

**Date:** 20010411

**File:** 161-2-1015

**Citation:** 2001 PSSRB 35



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**RICHARD QUESNEL**

Complainant

and

**PUBLIC SERVICE ALLIANCE OF CANADA AND UNION OF  
SOLICITOR GENERAL EMPLOYEES**

Respondents

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

***Before:*** [Yvon Tarte, Chairperson](#)

***For the Complainant:*** [Richard Quesnel](#)

***For the Respondents:*** [Jean Ouellette and Rachel Dugas, Public Service Alliance of  
Canada](#)

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(Decided without an oral hearing.)

## DECISION

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[1] This decision deals with the question of whether the Board has jurisdiction to hear a complaint filed under paragraph 23(1)(a) of the *Public Service Staff Relations Act* (the *PSSRA*) alleging that the Public Service Alliance of Canada (PSAC) and the Union of Solicitor General Employees (USGE), a component of the PSAC, failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA*. In other words, do those prohibitions apply to an employee organization or a component thereof? The prohibitions in question 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.*

[2] There have been significant delays in processing the complaint in this case. Those delays resulted from the following factors: two requests by the PSAC and the USGE (the respondents) to postpone the hearing for reasons related to the health of their witnesses and one of their representatives; the parties' availability; and a preliminary objection on jurisdiction raised by the respondents a week and a half before the date set out in the third notice of hearing.

### **Facts**

[3] On May 14, 1999, Richard Quesnel filed the complaint in this case. At that time, he was a correctional officer employed by the Correctional Service of Canada and was part of the Correctional Services (CX) Group bargaining unit, for which the PSAC was the bargaining agent. The Union was the authorized component of the PSAC for correctional officers. Mr. Quesnel was a member of the PSAC.

[4] Also at that time, the UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN was trying to obtain

the support of enough correctional officers to become the bargaining agent for the Correctional Services (CX) Group bargaining unit.

[5] In his complaint, Mr. Quesnel alleged that the respondents failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA*. Specifically, he alleged that a PSAC representative suggested to him that, if he did not sign a new PSAC membership card, he could no longer take union training courses offered by the PSAC, receive strike pay, attend the respondents' conferences or meetings, attend meetings of locals, be a member of the union executive or a local committee, sit on the respondents' committees, vote in strike votes, attend bargaining conferences or vote on contract demands.

[6] The respondents denied any violation of the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA*, *supra*. They also raised a number of preliminary objections on jurisdiction. One of them is worded as follows:

[Translation]

...

*6. We shall raise an objection to the complaint ... that Mr. Jean Morin failed to observe the prohibitions contained in section 8. It has been established in Public Service Staff Relations Board case law that section 8 prohibits employers from intervening in union matters or discriminating against unions. Section 8 does not apply to this case. Specifically, paragraph 8(2)(c) is not relevant to this case because it deals with action by the employer.*

...

[7] Under paragraph 8(2)(a) of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (the Regulations), the Board asked the parties to submit written arguments on the following issue:

[Translation]

*Does the Board have jurisdiction to hear a complaint under paragraph 23(2)(a) of the PSSRA alleging that the PSAC failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the PSSRA?*

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**Arguments of the Parties**

[8] The respondents filed the following written arguments:

[Translation]

<b><u>Complaint Under Section 23 of the Public Service Staff Relations Act</u></b>
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...

**Issue**

*On August 31, 2000, the Board notified the parties that it would rule on the above-noted objection on the basis of written arguments, and would address the following issue:*

*“Does the Board have jurisdiction to hear a complaint under paragraph 23(2)(a) of the PSSRA alleging that the PSAC failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the PSSRA?”*

*The PSAC considers that the Board does not have jurisdiction to hear a complaint made under paragraph 23(2)(a) of the Public Service Staff Relations Act concerning the above-noted prohibitions.*

*The prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) 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) 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.”

