Date: 20090904

File: 561-02-159

Citation: **2009 PSLRB 107**

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

MARTIN OUELLET

Complainant

and

LUCE ST-GEORGES AND PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Ouellet v. St-Georges and Public Service Alliance of Canada

In the matter of a complaint made under section 187 of the *Public Service Labour Relations Act*

Before: Michele A. Pineau, Vice-Chairperson

For the Complainant: **Himself**

For the Respondents: Guylaine Bourbeau

Heard at Drummondville, Quebec,
April 21, 2009.
(PSLRB Translation).

REASONS FOR DECISION **(PSLRB TRANSLATION)**

I. Introduction

[1] Until October 2009, the complainant, Martin Ouellet, was an employee of the Correctional Service of Canada (CSC).

[2] On April 19, 2007, the complainant filed a complaint with the Public Service Labour Relations Board ("the Board") against his bargaining agent representative, Luce St-Georges, and against the CSC under paragraphs 190(1)(*b*) and (*d*) of the *Public Service Labour Relations Act (PSLRA*).

[3] In an initial decision issued on January 27, 2009 (*Ouellet v. Public Service Alliance of Canada and Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 9), I dismissed the complaint filed against the employer. The bargaining agent withdrew its objection that the complaint was untimely. I also granted the complainant's request for a continuance, on certain conditions, so that he could obtain representation from counsel.

[4] In that decision, I instructed the complainant that, at the resumption of the hearing, his evidence was to be limited to the provisions of section 187 of the *PSLRA*, that is, the bargaining agent's duty of fair representation with respect to the grievance for which adjudicator Tessier rendered a decision in *Ouellet v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 23, and that he would have the burden of proof with respect to his complaint against the bargaining agent.

[5] At the resumption of the hearing on April 21, 2009, counsel for the complainant, Jean-François Houle, was in attendance but withdrew from the case at the beginning of the hearing after explaining to me that his client understood the entire matter, the nature of the complaint and the fact that he had the burden of proof.

II. Complainant's evidence and arguments

[6] At the time of the facts relevant to the complaint, the complainant was a parole officer (WP-4) at Drummond Institution. In 2002, the complainant was investigated for failing to consider a psychological report that contradicted his perception of the potential risk associated with the parole of an inmate. During the investigation, the complainant was assigned administrative duties.

[7] On February 5, 2003, the employer decided that the complainant had performed his duties inappropriately and in a manner that, directly or indirectly, had placed the public's safety at risk. It imposed a disciplinary sanction of a $500 monetary penalty along with a number of administrative measures, including a return to probationary status for six months, participation in training for new parole officers and the achievement of certain objectives concerning the quality of his work. The disciplinary report indicated that, in the event of a similar incident or of a failure to meet the objectives, the complainant would potentially be subject to discipline up to and including dismissal or demotion.

[8] The complainant was informed of the disciplinary sanction in the presence of his bargaining agent representative, Ms. St-Georges. Although the complainant considered the $500 sanction excessive, he decided to accept it without contesting it and informed Ms. St-Georges of his decision. The complainant was reinstated in his duties and sincerely believed that he would be able to meet the employer's expectations. The complainant quickly realized that he had made a very bad decision because, by accepting the disciplinary sanction, he acknowledged that he was guilty of an error that management considered very serious, and he had crossed a further step in the progressive application of discipline.

[9] Another incident occurred on October 23, 2003. At a cellblock committee meeting, the complainant presented a case file that did not contain the reasons justifying granting a reintegration, information crucial to decision making. Marc Lanoie, the unit manager and the complainant's superior, sent a memorandum to the institution's warden questioning the quality of the complainant's reports, his lack of judgment, his understanding of the system and his role as a parole officer. The complainant was subject to a new disciplinary investigation. During the investigation, he was assigned to the storeroom. The complainant tried to explain his actions to the Warden but was unsuccessful. According to the complainant, the internal committee conducted only a summary investigation and did not consider his explanations. The committee found that the complainant was at fault.

[10] Under cross-examination, the complainant admitted that the only incident investigated was the case file considered by the cellblock committee on October 23, 2003, and not all the concerns raised in Mr. Lanoie's memorandum, as he had alleged. The complainant also admitted that he was given Mr. Lanoie's memorandum

and that he had full knowledge of the facts. He acknowledged admitting his mistake to the investigators.

