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File: 561-34-338

Citation: 2008 PSLRB 103



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

LINDA SHUTIAK, MARY BALL AND VIVIAN YOUNG

Complainants

and

UNION OF TAXATION EMPLOYEES — BETTY BANNON, NATIONAL PRESIDENT

Respondents

Indexed as

Shutiak et al. v. Union of Taxation Employees — Bannon

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

REASONS FOR DECISION

Before: Michel Paquette, Board Member

For the Complainants: Linda Shutiak

For the Respondents: Jacque de Aguayo, Public Service Alliance of Canada



(Decided without an oral hearing.)

REASONS FOR DECISION

Complaint before the Board

[1] On July 4, 2008, Linda Shutiak, Mary Ball and Vivian Young ("the complainants") filed with the Public Service Labour Relations Board (the "Board") a complaint under paragraph 190(1)(g) of the *Public Service Labour Relations Act* ("the Act"), against the Union of Taxation Employees (UTE), and Betty Bannon ("the respondents"). In their complaint, they alleged that the respondents were guilty of an unfair labour practice in refusing to conduct an investigation "as provided for in the Union's By-Laws and Regulations, without delay." They alleged that the inaction of the respondents is in violation of section 187 of the Act.

[2] The complainants initially filed an internal complaint, addressed to Ms. Bannon, the National President of the UTE, a component of the Public Service Alliance of Canada (PSAC), in March 2008 in which they made the following allegations:

...

Pursuant to UTE Reg. 26.2(2)(d), please find attached an official complaint against Terry Dupuis, Regional Vice-President. We file this complaint pursuant to provisions of the UTE By-Law 11, Section 3, paragraphs (7), (13) and (15). We thank you in advance for dealing with this serious matter immediately.

...

[3] When they felt that their concerns had not been adequately addressed, they filed a complaint with the Board.

[4] The complainants attached to their complaint a copy of the internal complaint. In their complaint to the component, the complainants alleged that a Regional Vice-President had uttered a phrase in a union meeting, which they characterize as intimidating, coercive and in violation of the UTE's anti-harassment policy. Also attached was a copy of Ms. Bannon's response, received by the complainants in April 2008, stating that an investigation would not proceed, and a copy of a letter that the complainants sent to Ms. Bannon in April 2008, rejecting her decision not to proceed.

[5] The Public Service Alliance of Canada, which is the bargaining agent and therefore the appropriate respondent, replied on behalf of UTE and Ms. Bannon on

August 5, 2008, and objected to the complaint. It submitted that the complaint did not raise a *prima facie* violation of either section 187 or section 188 of the Act.

[6] In a letter dated August 18, 2008, Ms. Shutiak clarified the complaint as follows:

...

It appears that my interpretation of Section 187 of the legislation is not that of the PSAC and the PSLRB. I read Section 187 to mean that a bargaining agent was prohibited from acting in an arbitrary, discriminatory [sic] or in bad faith in ALL dealings with its members, not limited to representation in dealings with the employer.

Therefore, I amend my complaint to include a violation of Section 188(c) (sic). I submit that this paragraph applies because the bargaining agent is refusing to take disciplinary action against a member. I was personally subjected to disciplinary action by Betty Bannon, National President of the Union of Taxation Employees, a component of the PSAC, on far less evidence than presented within this complaint. I am awaiting a Hearing [sic] date on this particular matter.

...

[7] As corrective action, the complainants requested the following on the complaint form submitted to the Board:

...

Pursuant to subsection 192. (1) (d), we request that the PSLRB order the Union of Taxation Employees (& its National President, Betty Bannon) to proceed with an investigation, as provided for in the union's By-Laws and Regulations, without delay.

...

[8] The appropriate provisions of the Act read as follows:

...

187. No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.

188. No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall

...

(c) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization's standards of discipline to that employee in a discriminatory manner;

...

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

...

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

...

192. (1) If the Board determines that a complaint referred to in subsection 190(1) is well founded, the Board may make any order that it considers necessary in the circumstances against the party complained of, including any of the following orders:

...

(d) if an employee organization has failed to comply with section 187, an order requiring the employee organization to take and carry on on behalf of any employee affected by the failure or to assist any such employee to take and carry on any proceeding that the Board considers that the employee organization ought to have taken and carried on on the employee's behalf or ought to have assisted the employee to take and carry on;

...

Objection to the Board's jurisdiction

[9] As outlined above, the bargaining agent raised an objection to the Board's jurisdiction to hear and determine the complaint. They submitted that the Board does not have the authority to intervene in an internal union matter. In light of their

objection, the PSAC requested that the complaint be dismissed without a hearing under section 41 of the Act.

