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Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

Joe Bracciale, Gail Henderson-Jones and Tina Rennett

Complainants

and

Public Service Alliance of Canada
(Union of Taxation Employees, Local 00048)

Respondent

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

Before: Yvon Tarte, Chairperson

For the Complainants: Themselves

For the Respondent: Cécile La Bissonnière, Public Service Alliance of Canada

(Decided without an oral hearing)

[1] This decision deals with the issue whether the Board has jurisdiction to entertain a complaint filed by Mr. Joe Bracciale and Mmes Gail Henderson-Jones and Tina Rennett (complainants) pursuant to paragraph 23(1)(*a*) of the *Public Service Staff Relations Act* (Act), alleging that officers of the Union of Taxation Employees, Local 00048 (Local 00048), a component of the Union of Taxation Employees (Union), which is itself a component of the Public Service Alliance of Canada (Alliance), have failed to observe the prohibitions contained in subsection 10(2) of the Act. Those prohibitions read as follows:

> ***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.*

Facts

[2] The following facts are not in dispute.

[3] At one time, Mmes. Henderson-Jones and Rennett were officers of Local 00048 sitting on its Executive Council.

[4] On March 2, 2000, Ms. Henderson-Jones wrote to the Union's Ontario Regional Vice-President to complain about irregularities relating to the election of the Local 00048's Executive Council, the conduct of Local 00048's Executive Council meetings and some views expressed at those meetings. On June 1, 1999, the then Union's National President responded to the complaint. He informed Ms. Henderson-Jones that he would not intervene until he was provided with enough details to request an investigation.

[5] On September 13, 1999, the complainants wrote to the newly elected Union's National President to complain about irregularities relating to the management and practices of Local 00048, the election of the Local 00048's Executive Council, harassment to which Ms. Henderson-Jones would have been submitted and the representation of employees in the bargaining unit by the Union and Local 00048. A detailed statement was attached to the complaint. On October 22, 1999, Ms. Henderson-Jones referred the complaint to the Alliance's Executive Council. On October 28, 1999, the Union's National President responded to the complaint by stating that ". . . the local did indeed settle the matter to the satisfaction of the local

executive." The Alliance's National President responded to the complaint on November 8, 1999, stating that he believed ". . . this matter has now been resolved to the satisfaction of the Local Executive involved."

[6] On December 3, 1999, a copy of the detailed statement attached to the complaint was posted on a public bulletin board at the complainants' workplace.

[7] On January 11, 2000, the Local 00048's Executive Council resolved to ". . . ask the [Union's Ontario] Regional Vice President [*sic*] to strike a committee to investigate whether or not Brother Bracciale, Sisters Henderson-Jones and Rennett have violated the Local Bylaws by circulating and posting their statement which had already been dealt with by the National Office . . ." and that ". . . the Committee report back their findings to a Special Meeting of the Executive Council." A copy of the minutes of the Local 00048's Executive Council meeting was posted in the complainants' workplace.

[8] On March 8, 2000, the complainants wrote to the Union's National President to complain about the investigation requested by the Local 00048's Executive Council on January 11, 2000. On March 14, 2000, the Union's National President responded that the complaint related to a local matter and that she would not intervene.

[9] On March 22, 2000, the complainants filed the complaint at hand with the Board, alleging that the Local 00048's Executive Council acted in bad faith, misrepresented facts and harassed them. This complaint arises from the fact that a copy of the minutes of the Local 00048's Executive Council meeting of January 11, 2000 was posted in the workplace. Those minutes recorded the resolution of the same day that the complainants be investigated for a potential violation of the Local 00048's by-laws. The complaint read as follows:

. . .

*3. **IN OUR OPINION:***

> *The statements contained in these minutes are false, misrepresentative, harassing and accusatory, thus creating a very stressful and unpleasant work environment*
>
> *The action taken by the Local against us was a retaliation to an investigation we had requested involving the expenditures and conduct of the*

> *Executive Council whose names appear on the minutes*
>
> . . .
>
> *5.* The complainants request that the Board issue the following order:
>
> > *That the information contained in* [the minutes] *be retracted in writing and posted in the workplace*
> >
> > *That the harassment ceases*
> >
> > *That complainants* [*sic*] *charges be dealt with in a confidential manner within the union structure and not made public*
> >
> > *And any further corrective action deemed appropriate by the Board*
>
> *6. State other matters considered relevant:*
>
> > *Our charges requesting an investigation regarding the expenditures and conduct of the Executive Council has* [*sic*] *not been dealt with as required by the bylaws and regulation.*
> >
> > *We are being contacted now by fellow co-workers assigned to investigate us despite the fact that we have not been charged with any misconduct.*
>
> . . .

