Date: 20000829

File: 161-34-1129

Citation: 2000 PSSRB 80

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

LUIGI TUCCI

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

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

Before: Yvon Tarte, Chairperson

For the Complainant: Himself

For the Respondent: Ainslie Benedict, Counsel

(Decided without an oral hearing)

[1] This decision deals with the issue whether the Board has jurisdiction to entertain a complaint filed pursuant to paragraph 23(1)(*a*) of the *Public Service Staff Relations Act* (Act), alleging that the Professional Institute of the Public Service of Canada (Institute) has failed to observe the prohibitions contained in subparagraphs 8(2)(*c*)(i) and (ii) of the Act. In other words, do those prohibitions apply to an employee organization? Those prohibitions read as follows:

> ***8.*** *(2) Subject to subsection (3), no person shall*
>
> . . .
>
> (c) *seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee*
>
> *(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or*
>
> *(ii) to refrain from exercising any other right under this Act.*

Facts

[2] The following facts are not in dispute.

[3] Mr. Luigi Tucci works as an auditor for the Canada Customs and Revenue Agency. He belongs to the Auditors Group (AU) bargaining unit, for which the Institute is the bargaining agent. In fact, Mr. Tucci was a steward with the Institute for a number of years.

[4] Mr. Tucci alleged that, on February 7, 2000, a Mr. Siu M. Lai had a telephone conversation with a Mr. Réal Lamarche, Chairperson of the AU bargaining unit. Mr. Tucci alleged that Mr. Lamarche informed Mr. Lai that he had learned that Mr. Tucci had attended a social event in the company of two representatives of the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada). Mr. Tucci also alleged that Mr. Lamarche informed Mr. Lai that the Executive Committee of the AU bargaining unit considered that Mr. Tucci had, by his conduct, given support to the CAW-Canada to become the bargaining agent for the AU bargaining unit. Mr. Tucci alleged that Mr. Lai denied that Mr. Tucci had provided

support to the CAW-Canada at the social event. Mr. Tucci further alleged that Mr. Lamarche informed Mr. Lai that, if Mr. Tucci did not resign as a steward with the Institute, he could be removed from stewardship and membership with the Institute.

[5] Mr. Tucci resigned as a steward with the Institute by letter dated February 7, 2000. He alleged that he has done so for fear of being removed from membership in the Institute. His letter of resignation, however, makes no mention of this reason. It reads as follows:

. . .

> *I formally submit my resignation from all official capacities within the Professional Institute of the Public Service of Canada effective immediately and upon receipt of this facsimile.*
>
> *After two failed attempts by your President, Steve Hindle, to remove me from my elected office by initiating two independent internal investigations based upon groundless allegations; after continuous disregard by your President, Steve Hindle, to my written requests to receive a copy of the final report of the aforementioned investigations and after ignoring my request to your President, Steve Hindle, for an accounting of the cost of these investigations to the union/membership, it is with great pleasure to* [*sic*] *formally sever my ties with a* ***weak****,* ***ineffective*** *and* ***useless*** *bargaining agent that is governed by you.*

. . .

[Emphasis in the original]

[6] Mr. Tucci alleged that, on or about March 1, 2000, Mr. Lai had a telephone conversation with a Mr. Gaston Lampron, Chairperson of the AU bargaining unit Elections Committee. Mr. Tucci wanted to run for "… the Toronto Regional Representative of the AU Group…." Mr. Tucci alleged that Mr. Lampron informed Mr. Lai that Mr. Tucci might not be allowed to run for office because of an Institute's by-law prohibiting elected members to hold office if they publicly advocate leaving the Institute. Mr. Tucci alleged that Mr. Lai denied that Mr. Tucci had publicly endorsed leaving the Institute.

[7] By letter dated March 8, 2000, Mr. Lampron informed Mr. Tucci that he could not run for the position of regional representative of the AU bargaining unit. That letter reads as follows:

. . .

> *I am writing to inform you that you are not eligible to be a candidate in the upcoming AU Group elections.*
>
> *The Professional Institute's Policy on Group Revocation of Certification requires an elected member to resign from their position with the Institute if they publicly advocate leaving the Institute for another union. As you have publicly advocated that members of the AU Group sign cards with the Canadian Auto Workers (CAW), you would not be eligible to hold office if elected. As Chair of the AU Elections Committee I must therefore inform you that you are not eligible to be a candidate in this election.*

. . .

