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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA
AND CAREY BARNOWSKI**

Complainants

and

**CANADA CUSTOMS AND REVENUE AGENCY,
ROB WRIGHT AND REID CORRIGAL**

Respondents

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

Before: [Yvon Tarte, Chairperson](#)

For the Complainants: [Andrew Raven, Counsel](#)

For the Respondents: [Michel LeFrançois, Counsel](#)

Heard at Ottawa, Ontario,
August 27 and 28, 2001.

DECISION

[1] In June of this year, the Public Service Alliance of Canada (PSAC) and Carey Barnowski filed a complaint pursuant to section 23 of the *Public Service Staff Relations Act* (PSSRA) alleging that the Canada Customs and Revenue Agency (CCRA), Rob Wright and Reid Corrigan had “sought by intimidation and the imposition of a disciplinary penalty to compel 11 employees of the (CCRA) to refrain from exercising rights under the (PSSRA), in contravention of paragraph 8(2)(c)(ii) of the Act.”

[2] Subparagraph 8(2)(c)(ii) and section 23 of the PSSRA read:

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

. . .

(ii) to refrain from exercising any other right under this Act.

23. (1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed

(a) to observe any prohibition contained in section 8, 9 or 10;

(b) to give effect to any provision of an arbitral award;

(c) to give effect to a decision of an adjudicator with respect to a grievance; or

(d) to comply with any regulation respecting grievances made by the Board pursuant to section 100.

(2) Where, under subsection (1), the Board determines that the employer, an employee organization or a person has failed in any manner described in that subsection, the Board may make an order directing the employer, employee organization or person to observe the prohibition, give effect to the provision or decision or comply with the regulation, as the case may be, or take such action as may be required in that behalf within such specified period as the Board may consider appropriate.

(3) An order under subsection (2) directed to a person shall

(a) where that person has acted or purported to act on behalf of the employer, be directed as well

(i) in the case of a separate employer, to the chief executive officer thereof, and

(ii) in any other case, to the Secretary of the Treasury Board; and

(b) where that person has acted or purported to act on behalf of an employee organization, be directed as well to the chief officer of that employee organization.

[3] The right being asserted is contained in section 6 of the PSSRA which states that every member of an employee organization may participate in the lawful activities of that employee organization.

[4] The complainants contend that 11 members of the PSAC were improperly given letters of reprimand following their participation in the lawful activities of the employee organization.

Background

[5] Only two witnesses testified: Ron Moran for the complainants and Reid Corrigan for the respondents.

[6] Ron Moran, a Customs Officer at the CCRA, has held several positions with the PSAC. He is presently a member of the PSAC's collective bargaining team involved in negotiations with the CCRA.

[7] On August 1, 2000, the PSAC gave notice to bargain to the CCRA. Collective bargaining ensued. Negotiations between the parties were unsuccessful and eventually broke down in early November 2000.

[8] The PSAC national strike coordinating team then decided to contact the CCRA Board of Management members to urge them to return to the bargaining table.

[9] The Board of Management of the CCRA consists of 15 directors appointed by the Governor in Council, 11 of whom are nominated by the provinces and territories. The Board of Management is accountable to Parliament, through the Minister of National Revenue, for the management policies of the Agency. Among its responsibilities, the

Board of Management establishes the mandate for collective bargaining and approves collective agreements.

[10] Esmail Bharwani, a business and tax consultant who works from home, is the Alberta member on the CCRA Board of Management.

[11] The PSAC national strike coordinating team assigned to local or regional PSAC strike committees the responsibility to contact individual members of the Board of Management.

[12] On 13 March 2001, the Southern Alberta PSAC/CCRA Regional Strike Committee communicated by letter, fax and e-mail with Mr. Bharwani. The body of those communications reads:

The Southern Alberta PSAC/CCRA Regional Strike Committee is a body organized to co-ordinate actions in the event that strike action becomes necessary.

We would like to take a few moments of your time to meet with you to exchange ideas and discuss other areas of concern. A recently completed Public Service employees survey showed that employee's have a very high work ethic. A labour disruption would have a negative impact on employee morale.

A representative of the committee will contact you to arrange a meeting at a time convenient to you, so we may discuss these issues.