**Facts**

*The complainants work as correctional officers in various penitentiaries in Quebec. They are members of the CX group bargaining unit, for which the PSAC is the bargaining agent.*

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*On April 11, 1997, PSAC sent to Treasury Board a notice to bargain concerning the CX bargaining unit. Treasury Board representatives identified the positions to be designated under sections 78 to 78.5 of the PSSRA. Several hundred positions were not designated under the PSSRA. As a result, a number of members were able to take part in the strike.*

*On March 19, 1999, the conciliation board submitted a report under section 87 of the PSSRA stating that members occupying non-designated positions could take part in the strike starting on March 26, 1999.*

*On March 19, 1999, Treasury Board and PSAC agreed that approximately 728 positions in the CX bargaining unit would not be designated under the designation procedure described in the PSSRA.*

*On March 22, 1999, Treasury Board and PSAC ratified the agreement concerning the designated CX positions.*

*On March 22, 1999, Bill C-76, An Act to provide for the resumption and continuation of government services, 1999, was tabled.*

*On March 26, 1999, the CX members occupying the 728 positions went on strike.*

*On March 29, 1999, Part II of the Act to provide for the resumption and continuation of government services, 1999 came into force by order of the Governor in Council. Part II of that Act applied specifically to Correctional Service employees. Sections 16 and 17 of that Act ordered members of this group back to work and prohibited them from continuing the strike. That Act extended the collective agreement and imposed new working conditions by means of a new collective agreement.*

*On March 30, 1999, the new CX collective agreement came into effect, until May 31, 2000.*

*On March 30, 1999, the strike was declared to be over.*

*In mid-April 1999, strike pay cheques were sent to members who took part in the strike.*

*On or around April 22, 1999, Penny Bertrand, Director, PSAC Regional Offices; Steve Jelly, Executive Assistant, National Sectoral Council (NSC); and Daryl Bean, PSAC National President, met to determine in which cases CX members should sign new membership cards, considering the legal requirements, PSAC by-laws, and past practice.*

On April 22, 1999, Penny Bertrand sent a memorandum to all regional representatives assigned to the CX group (**Appendix 1**). In the memo, following her meeting with Steve Jelly and Daryl Bean, Penny Bertrand clarified that CX members could be represented by PSAC under the imposed collective agreement. She noted that it was inappropriate for members to sign membership cards again before proceeding with a grievance or an appeal.

However, Penny Bertrand pointed out that requests that membership cards be signed again were appropriate in the following cases:

- taking union training courses;
- receiving strike pay;
- being a representative at appeals;
- attending PSAC or USGE conferences;
- attending meetings of locals;
- being a member of the union executive or local committees;
- sitting on PSAC or USGE committees;
- voting in a strike vote;
- voting in a ratification vote;
- attending bargaining conferences and voting on contract claims.

On April 26, 1999, Jean Morin, Regional Co-ordinator, Montréal Office, sent a letter to all correctional officers working for Correctional Service in Quebec, reiterating the content of Penny Bertrand's memorandum (**Appendix 2**).

In April or May 1999, the CSN sent correctional officers a document accusing PSAC of dishonest practices toward its members (**Appendix 3**). The CSN also accused PSAC of demanding that “members sign PSAC membership cards again in order to obtain their strike pay and before being represented with the employer”. The CSN also accused PSAC of intimidating and harassing its members. The CSN therefore encouraged the correctional officers to complain using the draft it had prepared, and indicating, “the Board will be obliged to exert pressure on PSAC to respect your basic rights”.

Between May 5, 1999 and July 22, 1999, the complainants each filed a complaint alleging that PSAC failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the PSSRA. Specifically, they alleged the following:

“In a letter dated April 30, 1999, Mr. Jean Morin (Organizing Officer, PSAC, Quebec) suggested that if I did not sign a PSAC membership card again:

- I could no longer take a PSAC training course;
- I could no longer receive strike pay;
- I could no longer attend PSAC or USGE conferences or meetings;
- I could no longer attend meetings of locals;
- I could not be a member of the union executive or local committees;
- I could no longer sit on PSAC or USGE committees;
- I could no longer vote in strike votes;
- I could no longer attend bargaining conferences or vote on contract claims.

Mr. Morin did this without even receiving a resignation from me; I continue to pay PSAC and USGE union dues.”

*On August 25, 2000, the PSAC alleged that the Board did not have jurisdiction to hear the complaints. The jurisdictional objection dealt with the application of paragraph 8(2)(c) of the PSSRA to employee organizations. 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.”

*Under paragraph 8(2)(a) of the Regulations, the Board asked the parties to submit written arguments on the issue of its jurisdiction.*

### **Arguments**

*The PSAC argues that the prohibitions contained in subparagraphs 8(2)(c) (i) and (ii) of the PSSRA do not apply to employee organizations.*

*Subparagraphs 8(2)(c) (i) and (ii) of the PSSRA must be read in context, not in isolation from the rest of section 8, which 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

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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.”