[8] On March 15, 2000, Mr. Tucci filed a complaint alleging that the Institute has failed to observe the prohibitions contained in subparagraphs 8(2)(*c*)(i) and (ii) of the Act. More particularly, Mr. Tucci alleged that the Institute has threatened to exclude him from its membership unless he resigned from his steward position with the Institute and refrained from seeking to have another employee organization become his bargaining agent. Mr. Tucci also alleged that the Institute has prevented him from running in the election for regional representative of his bargaining unit.

[9] On April 7, 2000, the Institute objected to the Board's jurisdiction to entertain Mr. Tucci's complaint and requested that the complaint be dismissed pursuant to section 8 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (Regulations). That provision reads as follows:

> ***8.*** *(1) Subject to subsection (2), but notwithstanding any other provision of these Regulations, the Board may dismiss an application on the ground that the Board lacks jurisdiction.*
>
> *(2) The Board, in considering whether an application or complaint should be dismissed pursuant to subsection (1), shall*
>
> *(a) request that the parties submit written arguments within the time and in the manner specified by the Board; or*
>
> *(b) hold a preliminary hearing.*

. . .

[10] Pursuant to paragraph 8(2)(*a*) of the Regulations, the Board requested that the parties file written submissions on the issue of jurisdiction. That process was concluded on June 29, 2000.

Submissions of the parties

[11] The Institute submitted that "… the matters which form the subject of this complaint are internal union matters, not subject to scrutiny by this Board." It argued that "… a labour relations board does not have supervisory authority to regulate the internal affairs of a bargaining unit."

[12] The Institute referred to the following decisions in support of its position:

Forsen v. *Bean* (148-2-209);

Shore v. *Bean* (161-2-732);

Jacques v. *Public Service Alliance of Canada* (161-2-731);

Hornstead v. *Public Service Alliance of Canada* (161-2-739); and

Feldsted v. *Garwood-Filberts* (148-2-252 and 253, 161-2-813 to 816, 161-2-819 and 820 and 161-2-822 to 824).

[13] Mr. Tucci responded that his "… complaint is not an internal union matter." He added that the Board has jurisdiction to hear the complaint because the Institute "… had sought by intimidation, threat of dismissal, by the imposition of a penalty or other means to compel [him] to refrain from exercising [his] rights under sections 6 or 23 of the Act."

[14] In his submissions, Mr. Tucci made a reference to the decision of the Supreme Court of Canada in *Canada (Attorney General)* v. *Mossop*, [1993] 1 S.C.R. 554.

Reasons

[15] In the complaint at hand, Mr. Tucci alleges that the Institute has failed to observe the prohibitions contained in subparagraphs 8(2)(*c*)(i) and (ii) of the Act. The first question to address is whether those prohibitions apply to an employee organization. My reading of section 8 of the Act suggests that they do not.

Subparagraphs 8(2)(*c*)(i) and (ii) have to be read in their context; they cannot be read in isolation from the remainder of section 8. Section 8 provides as follows:

> ***8****. (1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.*
>
> *(2) Subject to subsection (3), no person shall*
>
> *(a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;*
>
> *(b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or*
>
> *(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee*
>
> *(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or*
>
> *(ii) to refrain from exercising any other right under this Act.*
>
> *(3) No person shall be deemed to have contravened subsection (2) by reason of any act or thing done or omitted in relation to a person who occupies, or is proposed to occupy, a managerial or confidential position.*
>
> [Emphasis added]

[16] The prohibition contained in subsection 8(1) of the Act is specifically directed at persons occupying managerial or confidential positions. Its purpose is to prevent management interference in the affairs of a bargaining agent. By its very wording, subsection 8(1) could not be construed as being directed at an employee organization.

[17] Paragraph 8(2)(*a*) prohibits discrimination on the basis of membership in an employee organization or on the basis of a right being exercised as provided for in the Act. The examples provided in that paragraph all refer to the authority of an employer, i.e. the refusal to employ or to continue to employ or the imposition of a term or condition of employment. An employee organization has no such authority and I do not believe it is subject to paragraph 8(2)(*a*).