[11] On December 11, 2003, the employer imposed an $800 sanction on the complainant and gave him the choice of dismissal or demotion to the position of linen attendant (GS-STS-04), which represented a loss of $25,000 in annual salary. The complainant accepted the linen attendant position subject to his right to file a grievance and signed a document to that effect.

[12] The complainant was represented by the Public Service Alliance of Canada ("the bargaining agent") at all stages of the grievance process as follows: by Ms. St-Georges at levels 1 and 2 and by Michel Charbonneau at level 3. In cross-examination, the complainant admitted that he had been well represented, especially by Mr. Charbonneau, but that Mr. Charbonneau had been surprised to learn that the complainant had signed the agreement to his demotion.

[13] On January 17, 2005, the complainant and the employer signed a memorandum of understanding under which the $800 sanction was repaid to the complainant and the grievance withdrawn. The memorandum was concluded with Mr. Charbonneau's assistance.

[14] In February 2007, the institution's warden met with the complainant in the presence of Ms. St-Georges to inform him of adjudicator Tessier's decision. In short, the adjudicator upheld the employer's objection and determined that he did not have jurisdiction to hear the grievance because the complainant could have contested his demotion under another redress procedure under federal law, specifically, the *Public Service Employment Act*. At the end of the meeting, the complainant told the Warden in an aggressive tone that she had not heard the last of him. Thereafter, he criticized Ms. St-Georges for not having informed him of the adjudicator's decision directly rather than allowing the Warden to do so. In cross-examination, he admitted that, after receiving adjudicator Tessier's decision, he prepared a complaint for filing with the Public Service Commission (PSC) but did not send it because the time limits for doing so had expired. He spoke about it with his new bargaining agent representative but not with Ms. St-Georges.

[15] In early March 2007, while the complainant was in the cafeteria, a fire broke out in the laundry for which he assumed responsibility. On March 9, 2007, the complainant

was called to the office of the Director of Management Services. She told him that she did not believe that he was capable of fulfilling his duties and that it was in his interest to sign a consent form for an assessment of his medical condition and his ability to work. The Director asked him to leave the workplace, and he was escorted to the institution's property line. The complainant showed up for the medical assessment two days later and returned to work a few days after that as if nothing had happened. The complainant stated that he never received the Health Canada medical report and that he does not know why the employer asked for the assessment.

[16] The complainant's complaints against Ms. St-Georges are as follows:

1) Failing to explain to him the consequences of not contesting the $500 sanction and management's expectations about his work. According to the complainant, Ms. St-Georges should have advised him to file a grievance to prevent the disciplinary consequences of that incident. He criticizes Ms. St-Georges for not negotiating management's expectations for his work, including the need for additional training.

2) Failing to "energetically" contest the findings of the November 2003 disciplinary investigation and to raise the unfairness of the investigative process as well as his state of anxiety at the time he made his presentation to the cellblock committee. The complainant claims that, if he had known of the nature of the allegations at the time of his meeting with the investigative committee, he would have been able to refute all the incidents that were the subjects of the findings of the investigation report. The complainant believes that his fragile psychological state prevented him from confronting Mr. Lanoie and that Ms. St-Georges did not offer the moral support he might have expected from a bargaining agent representative at a time when he was experiencing significant anxiety as a result of management's systematic refusal to meet with him to discuss the handling of his cases and to consider alternative work solutions.

3) Failing to inform him that, in addition to a grievance, he had another administrative procedure for redress against the employer's decision to demote him. The complainant claims that he is very disappointed by Ms. Georges' passive attitude concerning the 2003 disciplinary sanctions.

4) Failing to provide assistance when he was forcibly removed from the institution.

[17] The complainant states that, in addition to great personal distress, he lost his professional status and his self-esteem; his health has been compromised, and his family life has been profoundly disrupted. His removal from work under escort contributed to unwarranted rumours of disciplinary sanctions. The complainant is no longer eligible for the 20-year continuous service award. The last four years of his career working as a day labourer isolated him from his peer group. The sanctions imposed on him have prevented him from performing any other jobs at his work site. He has suffered a significant monetary loss of $100,000 in salary over four years, which resulted in a major monetary reduction to his pension.

