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File: 561-34-24

Citation: 2005 PSLRB 60



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

HAROLD BRYAN PEREVERSEFF

Complainant

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

Indexed as

Pereverseff v. Canada Customs and Revenue Agency

In the matter of a complaint made under section 23 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: John Steeves, Board Member

For the Complainant: Harold Pereverseff

For the Employer: Simon Kamel, counsel

Heard at Lethbridge, Alberta,
May 31, 2005.

REASONS FOR DECISION

Complaint before the Board

[1] This is a decision about a preliminary objection of the employer.

[2] On April 6, 2004, the complainant made an application under section 23 of the *Public Service Staff Relations Act* (the former *Act*). He alleges that a member of management has interfered in the formation of an employee organization contrary to subsection 8(1).

[3] As a preliminary matter, the employer submits that I am without jurisdiction to hear this complaint. It is submitted that an application alleging a contravention of section 8 of the former *Act* can only be made by an employee organization such as the bargaining agent. It is not open to an individual to make an application alleging a contravention of section 8, according to the employer.

[4] On April 1, 2005, the *Public Service Labour Relations Act* (the “new *Act*”), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 39 of the *Public Service Modernization Act*, the Board continues to be seized with this complaint, which must be disposed of in accordance with the new *Act*.

Summary of the evidence

[5] The employer operates offices throughout Canada and employs staff to collect revenue and investigate related matters, among other activities. The events giving rise to this complaint took place in Lethbridge, Alberta.

[6] The complainant is Mr. Harold Pereverseff. He is an employee of the employer and also the Chief Shop Steward for the Lethbridge local of the United Taxation Employees (UTE). Since 2003, the Lethbridge office of the employer has had its own local of the UTE.

[7] On February 26, 2004, the Lethbridge local of the UTE held its annual general meeting. This was open to all paid-up members.

[8] Mr. Don Credico was a member of the UTE. Before the annual general meeting, on February 19, 2004, Mr. Credico accepted a promotion to the position of Assistant Director of Revenue Collections. The letter of offer, dated February 11, 2004, stated that the position “will be proposed for exclusion from a bargaining unit”. This

decision was to be made by the Public Service Staff Relations Board. In the meantime, the employer was required to deduct union dues. An important aspect of excluding Mr. Credico's position from the bargaining unit was that he would no longer be a member of the bargaining unit. The staff of the Lethbridge Taxation Office was advised of Mr. Credico's appointment on February 25, 2004.

[9] Mr. Credico attended the annual general meeting of the UTE, Lethbridge local, on February 26, 2004, and participated in various activities such as the election of officers. There were apparently concerns about Mr. Credico's participation at the meeting in light of his new position.

[10] After the meeting, the concerns about Mr. Credico's status continued. On March 3, 2004, the complainant e-mailed the Director, Lethbridge Tax Services, Mr. Tony Persaud, and asked whether Mr. Credico's new position was "designated as a 'Management Exclusion' and not a Unionized position". Mr. Persaud replied on March 4, 2004, "It's an excluded position".

[11] Mr. Greg Kokosh is the President of the Lethbridge local of the bargaining unit. He chaired the annual general meeting on February 25, 2004. Following the meeting, he sought further information about Mr. Credico's status. He wrote to the National President of the UTE, Ms. Betty Bannon. On March 10, 2004, Ms. Bannon sent an e-mail to Mr. Krokosh with copies to a number of people including the complainant.

This e-mail is in response to a complaint that I received regarding the voting at your recent AGM and the attendance and participation of Brother Don Credico.

I have spoken with both Greg Krokosh and your Director, Tony Parsaud. The position that Don Credico is moving into is a newly named position that is being proposed to be excluded. Don is still paying dues and will continue to pay dues until the position has been excluded. The day the position is excluded, so is Don.

Thus, I will not nul and void the recent election as it was conducted appropriately and Don Credico had every right to attend the meeting and fully participate, including voting for the candidates of his choice.