[10] On April 7, 2000, the Alliance requested that the complaint be dismissed without a hearing. It alleged that ". . . the allegations against the union deal with an internal union matter . . ." and that the Board was without ". . . jurisdiction to oversee or regulate the internal activities of an employee organization."

[11] On April 20, 2000, the complainants replied that "[i]t is our position that the Board does have jurisdiction and our complaint should be heard."

[12] Pursuant to paragraph 8(2)(*a*) of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (Regulations), the Board requested that the parties file written submissions on the issue of jurisdiction. Section 8 of the Regulations 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.*
>
> . . .

[13] The written submissions process was concluded on August 8, 2000.

Submissions of the parties

[14] The Alliance submitted that the part of the minutes of the Local 00048's Executive Council meeting of January 11, 2000 to which the complainants object is a ". . . resolution [that] was passed at the Local meeting and deals with internal union matters as it relates to a possible violation of the Local Bylaws."

[15] The Alliance added the following:

> . . .
>
> *Section 10 of the* PSSRA *has already been interpreted by the Board as meaning that* [*sic*] *duty of fair representation of a bargaining agent only applies to the representation of their members with the employer. . . .*
>
> . . .
>
> *In the present case, there is no evidence that this complaint falls under subsection 10(2) of the* PSSRA *or that the bargaining agent has refused to represent the complainants in their dealings with the employer. In fact, the subject matter of their complaint deals with internal union matters over which the Board has no jurisdiction. Internal union matters are not covered by subsection 10(2) of the* PSSRA*.*
>
> . . .

[16] The Alliance requested that the Board dismiss the complaint for want of jurisdiction.

[17] The Alliance referred to the following decisions in support of its position:

Shore v. Bean and Gordon (161-2-732);

Lamarre v. Professional Institute of the Public Service of Canada (161-2-741, 756, 764 and 765, 770 to 772, 774 and 776);

Jetté et al. v. Public Service Alliance of Canada, Local 10427 (161-2-631 to 633); and

St-James et al. v. Public Service Alliance of Canada (Canada Employment and Immigration Union) and Pascucci (100-1).

[18] The complainants responded that "PSAC's response speaks mainly, to 'fair representation' whereas, subsection 10(2) is somewhat broader than that." They alleged that *Jetté* (*supra*) had no application to their case. They added the following:

. . .

> *The Executive Council has not filed a complaint against us for violating the Local Bylaws that we are aware of. The National office has* not *dealt with our complaint, the Regional Vice-President has* not *dealt with our complaint, and neither has the Local. However, the Executive Council was asked to review our complaint against them, and to determine if it warranted an investigation. We believe that this also, is contrary to the Bylaws.*
>
> *Shortly after filing our complaint, not only did the Council post a rebuttal to our inquiry(contents of which contained confidential information) but also posted and circulated information in our workplace, using our names and implying the WE MAY be in violation of the Local Bylaws. To date, almost 7 months after posting the information, they have not filed a complaint or charge to that effect, just speculation.*
>
> *The PSAC stated:*
>
> *"The actions of the bargaining agents may very well have affects on our employment relationship with our employer and co-workers. Furthermore, these affects may not necessarily be visible or measurable. We strongly believe that this action was perpetrated for the sole purpose to harass us and retaliate against us for filing our complaint which we submitted in a confidential manner.*
>
> *Furthermore, as no action was taken by the National office, we believe that the Local feels justified in continuing the harassing behavior . . . .*

> *In conclusion, we submit that based on the above, the Board has jurisdiction to hear our complaint and grant the corrective action requested. . . .*
>
> . . .
>
> [*Sic* throughout]

[19] In rebuttal, the Alliance stated that ". . . the Alliance denies having violated subsection 10(2) of the PSSRA and the complainants have not brought any evidence to the effect that we have failed to represent them in their dealings with the employer."

Reasons

[20] In the case at hand, the complainants allege that the Alliance failed to observe the prohibitions contained in subsection 10(2) of the Act. This complaint arises from the fact that a copy of the minutes of the Local 00048's Executive Council meeting of January 11, 2000 was posted in the workplace. Those minutes recorded the resolution of the same day that the complainants be investigated for a potential violation of the Local 00048's by-laws.

[21] The sole issue before the Board is whether the essence of the complaint is covered by subsection 10(2) of the Act or, in other words, whether that provision prohibits the posting of the minutes. This type of issue is not new to the Board and some of its decisions provide some guidance in this respect.

