Date: 20030211

File: 161-2-1228

Citation: 2003 PSSRB 12

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

SIMON CLOUTIER AND MICHELINE RIOUX

Complainants

and

NYCOLE TURMEL, PRESIDENT OF THE PUBLIC SERVICE ALLIANCE OF CANADA, AND THE PUBLIC SERVICE ALLIANCE OF CANADA

Respondents

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

Before: Marguerite-Marie Galipeau, Deputy Chairperson

For the Complainants: Simon Cloutier, Complainant

For the Respondents: Francine Cabana, Public Service Alliance of Canada

Heard at Montréal, Quebec,
January 20, 2003.

[1] This decision follows the hearing into a complaint referred back to the Public Service Staff Relations Board (the Board) by Simon Cloutier and Micheline Rioux, Citizenship and Immigration Canada (CIC) employees. The complaint was referred back under section 23 of the *Public Service Staff Relations Act* (the Act) and alleges that the bargaining agent for the complainants, the Public Service Alliance of Canada (PSAC), (translation) "acted in a manner that is arbitrary, discriminatory and in bad faith in our representation, particularly in connection with our case against the employer under the same section of the Act."

[2] These employees had previously filed two complaints against their employer (Board files 161-2-1140 and 161-2-1146) and the hearing into these two complaints was suspended by the Board pending the outcome of this complaint against the bargaining agent. In 2000, I served as the mediator between the complainants and their employer. Since the mediation did not lead to a settlement, they were referred to the Board to be heard by another Board Member. As I just indicated, they remain in abeyance and will only proceed once this complaint against the bargaining agent has been settled.

[3] At the beginning of the hearing, I asked the complainants to explain their complaint and set out the allegations as well as the remedies they were seeking. Moreover, the representative for the bargaining agent indicated that she believed that this entire matter was an internal union issue and she objected that the Board had no jurisdiction to become involved in it.

[4] I asked myself whether the facts as presented by the complainants, even if proven, would amount to a contravention to the bargaining agent's duty of representation, as set out in section 10(2) of the Act:

> *[…]*
>
> *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.*

[5] The following is a summary of the parties' representations.

[6] The complainants believe that it was insufficient and negligent for their bargaining agent to plan to meet with them only three days before the date of the

hearing into their complaints against their employer. They deem that they were entitled to a written opinion and supporting case law from their union. They had a different interpretation of the collective agreement from that of their bargaining agent in terms of the number of hours of work and the time off work and union leave for preparing their complaints against their employer. In this regard, they deem that their bargaining agent assigned too much weight to the employer's "operational requirements". They deem that the letters of April 23 and 24, 2002, filed with the Board, showed the bargaining agent's bad faith and the botched representation they provided. They believe that their bargaining agent was the one who should have charged their employer with union violations. They believe that they were being treated with animosity because of the petition they had circulated in an effort to "get out of" the Alliance unit (the Canada Employment and Immigration Union) and were opposed to being under their local's control.

[7] Ms. Cabana, the bargaining agent's representative, focused on the different letters filed with the Board and those sent to the complainants by the bargaining agent, in which the bargaining agent responded to the concerns raised by the complainants and notified them of the standard procedure followed by the Alliance in matters of representation. The bargaining agent's representative pointed out that even the hearing process (cross-examination, burden of proof) had been explained to the complainants. Moreover, she pointed out the opinions given to the complainants were based on the applicable case law and that the correspondence filed with the Board so demonstrates.

[8] In reply, the complainant, Mr. Cloutier, repeated that his colleague and he deemed that the time chosen by the Alliance to meet with them and the amount of time allocated to the preparation of the presentation of their complaint against their employer before the Board was not suitable. Finally, they deemed that other employees were given better representation. However, they did not have access to the full files of these other employees.

[9] The following case law was brought to my attention.

- By the complainants: *Boulanger v. Syndicat des employées et employés de métiers d'Hydro-Québec, section locale 1500*, [1998] R.J.D.T; *Eamor v. Canadian Airlines Pilots Association (Air Canada)*, [1996] (Board File: 745-4404); *Centre hospitalier Régina Ltée v. Labour Court*, [1990] 1 S.C.R.; *Savoury v. Canadian Merchant Service Guild* (Board File: 161-2-1143).

