

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**LUIGI TUCCI**

Complainant

and

**STEVE HINDLE**

Respondent

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

**Before:** P. Chodos, Deputy Chairperson

**For the Complainant:** Siu M. Lai

**For the Respondent:** Ainslie Benedict, Counsel

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Heard at Toronto, Ontario,  
October 17, 1997  
(Written arguments submitted on October 31,  
November 7 and November 12, 1997.)

## DECISION

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Mr. Luigi Tucci is employed at the Mississauga offices of the Department of National Revenue, Customs, Excise and Taxation as a Senior Business Auditor. He has filed a complaint against Mr. Steve Hindle, the President of the Professional Institute of the Public Service of Canada (PIPSC) alleging that Mr. Hindle “*has denied my right to be represented by a local union representative in an Appeal hearing held under section 10 of the Public Service Employment Act ... The denial was made in an unfair, arbitrary, and/or discriminatory manner.*” In effect, Mr. Tucci alleges that Mr. Hindle, in his capacity as President of PIPSC, had breached subsection 10(2) of the *Public Service Staff Relations Act*.

This matter arose out of an appeal to the Public Service Commission filed by Mr. Tucci in respect of several acting AS-5 competitions within Revenue Canada; the competitions concerned positions which were located in Mississauga. In his appeal document (Exhibit C-1), Mr. Tucci indicated that for purposes of the appeal, his representative would be Mr. Siu Lai; Mr. Lai was, and continues to be, a colleague of Mr. Tucci, and a fellow union Steward, as well as being Chairman of the Mississauga AU subgroup, Chairman of the Mississauga Branch, and the regional representative for Toronto. Mr. Tucci is also a Steward for the Toronto West office as well as Vice-Chairman of the Mississauga AU subgroup and a Vice-Chairman of the Mississauga Branch; all these union offices are elected positions.

Both Mr. Tucci and Mr. Lai had on other occasions represented PIPSC members before appeal boards, as well as other proceedings, and had met with some success. Mr. Tucci testified that he had never obtained approval from PIPSC in order to represent its members, nor had he been told by the union that he had to have such approval. He also noted that in the past when he had been required to travel for the purpose of representing members in the Toronto area, PIPSC had reimbursed his travel expenses. While he had sought approval of these expenses in advance, these approvals had never been rejected. He also maintained that when he had represented PIPSC members employed outside of the Mississauga office, he did not seek, nor was he required to seek, PIPSC’s approval before doing so.

The Public Service Commission Appeal Board advised Mr. Tucci that a hearing of the appeal would take place in London, notwithstanding that several of the parties were in fact located in the Toronto area; the date of the appeal hearing was set for

May 29, 1997. Mr. Tucci advised Mr. Lai of these facts, and Mr. Lai proceeded to write to Mr. Edward Gillis, who is employed as a Labour Relations Officer with PIPSC in its Toronto office. In his letter dated April 18, 1997 (Exhibit C-4) Mr. Lai advised that he is Mr. Tucci's representative in respect of the appeal hearing scheduled for May 29, 1997 in London, Ontario and that he "*would like to request approval from the Institute for my travelling expenses to attend the above appeal hearing, as a PIPSC Representative, in London.*" The letter goes on to indicate the nature of the expenses to be incurred.

Mr. Gillis replied in a letter dated May 6, 1997 that "*Please be advised that because London is outside your area of jurisdiction, expenses cannot be approved. Should you wish to appeal this decision, you may do so directly to Mr. Steve Hindle.*" In a letter to Mr. Hindle dated May 7, 1997 Mr. Lai stated the following:

*I formally appeal your decision not to allow me to represent a Mississauga Branch member (Luigi Tucci) who has filed an Appeal, among others, against a Mississauga Acting AS-05 appointment. I request that this appeal be discussed at the next executive/management meeting scheduled for May 15, 1997.*

*I wish to point out that in representing Mr. Tucci, I will not be outside of my jurisdiction as a steward because the appeal filed by Mr. Tucci was against an acting appointment here in Mississauga. The Public Service Commission decided to hear the appeal in London, Ontario because 2 or more appeals were filed by employees who work in the London, Ontario area, against similar acting appointments. All these appeals will be heard at the same time in London. In fact, the PSC will be reimbursing Mr. Tucci all related travel costs incurred for this appeal.*