...

[12] On April 14, 2004, Mr. Credico was advised that his position was designated as a step in the grievance procedure. In other words, he was excluded from the bargaining agent.

The Complaint

[13] On April 6, 2004, the complainant filed a complaint with the Public Service Staff Relations Board. The named respondent was the “Canada Revenue Agency, Attention: Mr. Tony Persaud (Director)”. The employer submits that Mr. Persaud is not the correct respondent. As a result of the decision below, I do not have to decide that issue.

[14] The complaint alleged that Mr. Credico was working in an excluded managerial position when he attended the bargaining agent’s annual general meeting. It was also alleged that his attendance at the meeting was “viewed and sensed by some Union members as being intimidating given the management position he now held”.

[15] The complaint stated that Mr. Credico heard the complainant’s concerns at the annual general meeting. The complainant stood up, on a point of order, and asked the Chairman of the meeting “if all present were members of the UTE and if all those voting were allowed to vote. Yet he (Mr. Credico) chose not to acknowledge any conflict of interest, and continued to participate in the meeting”, according to the written complaint.

[16] The remedy sought in the complaint was an order in accordance with section 23 of the *Act* that Mr. Credico “is to observe the prohibitions that are incumbent on his indeterminate Management position as Assistant Director, Revenue Collections, Lethbridge”.

Summary of the arguments

[17] A hearing was held at Lethbridge, Alberta, on May 30, 2005. At that time the employer presented its preliminary objection. The employer and the complainant presented evidence and argument. The hearing was adjourned in order to make a decision on the preliminary issue raised by the employer.

[18] The employer submits that only an employee organization such as the bargaining agent has standing to make a complaint concerning section 8 of the former

Act. In this case, the party that is authorized by section 8 to be a complainant is the Public Service Alliance of Canada (PSAC). Since there is no direct evidence of the PSAC's participation, the complainant's application must be dismissed on a preliminary basis. The employer relies on *Reekie and Thomson*, PSSRB File No. 161-2-855 (1998) (QL).

[19] The complainant submits that the Acting President of the Lethbridge local of the UTE supported his complaint. As well, he discussed it and received advice from representatives of the PSAC and he is and was the Chief Shop Steward for the Lethbridge local of the UTE. With regard to the *Reekie* decision (*supra*), it is submitted that it is subject to a pending judicial review application. The complainant also relies on *Simon Cloutier and Treasury Board (Department of Citizenship and Immigration)*, 2005 PSSRB 21, as a decision where an individual was able to proceed with a complaint respecting section 8 of the former Act.

Reasons

[20] Subsection 8(1) of the former Act is 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 or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.

[21] Subsection 23(1) of the former Act is as follows:

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

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

...

[22] These provisions have been considered in other decisions.

[23] In *Reekie (supra)*, a complaint was filed by an individual, Mr. Reekie, under section 23 of the former Act alleging that there was interference in his right to representation during a disciplinary investigation contrary to section 8. The complaint was dismissed on jurisdictional grounds. The reasoning of the Board was as follows:

13. A section 23 complaint under the PSSRA could refer to violations of sections 8, 9, and 10 of the PSSRA. Mr. Reekie's complaint alleges a breach of subsections 8(1) and 9(1) of the PSSRA. Subsections 8(1) and 9(1) refer to "employee organization", in this case the PSAC, as a properly defined employee organization under section 2 of the PSSRA. Since Mr. Reekie is not an official representative of the PSAC, nor was anyone before me at the hearing representing the PSAC with respect to the complaint, I cannot find that Mr. Reekie has standing to file his complaint under section 23 and, therefore, that I have jurisdiction to hear Mr. Reekie's complaint.

14. The statutory rights under subsections 8(1) and 9(1) were established by Parliament to protect employee organizations, such as the PSAC, and not individual employees, against employer interference or discrimination.

