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*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

FRANCINE BOUCHARD

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA et al.

Respondents

Indexed as

Bouchard v. Public Service Alliance of Canada et al.

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

REASONS FOR DECISION

Before: [Renaud Paquet, Board Member](#)

For the Complainant: [Lise Pronovost](#)

For the Respondents: [Amarkai Laryea, Public Service Alliance of Canada](#)

Heard at Montreal, Quebec,
September 26, 2008.
(PSLRB Translation)

Complaint before the Board

[1] On September 24, 2007, Francine Bouchard (“the complainant”) filed a complaint with the Public Service Labour Relations Board (“the Board”) under paragraph 190(1)(g) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (“the Act”), against the Public Service Alliance of Canada (PSAC), John Gordon, President; the Union of Taxation Employees (UTE), Betty Bannon, President; Local 10005 of the UTE, Jean-Pierre Fraser, President; Sylvie Lahaie; Michel Désilets; André Bélanger; Patrick Simoneau; Jean-Yves Martel; and Danielle Bédard (“the respondents”). The complainant alleges in her complaint that the respondents engaged in an unfair labour practice in relieving her of her union duties and stripping her of her member status.

[2] The complainant is a Canada Revenue Agency (CRA) employee in Shawinigan, Quebec. As of March 21, 2006, the complainant was the president of Local 10005 of the UTE. The UTE is the PSAC component that represents CRA employees. In October 2006, the members of the Local 10005 executive filed a complaint with the national president of the UTE against the complainant. In their complaint, they called for the complainant’s resignation from her union duties.

[3] On April 3, 2007, the President of the UTE notified the complainant that, following the UTE’s inquiry, she was relieved of her duties as president of Local 10005. The President of the UTE also notified the complainant that the UTE was working with the PSAC in its efforts to revoke her member status for a five-year period. On June 25, 2007, and then again on July 5, 2007, the PSAC wrote to the complainant, advising her of its decision to revoke her member status for the five-year period from June 8, 2007, to June 7, 2012.

[4] After the complaint was filed, the PSAC wrote to the Board, requesting that it dismiss the complaint because the conditions of subsection 190(3) of the *Act* had not been met. The PSAC based its request on two facts: the complainant had appealed the decision to suspend her, and that appeal was still pending. According to the PSAC, the complaint was thus premature.

[5] Following a pre-hearing conference on July 3, 2008 with the complainant and the PSAC, the Board decided to call the parties to a hearing that would deal only with the issue of whether the complaint was premature. This decision is further to that hearing.

Summary of the evidence

[6] The evidence filed by each party is not in dispute, although each interprets it differently. The documentary evidence is mainly composed of correspondence that the complainant exchanged with the PSAC and the UTE. Excerpts from the by-laws and regulations of the PSAC and the UTE were also adduced into evidence. In this decision, I will refer only to evidence that is necessary to decide whether the complaint is premature.

[7] On April 23, 2007, the complainant contacted Mr. Gordon, National President, PSAC, to appeal the UTE's decision to relieve her of her duties as president of Local 10005. On May 9, 2007, the PSAC's executive vice-president informed the complainant that her appeal should instead be filed with the UTE. Further to that response, the complainant contacted the UTE on May 27, 2007 to file an appeal.

[8] On July 11, 2007, the complainant contacted the PSAC's national president and executive vice-president to appeal the PSAC's decision to revoke her member status. On July 19, 2007, the PSAC wrote to the complainant to acknowledge receipt of her appeal and to inform her of the procedures to follow. The PSAC also asked the complainant to supply the name of the person who would represent her at the three-person tribunal that would hear the appeal. The complainant replied on August 13, 2007 that she would provide her representative's name after the UTE's appeal process took place.

[9] On August 27, 2007, the PSAC informed the complainant that the three-person tribunal that would be responsible for hearing her appeal regarding her membership would also deal with the UTE's decision to relieve her of her union duties. An exchange of correspondence followed between the complainant and the PSAC. Then, on October 1, 2007, the PSAC wrote to the complainant, informing her that it understood from previous correspondence that she no longer wished to pursue her appeal regarding her member status. The complainant replied immediately by email, indicating that that was not the case. Then, on October 25, 2007, the PSAC wrote to the complainant to inform her that her right to appeal the issue of her loss of member status had been restored. The PSAC also asked the complainant to supply the name of the person who would represent her at the three-person tribunal.

[10] As of the date of this hearing, the complainant's appeal still had not been heard. According to the respondents, the PSAC could not set up the three-person tribunal until the complainant and the UTE provided the names of their representatives for the tribunal. The complainant has already provided the name of her representative and, recently, so has the UTE, according to the respondents. The three-person tribunal can now be established.

[11] The complainant also adduced several documents into evidence stating her worries about the appeal process already under way and about compliance with the by-laws and regulations of the PSAC and the UTE. Those documents would be relevant if I were hearing the case on the merits, but this hearing is concerned only with determining whether the complaint is premature.