*Economically, the Institute would save money by allowing me to represent Mr. Tucci because it would not have to cover mileage costs. The Institute would only have to cover my meal and accommodation costs, as requested in my letter of April 18, 1997 because I would be travelling in Mr. Tucci's car. In my absence, the appeal would have to be handled by a staff person from the Toronto Regional Office who would have to incur mileage, meal and accommodation costs.*

*I find it difficult to believe that you would deny my request for approval of my travel to London because you are denying my member in Mississauga the right to be represented by a PIPSC representative of his choice against an acting*

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*appointment in Mississauga. Your decision is unjustifiable and irresponsible.*

*I request that your decision be reconsidered and I be allowed to travel to London to represent Mr. Tucci.*

On May 21, 1997 Mr. Hindle replied to Mr. Lai that:

...

*The Executive Committee reviewed the points raised in your letter and the decision remains the same. The Institute will not reimburse you for expenses incurred as a result of representing Mr. Tucci in this matter.*

Notwithstanding the union's decision to reject his request for reimbursement of travel expenses, Mr. Lai did accompany Mr. Tucci to the hearing in London; Mr. Lai was a passenger in Mr. Tucci's car, and shared his hotel room. Mr. Tucci bore Mr. Lai's meal expenses for May 28 and 29. Mr. Lai made representations on Mr. Tucci's behalf, and ultimately the appeal was successful.

Mr. Tucci and Mr. Lai gave evidence concerning a luncheon which they had with Mr. Gillis on March 7, 1997. Both Mr. Tucci and Mr. Lai recalled that at the luncheon Mr. Tucci had advised Mr. Gillis that he had filed an appeal with respect to an acting AS-05 competition. Mr. Lai's recollection was that Mr. Gillis had responded that they just wanted to go to a party and get drunk. Mr. Gillis testified that he recalled having lunch with Mr. Lai and Mr. Tucci in March 1997, however, he did not recollect any discussion about an appeal having been filed.

In cross-examination Mr. Tucci acknowledged that he did not explore the possibility of anyone else representing him from PIPSC; he also stated that he was not prepared to seek someone else's representation, other than Mr. Lai. He acknowledged as well that no one from the Institute had told him that Mr. Lai could not represent him.

It was Mr. Lai's testimony that when he was advised that his request for travel expenses was refused, he had contacted Mr. Gillis and had discussed with him whether Mr. Gillis would be prepared to represent Mr. Tucci in the appeal proceeding. Mr. Gillis had responded that he was not available, as there was a meeting of regional representatives in Montreal on that date. According to Mr. Lai, Mr. Gillis stated that

someone from Ottawa, Ms. Lyette Babin, would be available. However, it was Mr. Lai's recollection that Mr. Gillis had finally concluded that no one was readily available from the Institute, and there was no further discussion of alternate representation. Mr. Lai testified that he had contacted the Registrar of the Public Service Commission to ask for a rescheduling; this request was denied because it had been the second request for rescheduling of the appeal.

Mr. Gillis testified, on behalf of the respondent, that he indicated to Mr. Lai that while he was not available to represent Mr. Tucci on May 29, there would be somebody from the Ottawa office who could do so. He also told Mr. Lai about his right to appeal the travel decision to Mr. Hindle, and that Mr. Lai could, for the future, seek to have his jurisdiction as Steward expanded.

In his testimony Mr. Tucci referred to a memorandum dated August 18, 1997 (Exhibit C-8) addressed to all Stewards and Staff indicating that responsibility for representation of members "*rests with staff. Staff may request assistance from Stewards, if required.*" Subsequently he had a discussion with Mr. Gillis concerning this memo; Mr. Gillis told him that the staff had sought clarification from the Board of Directors concerning this subject. Mr. Tucci also made reference to an extract from a PIPSC policy manual which provides, among other things, that the Institute will provide representation at Appeal Hearings. Mr. Tucci stated that he viewed Mr. Lai as his Institute representative, since Mr. Lai is a Steward and therefore an officer of the union. Mr. Tucci also indicated that he did not seek another PIPSC representative in late May because he believed there was not enough time to bring someone else up to speed, and Mr. Lai already had a thorough familiarity with the case. There was also little likelihood that a further rescheduling would be granted by the Appeal Board. Mr. Tucci also observed that the Chair of the Toronto East office had referred to the August 18th memorandum as "*the Lai/Tucci memorandum*"; and he also stated that they had been "*too successful in winning cases*".