Reasons

[10] The complainants allege that the UTE and Ms. Bannon violated section 187 and paragraph 188(c) of the Act because they did not investigate a complaint as per its By-laws and Regulations and because they did not take disciplinary action against one of their members.

[11] The Board and its predecessor, the Public Service Staff Relations Board (PSSRB), have repeatedly been asked to examine situations involving the internal affairs of a bargaining agent both under the PSLRA and under the predecessor legislation, the PSSRA. In *St-James et al. v. Canada Employment and Immigration Union Component (Public Service Alliance of Canada) and Cres Pascucci*, PSSRB File No. 100-1 (19920331), the Board stated:

...

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. . . .

...

[Emphasis in the original]

[12] Although *St-James et al.* predates the coming into force of subsection 10(2) of the *Public Service Staff Relations Act* in 1993, which section imposed statutorily a duty of fair representation, the line of reasoning developed by the Board in that decision was followed by the predecessor Board, as seen in *Bracciale et al. v. Public Service Alliance of Canada (Union of Taxation Employees, Local 00048)*, 2000 PSSRB 88:

...

[28] As can be seen above, the Board has no more powers than those conferred upon it by legislation. Subsection 10(2)

of the Act has been consistently interpreted by the Board as applying exclusively to a bargaining agent's representation of its members in matters directly relating to their relationship with the employer. I see no reason to differ from that line of reasoning.

...

[13] The Act, enacted in 2005, now contains provisions, outlined in section 188, which do enable the Board to inquire into the internal affairs of a bargaining agent, but only in limited circumstances. Paragraph 188(c) of the Act, relied on by the complainants in their amendment to the complaint, prohibits a bargaining agent from taking disciplinary action or imposing any form of penalty against a member "in a discriminatory manner."

[14] One of the complainants, Ms. Shutiak, claims in her letter dated August 18, 2008, that she was in the past, "personally subjected to disciplinary action by Ms. Bannon, on far less evidence than presented within this complaint". She makes no reference at all to her or the other two complainants having been subjected to disciplinary action by Ms. Bannon in the case at hand.

[15] Ms. Shutiak, as I understand it, is therefore arguing that her bargaining agent took disciplinary action against her in a discriminatory manner by imposing a penalty against her without doing the same for the member against whom she filed the complaint. Ms. Shutiak is therefore using the word "discriminatory" as a synonym for "unfair" or "arbitrary".

[16] The word "discriminatory" is not defined in the Act but I find that it refers to the prohibited grounds of discrimination as set out in the *Canadian Human Rights Act*. While the new Act does provide the Board with the jurisdiction to inquire into internal union affairs in certain circumstances, the Act does not go as far as to allow a member to subject every decision of a bargaining agent to the Board's scrutiny.

[17] If it were the intention of the legislator to allow a bargaining agent member to contest internal union decisions on the basis of fairness, the words "arbitrary" or "unfair" would have been used, as was done in section 187. The use of the word "discriminatory", which has a particular legal meaning, is important and restricts the Board's inquiry to the prohibited grounds set out in the federal human rights legislation. As the complainants do not allege that the actions of their bargaining agent

are in violation of their human rights, the complaint fails to make out a *prima facie* violation of section 187.

[18] Furthermore, Ms. Ball and Ms. Young have made no allegations whatsoever that they also were subject to disciplinary action by the bargaining agent, which action was discriminatory in nature. Therefore, they have failed to allege that they were the recipients of treatment that could lead to an allegation of a violation of paragraph 188(c).

[19] Finally, with respect to the portion of the complaint which refers to section 187 of the *Act*, I agree with the submissions of the bargaining agent. The Board has jurisdiction under section 187 of the *Act* to deal with allegations that a bargaining agent acted in a manner which is arbitrary, discriminatory or in bad faith "in the representation of any employee in the bargaining unit". It is well established in the Board's jurisprudence that section 187 does not address matters relating to the internal affairs of a bargaining agent but, rather, relates to the representation of employees by the bargaining agent in its dealings with the employer: *Kraniauskas v. PSAC et al.*, 2008 PSLRB 27. As the complainants have made no allegation concerning the union's actions vis-à-vis the employer, the complainants have failed to make out a *prima facie* case under section 187.

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

(The Order appears on the next page)

Order

[21] The complaint is dismissed.

December 5, 2008.

**Michel Paquette,
Board Member**