Summary of the arguments

[12] The respondents object to the complaint because it is premature. Subsection 190(3) of the *Act* states that no complaint may be made unless the complainant has presented an appeal in accordance with any procedure that has been established by the employee organization and unless the organization has dealt with the appeal. The complainant did indeed submit an appeal, but the appeal process had not yet completed at the time the complaint was filed and still has not completed at the time of this hearing.

[13] The respondents also argue that since the PSAC gave the complainant ready access to an appeal procedure, the Board should not determine this complaint under subsection 190(4) of the *Act*. That subsection states that the Board may determine the complaint if it is satisfied that the employee organization has not given the complainant ready access to an appeal procedure. However, that is not the case here, since the complainant had access to an appeal procedure.

[14] The complainant points out that the UTE never followed up on her appeal regarding her removal from office as president of Local 10005. She wanted that appeal to be heard before the appeal regarding her member status. The PSAC ignored her request. Furthermore, the PSAC's approach and the appeal procedure it proposed do not comply with the by-laws and regulations of the UTE and the PSAC.

[15] The complainant further submits that the PSAC took away her right of appeal on October 1, 2007. Her right of appeal was restored only after the PSAC received a copy of this complaint filed with the Board.

[16] Based on the by-laws and regulations of the UTE and the PSAC, the complainant argues that the PSAC does not have the right to relieve a local union executive of his or her duties. That power belongs to the UTE. By extension, the appeal on the matter should thus be heard by the UTE and not the PSAC.

[17] According to the complainant, the evidence and the facts adduced reveal that the PSAC has not given her ready access to an appeal procedure. The Board can therefore determine the complaint under subsection 190(4) of the Act.

Reasons

[18] To decide whether the complaint is premature, I must consider the following provisions of the Act:

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.

...

(3) Subject to subsection (4), no complaint may be made to the Board under subsection (1) on the ground that an employee organization or any person acting on behalf of one has failed to comply with paragraph 188(b) or (c) unless

(a) the complainant has presented a grievance or appeal in accordance with any procedure that has been established by the employee organization and to which the complainant has been given ready access;

(b) the employee organization

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or

(ii) has not, within six months after the date on which the complainant first presented their grievance or appeal under paragraph (a), dealt with the grievance or appeal; and

(c) the complaint is made to the Board not later than 90 days after the first day on which the complainant could, in accordance with paragraphs (a) and (b), make the complaint.

Exception

(4) The Board may, on application to it by a complainant, determine a complaint in respect of an alleged failure by an employee organization to comply with paragraph 188(b) or (c) that has not been presented as a grievance or appeal to the employee organization, if the Board is satisfied that

(a) the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or

(b) the employee organization has not given the complainant ready access to a grievance or appeal procedure.

...

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).

...

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

...

(b) expel or suspend an employee from membership in the employee organization or deny an employee membership in the employee organization by applying its membership rules to the employee in a discriminatory manner;

(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;*

...

[19] I find it important to recall that the Board has a relatively limited role in disputes between an employee and his or her employee organization. Generally speaking, it is not the Board's place to question or re-examine the relationship that the employee organization has with its members. The Board is able to intervene only in exceptional circumstances. Among other things, the Board must enforce section 188 of the *Act* when complaints are filed. It is then a matter of establishing whether the employee organization was discriminatory in applying its own rules and not a matter of questioning those same rules or their general application.

[20] Moreover, unless the exception under subsection 190(4) of the *Act* applies, the Board cannot accept an employee's complaint until the employee has exhausted the employee organization's appeal procedure.

[21] The evidence presented to me is unequivocal: the appeal procedure put in place by the PSAC is still pending. Accordingly, the complaint is premature and must be dismissed.

[22] There was certainly some confusion in the PSAC's handling of the appeal. First, the complainant was told that she had to apply to the UTE for her first appeal. Then, she was told that the PSAC rather than the UTE would hear the appeal. After that, part of the complainant's right to appeal was taken away temporarily, owing to a misunderstanding of her intentions. The PSAC is not entirely to blame on that point because the intentions expressed by the complainant had several possible interpretations.

[23] Nonetheless, the complainant was offered a full right of appeal, both for loss of her member status and for being relieved of her duties as president of Local 10005 of the UTE. The representatives for the complainant and the UTE have now been appointed to the three-person tribunal. The three-person tribunal that will hear the appeal appears to be about to begin its work and hear the appeal.

[24] I also dismiss the complainant's allegation that I can determine the complaint under subsection 190(4) of the *Act* because the employee organization has not

provided ready access to an appeal procedure. The evidence filed does not support that allegation. There was indeed some confusion over the handling of the complaints, but not to such an extent as to conclude that the conditions of subsection 190(4) were fulfilled.

[25] That said, I suggest that the complainant cooperate with the PSAC in the appeal procedure that she has been offered and that she participate fully in that procedure. When the PSAC renders its final decision following the appeal, the complainant may then file a new complaint within the prescribed time limits if she believes that the provisions of section 188 of the *Act* were violated.

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

(The Order appears on the next page)

Order

[27] The complaint is dismissed.

October 15, 2008.

PSLRB Translation

**Renaud Paquet,
Board Member**