[13] Mr. Bharwani replied in writing on CCRA Board of Management letterhead as follows:

The CCRA Board of Management has approved a mandate for the Agency to negotiate a collective agreement with the Public Service Alliance of Canada. As this process is now engaged, it is not for me to meet with you. Should you wish to make representations, you may do so by contacting Mr. Rob Wright, Commissioner of the CCRA.

I have forwarded your correspondence to Mr. Nadir Patel, Secretary to the Board of Management, for information. I would ask that you direct any future correspondence or inquiries to his attention.

[14] Faced with this negative response to their request for a meeting, the regional strike committee decided to demonstrate at Mr. Bharwani's place of work which also happens to be his home.

[15] The 25-minute demonstration, which started shortly after 5:00 p.m., took place on Saturday, March 31, 2001 at Mr. Bharwani's residence.

[16] The PSAC issued a press release (Exhibit C-7) indicating that its members intended to deliver a personal message to their employer about the current round of negotiations. The press release was hand-delivered by a PSAC organiser to the offices of the Calgary Police in advance of the March 31st demonstration.

[17] Immediately prior to the demonstration, PSAC organizers told the group to be peaceful, not to trespass on private property, not to block access or egress to and from Mr. Bharwani's property and finally not to intimidate anyone. Also, a few days prior to the demonstration, a local union official had taken it upon himself to advise management of the plan to demonstrate at the residence of Mr. Bharwani.

[18] Most of the demonstrators had signs with messages such as:

- 2% is for milk
- CCRA executives 8.7%; we the workers 2.25%
- Let's talk
- 2% is only good for milk
- We don't just go away - let's talk
- Hey Bharwani where's our money
- Assume your full responsibilities Sir
- CCRA negotiate
- CCRA where's our money
- CCRA where's our contract

[19] During the demonstration, the participants walked up and down the sidewalk in front of Mr. Bharwani's house. Slogans similar to the messages on the placards were chanted.

[20] When the demonstrators arrived at the Bharwani residence, a security van was parked on the street. The garage door to Mr. Bharwani's house was open and security guards were on the premises to videotape the event. There was no contact between the demonstrators and Mr. Bharwani or his family.

[21] During the demonstration, Mr. Moran gave a televised interview to a local TV station (Exhibit E-3). The demonstration did not take place during the normal working hours of any of the employees participating. While they were at the Bharwani residence conducting their peaceful demonstration, the picketers were never asked to leave.

[22] On 25 April 2001, Rob Wright wrote to Nycole Turmel, National President of the PSAC, to express his disappointment in the action of the demonstrators who picketed the private home of a CCRA Board of Management member and to inform her of the consequences of such action (Exhibit C-12). Mr. Wright went on to state that, in his opinion, "such action constitutes harassment, and is contrary to CCRA policy" and "Public Service values that recognize, and support, the separation of work and home life."

[23] Mr. Wright went on to say: "As a result, the ten employees involved in the picketing action will be disciplined. You should also be aware that your course of action has a cost associated with it - the CCRA's business flexibility has been reduced by the costs of safeguarding the home of the Board member you targeted."

[24] Ms. Turmel responded in part as follows (Exhibit C-13):

All Canadians have a right to expect at least a basic understanding of the Charter of Rights from senior public sector officials. Your April 25th letter to me indicates that you do comprehend its importance and significance when it comes to freedom of expression, and freedom of association.

Let me be clear, it is an accepted and legitimate practice in Canada and most countries that hold themselves up as being democratic to allow demonstrations, whether they be outside parliament, the courts, public institutions, private companies and yes, even the personal residence of

those with power over individuals. Whether you like it or not, demonstrations of this kind are part of our democracy, and play a very real role in ensuring some balance between the elites of our society and workers, social, community activists and the like.

Hence, and I say this with care, your statement that the PSAC members who «picketed» the home of a CCRA Board of Management member on March 31, 2001 «will be disciplined» is an unacceptable abuse of your power as CCRA Commissioner. If you carry through on this threat, you will, in the opinion of the PSAC and our legal counsel, have violated the Charter Rights of PSAC members. You can rest assured that the PSAC will not allow your actions to go unchallenged. As a result, I would ask that you review your position, repudiate your April 25, 2001 letter to me, and issue an apology to the members of my union that you have called into meetings that local management have characterized as fact-finding or investigation meetings.