See also, *Feldsted and Public Service Alliance of Canada*, PSSRB File Nos. 161-2-945/946/955 (1999) (QL), at paragraph 13, and *Czmola and Garwood-Filbert*, PSSRB File Nos. 161-2-938/939/953 (1999) (QL), at paragraph 8.

[24] I agree with the result and reasoning in the *Reekie (supra)* decision. The complainant submitted that this decision is subject to judicial review. This submission was very reasonably made on the basis that the Public Service Labour Relations Board Summary of the *Reekie (supra)* decision stated that a judicial review application was pending. However, this was an unfortunate error by the Board. There had been an application for judicial review but it was withdrawn.

[25] Section 2 of the former Act defines "employee organization" as follows,

"employee organization" means any organization of employees the purposes of which include the regulation of relations between the employer and its employees for the purposes of this Act, and includes, unless the context otherwise requires, a council of organizations.

[26] There seems little doubt that the PSAC is the employee organization for the employees of the employer, including those in the Lethbridge Taxation Office.

[27] In the case before me, I note that the collective agreement between the parties is titled "Agreement between the Canada Customs and Revenue Agency and the Public Service Alliance of Canada" (expiry date of October 31, 2007). Clause 9.01 states that the "Employer recognizes the Alliance as the exclusive bargaining agent for all employees of the Employer ..." and Clause 3.01 states that the provisions of the

agreement “apply to the Alliance, employees, and the Employer”. “Alliance” is defined in Clause 2.01 as meaning the Public Service Alliance of Canada. I also note that “bargaining agent” is defined in subsection 2(1) of the former *Act* as “an employee organization that has been certified by the Board as the bargaining agent for the employees in a bargaining unit and the certification of which has not been revoked” (emphasis added). I conclude that the PSAC is the bargaining agent as well as the employee organization.

[28] The evidence demonstrated that there was a conflict within the Lethbridge local of the UTE about whether the complaint should be made. The complainant, as Chief Shop Steward, and a person who was Acting President at the time support the complaint. On the other hand, the President does not support the complaint. I did not hear any evidence from either the UTE or the PSAC and the complaint cannot be characterized as one from either organization. Indeed, the e-mail from the National President of the UTE suggests that the UTE believes that Mr. Credico was not excluded from the bargaining agent at the time of the AGM.

[29] In my view, this situation supports the policy reasons for the result in the *Reekie (supra)* decision. From time to time, there will be disagreements about whether an application concerning sections like section 8 of the former *Act* will be made. A local of the employee organization or an individual within the local may want to proceed with an application or may not want to proceed. Something of a debate may take place within the employee organization and a decision will be made. This decision will be based on legal, national and other considerations that are internal matters of the employee organization. However, someone has to make a decision about whether an application is made or not and it is logical and good policy that it is the employee organization that makes that decision.

[30] I realize that, in this case, the complainant is the Chief Shop Steward of the Lethbridge local of the UTE. Also, he had the support of the Acting President of the time and he discussed the complaint with representatives of the PSAC. However, the evidence is clear that the PSAC is not participating in this complaint in any way that can be interpreted to mean it supports it or has advanced it. The collective agreement states that the PSAC is the exclusive bargaining agent.

[31] I have also considered the *Cloutier (supra)* decision. It is true that it appears that an individual was able to make an application concerning section 8. However, the

decision was a denial of an extension of time for an application that was made twenty-two months after the incidents that gave rise to the application. I conclude that the Board denied the application on grounds of timeliness and, therefore, it did not have to address the issue of whether an individual can make an application concerning section 8.

[32] Subsection 8(1) of the former *Act*, as correctly interpreted by the *Reekie (supra)* decision, requires an application concerning section 8 to be made by an employee organization. In this case, that is the PSAC and I am without jurisdiction to consider an application made by an individual member of the employee organization. To be clear, I am not commenting in any way on the legality or appropriateness of Mr. Credico attending the AGM on February 26, 2004.

[33] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

[34] The complaint is dismissed.

June 22, 2005.

**John Steeves,
Board Member**