[18] The complainant believes that the disastrous consequences he suffered in 2003 are evidence that he did not receive proper representation and that he did not have the opportunity to defend himself. The complainant recognizes that it is very difficult to prove anyone’s bad faith, but he is still confused by Ms. St-Georges’ acquiescence concerning the progress of his disciplinary file.

III. The bargaining agent’s evidence and arguments

[19] Ms. St-Georges is a parole officer. She was a bargaining agent representative from 1988 to 2008 and bargaining agent president from 1998 to 2007. She became acquainted with the complainant’s case in 1990 and assisted him in all his efforts from then until he was demoted to the laundry. In November 2001, the complainant received a written reprimand for forging the signature of a unit manager on a document in order to move a case forward more quickly. He chose not to be represented by the bargaining agent. After that, the complainant was subjected to several disciplinary investigations about errors in his work. As a result, the complainant was closely monitored by his superiors so that he could work independently.

[20] Ms. St-Georges supported the complainant before, during and after the disciplinary sanction was imposed on February 5, 2003. She discussed with him the possible consequences of the sanction and the fact that he was exposing himself to demotion and to more serious measures in the event of further errors. The complainant was inflexible and did not want to file a grievance. The complainant’s work continued to be closely monitored by Mr. Lanoie.

[21] Ms. St-Georges also accompanied the complainant during the November 2003 disciplinary investigation and ensured that Mr. Lanoie was not part of the investigative committee because of a clear conflict of interest. She obtained for the complainant a copy of Mr. Lanoie's complaint to the Warden about the complainant's work. When the disciplinary sanction was imposed on December 11, 2003, Ms. St-Georges informed the complainant of his recourse and advised him to file two grievances, one for the $800 fine and a second one alleging that the imposition of the demotion was a double penalty for the same incident. The grievance with respect to the $800 fine was the subject of a settlement. The second grievance was addressed by adjudicator Tessier's decision. Ms. St-Georges represented the complainant at the first and second levels of the grievance process, and Mr. Charbonneau represented him at the third level.

[22] The complainant's reaction in the Warden's office to adjudicator Tessier's decision raised concerns that he might one day lose control of his emotions. Ms. St-Georges contacted the bargaining agent's counsel to allow the complainant to address adjudicator Tessier's decision.

[23] Ms. St-Georges pointed out that the complainant's mistakes in handling his cases affected his colleagues. If he misled his colleagues through omissions in reviewing his cases, all his colleagues were subject to the consequences. Ms. St-Georges must defend the rights of all the employees that she represents. If the employer found a genuine error, she had to advise the complainant accordingly. On the contrary, the complainant did not provide her with all the information about the October 23, 2003 incident until the disciplinary sanction was imposed on December 11, 2003.

[24] On behalf of Ms. St-Georges, the bargaining agent argues that it was the complainant's decision not to file a grievance contesting the February 5, 2003 disciplinary sanction. As for the December 11, 2003 sanction, the complainant acknowledged that he was well represented at his grievance hearing. The complainant even admitted being very satisfied with Mr. Charbonneau's assistance. Ms. St-Georges not only represented the complainant when the disciplinary sanctions were imposed and during the grievance process, she also helped him with his testimony during the administrative investigations.

[25] The bargaining agent gave the complainant's case special attention, going so far as to hire counsel from private practice to represent him before adjudicator Tessier. Even though the adjudicator upheld the employer's preliminary objection, the

complainant had recourse to an administrative procedure for redress, which he chose not to exercise. The complainant decided that a complaint with the PSC was untimely, not the bargaining agent.

[26] The bargaining agent argues that the complainant has not demonstrated that it acted in bad faith or in a discriminatory manner with respect to its representation of him. The complainant may be disappointed, confused and uncertain about some outcomes, but that does not prove that the bargaining agent represented him unfairly.

IV. Reasons

[27] Section 187 of the *PSLRA* sets out the bargaining agent's obligation to provide fair representation 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.*

[28] The duty of fair representation is the counterpart to the exclusive power of the bargaining agent to act as spokesperson for the members of the bargaining unit.