In cross-examination Mr. Tucci identified a memorandum from Mr. Wayne Rogers, Manager, Representation & Educational Services of the Institute (Exhibit R-1) which notes the requirement for prior authorization for travel expenses on the part of Stewards.

Mr. Gillis also testified that as a Labour Relations Officer he is responsible for dealing with all aspects of appeals, including the representation of members. He noted that approximately 18 months ago, when he initially introduced himself to the Chairs and sub-Chairs of union members employed by Revenue Canada in Ontario, he requested that they provide him with copies of all grievances and appeals filed within their areas of jurisdiction, as a means of encouraging closer communications and cooperation between his regional office and their workplace. He recalled that Mr. Lai had responded that the Mississauga office had experienced Stewards and did not require any assistance from the regional office on labour relations matters. Mr. Gillis stated that when he received Mr. Lai's letter requesting approval for travel expenses outside Mr. Lai's geographic jurisdiction as Steward, he forwarded this unusual request to his supervisor, Mr. Wayne Rogers, for further instructions (Exhibit R-2). He had explained to Mr. Lai that the union was concerned about paying his expenses because he would be operating outside his jurisdiction as Steward of the Mississauga office. Mr. Lai then asked him: "*Does that mean that Mr. Tucci wouldn't be represented?*"; Mr. Gillis replied to him that the memorandum did not mean that, but rather simply addresses the matter of incurring travel expenses outside his jurisdiction.

In cross-examination Mr. Gillis stated that he had not been aware previously of Stewards getting involved in cases outside their area of jurisdiction. However, he was aware that in this instance the appeal involved an appointment to the Mississauga office, and that the member submitting the appeal was from Mississauga. He acknowledged that, had the appeal hearing been held in Toronto, he may have looked at the matter differently. Mr. Gillis maintained that when Mr. Lai had asked him if he would be available to represent Mr. Tucci in London, he indicated that he was not available, but would arrange for representation from the Ottawa office. He received no request from either Mr. Lai or Mr. Tucci concerning alternative representation for Mr. Tucci.

Mr. Wayne Rogers is the Manager of Representation & Educational Services since January 1997; he has been employed with the Professional Institute for 18 years. He has responsibility for employment relations in respect of both the national and regional offices; in that capacity 55 PIPSC employees report to him, including Mr. Gillis. Mr. Rogers stated that when he became aware of Mr. Lai's request for

approval of expenses, he determined that the appeal representation would not be within Mr. Lai's jurisdiction and therefore denied the request. Mr. Rogers observed that the representation of members in appeals is a staff responsibility; also, this would not be something which Mr. Lai would normally be responsible for. Mr. Rogers maintained that the travel costs were not a factor in his decision.

Mr. Rogers also observed that Stewards are political entities; he has no responsibility for determining their area of jurisdiction; it is the Executive Committee, and perhaps the Board of Directors which makes that determination. It had always been his understanding that the staff had responsibility for providing representational services, however, some Stewards were taking on this role. In order to clarify the situation, he brought this issue to the attention of the union Executive Committee and recommended the issuance of Exhibit C-8. The reasons for concern were that some Stewards were not keeping PIPSC staff and the regional officers informed as to what was going on. Also, it was important that the credibility of the Institute, as a corporate body, be maintained before third parties. He referred to Exhibit R-3, a lengthy memorandum prepared in July 1997 from Mr. Gillis which outlined concerns about Stewards such as Mr. Lai and Mr. Tucci representing members in third party proceedings. He noted that PIPSC has over 700 Stewards, and that it was important to maintain a handle on the Stewards' involvement in representational matters.