[22] Although *St-James* (*supra*) predates the coming into force of subsection 10(2) of the Act, the line of reasoning developed by the Board in that decision has been followed in those subsequent to the adoption of that provision. In that case, the complainants challenged the decision made by an officer of their bargaining agent not to follow a course of action chosen by the majority of the membership at a general meeting. The Board considered the essence of the complaint and determined that it had no jurisdiction to hear the matter. In arriving at its decision, the Board made the following comments at pages 6 and 7:

> . . .
>
> *It has been widely recognized that at least in the absence of specific provisions to that effect in its enabling statute, a labour relations board does not have supervisory authority to regulate the internal affairs of a bargaining agent. For example, George Adams, the former Chairman of*

the Ontario Labour Relations Board (now Mr. Justice Adams) stated the following in his text, Canadian Labour Law (1985) Canada Law Book, at page 721:

> Labour relations boards have made it clear that the statutory duty of fair representation does not apply to regulate the internal workings of trade unions. The duty applies only to a trade union in the representation of its members in terms of their relations vis-à-vis their employer. Accordingly, labour relations boards have been unwilling to interfere with: the conduct of ratification votes, the suspension of an employee from membership in the trade union, the exclusion of non-members from votes on contract matters during collective bargaining, an allegedly unfair appeal procedure provided by a trade union with respect to decisions whether to pursue grievances, allegations concerning a trade union's constitutional procedures with respect to elections, the right of a trade union member to run for the office of area steward, the method in which delegates are selected for the purpose of participating in a union convention and the fact that the trade union may have departed from its internal by-laws, the alleged improper removal of the complainant from a trade union office and membership when it was clear that the complainant was not an employee in the bargaining unit, and the alleged failure of a trade union to provide an adequate pension plan.

The Public Service Staff Relations Board has only the authority conferred on it by statute. 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. . . .

. . .

[23] In *Shore* (*supra*), the complainant objected to his bargaining agent's failure to follow its internal process in dealing with the complainant's appeal of his suspension from membership. Twenty-one months after the complainant had filed his appeal, no

appeal date had been set yet, although the bargaining agent's Constitution and Regulation provided for such a date to be set within two months of an appeal being filed. In declining jurisdiction to hear the complaint, the Board made the following comments at pages 3 and 4 of its decision:

> . . .
>
> *Prior to the enactment of subsection 10 (2) of the Public Service Staff Relations Act, this Board has consistently held that it had no authority to regulate the internal proceedings of an employee organization that is certified as a bargaining agent under the Act. Most of these cases were decided prior to the addition of the fair representation clause to the Public Service Staff Relations Act on June 1, 1993.*
>
> *The new subsection imposing on certified bargaining agents a duty of fair representation states that:*
>
> > 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.
>
> *I must now decide whether the addition of this statutory duty of fair representation in some way modifies the general principles enunciated above. In the broadest sense, I must conclude that it does not. . . .*
>
> . . .
>
> *Representation is concerned with the actions of a bargaining agent as they relate to the dealings that an employee in the bargaining unit may have with the employer. The addition of subsection 10 (2) to the Public Service Staff Relations Act does not in my opinion provide any new authority to regulate the internal workings of a bargaining agent.*
>
> . . .

[24] In *Hornstead v. Public Service Alliance of Canada et al.* (161-2-739), the complainant contested her suspension from her bargaining agent's membership. The respondent questioned the Board's jurisdiction to hear the complaint. The Board found that the complainant had not established that subsection 10(2) of the Act had been breached and expressed the following comments at page 13 of its decision:

. . .

> *In the case against the PSAC, the complainant did not establish that the PSAC failed to represent her in relation to her employer. Ms. Horstead never submitted a grievance that could allow me to judge whether or not she was fairly or unfairly treated by her union. The fact that she was disciplined by her union is not a matter that this Board can or should interfere with. This fact has been clearly recognized in the jurisprudence presented to me by Ms. Bramwell. Unless the actions of the bargaining agent affect the employment relationship of the complainant, the Board has no role to play.*

. . .

[25] In *Tucci v. Hindle* (161-2-840), the complainant opposed his bargaining agent's decision not to allow him to be represented by a bargaining agent's officer of his choice; the bargaining agent had decided to assign another officer to represent the complainant. The Board found that the object of the complaint was not covered by subsection 10(2) of the Act. In arriving at its decision, the Board made the comments that follow at pages 16 and 17:

. . .

