Date: 20091015

File: 561-02-198

Citation: 2009 PSLRB 130

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

FRANCINE PARADIS

Complainant

and

CHERYL FRASER AND TREASURY BOARD

Respondents

Indexed as
Paradis v. Fraser and Treasury Board

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: Herself

For the Respondent: Muriel Lamothe, counsel, Treasury Board

Decided on the basis of written submissions filed January 17, 2008 and September 22, 2009.
(PSLRB Translation)

I. Complaint before the Board

[1] Francine Paradis ("the complainant") works as a program officer at the WP-04 group and level for the Correctional Service of Canada (CSC) at Cowansville Institution. On November 9, 2007, she made a complaint with the Public Service Labour Relations Board ("the Board") against Cheryl Fraser, Assistant Commissioner, CSC. The complainant based her complaint on paragraphs 190(1)(*a*), (*c*), (*e*), (*f*) and (*g*) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 ("the *Act*"). On November 20, 2007, the Treasury Board asked the Board to add it as a respondent to the complaint. Since the complainant did not object to the request, the Board determined that Cheryl Fraser and the Treasury Board were the "respondents" to this complaint.

[2] In April 2002, the CSC's program officers, including the complainant, were reclassified from the WP-03 group and level to the WP-04 group and level. However, the program officers claimed that the reclassification should have been retroactive to 1998. Roger Tousignant and Denis Paradis, two program officers, filed a grievance against the effective date of the reclassification. In 2006, Mr. Tousignant and Mr. Paradis obtained a negotiated settlement of their grievances by which the CSC paid them financial compensation in exchange for the withdrawal of the grievances. The negotiated settlement applied only to Mr. Tousignant and to Mr. Paradis. The other program officers, including the complainant, did not receive any financial compensation for the period from 1998 to 2002. On August 30, 2007, the complainant wrote to Ms. Fraser to request that the other program officers also receive financial compensation for the period from 1998 to 2002. The complainant states that she did not receive any response from Ms. Fraser.

[3] The complainant is asking that, as a corrective measure, all program officers employed between 1998 and 2002 be paid according to the pay scale applicable to the WP-04 group and level.

[4] Section 190 of the *Act*, on which the complaint is based, reads 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.*
>
> . . .

[5] The complainant alleges that Ms. Fraser's decision not to apply to the other program officers the same treatment she applied to Mr. Tousignant and Mr. Paradis is inequitable and discriminatory because all program officers had the same job description and performed the same work between 1998 and 2002. It is an unfair labour practice within the meaning of the *Act*. The respondents treated all program officers unfairly by entering into an agreement with two of them and not applying that agreement to the others. The principle of equity was not respected.

[6] The respondents claim that they have not contravened the *Act*. They argue that a settlement through a memorandum of agreement does not confer a particular right on employees who are not a party to the dispute that is the subject of the settlement. Moreover, the complainant's allegations do not meet any of the existing criteria for filing a complaint under section 190 of the *Act*. Lastly, the complaint was not made within the 90 days specified in subsection 190(2) of the *Act*.

II. Reasons

[7] The complainant bases her complaint on paragraphs 190(1)(*a*), (*c*), (*e*), (*f*) and (*g*) of the *Act*. Those paragraphs refer to sections 56, 107, 117, 132, 157 and 185 of the *Act*.

[8] Sections 56, 107 and 132 of the *Act* stipulate that the terms and conditions of employment must not be changed while certification or bargaining processes are ongoing. There are no facts or allegations in the complaint referring to such changes.

[9] Sections 117 and 157 of the *Act* deal with the timelines for implementing a negotiated collective agreement or an arbitral award. There are no facts or allegations in the complaint referring to non-compliance with those timelines.

[10] The unfair practices referred to in section 185 of the *Act* involve employer interference in the business of an employee organization (paragraph 186(1)(*a*)) and employer discrimination against an employee organization (paragraph 186(1)(*b*)) or a person who is a member of or who participates in an employee organization or who exercises any right under the *Act* (subsection 186(2)). Sections 187 and 188 impose restrictions on employee organizations. Subsection 189(1) states that no person shall intimidate or coerce an employee to become or to refrain from becoming a member of an employee organization or to refrain from exercising any other right under Part 2 of the *Act*. There are no facts or allegations in the complaint that constitute an unfair labour practice within the meaning of section 185.

[11] The complainant has not shown that the respondents contravened the provisions of the *Act* on which she bases her complaint. Moreover, she has not shown that the respondents have contravened any other provisions of the *Act*.

[12] The complaint has shown that she was the victim of a treatment that she considered inequitable and unfair. On that point, she may be correct, but it is not enough for a treatment to be inequitable or unfair to conclude that the *Act* has been contravened. The respondents decided not to apply to the other program officers the settlement that they had reached with Messrs. Tousignant and Paradis. They had the right to act as they did, at least under the *Act*.

[13] Having dismissed the complaint on its merits, I do not have to rule on the timelines question that the respondents invoked.

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

(The Order appears on the next page)

III. Order

[15] The complaint is dismissed.

October 15, 2009.

PSLRB Translation

Renaud Paquet,
Board Member