June 3, 2004.