*Clearly, section 8 of the PSSRA as a whole applies to persons occupying managerial or confidential positions. Specifically, paragraph 8(2)(c) prohibits seeking to compel employees to refrain from becoming or cease to be a member, or to refrain from exercising a right under the Act. There are examples: intimidation, threat of dismissal or imposition of a pecuniary penalty. These examples are based on the authority conferred on employers, as expressed in the Board decision in Lai, PSSRB 161-34-1128 (2000-08-29), at page 6 (Appendix 4):*



“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. ”

*The Board made a similar ruling in the Tucci decision, PSSRB 161-34-1129 (2000-08-29) (Appendix 5).*

*The Board had already set out its position on section 8 in the decisions in Jetté et al., PSSRB 161-2-631 to 633 (1992-03-02), at page 6 (Appendix 6):*

“ It seems clear that sections 8(1) and (3) and 9(1) and (2) do not apply in the instant case. They prohibit the employer from interfering in the affairs of a trade union and from discriminating against a trade union.”

...

Sections 8(2)(a) and (b) also have no application because they prohibit certain actions by the employer.”

...

*Lastly, in its decision in Bélanger, PSSRB 161-2-105 (1974-07-10), at page 16 (Appendix 7), the Board ruled as follows:*

“In view of the terms used, it is clear that section 8(1) prohibits certain activities by persons employed in a managerial or confidential capacity. The prohibition, however, is directed against persons, not against employee organizations, inasmuch as the concept of a person employed in a managerial or confidential capacity, as described (sic) in section 2 of the Public Service Staff Relations Act, is intended to designate, and thus exclude on the grounds of managerial or confidential functions, only natural persons. It cannot therefore be applied to employee organizations, whether or not they have acquired legal personality. A contrary interpretation would contradict the purpose of the Act. We consequently cannot see how the complaint could possibly apply to the respondents named - the Public Service Alliance of Canada and the Department of Veterans Affairs Component - at least in so far as the prohibitions stipulated in section 8(1) are concerned....

To be successful in the case before the Board, the complainant would have to prove that the four

natural persons named as respondents are persons employed in a managerial or confidential capacity, 2) who have infringed the prohibition laid down in section 8(1) of the Act against participating in or interfering with the formation of administration of an employee organization or the representation of employees by such an organization....” (*our emphasis*)

*According to the above-cited case law, then, the Board does not have jurisdiction to hear complaints made under section 8 since section 8 applies to interference by employers in union matters. These complaints have been made by PSAC members against the PSAC, a situation to which section 8 does not apply.*

**Corrective Action Requested**

*For all these reasons, we respectfully ask the Board to grant the preliminary objection concerning its jurisdiction and therefore to dismiss the complaint.*

*Respectfully submitted.*

**[Original underlining and boldface]**

[9] Mr. Quesnel did not reply to the written arguments filed by the respondents.

**Reasons for Decision**

[10] The issue that the Board must decide in this case is whether it has jurisdiction to hear a complaint filed under paragraph 23(1)(a) of the *PSSRA* alleging that the respondents failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA*. In other words, do those prohibitions apply to an employee organization or one of its components?

[11] The Board recently examined this question in *Lai v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 79 (161-34-1128), *Tucci v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 80 (161-34-1129), *Martel v. Veley*, 2000 PSSRB 89 (161-2-1126), and *Godin v. Public Service Alliance of Canada (Union of Solicitor General Employees)*, 2001 PSSRB 16 (161-2-1121). In these decisions, the Board concluded that the prohibitions contained in paragraph 8(2)(c) of the *PSSRA* apply to employers and not to employee organizations or one of their representatives.

[12] The respondents argued that the Board did not have jurisdiction to deal with Mr. Quesnel's complaint and referred, *inter alia*, to *Lai* and *Tucci* in support of their

arguments. Mr. Quesnel, on the other hand, has not submitted any arguments to the Board to show that it can hear his complaint. In these circumstances, I see no reason to depart from the reasoning developed in *Lai, Tucci, Martel* and *Godin, supra*.

[13] Since Mr. Quesnel alleged that his bargaining agent and a component thereof failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA*, and in light of the decisions in *Lai, Tucci, Martel* and *Godin, supra*, I find that the Board does not have jurisdiction to hear Mr. Quesnel's complaint.

[14] For these reasons, Mr. Quesnel's complaint is dismissed.

**Yvon Tarte,  
Chairperson**

OTTAWA, April 11, 2001.

Certified true translation

Maryse Bernier