While it has no bearing on the legitimacy of our members deciding to demonstrate outside of the home of a CCRA Board of Management member, I should like to point out that the Board member's home is also his place of business. Moreover, the decision to hold the demonstration was made after the Board member in question consciously refused an invitation to meet with our members and discuss their concerns regarding CCRA management's bargaining position directly. Finally, members of your Board play an active role in the bargaining process - including the approval of your bargaining mandate, as such they can expect to be held accountable by our members. I make no apologies for this.

In your letter, you offer the opinion that the March 31, 2001 demonstration «constitutes harassment». For the record, the PSAC believes that if culpability is to be assigned to the events that took place during the demonstration on March 31, 2001, it rests with the CCRA when you decided to photograph and tape our members who were participating in what was a legal demonstration. To reconstruct this monitoring as being the «costs of safeguarding the home of the Board member you targeted», is insulting at best. May I remind you that in a democracy, it is the role of the police to safeguard individuals and property, and not the role of other agencies. Moreover, as a taxpayer, I personally find it offensive that a public agency would expend public funds in this way when there was absolutely no threat to the Board member.

[25] In early May 2001, the demonstrators received letters of reprimand reiterating the employer's belief "that disturbing people and their families at their personal residence is an act of harassment and totally contrary to the Public Service values." The letters of reprimand were grieved. The grievances were denied at the final level of the CCRA grievance process.

[26] Reid Corrigan is the Director of the Calgary Tax Services Office. Approximately 1300 employees work under his authority.

[27] A few days prior to March 31, 2001, Stan Bahniuk, a local union official, asked to meet with Mr. Corrigan. Discussions at that meeting quickly turned to the bargaining agent's decision to picket Mr. Bharwani's residence.

[28] Mr. Corrigan advised Mr. Bahniuk that Mr. Bharwani worked for various organizations which might provide a more appropriate venue for picketing. Mr. Corrigan also clearly expressed his disapproval of the picketing of an individual's private residence and further indicated that discipline might ensue if the union continued with its plan to hold the demonstration.

[29] Following discussions with CCRA headquarters, Mr. Corrigan arranged for security to be present at the Bharwani residence. Mr. Bharwani was worried that his home would likely be picketed.

[30] At approximately 5:50 p.m. on March 31, 2001, the witness received a phone call from Mr. Bharwani, who appeared nervous and animated at the presence of the picketers outside his home. At one point during their conversations, Mr. Bharwani stated that his wife was angry that he had accepted to sit on the CCRA Board of Management.

[31] After the demonstration, a much more relaxed Mr. Bharwani phoned again to indicate that the picketers had left and that he was going to a movie. Finally, at approximately 9:30 p.m., Mr. Bharwani phoned Mr. Corrigan one last time that evening to discuss the movie he had just seen.

[32] Security at the Bharwani home was discontinued on the Tuesday following the demonstration.

Arguments

For the Complainants

[33] This complaint alleges a breach by the respondents of the rights of 11 members of the PSAC to participate in the lawful activities of their employee organization. In determining what is a lawful activity protected by section 6 of the PSSRA, the Board must consider the rights of individuals as they are outlined in subsection 2(b) and (c) of the *Canadian Charter of Rights and Freedoms* (Charter).

[34] The conduct of the demonstrators at the residence of Mr. Bharwani did not amount to picketing in the normal sense of the word. There is no evidence that access or egress was in any way prevented. Rather, the activities engaged in by the demonstrators were more in the nature of leafleting with a view to communicating a message.

[35] Any form of expression is protected by the Charter unless it involves a tort such as trespass, nuisance, intimidation, harassment or the inducement of a breach of contract.

[36] The fact that Mr. Bharwani works at home is relevant in assessing the lawfulness of the demonstrators' activities. The complainants further contend that such demonstrations at the residence of an employer representative, even if that person does not work at home, are also protected.