In cross-examination Mr. Rogers stated that he had not been aware that the appeal in question was in respect of a position in Mississauga. He noted that Mr. Lai's earlier request for approval of travel expenses were approved on a case by case basis. Mr. Rogers observed that the union cannot have members deciding who represents them and what expenses will be incurred. He also noted that he had received representations about the way allegations had been presented to third parties with respect to questions of bias, and concerning personal attacks which had been made by Stewards. He agreed that there had been representations made by the internal staff union regarding the responsibilities of its members, and one of the concerns behind Exhibit R-3 was job security, however, this was not the primary concern. He acknowledged that prior to the issuance of Exhibit C-8, there had not been a memorandum advising Stewards about their role in representing members before third parties.

Mr. Steven Hindle also testified in these proceedings. Mr. Hindle has been the President of the PIPSC since January 1, 1996. He stated that he became aware of this issue in early May as a result of Mr. Lai's appeal from the Institute's decision not to pay travel expenses. Prior to responding to this appeal he discussed the circumstances with Mr. Rogers, and assured himself that he had the necessary facts. He considered the costs involved; he also gave consideration to the concern that representation should be consistent with the Institute's objective of maintaining credibility before third parties. In addition, he was satisfied that, if approval for travel expenses were not granted, the Institute would still be able to discharge their responsibilities by providing a staff person to provide representation.

Mr. Hindle noted that a member can go beyond the President to appeal his decision to either the Executive Committee, or the Board of Directors, or ultimately to the PIPSC Annual General Meeting. Mr. Lai in fact referred this matter to the Executive Committee, which consists of the President and four Vice-Presidents; the Vice-Presidents looked at the issue and confirmed his decision, and Mr. Lai was so advised. Mr. Hindle maintained that an individual member does not have the right to determine who will represent him or her; that decision rests with Mr. Rogers.

In cross-examination Mr. Hindle noted that Mr. Lai's letter of April 18, 1997 dealt strictly with travel expenses; it was Mr. Hindle's understanding that Mr. Lai was free to represent Mr. Tucci, however, there would be no reimbursement of travel costs. He agreed that in respect of representation of members, cost is an important, but not the sole, consideration; the credibility of PIPSC is also an important concern. Mr. Lai's request for travel expenses was denied because of concern about credibility; it also raised the issue of the exercise of control over representation, that is, the ability of a member to choose representation, versus the Institute's responsibility in this regard. Mr. Hindle maintained that as a Steward Mr. Lai is a representative of PIPSC, however this does not include involvement in a member's choice of representative. Mr. Hindle also maintained that his letter dated May 21, 1997 to Mr. Lai is the normal way to reply to appeals from the President's decision. While he reviewed Mr. Lai's letter, he did not talk to Mr. Lai or Mr. Tucci before issuing the May 21st letter. Mr. Hindle indicated he was aware of representations made by staff concerning job security questions. There had been discussions between the staff association and himself on



this issue, likely sometime in 1996. Mr. Hindle maintained that job security was not his concern in denying Mr. Lai's appeal respecting travel expenses.

The parties submitted written arguments. The following is a summary, as well as extracts, from their submissions.

With respect to the Board's jurisdiction to address their complaint under subsection 10(2) of the *Public Service Staff Relations Act* the complainant noted the following:

*The Merriam Webster's Collegiate Dictionary, Tenth Edition, (copy attached) defines the preposition in:*

***"--used as a function word to indicate inclusion, location, or position within limits."***

*The Funk & Wagnalls Standard Dictionary of the English Language, International Edition (copy attached) defines the preposition in to mean:*

***"--within the bounds of; contained or included within."***(page 637)

*The expression "in the representation" as used in Subsection 10(2) of the PSSRA means **within the boundary of the subject matter of representation.***

*When a union or its officer acts in an arbitrary, discriminatory, or bad faith manner in refusing to provide representation to a member, this is within the subject matter of representation. As such, the issue is within the jurisdiction of the Public Service Staff Relations Board.*

(p. 2 of Complainant's arguments)

The complainant maintained that he had requested representation from the Institute, among other things, by indicating on the appeal document that he would be represented by Mr. Siu Lai as his union representative. It was also noted that Mr. Gillis had been informed of the appeal and was made aware that Mr. Lai would be representing Mr. Tucci. The union was well aware that Mr. Tucci and Mr. Lai had in the past represented members in their capacity as union Stewards, and except for approval for travel reimbursements, the union did not require prior approval for such representation.

