Date: 20091008

File: 561-34-207

Citation: 2009 PSLRB 124

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

WILLIAM ADAMS AND WAYNE RICHARDSON

Complainants

and

UNION OF TAXATION EMPLOYEES

Respondent

Indexed as
Adams and Richardson v. Union of Taxation Employees

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 Complainants: Themselves

For the Respondent: Jacquie de Aguayo, Public Service Alliance of Canada

Decided on the basis of written submissions filed December 20, 2007, and September 21, 2009.

I. Complaint before the Board

[1] On December 13, 2007, William Adams and Wayne Richardson ("the complainants") filed a complaint against the Union of Taxation Employees ("the respondent"). The respondent is a component of the Public Service Alliance of Canada, the complainants' bargaining agent. The complainants allege that the respondent committed an unfair labour practice within the meaning of paragraph 190(1)(*g*) of the *Public Service Labour Relations Act*, s.c. 2003, c. 22 ("the *Act*"). The complainants allege that the respondent refused to pursue their grievance, which challenged the decisions of the Canada Revenue Agency ("the employer") denying them overtime opportunities.

[2] The complaint involves the following provisions of the *Act* :

. . .

> ***190.*** *(1) The Board must examine and inquire into any complaint made to it that*
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> . . .
>
> (g) *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*
>
> . . .
>
> ***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).*
>
> . . .
>
> ***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.*

. . .

[3] In October 2005, the employer denied the complainants the opportunity to work overtime because overtime was offered only to employees at the PM-01 group and level. The complainants were at the PM-02 group and level. The complainants discovered at a union meeting in February 2006 that the overtime in question was also

offered to some employees at the PM-02 and PM-03 groups and levels. Armed with that new information, the complainants filed a grievance on March 22, 2006.

[4] At the first level of the grievance procedure, the employer concluded that the grievance was untimely. It also answered that, even if timely, the grievance would have been rejected. The grievance was referred to the other levels of the grievance procedure, and it was denied at each level. On September 10, 2007, the respondent informed the complainants that the grievance would not be referred to adjudication based on its circumstances and issues.

II. Summary of the arguments

[5] The complainants disagree with the positions and arguments provided by the employer at the different levels of the grievance procedure. They believe that their grievance should have been allowed.

[6] The complainants alleged that they were not invited by the respondent to attend the grievance hearing at the second, third and final levels of the grievance procedure. After the first level of the grievance procedure, they were not asked any questions by the respondent. The respondent did not consult the complainants' witnesses, who could have supported their claims. From the nature of the employer's responses to the grievance, the complainants concluded that they were not properly represented.

[7] Given that the employer's contentions could be easily refuted, the complainants asked the respondent to refer their grievance to adjudication. The respondent refused. The complainants allege that the decision was based on a precedent, which, in their minds, was a weak case.

[8] The respondent claimed that, according to the existing case law, equitable distribution of overtime cannot be assessed based on one or two missed opportunities. Rather, there must be a demonstrated inequity over a reasonable period of time. The complainants' case did not meet that criteria, and on that basis, a decision was made not to refer the grievance to adjudication.

[9] The respondent submitted that the complainants have not established that it contravened its obligation under section 187 of the *Act*. The respondent acted with due diligence and exercised its discretion in an informed manner with supporting case law.

III. Reasons

[10] The complainants believe that the respondent did not properly represent them at the upper levels of the grievance procedure. In support of that allegation, they raised the fact that the respondent did not invite them to attend the grievance hearings, that the respondent did not ask them any questions and that the respondent did not consult their witnesses. The complainants also concluded that, based on the nature of the employer's responses to the grievance, they were poorly represented. Finally, the complainants alleged that the respondent should have referred their grievance to adjudication.

[11] To conclude that the respondent violated section 187 of the *Act*, the complainants needed to present evidence that the respondent acted in a manner that was arbitrary or discriminatory or in bad faith in their representation. Nothing in the complainants' submissions, even if proven, constitutes evidence that the respondent violated the *Act*.

[12] There is no obligation for a bargaining agent to invite employees to attend grievance hearings, to keep in touch with a grievor or to consult witnesses while pursuing a grievance at the upper levels of the grievance procedure. If the respondent chose not to do those things, it does not mean that it acted arbitrarily, in bad faith or in a discriminatory manner. Furthermore, an employee cannot make an assessment of the work done by a bargaining agent from the response received from the employer.

[13] The *Act* does not oblige a bargaining agent to refer employees' grievances to adjudication. In *Canadian Merchant Service Guild v. Gagnon et al.,* [1984] 1 S.C.R. 509, the Supreme Court of Canada established that it is sufficient for a bargaining agent to demonstrate that it has looked at the circumstances of the grievance, considered its merits and made a reasoned decision whether to pursue the case.

[14] The complainants did not convince me that the respondent did not meet its legal obligation in refusing to refer their grievance to adjudication. I believe that the respondent took the time to analyze the situation before concluding that there was nothing to be gained from referring the grievance to adjudication. My role is not to decide if the respondent made the right decision in not going to adjudication but rather to examine if the respondent's decision was arbitrary, discriminatory or made in

bad faith. Nothing presented to me could lead me to believe that the respondent's decision could be qualified in that way.

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

(The Order appears on the next page)

IV. Order

[16] The complaint is dismissed.

October 8, 2009.

Renaud Paquet,
Board Member