

**Files:** 148-2-252 & 253,  
161-2-813 to 816,  
161-2-819, 820, 822 to 824



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**JOHN B. FELDSTED, KARL H. BUCHART,  
ALVIN P. SPEWAK, RICHARD SANDERSON**

Complainants

and

**LINDA GARWOOD-FILBERTS,  
PUBLIC SERVICE ALLIANCE OF CANADA**

Respondents

**RE:** Applications under section 21 and complaints under  
section 23 of the Public Service Staff Relations Act

**Before:** [J. Barry Turner, Board Member.](#)

**For the Complainants:** [Don Bjornson, Counsel](#)

**For the Respondents:** [Edith Bramwell, Counsel](#)

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Heard at Winnipeg, Manitoba,  
September 10, 1997.

## DECISION

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After discussions with the parties, it was agreed that the issues before me will be heard simultaneously for the four complainants who are all employees of the Correctional Service of Canada (CSC) in Manitoba. It was also agreed that this decision will relate to the complaints under section 23 of the *Public Service Staff Relations Act* (PSSRA) as written in complainant Feldsted's Board files 161-2-813 and 161-2-814 but my conclusion will apply to all matters before me. The parties agreed that I would hear their arguments on timeliness and jurisdiction only.

In the case of the complaint under section 23 of the *Public Service Staff Relations Act* (PSSRA) dated 18 October 1996, Board file 161-2-813, the respondent is Ms. Linda Garwood-Filberts, Regional Vice-President, CSC, Manitoba, Union of Solicitor General Employees (USGE), a component of the Public Service Alliance of Canada (PSAC).

The complainant complains that:

*(d) a person acting on behalf of an employee organization,*

*has misused her position as an officer of the Union to obtain Union funds, to finance a private civil action, Court of Queen's Bench (Manitoba) File No. CI 95-01-87608 against fellow union members including myself, contrary to provisions of Section 10 ss (2) of the PSSRA.*

Subsection 10(2) of the PSSRA reads:

*(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.*

Section 23 of the PSSRA reads:

*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.*

The complainant requests that the Board issue the following orders:

*(1) requiring the respondent to reimburse the Union forthwith for all money expended on her behalf in respect to the noted civil action. (2) Prohibiting the respondent from holding any Union office for a period of five (5) years from the date of such order. (3) requiring the respondent to reimburse me for all costs incurred in legal representation required for the process and hearing of this complaint.*

In the case of the complaint in Board file 161-2-814 initially filed under section 23 of the PSSRA on 18 October 1996 and subsequently altered to an application under section 21 of the PSSRA by complainant Feldsted dated 31 January 1997, the respondents are the USGE and the PSAC: Board file 148-2-253.

The application reads:

*The applicant submits that the respondents, an employee organization and a council of employee organizations, wrongfully suspended my membership in my employee organization for a period of five years contrary to the provisions of Section 6 of the Public Service Staff Relations Act.*

Section 6 of the PSSRA reads:

*6. Every employee may be a member of an employee organization and may participate in the lawful activities of the employee organization of which the employee is a member.*

Subsection 21(1) of the PSSRA reads:

*21. (1) The Board shall administer this Act and exercise such powers and perform such duties as are conferred or imposed on it by, or as may be incidental to the attainment of the objects of, this Act including, without restricting the generality of the foregoing, the making of orders requiring compliance with this Act, with any regulation made hereunder or with any decision made in respect of a matter coming before it.*

The complainant requests that the Board issue the following orders:

- 1.) an order requiring the respondents to return all union dues paid by me from the date of "suspension" to the date of the Order to me without delay.*
- 2.) an order prohibiting the respondents from suspending member or otherwise interfering with or infringing on the statutory rights conferred on employees under Section 6 of the Public Service Staff Relations Act.*

The hearing lasted one day with no exhibits and no witnesses testifying. Although there was no agreed statement of facts, the facts were not in dispute in the matters before me and are referred to primarily in various letters in the Board files on these matters.