The complainant observed that:

*Steve Hindle acted in an arbitrary manner in refusing Siu Lai's request to travel to London and consequently denied Luigi Tucci's right to be represented by PIPSC. The reason is that the denial is based upon geographical location of the Appeal hearing and not whether Siu Lai has jurisdiction to represent a Mississauga member's appeal against an appointment to take place in Mississauga.*

(page 6 of complainant's argument)

The complainant also submitted that:

*... it is evident that job security of Institute staff is a significant factor in the decision making process of Steve Hindle in denying Siu Lai's request to travel to London, Ontario.*

Mr. Lai stated that as a shop Steward he is an official representative of the union and therefore had the right to represent Mr. Tucci in proceedings before the Appeal Board. Mr. Lai argued that the overriding concern for job security of staff demonstrates bad faith on behalf of the respondent.

Mr. Lai also made reference to the Institute's policy manual (Exhibit C-9); he observed that

*This policy must be applied fairly and consistently to all Institute members. In denying Siu Lai's request to travel and consequently Luigi Tucci's right to representation, Steve Hindle acted in a **discriminatory** manner in the representation of Luigi Tucci because the Institute's policy on representation should be applied to Luigi Tucci, unless there is a valid and legitimate reason. In this instance, it has been demonstrated that there was no legitimate reason in denying Luigi Tucci representation.*

*PIPSC contends that in its actions it did not deny representation to Luigi Tucci, but only denied Siu Lai's travel expenses to London, Ontario. In order to provide representational services to a member, the provider (PIPSC) must bear the associated costs of representation. In not doing so, the provider is effectively denying the member representational services. In testimony, Steve Hindle affirmed that normally PIPSC pays all travel and associated costs when representing members before third parties. The question that*

*must be asked is why is it different for Luigi Tucci that his costs will not be borne by PIPSC in this instance?*

(pages 7 and 8 of complainant's argument)

In reply, counsel for the respondent noted that:

*Mr. Hindle explained that a steward is an official representative of the Institute in certain capacities and for certain matters only. Stewards are not responsible for assigning or assuming on their own initiative responsibility for the representation of members. According to Mr. Hindle, the Institute is responsible for providing representation services and reserves the right to control who does the representation.*

(page 3 of respondent's submission)

Counsel also observed that:

*The complainant and Mr. Lai proceeded on their own initiative with respect to the PSCAB appeal. By April 18, 1997, when Mr. Lai requested authorization for his travel expenses in connection with the Hearing, the appeal process was well under way and extensive disclosure meetings had taken place.*

*... He had already filed his Document of Appeal with the PSCAB in February and his unilateral choice of Mr. Lai as his representative was a fait accompli.*

. . . .

*At no time did Mr. Hindle, Mr. Gillis or anyone else from the Institute advise either the Complainant or Mr. Lai that Mr. Lai could not represent the Complainant at the Hearing. In fact, Mr. Hindle's reply of May 21, 1997 refers to Mr. Lai's representation of the Complainant and says only that the Institute will not cover the expenses incurred in connection with this representation.*

(page 9 of respondent's submission)

With respect to the Board's jurisdiction to address this complaint, counsel for the respondent made the following submissions:

(page 13)

*The Respondent submits that by naming Mr. Hindle as the Respondent, the Complainant has inappropriately framed his complaint. Subsection 10(2) of the PSSRA is meant to deal with the actions of a Union. The Board should not permit the Complainant to mount a personal attack against an individual decision-maker in the Institute under cover of a statutory provision intended to control Institute policies and action.*

*The Respondent's position, as communicated to the Board in writing in August, 1997, is that the Institute's refusal to approve Mr. Lai's travel expenses did not breach any duty owed to the Complainant with respect to its representation of him.*

*The Complainant's allegations relate solely to internal Union matters, namely, the authority of the Institute to oversee the spending of Institute monies, the scope of the authority of a Union steward, and the question of whether a Union member has any right to select the person who will represent him at a hearing before a third party.*

