

Date: 20060501

File: 561-02-00102

Citation: 2006 PSLRB 46



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

**INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND
DISTRICT LODGE 147, NATIONAL ASSOCIATION OF FEDERAL CORRECTIONAL
OFFICERS**

Complainants

and

CORRECTIONAL SERVICE OF CANADA

Respondent

and

**UNION OF CANADIAN CORRECTIONAL OFFICERS – SYNDICAT DES AGENTS
CORRECTIONNELS DU CANADA - CSN**

Intervenor

Indexed as

*International Association of Machinists and Aerospace Workers and District Lodge 147,
National Association of Federal Correctional Officers v. Correctional Service of Canada*

In the matter of a complaint made under section 190 of the *Public Service Labour
Relations Act*

REASONS FOR DECISION (No. 1)

Before: Dan Butler, Board Member

For the Complainant: Susan Ballantyne, counsel

For the Respondent: Richard Fader, counsel

For the Intervenor: John Mancini, counsel

Heard at Ottawa, Ontario,
March 17 and April 19, 2006.

Complaint before the Board

[1] On February 27, 2006, the International Association of Machinists and Aerospace Workers and District Lodge 147, National Association of Federal Correctional Officers (“the complainants”), filed a complaint with the Public Service Labour Relations Board (“the Board”) against Correctional Service Canada (“the respondent”) under paragraph 190(1)(g) of the *Public Service Labour Relations Act* (PSLRA).

[2] Subsection 190(1) of the PSLRA provides, in part, as follows:

190. (1) The Board must examine and inquire into any complaint made to it that

(a) the employer has failed to comply with section 56 (duty to observe terms and conditions);

(b) the employer or a bargaining agent has failed to comply with section 106 (duty to bargain in good faith);

(c) the employer, a bargaining agent or an employee has failed to comply with section 107 (duty to observe terms and conditions);

(d) the employer, a bargaining agent or a deputy head has failed to comply with subsection 110(3) (duty to bargain in good faith);

(e) the employer or an employee organization has failed to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award);

(f) the employer, a bargaining agent or an employee has failed to comply with section 132 (duty to observe terms and conditions); or

(g) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.

(2) Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.

[3] The complainants allege that the respondent has committed an unfair labour practice within the meaning of section 185 of the PSLRA and, in particular, has violated

paragraph 186(1)(a) of the *PSLRA* by refusing to allow its premises to be used for the distribution of certain of the complainants' mail delivered to the work addresses of certain correctional officers. The following paragraphs are excerpts from the complaint:

...

2. In response to widespread expressions of dissatisfaction with the current bargaining agent (the Union of Canadian Correctional Officers-CSN "UCCO-CSN"), the IAMAW, with the support of the Canadian Labour Congress, is conducting an organizing campaign among the employees of the Respondent, Correctional Service Canada ("CSC"), in order to displace UCCO-CSN as the bargaining agent for these employees.

...

7. Recently, IAMAW and NAFCO sent important campaign information via Canada Post to all correctional officers at their home addresses. Putting this information in the hands of all correctional officers in a timely fashion is a crucial part of IAMAW and NAFCO's organizing campaign.

8. In cases where IAMAW and NAFCO do not have access to officers' home addresses, the campaign information has been sent via Canada Post to the officers' work addresses. CSC has a practice of permitting correctional officers to receive personal mail at work.

9. On February 12, 2006 Don Head, Senior Deputy Commissioner for CSC, issued a communiqué advising that mail sent to correctional officers from NAFCO/IAMAW would not be delivered to them, but would instead be returned to the sender....In the complainant's submission, if CSC continues with this unlawful delay of the mail, it does so in contravention of paragraph 190(1)(g) of the Public Service Labour Relations Act, by further interfering with the complainant's organizing campaign, contrary to sections 185 and 186(1)(a) of the Act. It also does so, in the complainant's submission, in contravention of section 49 of the Canada Post Corporation Act.

[Sic throughout]

[4] At the hearing, the complainants also argued that the respondent has contravened paragraph 186(1)(b) of the *PSLRA*.

[5] Section 185 and subsection 186(1) of the *PSLRA* read as follows:

185. In this Division, "unfair labour practice" means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).

186. (1) Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall

(a) participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or

(b) discriminate against an employee organization.