[37] In support of its position, the complainants referred to: *Linetsky and Resanovic* (Board file 161-2-316); *Linetsky and Resanovic* (FCA No.: 1482-84); *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573; *United Food and Commercial Workers, Local 1518 v. KMart Canada Ltd. et al.* (1999), 245 N.R. 1; *Thomson Newspapers Co. V. Canada (Attorney General)*, [1998] 1 S.C.R. 877; *Haydon v. Canada*, [2001] 2 F.C. 82; *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, S.C.A. [1998] S.J. No. 727; *Regina v. Dooling*, 94 C.C.C. (3d) 525; *Halifax Antiques Ltd. V. Hildelbrand et al.*, 22 D.L.R. (4th) 289; *Re Windsor Star and Windsor Newspaper Guild*, 26 L.A.C., 4th 129; *City of Verdun v. C.U.P.E., Local 302*, 186 D.L.R. (4th) 89; and *Canadian Labour Arbitration (3rd)*, Brown and Beatty, section 7:3020.

[38] Mr. Bhawarni is a member of the CCRA Board of Management and as such is responsible for the establishment of the employer's mandate for collective bargaining and for the approval of collective agreements. The demonstration at Mr. Bhawarni's residence was sponsored by the PSAC National Strike Co-ordinating Committee. It constituted the activity of the PSAC, an employee organization whose lawful activities are protected by section 6 of the PSSRA.

[39] The demonstration itself was peaceful, orderly, non-invasive and of short duration. There were no threats, foul language, trespass or blockage of traffic. Neither Mr. Bhawarni nor the security firm hired to videotape the demonstration was called to testify that the demonstrations had been anything but peaceful.

[40] The complaint should be upheld and the CCRA must be ordered to destroy the records of the off-duty conduct engaged in by the demonstrators at the Bhawarni residence on March 31, 2001.

For the Respondents

[41] The PSAC was put on notice that discipline would likely be imposed if the home of Mr. Bhawarni was picketed. The complainants were given alternative sites for picketing.

[42] By picketing the home of Mr. Bhawarni, the demonstrators forced him to be a captive in his own home.

[43] The provisions of section 6 of the PSSRA do not protect all lawful activity. Picketing, although fundamental to the advancement of union activity, is not a protected right under the PSSRA.

[44] Even if the Board were to find that section 8 of the PSSRA has been violated in this case, it has no authority to order the removal or cancellation of the letters of reprimand given to the demonstrators.

[45] The CCRA cannot allow picketers to demonstrate at the homes of the members of the Board of Management. The conduct of the demonstrators amounted to a private nuisance and is not protected by section 6 of the PSSRA. Mr. Bhawarni's home is unconnected with the collective bargaining dispute between the CCRA and the PSAC.

The complainants could have picked many other sites for their demonstration, including any of the numerous worksites of the CCRA.

[46] The owners of private property have a right to privacy, which includes the right not to hear unwanted messages. Where the right to picket conflicts with the right to privacy, the latter must prevail. This is so because picketing, which can take place at many appropriate locations, totally denies the right to privacy when it takes place at a private residence. The demonstrators' conduct might have been protected had there been no other avenue of communication open to them.

[47] Because of the fundamental value placed on privacy and the sanctity of one's home, picketing at a private residence cannot be protected under section 6 of the PSSRA.

[48] In support of its position, the respondents referred to: *Beamish and Lunney*, [1983] C.P.S.S.R.B. No. 54; *Drouin v. Pacelli*, [1982] 2 F.C. 378 (F.C.A.); *Ontario (Attorney General) v. Dieleman*, [1994] O.J. No. 1864; *Frisby v. Schulz*, [1988] S.C.T.-QL 2885 (U.S.S.C.); *Interforest v. Weber*, [1999] O.J. No. 3637; *Industrial Hardwood Products v. I.W.A.W.*, [2000] O.J. No. 2832; *British Columbia Telephone v. T.W.U.* (1978) C.L.L.C. 14,124; *Journal de Montréal v. S.C.G.*, [1994] A.Q. No. 592; *R.W.D.S.U. v. Pepsi-Cola* (1998), 167 D.L.R. (4th) 220; *Western Cablevision v. I.B.E.W.*, [1986] B.C.J. No. 1501; and *Office Municipal D'habitation v. S.C.F.P.* (1999), No. 500-05-044546-982.

Reply of the Complainants

[49] Most of the cases referred to by the respondents deal with injunctive relief where the violation of rights must be shown before an injunction will be granted. Furthermore, injunctions are normally issued to prevent repetitive action or conduct. The respondents were unable to refer to any case where a single act of the type performed by the demonstrators in this case was found to be illegal.