*The Respondent submits that the decision made by Mr. Hindle was one which he was authorized to make and one that he made in good faith, after consideration of all of the relevant factors, both administrative and "political", including the detailed representations made by Mr. Lai in his letter of May 7, 1997. The decision was an internal matter, namely, whether the Institute would pay for a steward from Mississauga to travel to London to represent a member before a third party.*

*In exercising his discretion with respect to authorization of travel expenses, Mr. Hindle was making an internal administrative decision. The Respondent submits that the exercise of that discretion by Mr. Hindle is not subject to review by this Board.*

*It is widely recognized that a Labour Relations Board does not have supervisory authority to regulate the internal affairs of a bargaining unit.*

...

(page 15)

*The Respondent urges the Board to resist the temptation to conclude that because Mr. Lai's request for travel expenses was made in connection with a hearing of the Complainant's rights vis-à-vis his employer, the matter is automatically one which falls within the jurisdiction of the Board. Were the*

*Complainant to obtain standing before the Board on the basis that Mr. Hindle's denial of funding had something to do with his relationship with his employer, the Complainant would be doing indirectly what he cannot do directly: litigating a matter over which the Board has no authority.*

*The Respondent submits that the issue raised by the complainant's allegations is not one of representation. Despite the Complainant's attempt to characterize the filing of his Document of Appeal with the PSCAB as a request to the Institute for representation, the evidence is clear that at no time did the Complainant request anyone other than Mr. Lai to provide representation and at no time did the Institute refuse to provide the Complainant with representation at the Appeal Board hearing.*

Counsel for the respondent submitted that the reasons provided by the Institute in respect of Mr. Lai's representation demonstrate that these matters are internal union affairs and therefore outside the scope of the Board's jurisdiction. Counsel referred to the Institute's policy manual and observed that the policy is clear that:

*... it is the management of the Institute, not individual members, who have the responsibility to arrange representation for its members in these situations. The Institute's responsibility for assigning representation before third parties was confirmed in the memo to stewards from the Acting President of the Institute dated August 18, 1997 (Exhibit C-8).*

(pages 18 and 19 of respondent's written submission)

Counsel also submitted that:

*... it is incumbent upon a complainant to demonstrate to the Board that it has jurisdiction to hear a complaint. The complainant must establish that his or her complaint falls under section 10 of the PSSRA. ...*

*... The Respondent submits that the Complainant in the present case has failed to demonstrate either that his complaint falls under subsection 10(2) of the Act or that the Board has jurisdiction to hear the complaint. ...*

In support of these submissions, Counsel cited the following passage from *Canadian Labour Law* (2d. ed., Canada Law Book, 1994, p. 13-12):

*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, the hiring-hall methods chosen by a trade union to select back-up workers to receive work after the dispatch of all available union members and the alleged failure of a trade union to provide an adequate pension plan.*

Counsel maintained that if the Board were to take jurisdiction of this matter the complaint must nevertheless fail on its merits:

*Mr. Hindle did not deny the complainant's right to be represented by a local Union representative at the Hearing. What he did refuse to do was to authorize expenses for the Complainant's self-appointed representative, a steward in the Mississauga AU Subgroup, to travel to London, Ontario. It is submitted that Mr. Hindle and all of the other decision-makers involved in the consideration of Mr. Lai's request for approval of travel expenses exercised their discretion properly and the Institute did not violate the prohibition in subsection 10(2) of the PSSRA.*

*Even if Mr. Hindle had denied the complainant's right to use a local representative, which he did not, the Respondent submits that such refusal would not have contravened Institute policy, as the complainant has alleged, nor constituted unfair, arbitrary or discriminatory treatment by the Institute in its representation of the Complainant, contrary to subsection 10(2) of the PSSRA.*

In rebuttal, Mr. Lai disputed the assertion by the respondent that alternative representation was offered by the Institute for the May 29th hearing:

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*... The onus was on PIPSC to seek alternative representation for Luigi Tucci given that it had denied Siu Lai's travel expenses to London to represent Luigi Tucci.*