[29] The duty of fair representation is a fundamental principle of Canadian labour relations legislation and is found in almost all provincial and federal labour statutes. It has been the subject of long-standing and consistent interpretation not only by labour boards but also by the courts. The principles that govern the bargaining agent's duty are enshrined in the following quotation from the Supreme Court of Canada in *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509:

> *. . .*
>
> *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
>
> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its*

> *consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

. . .

[30] Although those criteria were developed to determine whether a bargaining agent appropriately used its discretionary power to file a grievance and refer it to arbitration, the same principles apply generally to the bargaining agent's conduct in handling an employee's grievance file. Thus, the Board's role is not to examine on appeal the bargaining agent's decision of whether to file a grievance or to refer it to adjudication but rather to evaluate the manner in which it handled the grievance. In other words, the Board rules on the bargaining agent's decision-making process and not on the merits of a grievance or complaint. That said, it is often necessary to review the facts to determine whether the bargaining agent's decision-making process reflects the value and seriousness of a given case.

[31] In a complaint under section 187, the grievor bears the onus of presenting evidence sufficient to establish that the bargaining agent failed to meet its duty of fair representation.

[32] Moreover, the bargaining agent's duty of fair representation assumes that the grievor takes the necessary measures to protect his or her own interests. He or she must inform the bargaining agent of his or her willingness to file a grievance and act within the time limits set out in the collective agreement. He or she must collaborate with the bargaining agent by providing the information required to prepare his or her case and follow the bargaining agent's advice on how to behave during the grievance process. If the grievor neglects any of those things, he or she risks the Board dismissing the complaint. The Board will not usually allow a complaint where the bargaining agent obtained a reasonable settlement that the complainant subsequently rejected.

[33] The *PSLRA* provides the bargaining agent with exclusive authority over the negotiation and administration of the collective agreement because that is part of being an effective spokesperson for members of the bargaining unit as a whole. A

bargaining agent's power in its relationship with the employer is derived from the fact that it fairly represents a specific group of employees and, as a consequence, is in a position to make commitments that the employer can then rely on. To receive something in return for such commitments requires that the bargaining agent consider the interests of the employee group as a whole as well as the needs of individual employees.

[34] In deciding whether to file a grievance or to refer a grievance to adjudication, the bargaining agent is doing its job of representing employees. To that end, it must determine the conditions that may have led to a breach of the collective agreement based on its experience of relations between itself and the employer. The bargaining agent must also consider the impact of a grievance on the other members of the bargaining unit. To the extent that its analysis of a case is based on relevant factors, the bargaining agent has the freedom to choose the optimal strategy in a given situation.

[35] The duty of fair representation begins as soon as a possibility exists that discipline may be imposed and extends throughout the grievance process to its final conclusion. There is no exhaustive list of items that an employee organization must consider in deciding whether to file a grievance or to refer a grievance to adjudication. However, there are a number of established principles, including those that follow.

[36] The bargaining agent must not act unlawfully, for example allowing the personal feelings of bargaining agent officials to influence the decision of whether to pursue a grievance or allowing the political ambitions of a few to negatively affect the interests of another employee.

[37] A bargaining agent must not discriminate on the basis of age, race, religion, sex or medical condition, as set out in the *Canadian Charter of Rights and Freedoms*. Each member of the bargaining unit is entitled to individual treatment with respect to his or her case, and the bargaining agent must consider only relevant and lawful factors when deciding whether to file a grievance or to refer it to adjudication. The bargaining agent must be able to justify its actions objectively and reasonably. It must not blindly believe the employer's position without conducting its own investigation.

[38] It is legitimate for the bargaining agent to consider the employee's credibility, the presence or absence of witnesses that could support the employee's version of

events, the possibility of whether the discipline is reasonable and the decisions of adjudicators in similar circumstances.

[39] In short, the bargaining agent's obligation is to carry out its duty of representation in a reasonable manner, taking into account all the related facts, investigating the situation, weighing the conflicting interests of the employee, drawing considered conclusions as to the potential outcomes of the grievance and then informing the employee of its decision on whether to pursue the grievance.

[40] After hearing the evidence and arguments of the parties and applying the above principles, I am of the opinion that the complaint of unfair representation must be dismissed for the following reasons.