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Arguments on Timeliness

Ms. Bramwell argued that, even though there is no statutory provision relating to timeliness, she felt that “labour relations delayed are labour relations denied”. She said the civil action in these matters began in February 1995 and the complaints were not submitted until October 1996. She argued that the complainants were well aware of their rights, were not ignorant of the process, and could therefore have filed their complaints much earlier; especially since the PSAC is always open to complaints. She argued the PSSRA is not meant to be limitless in time. Ms. Bramwell concluded that the delay of almost two years is unfair to the PSAC, and that I should therefore dismiss the complaints for being untimely. Counsel referred me to *Horstead* (Board file 161-2-739) and *Harrison* (Board file 161-2-725).

Mr. Bjornson argued that the complaints relate to an unusual set of circumstances, and the complainants believe the bargaining agent’s argument is lacking in merit since, when discovery began in August 1995 on the civil action brought by Ms. Garwood-Filberts against Mr. Feldsted, followed by a letter from the PSAC dated September 14, 1995 saying that respondent Linda Garwood-Filberts’ legal expenses were being funded by the PSAC, the complainants tried to resolve the civil matter then but failed. It is still going on today with the full knowledge and financial support of the bargaining agent even though the complainants have tried to settle the matter. Mr. Bjornson concluded that it was wrong to argue timeliness since his “clients have tried to settle the issue all along before filing their complaints”.

In rebuttal, Ms. Bramwell argued that complainant Feldsted brought a civil action against Ms. Garwood-Filberts in December 1995 that the PSAC was not a part of, and asked me not to confuse slow court action with the “tangled web” that is before me. She argued that if the complainants received confirmation of Ms. Garwood-Filberts’ legal funding in September 1995, why did they wait until October 1996 to file complaints. Counsel said time should be measured in months regarding this matter, not in years. Counsel felt the period of time between September 14, 1995, the date the complainants were officially informed the PSAC was funding Ms. Garwood-Filberts, until December 6, 1996, when complainant Feldsted wrote the Board seeking guidance under section 6 of the PSSRA was too long a delay.

I reserved my decision on timeliness.

### Arguments on Jurisdiction

Ms. Bramwell argued that all of these complaints under section 23 and applications under section 21 of the PSSRA do not come under the jurisdiction of the Public Service Staff Relations Board (PSSRB) because of the substance of the complaints, namely that they deal with internal union matters. She argued the decision to support the court action of Ms. Garwood-Filberts was made by the bargaining agent without any need to consult the employer, and was done within the by-laws of the bargaining agent at a properly constituted USGE meeting. She concluded therefore that this action does not fall under any of the subjects included under section 23 or subsection 10(2) of the PSSRA that relate to the relation between the bargaining agent and the complainant. Counsel argued this was an internal union decision to direct funds to Ms. Garwood-Filberts and that subsection 10(2) of the PSSRA makes no reference to how funds are to be used internally by the bargaining agent. The PSAC is a democratic organization that is only accountable to its members. She argued the PSSRA only allows the PSSRB to interfere in a situation that affects a complainant's employment relationship. The PSSRB administers a separate regime from the Canada Labour Relations Board (CLRB).

Regarding the requested remedy in the Garwood-Filberts matter, Ms. Bramwell argued that the PSSRB has no authority to award costs and has never done so. She submitted that I cannot allow section 6 of the PSSRA regarding membership in an employee organization, that is a declaratory section, to be a back door entry to subsection 10(2) of the PSSRA. In short, she argued I have no jurisdiction in any of the matters before me since they all relate to internal union business.

Counsel referred me to: *St-James et al* (Board file 100-1); *Shore* (Board file 161-2-732); *Mark Conlin and Canadian Union of Postal Workers* (1994), 27 C.L.R.B.R., (2d) 149; *Forsen* (Board file 148-2-209); *Hibbard* (Board file 161-2-136); *Laporte* (Board files 148-2-199, 161-2-640); *Martel* (Board files 161-2-669 to 671).