(page 3 of complainant's rebuttal)

The complainant also observed that:

*In denying Siu Lai's travel costs to London to represent Luigi Tucci and in not offering alternative representation to Luigi Tucci, PIPSC has effectively denied Luigi Tucci representation.*

*The Complainant requests that the Board, in deciding whether it has jurisdiction to hear this case, look at the "substance" or "reality" of the matter that gave rise to the complaint and not its "form". **The substance of the matter is denial of fair representation by the Union to the Complainant, which is disguised in the form of refusal to pay the Complainant's representative to attend the Appeal Hearing.***

*Furthermore, the Complainant urges the Board not to let the Union hide behind the veil of internal affairs, when such affairs resulted in the denial of fair representation to its member or affected the employment relationship of the Complainant.*

...

(page 5)

*The Complainant submits that he does not deny the fact that PIPSC has the right to assign its employees and/or legal counsel to represent members. He, however, does not agree that he should have been left effectively without representation, after the Union had denied Siu Lai's travel expenses to London and had made no effort to offer him alternative representation.*

...

*The Complainant submits that in his case, the Board does not have the jurisdiction to consider denial of travel expenses of a Union Representative per se, but it has the jurisdiction to look at the issue when the denial is the cause for leaving the Complainant effectively without representation in his dealings with the employer.*

Reasons for Decision

The Board's authority to address complaints with respect to the representation of bargaining agents is found in subsection 10(2) of the Act, which states as follows:

*Fair representation*

*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.*

At the outset I would note that, contrary to the submissions of counsel for the respondent, it is clear that the ambit of subsection 10(2) subsumes an "officer or representative" of the employee organization, as well as, and in addition to, the organization itself. Accordingly, the complainant is undoubtedly entitled to name the President of PIPSC as the sole respondent to the complaint, if he so chooses.

I would also make the observation that there is little, if any, cogent evidence demonstrating that the Institute had any negative animus towards Mr. Tucci, from which one might surmise that the union was not interested in providing Mr. Tucci with representation in respect of his appeal before the Public Service Commission Appeal Board. It is quite clear from the Institute's policy manual (Exhibit C-9) that in such circumstances the Institute views it as its obligation to provide representation to the appellant; moreover, at no point did the Institute through any of its officers or officials advise Mr. Tucci or Mr. Lai that it was not prepared to provide such representation. It cannot be disputed that in fact it was Mr. Lai, and not an employee of the Institute, who did represent Mr. Tucci in the proceedings before the PSCAB. However, it cannot be concluded that this resulted from a decision on the part of the Institute or its officers to deprive Mr. Tucci of the benefit of representation by the Institute. It is apparent to the Board that throughout the events in question, the complainant was particularly anxious to have Mr. Lai represent him; any considerations about alternative representation was clearly secondary, and arose only because of concerns about the union's refusal to pay Mr. Lai's travel expenses. It is also clear that it was this refusal which precipitated the complaint, as evidenced from the Form 2 complaint document and the attachment; thus, paragraph 3 of the attachment states that:



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*On April 18, 1997 my union representative, Mr. Siu Lai, requested approval of his travel to London in order to represent me at the above Appeal hearing. This request was denied by PIPSC by way of a letter dated May 6, 1997.*

There is no reference in that document to the alleged failure to provide alternative representation. In short, the complainant's concern throughout, and the true source of his complaint, is the failure of the Institute to approve reimbursement of Mr. Lai's travel expenses.

Does subsection 10(2) subsume matters such as the decision by the Institute not to reimburse Mr. Lai's travel expenses? 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.

I agree with the complainant that the Board can look at these kinds of decisions by a bargaining agent, where they in effect constitute a denial of representation which is arbitrary, discriminatory, or in bad faith. However, such conclusions are very serious, and cannot be arrived at lightly. Moreover, as I have already noted, the evidence in this case does not demonstrate that there was in fact any attempt on the part of the officers of the Institute to deny Mr. Tucci representation.

Accordingly, I find that the complaint does not fall within the ambit of subsection 10(2) of the Act, and therefore must be dismissed.

**P. Chodos,  
Deputy Chairperson**

OTTAWA, December 29, 1997.