- By the bargaining agent: *Hibbard v. Public Service Alliance of Canada* (Board File: 161-2-136); *Feldsted, Buchart, Spewak and Sanderson v. Garwood-Filberts (Public Service Alliance of Canada)* (Board Files: 148-2-252 and 253, 161-2-813 to 816, 161-2-819, 820, 822 to 824); *White v. Public Service Alliance of Canada* (Board File: 161-2-960); *Godin v. Public Service Alliance of Canada, Union of Solicitor General Employees* (Board File: 161-2-1121); *Martel v. Veley, McGrath, Edmunds and Nellis* (Board File: 161-2-1126).

Decision

[10] The representations made by the two parties lead me to conclude that, even if the Board was assumed to have the jurisdiction, the circumstances described by the Complainants would not amount to a contravention of the above-mentioned provision. The exchange of correspondence between the parties, which was filed with the Board, clearly shows that the bargaining agent addressed the case by the complainants against their employer and intended to represent them in accordance with its usual procedure, which it uses with all of its members, within the limits of its practices and availability of time, people and funds.

[11] My understanding of the evidence is as follows.

[12] First, the complainants' complaint against their employer (Board files 161-2-1140 and 1146) has not yet been heard. The hearing date has not been set and will not be until the decision has been made on this matter. Consequently, the bargaining agent and the complainants still have time to prepare the complaint for hearing by the Board.

[13] I now come to the situation as it was presented to me by the parties. I have assessed it in light of the representations made by the parties and the correspondence on file. I have already outlined the representations. Only the correspondence remains to be addressed.

[14] I note upon reading it that the complainants were notified an official would be assigned to their case once the hearing date into their complaint had been set (February 26, 2002 e-mail from Anne Clark-McMunagle, Coordinator, Representations Section, Public Service Alliance of Canada).

[15] Moreover, I note that in response to their letter of April 18, 2002, Ms. Clark-McMunagle explained to them on April 23, 2002, the procedure involved in a hearing, provided them with supporting case law and an opinion on their rights to union leave to work on their complaint, and informed them that their bargaining agent was ready to submit the matter to an adjudicator on their behalf. Moreover, she reminded them that it was up to the bargaining agent to inform them of the stronger and weaker points in a case.

[16] As well, I note that on April 26, 2002, Ms. Clark-McMunagle notified them in writing that, according to the procedure applicable to all cases brought before the Board, the bargaining agent assigned to their case would meet with them two or three days before the hearing date to prepare the presentation of their complaint.

[17] This correspondence indicates the Alliance's intention to represent these complainants before the Board. It also indicates that the Alliance based its opinions on case law. Overall, it indicates that far from ignoring them, the bargaining agent took into consideration the complainants' concerns.

[18] The complainants would like to dictate to their bargaining agent the timing of the meeting between them and their bargaining agent in preparation for the hearing into their complaint and the amount of time to be spent on the meeting. I deem that it is up to their union to decide when and how long to work on their file. I understand that the complainants would like to have as much attention as possible paid to their case. However, it is up to the bargaining agent to decide on the process (people, time and money) for representing them. And in this regard, the Alliance's commitment in this matter has not yet been fulfilled since the date of the hearing into the complaint against the employer has not yet been set. I cannot presume at this point that the Alliance will not do the required work.

[19] In itself, the Alliance's practice of meeting with its members two or three days before the hearing into their case before the Board is neither arbitrary, discriminatory nor in bad faith. This is a well-established practice. It falls under the Alliance's

discretion and it is up to the Alliance to decide how it will adapt this practice to the requirements of each case.

[20] Moreover, putting the local chaired by the complainant, Simon Cloutier, under the control of an element of the Alliance is an internal matter and beyond the jurisdiction of the Board. This having been said, there is nothing in the facts presented by the complainants that would suggest that the representatives of the Alliance's Representation Section under Ms. Clark-McMunagle, which will represent the employees before the Board, are acting in bad faith or in conflict of interest or will be unable to be objective because of this situation.

[21] Once again, it is up to the bargaining agent to choose the person who will represent these complainants before the Board and there is nothing to suggest that it would do so without taking into account any potential conflict of interest.

[22] Finally, the Alliance is responsible for interpreting the collective agreement applicable to the complainants. This is what it did and the fact that it did not agree with the complainants' opinion does not constitute bad faith or an arbitrary or discriminatory act.

[23] For all of these reasons, the complaint is dismissed. Consequently, the parties will be notified of the hearing date for their complaints against their employer (Board Files 161-2-1140 and 1146). Once the hearing date has been determined, it will be up to the bargaining agent to carry out the representation of these employees before the Board.

Marguerite-Marie Galipeau,
Deputy Chairperson

OTTAWA, February 11, 2003.

P.S.S.R.B. Translation