Reasons for Decision

[50] There is no doubt that the complainants had a right in the context of collective bargaining to demonstrate in order to encourage the CCRA and members of the Board of Management, whose specific responsibilities include certain key aspects of collective bargaining, to discuss relevant issues and return to the bargaining table.

[51] The fundamental importance to be attributed to the right of an employee to participate in the lawful activities of an employee organization was recognized by the Board very early on in *M.M. Stonehouse and Treasury Board* (Board file 161-2-137, at page 35):

...

The words contained in section 6 are fundamental to the object of the Act. They are the statutory Magna Carta of the rights conferred on every employee within the jurisdiction of the P.S.S.R. Act. In simple, concise language, it provides that every employee may be a member of an employee organization and may participate in the lawful activities thereof. They are rights to be exercised by any and every employee without any fear or restraint whatsoever from or by any person. In the absence of these rights, the balance of the provision of the P.S.S.R. Act regarding certification of a bargaining agent, collective bargaining, mediation, and resolution of disputes and grievances would be a mere mockery.

...

[52] The issue in this case is whether the demonstration conducted at the residence of Mr. Bharwani on Saturday, March 31, 2001, constitutes a lawful activity protected by section 6 of the PSSRA.

[53] The demonstrators' right of expression by way of picketing or leafleting is protected by the Charter unless the conduct of the participants is illegal, tortious or in some other way unlawful. The demonstrators in this case were involved in a PSAC sponsored peaceful demonstration, on public property and on their own time. The purpose of this demonstration was to engage a member of the Board of Management of the CCRA in discussions concerning stalled collective bargaining. It is important to remember that, as a member of the CCRA Board of Management, Mr. Bharwani is, with others, responsible for approving management policies for human resources in areas such as staffing, classification and compensation, establishing the mandate for collective bargaining and approving collective agreements (Exhibit C-18, page 8).

[54] In the *KMart* case (*supra*) (page 27), Mr. Justice Cory discussed leafleting conducted in the course of a lawful labour dispute in the following terms:

*It is obvious that freedom of expression in the labour relations context is fundamentally important and essential for workers. In any labour dispute it is important that the public be aware of the issues. Furthermore, leafleting is an activity which conveys meaning. In light of the very broad interpretation that has been given to freedom of expression, it clearly falls within the purview of s. 2(b) of the **Charter**. In **Libman**, supra, at para 31, it was said: "Unless the expression is communicated in a manner that excludes the protection, such as violence, the court recognizes that any activity or communication that conveys or attempts to convey meaning is covered by the guarantee of s. 2(b) of the Canadian **Charter**".*

[55] The evidence adduced at the hearing does not permit me to conclude that any torts or unlawful or illegal acts were committed during the demonstration at Mr. Bharwani's residence. Nor does it permit me to conclude that Mr. Bharwani or members of his family were threatened or prevented from leaving or accessing their property. Mr. Bharwani did not testify. I am therefore left with the inconclusive hearsay testimony of Mr. Corrigan, who was not even present at the demonstration. Such testimony is inherently unreliable.

[56] The demonstration in this case included orderly marching on public property and the chanting of slogans, calling on Mr. Bharwani to give them their money and to negotiate. There is simply no evidence to substantiate the allegations of harassment made by the respondents. Much of the case law presented by the respondents is of little use since it involves the issuance of injunctive relief in cases where the conduct of picketers was obviously inappropriate.

[57] I therefore conclude that the 11 demonstrators were involved in the lawful activities of an employee organization away from the workplace and on their own time and that such activities are protected by section 6 of the PSSRA. It is also clear that the respondents have, in violation of subparagraph 8(2)(c)(ii), sought, by the imposition of a penalty, to compel the demonstrators to refrain from exercising their rights under section 6 of the PSSRA.

[58] Pursuant to the broad powers given to the Board under section 23 of the PSSRA, I hereby order the CCRA to forthwith rescind and destroy the letters of reprimand given to the 11 demonstrators who participated in the lawful activities of their employee organisation on March 31, 2001, at the residence of Mr. Bhawarni.

[59] Even assuming that I had the authority to do so, I do not believe that it would be appropriate or useful in this case to order the respondents to issue a public apology to the demonstrators. Neither do I believe it would be appropriate to order the posting of this decision in conspicuous places in the respondents' work locations.

**Yvon Tarte,
Chairperson**

OTTAWA, October 19, 2001.