[41] The complainant alleges that the bargaining agent failed in its duty of fair representation in the following four areas:

A) failing to explain to the complainant the consequences of not contesting the February 5, 2003 disciplinary sanction;

B) failing to contest the unfairness of the investigative process and the findings of an internal investigation performed in November 2003;

C) failing to inform the complainant that, in addition to a grievance, he had an administrative procedure of redress against the employer's decision to demote him; and

D) failing to help the complainant when he was forcibly removed from the institution in March 2007.

A. Failing to explain to the complainant the consequences of not contesting the February 5, 2003 disciplinary sanction

[42] The complainant's allegation that the bargaining agent apparently failed to inform him of the consequences of not contesting the February 5, 2003 disciplinary sanction does not reflect the facts as revealed by the evidence. In his testimony, the complainant admitted that he decided to accept the disciplinary sanction without contesting it because of his state of anxiety at that time. As required of her by the duty of fair representation, Ms. St-Georges explained to the complainant the possible consequences of the disciplinary sanction and the fact that he was opening himself up

to demotion or to more serious measures should further incidents occur. Despite the warning, the complainant refused to file a grievance. There is no evidence that the complainant asked Ms. Georges to negotiate the administrative sanctions imposed on him. On the contrary, he testified that he believed that he was able to meet them. It was only in hindsight that he realized that he made a bad decision. Under the circumstances, the failure to contest the disciplinary sanction is not attributable to Ms. St-Georges. She met her duty by accompanying the complainant to the disciplinary meeting. She provided him with advice. The complainant acted otherwise. The complainant must assume full responsibility for his decision to accept the disciplinary sanction without contesting it. He cannot reverse that decision.

B. Failing to contest the unfairness of the investigative process and the findings of an internal investigation performed in November 2003

[43] The complainant also alleges that Ms. Georges did not “energetically” contest the findings of the disciplinary investigation performed in November 2003, which led to the December 11, 2003 disciplinary sanction, and that she did not raise the unfairness of the investigative process.

[44] Ms. St-Georges first ensured that Mr. Lanoie would not be part of the investigative committee because the investigation had been triggered by his memorandum expressing his dissatisfaction with the complainant’s performance. Ms. St-Georges accompanied the complainant during his interview with the investigators and, according to the report, she intervened on more than one occasion. According to the committee’s report, the complainant met with it on November 18, 2003. During that meeting, Ms. St-Georges pointed out that Mr. Lanoie’s memorandum of October 24, 2003 had not been shared with Mr. Ouellet. Because of her intervention, the memorandum was provided to the complainant on November 20, 2003. On November 21, one of the members of the investigative committee met with the complainant to inform him that the committee would consider only the information about the incident of October 23, 2003 and not the other facts alleged in the memorandum in question. The complainant stated that he was satisfied with that clarification. The complainant cannot now claim that he was taken by surprise or that he did not have all the relevant information about the disciplinary investigation. The investigation report was released on November 27, 2003, which was after the meeting with the complainant in which he was provided with the clarifications.

[45] Furthermore, the investigation report contains two important admissions by the complainant:

> [Translation]
>
> *. . .*
>
> *He [the complainant] told the committee that he was not able, from a personal standpoint, to make a proper presentation.*
>
> *. . . the employee voluntarily admitted that he had not provided all the existing information and pointed out that it was not because of bad faith or to hide the information.*
>
> *. . .*
>
> *Findings*
>
> *Given that Mr. Ouellet voluntarily admitted that he did not provide all the relevant information during his presentation to the cellblock committee on October 23, 2003 . . . The investigative committee did not consider it relevant to meet with the people who were present at the October 23 cellblock committee meeting other than with the unit manager, Mr. Lanoie.*
>
> *. . .*
>
> [Emphasis added]

[46] In light of the investigators' comments, I have difficulty understanding how the complainant can complain about Ms. St-Georges' failure to contest the findings of the investigation and the unfairness of the investigative process. The complainant admitted his mistake. The investigators did not have to go any further. Ms. St-Georges had nothing to contest. The investigative committee looked at the October 23, 2003 incident, nothing else, and concluded that the complainant had made a serious error. The complainant's conduct was even more serious given that he already had two active disciplinary sanctions in his file, one as recent as February 5, 2003. The investigative committee felt that there had been a repetition of a very serious infraction and that the error could have serious consequences. The committee recommended a disciplinary and/or administrative sanction. Since the complainant's mistakes with his cases affected the work of other parole officers, Ms. St-Georges had to exercise her judgment based on the consequences for all members of the unit she represented and not just the complainant. By choosing a strategy that involved filing two grievances, she fully met her duty of fair representation, and she cannot be reproached for that decision. There is no evidence that she acted negligently or that she put the interests of the employer before those of the complainant.