Mr. Bjornson argued regarding funding the legal expenses of Ms. Garwood-Filberts that his clients felt their complaints were justified since the bargaining agent did not follow any internal procedures in doing this as far as they

could determine. He also argued they felt the PSSRB was the only logical place they could take their complaints, since both the PSAC and the USGE are subject to the PSSRA. Mr. Bjornson said the jurisprudence presented by Ms. Bramwell was not appropriate or binding, especially since none of it was ever referred to the Federal Court that would have clarified any ambiguity regarding the perpetual argument made that the PSSRB has no legal right to interfere in internal union matters. Mr. Bjornson felt the principle and/or the law written in the revised PSSRA in June 1993 is in error. He argued the PSSRA must be read as a whole and interpreted according to its intention of “protecting the little guy from an employee organization”.

Mr. Bjornson referred to section 37 of the *Canada Labour Code* (CLC) that includes a reference to rights under the collective agreement not inserted by Parliament in subsection 10(2) of the PSSRA.

Section 37 of the CLC reads:

*37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.*

He argued that his clients could have gone through the grievance process to Ms. Garwood-Filberts, but did not for obvious reasons, and that they could probably not sue the bargaining agent in a civil action. He argued there is a common law duty of fair representation since there appears to be no guidance for the complainants under the PSSRA.

Mr. Bjornson asked me to interpret the PSSRA by taking jurisdiction in these matters in order to allow the “little guy a chance to be heard at a later date”.

In rebuttal argument, Ms. Bramwell said that leaving out any reference to a collective agreement in subsection 10(2) of the PSSRA by Parliament was a conscious decision. She argued the language in subsection 10(2) was clear in the past and would be interpreted the same in the future as it has been by the jurisprudence she presented. She argued the words 'bargaining agent' are referred to in subsection 10(2),

since the bargaining agent controls the relationship between the employee and the employer.

Ms. Bramwell concluded that even though the complainants feel a wrong has been done, this does not give the PSSRB jurisdiction to deal with the matters raised since the PSSRA is almost silent on how a bargaining agent is to conduct itself.

### Decision

I have decided on the question of timeliness, that in the absence of a statutory time limit, the complaints and applications are timely for the following reasons. Unlike the *Horstead* decision (supra) that related to a situation which was extended over a number of years, the complaints before me can be said to be extended at worst thirteen months (September 14, 1995 to October 16, 1996) according to the argument by Mr. Bjornson, or at best ten months (December 1995 to October 1996) according to the argument by Ms. Bramwell. Where they differed, was in the lengths of the delays and whether or not they should be considered untimely.

Although one could argue these periods of delay are borderline to good labour relations acceptability, they are not unreasonable under the special circumstances of the matters before me. I acknowledge however that the onus is on the complainant to submit a complaint as soon as possible. The issues were and are ongoing, if not before the PSSRB then before the civil courts, since the question of paying legal fees first came to light in September 1995. I believe Mr. Bjornson who said there were ongoing efforts by the parties to resolve the matter before submitting written complaints to the PSSRB in October 1996. For these reasons, I feel that the complaints and applications are timely.

On the question of jurisdiction, I must respond differently, recognizing the “tangled web” for the “little guy” that the complainants find themselves in. If I intervene, the question must be asked under what authority I do this and where would the line be drawn for such interventions in the future?

If I do not intervene, then where do the complainants turn with their complaints and how will their actions be paid for?



The answers to both of these questions are not to be found in this decision but possibly in future revisions to the PSSRA. As the PSSRA now reads either under section 6 or subsection 10(2), I can find no legal authority that allows me to intervene in the complaints and applications before me.

The *St.-James et al* decision (supra) written in March 1992 substantiates my finding with the following 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.*

The Board stated the following in September 1993 relating to section 6 of the PSSRA at page 7 of the *Forsen* decision (supra):

*It has long been held, in jurisprudence emanating from both labour relations boards and the courts, that this provision was intended primarily to establish and protect the right of employees to join and participate in a union without fear of retaliation from their employer.*

I believe that this decision holds today and applies in the matters before me.

Similarly with respect to subsection 10(2) of the PSSRA, I cannot find any wording, precedent, or legal jurisdiction that allows me to intervene in the matters before me.

For all these reasons, neither section 6 nor subsection 10(2) of the PSSRA can be utilized to allow me to intervene in the internal affairs of a bargaining agent as requested in the matters before me.

These complaints and applications are therefore dismissed for want of jurisdiction.

**J. Barry Turner,  
Board Member.**

OTTAWA, November 3, 1997.