[6] As corrective action, the complainants request that the Board issue:

(a) an immediate interim order pursuant to s. 36 of the Public Service Labour Relations Act restraining CSC from taking action to interfere with the delivery of mail from IAMAW and NAFCO to correctional officers at their places of work;

(b) a declaration that CSC's actions violate sections 185 and 186 of the Public Service Labour Relations Act;

(c) an order requiring the employer to post the declaration prominently in each workplace/institution, together with a statement to the effect that employees have the right to receive IAMAW or NAFCO mailings at their places of work; and

(d) such further and other relief as counsel may advise and the Board see fit.

[7] I am appointed under the authority of section 31 of the PSLRA to sit as a panel of the Board to hear this matter.

Preliminary Matters

[8] On March 8, 2006, the complainants wrote again to the Board to reiterate their request that the Board issue, under section 36 of the PSLRA, an immediate interim order to restrain the respondent from any action to interfere with delivery of the mail in question in the complaint pending the Board's final ruling on the complaint.

[9] Section 36 of the PSLRA provides as follows:

36. The Board administers this Act and it may exercise the powers and perform the functions that are conferred or imposed on it by this Act, or as are incidental to the

attainment of the objects of this Act, including the making of orders requiring compliance with this Act, regulations made under it or decisions made in respect of a matter coming before the Board.

[10] In order to address the complainants' request for an immediate interim order, the Board scheduled a hearing on an expedited basis on March 17, 2006, on this aspect of the corrective action sought by the complainant.

[11] In view of the possibility that the complainants' request for an immediate interim order might raise legal issues about the Board's authority to take such action, I asked to confer informally with the complainants and the respondent at the outset of the hearing on March 17, 2006. As a result of these discussions, I determined that the issue of an immediate interim order could be set aside were it possible to schedule a full hearing of the complaint itself and issue a decision thereon as quickly as possible. The Board subsequently confirmed hearing dates of April 19 and 20, 2006, for the complaint.

[12] To facilitate the rapid issuance of an order, if any, in response to the complaint, the complainants and the respondent agreed that I issue my interim decision as a written finding as soon after the hearing as possible, with the summary of evidence and arguments and the reasons for decision to follow thereafter.

[13] I informed the parties that the Board would provide a copy of the documents on file to the UNION OF CANADIAN CORRECTIONAL OFFICERS – SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN ("UCCO-SACC-CSN"), as a party potentially having a substantial interest in this matter, and that the Board would also inform UCCO-SACC-CSN of its opportunity pursuant to subsection 14(1) of the *Public Service Labour Relations Board Regulations* to apply to be added as a party or an intervenor in this matter.

[14] As a result of an application from UCCO-SACC-CSN for intervenor status, and after providing the complainants and respondent an opportunity to comment, I granted intervenor status to UCCO-SACC-CSN to the extent of allowing it to present an oral argument at the end of the hearing concerning the order, if any, that I should make in this matter. Reasons for my ruling on the application for intervenor status will be included with the final decision.

Reasons

[15] As indicated above, the reasons for the ruling on the application for intervenor status, the summary of evidence and the arguments of the parties on the complaint, as well as the full reasons for the decision will be issued at a later date in Decision No. 2.

[16] I find that the refusal by the respondent to deliver the complainants' mail to correctional officers at their workplace can be characterized, in isolation, as interference in the formation of an employee organization within the meaning of paragraph 186(1)(a) of the *PSLRA*. I find, however, that this refusal does not comprise a violation of the *PSLRA* because the respondent could reasonably believe that the activity in question represents an attempt by an employee organization to persuade employees on the employer's premises, during their normal working hours, to become a member of an employee organization, an activity which, without the consent of the employer, is prohibited under subsection 188(a) of the *PSLRA*.

[17] I also find that the evidence in this case is not sufficient to establish that the actions of the respondent represent discrimination against an employee organization within the meaning of paragraph 186(1)(b) of the *PSLRA*.

[18] The complainants, consequently, have not established an unfair labour practice within the meaning of section 185 of the *PSLRA*.

[19] I note that the complaint also refers to an alleged violation of the *Canada Post Corporation Act*. At the hearing the complainants did not argue a violation of the *Canada Post Corporation Act* and I make no finding on this element.

[20] For these reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[21] The complaint is denied.

May 1, 2006.

**Dan Butler,
Board Member**