[47] The Board's role is not to judge the legitimacy of the disciplinary sanction imposed by the employer, but to determine whether the bargaining agent fulfilled its duty to the complainant during the disciplinary process. Ms. St-Georges did everything she could for the complainant, given his admission that he made a mistake. She could not defend the indefensible. It should be noted that the grievance contesting the $800 sanction resulted in a settlement and that the grievance against the demotion was referred to adjudication. Following adjudicator Tessier's decision, Ms. St-Georges made arrangements for the complainant to communicate with the counsel who represented him to discuss the consequences. The complainant did not mention in his testimony that he took advantage of that opportunity. I am of the view that the bargaining agent dealt with the complainant's case seriously and that it considered all its elements. For all those reasons, this allegation is unsubstantiated.

C. **Failing to inform the complainant that, in addition to a grievance, he had an administrative procedure of redress against the employer's decision to demote him**

[48] The complainant criticizes Ms. St-Georges for failing to inform him that, in addition to a grievance, he had another administrative procedure of redress against the employer's decision to demote him. Under cross-examination, the complainant admitted that, after learning of adjudicator Tessier's decision, he prepared a complaint to file with the PSC but that he never sent it because he believed that it was untimely. He did not seek Ms. St-Georges' advice about this; he decided on his own that the time limits for filing a complaint had expired. Although Ms. St-Georges should have known that the complainant had a recourse before the PSC tribunal, the complainant did not allow her to correct her mistake. Given that Ms. St-Georges had assisted the complainant in his efforts since 1990, it seems to me that the complainant should have had enough faith in her to speak to her about the possibility of filing a complaint before the PSC. She could have intervened, for example, by requesting an extension of time for filing a complaint if the time had indeed expired. The bargaining agent's representation does not have to be perfect, but a complainant must collaborate with the bargaining agent before complaining that its representation was less than fair. Under these circumstances, this allegation by the complainant is unsubstantiated.

D. Failing to help the complainant when he was forcibly removed from the institution in March 2007

[49] In March 2007, the complainant was assigned to a linen attendant position in the GS Group, which is also a bargaining unit under the Public Service Alliance of Canada. Representing that group of employees is not Ms. St-Georges' responsibility. The complainant did not adduce any evidence that he had asked his bargaining agent for help at the time of his removal and that he had been refused such assistance. Moreover, this allegation is not part of the complaint filed with the Board on April 13, 2007 and is therefore moot. This allegation is dismissed.

[50] In this case, the complainant had the burden of establishing that the bargaining agent failed in its duty of fair representation. For the reasons given earlier, the complainant has not met his burden of proof. The complainant did not take the necessary measures to protect his own interests. He refused to file a grievance. He did not collaborate by providing all the information required to prepare his case. He did not follow the advice of the bargaining agent.

[51] The bargaining agent met its duty of fair representation by being involved from the beginning of the disciplinary process with respect to the two sanctions imposed on the complainant. In terms of the grievances that followed the December 11, 2003 disciplinary sanction, the bargaining agent continued to be involved throughout the grievance process until the final conclusion.

[52] The complainant did not adduce evidence that the bargaining agent acted unlawfully or in a discriminatory manner. The complainant received individual treatment of his case, and the bargaining agent considered relevant factors in analyzing that case. The grievance for which an amicable settlement was not reached was referred to adjudication. The complainant did not complain about the quality of his representation at adjudication. The bargaining agent was able to justify its actions objectively and reasonably. The complainant provided no evidence that would have justified the bargaining agent doing more than what the complainant asked it to do on his behalf.

[53] I therefore find that the bargaining agent met its duty of fair representation by considering all the facts and the interests of the complainant.

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

(The Order appears on the next page)

V. Order

[55] The complaint is dismissed.

September 4, 2009.

PSLRB Translation

Michele A. Pineau,
Vice-Chairperson