> *. . . I would agree with counsel for the respondent that the jurisprudence is consistent in finding that provisions such as subsection 10(2) do not confer jurisdiction on a labour relations board to regulate or oversee the internal affairs or the management of a bargaining agent. In fact, the complainant acknowledged in his arguments that "*the Board does not have the jurisdiction to consider denial of travel expenses of a union representative per se... " *I would also agree with Mr. Hindle that in an organization such as the Institute, which has a substantial and diverse membership widely dispersed throughout the country, it is imperative that there be some degree of centralized authority in respect of the conduct of representations before bodies such as the Public Service Commission Appeal Board. To have it otherwise is to invite all manner of inconsistencies, and, as Mr. Hindle has noted, the result can only undermine the Institute's credibility before these third parties, to say nothing of its relationship with the employer. It is therefore not unusual for unions to reserve the right to determine who shall represent their members before third parties - see for example,* Carby- Samuels and Economists', Sociologists', and Statisticians' Association et. al, *Board File no. 161-2-708. Accordingly, there is nothing inherently inappropriate in the union imposing some strictures on the ambit of the responsibilities and conduct of the several hundred Stewards*

> *who are a part of the PIPSC. In any event, the authority of Stewards to represent members in third party proceedings, and the reimbursement of travel expenses for such persons are* a priori *matters respecting the internal management of the union and therefore outside the purview of the Board's authority under subsection 10(2). In this context I am of the view that the facts of this case are* in pari materia *with the various circumstances set out in the passage (*supra*) from Mr. Justice Adams' text quoted by the respondent (and also referred to in the complainant's rebuttal at p. 4) concerning limitations on the scope of the duty of fair representation.*
>
> . . .

[26] In *Kilby et al. v. Public Service Alliance of Canada and Bean* (161-2-808, 150-2-44), the complainants took exception to the process followed by their bargaining agent in dealing with harassment complaints they had filed against a bargaining agent's officer. The Board found that it did not have jurisdiction over the matter and made the following comments at pages 14 and 15 of its decision:

> . . .
>
> *With respect to the complaint under subsection 10(2), it is readily apparent that the Board has no jurisdiction to deal with this dispute under that provision. The complainants' representative acknowledged that there is at best a tenuous link between the complaints and the complainants' relationship with the employer. In fact, it is crystal clear that the complaint concerns exclusively the complainants' relationship with the bargaining agent and its officers; it has nothing to do with the employee organization's representation on behalf of the complainants vis-à-vis the employer.*
>
> *As Mr. Wilson has candidly noted in his written argument, the Board has consistently held that its jurisdiction under section 10 does not extend to the regulation or oversight of the internal affairs of employee organization. See for example the decision in* Tucci and Hindle, *(*supra*, dated December 29, 1997) where the Board very recently reaffirmed this conclusion. The Board's view of the ambit of the unfair representation provision is in fact no different than that of labour relations boards in other jurisdictions in Canada where such provisions are found. . . .*
>
> . . .
>
> *The complainants' representative suggests that this Board should take jurisdiction in respect of the union's internal affairs where issues of discrimination and human*

> *rights violations are concerned. Clearly however, that would be entirely beyond the scope of subsection 10(2), and would fly in the face of substantial and long established jurisprudence. Accordingly, I must find that the Board is without jurisdiction under that provision to address the concerns raised by the complainants.*
>
> . . .

[27] Finally, although *Forsen v. Bean et al.* (148-2-209) did not deal with a complaint alleging a violation of subsection 10(2) of the Act, principles similar to those reported above were applied to that case. The applicant disputed his suspension from his bargaining agent's membership. In dismissing the matter for want of jurisdiction, the Board made the following comments at pages 8 and 9 of its decision:

> . . .
>
> *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 (supra)). 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. . . .*

[28] As can be seen above, the Board has no more powers than those conferred upon it by legislation. Subsection 10(2) of the Act has been consistently interpreted by the Board as applying exclusively to a bargaining agent's representation of its members in

matters directly relating to their relationship with the employer. I see no reason to differ from that line of reasoning.

[29] In the case at hand, the complainants are disputing the Local 00048's Executive Council's day-to-day operations of the Local 00048 as well as other internal union matters. Their dispute relates directly to their relationship with their bargaining agent, not with their employer. In other words, their dispute concerns exclusively their membership in the bargaining agent, not their employment with the employer.

[30] For these reasons, I find that the posting in the workplace of a copy of the minutes of the Local 00048's Executive Council meeting of January 11, 2000 does not constitute a violation of subsection 10(2) of the Act, as that provision is not intended to apply to that type of action on the part of a bargaining agent. The complaint process is not an avenue appropriate for addressing the type of concerns raised by the complainant.

[31] This complaint is therefore dismissed.

Yvon Tarte,
Chairperson.

OTTAWA, September 27, 2000.