[18] Paragraph 8(2)(*b*) prohibits the imposition of a condition of employment seeking to restrain membership in a employee organization or to restrain the exercise of a right provided for in the Act. The examples provided in that paragraph refer to appointments and contracts. No employee organization is involved in the appointment or contracting processes and I fail to see how it could be subject to the provisions of paragraph 8(2)(*b*).

[19] Paragraph 8(2)(*c*) prohibits seeking or compelling an employee to take a particular course of action in relation to membership in an employee organization or to refrain from exercising a right provided for by the Act. One example provided in that paragraph refers to threatening to dismiss. The authority to dismiss belongs solely to an employer. An employee organization has no power to dismiss an employee. In this light, and in light of the other provisions in section 8 of the Act, I find that paragraph 8(2)(*c*) of the Act could not be directed at an employee organization.

[20] I have considered the cases referred to by the parties and find the Board's decision in *Forsen* v. *Bean* (*supra*) to be of particular interest. In that case, as in the case at hand, the complainant was unhappy with the conduct of his bargaining agent. In both cases, the complaints concerned the relationship between the complainant and his bargaining agent, not the relationship between the complainant and his employer; Mr. Forsen complained about his suspension from membership in his bargaining agent, while Mr. Tucci complained about a threat of exclusion from membership by his bargaining agent and the interdiction to run for "… the Toronto Regional Representative of the AU Group…."

[21] In *Forsen* v. *Bean* (*supra*), the Board arrived at the following conclusions:

. . .

Notwithstanding Mr. Forsen's argument to the contrary, I believe that the essential issue here is whether the Board has the authority to involve itself in his suspension from membership in the Public Service Alliance of Canada. As Mr. Forsen acknowledged, were it not for that suspension he would have no cause for complaint, and would not be before this Board. Accordingly, I must determine whether the Board has any authority under the Public Service Staff Relations Act *to intervene in a union decision vis-à-vis its members….*

. . .

… In St. James et. al. [Board file 100-1] *the PSSRB made the following observation:*

> (at p.7) It is quite clear that the *Public Service Staff Relations Act* does not confer the authority on this Board to regulate the internal affairs of a bargaining agent. The granting of certification pursuant to section 28 of the Act undoubtedly imposes certain obligations on the bargaining agent. However, as noted by the representative of the respondents, unless and until the actions of the bargaining agent affect the employment relationship, the Board clearly has no role to play. *(See also the Laporte decision,* [Board file 148-2-99].*)*

As a statutory tribunal, the Board's authority to act is derived exclusively from federal legislation, in particular the Public Service Staff Relations Act*. That is, the Board has no authority to act except pursuant to the mandate specifically given to it by Parliament. In assessing whether Parliament, through that statute, intended to confer on the Board the authority and responsibility to regulate the internal proceedings of an employee organization that is certified as a bargaining agent under the Act, it is interesting to contrast the provisions of the PSSRA with the* Canada Labour Code, *another federal labour relations statute. As the respondents' representative has noted, the* Labour Code *has more broadly worded provisions in respect of an employee's rights vis-à-vis his bargaining agent; see for example section 95 of the Code. However, even these provisions have been found not to confer general jurisdiction in the Canada Labour Relations Board to intervene in the internal affairs of an employee organization (see e.g. the* Carbin *decision* [59 di 109; 85 C.L.L.C. 16,013]*). It must be concluded therefore a fortiori that it was not the intention of Parliament to confer on the Public Service Staff Relations Board the sweeping authority over a bargaining agent which the applicant is in effect arguing for.*

Accordingly, I must find that whatever remedy may be available to Mr. Forsen in this matter, that remedy does not lie

> *with the Public Service Staff Relations Board. Therefore this complaint is dismissed for want of jurisdiction.*
>
> . . .

I agree with these conclusions and I believe that they apply to the complaint at hand.

[22] Accordingly, for all these reasons, the complaint is dismissed.

Yvon Tarte,
Chairperson.

OTTAWA, August 29, 2000.