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**Files:** 561-02-197 and 232

**Citation:** 2009 PSLRB 133



*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**FRANCINE PARADIS AND GILLES MARTINEAU**

Complainants

and

**UNION OF SOLICITOR GENERAL EMPLOYEES, JOHN EDMUNDS,  
SUZANNE GAUTHIER AND PUBLIC SERVICE ALLIANCE OF CANADA**

Respondents

Indexed as

*Paradis and Martineau v. Union of Solicitor General Employees et al.*

In the matter of complaints filed under section 190 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

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

***For the Complainants:*** [Themselves](#)

***For the Respondents:*** [Jacquie de Aguayo, Public Service Alliance of Canada](#)

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Decided on the basis of written submissions  
filed December 5, 2007, June 11 and July 7, 2008, and September 25, 2009.  
(PSLRB Translation)

**I. Complaints before the Board**

[1] On November 9, 2007, Francine Paradis made a complaint (PSLRB File No. 561-02-197) with the Public Service Labour Relations Board (“the Board”) against the Union of Solicitor General Employees (USGE), a component of the Public Service Alliance of Canada (PSAC). On May 3, 2008, Gilles Martineau made a complaint (PSLRB File No. 561-02-232) with the Board against John Edmunds, President, USGE; Suzanne Gauthier, Labour Relations Officer, USGE; and the PSAC. The complaints that Ms. Paradis and Mr. Martineau (“the complainants”) made are based on paragraph 190(1)(g) of the *Public Service Labour Relations Act* (“the Act”). The parties to the complaints agreed to have them dealt with together given that they refer essentially to the same events. The respondents for the two complaints are the Union of Solicitor General Employees, John Edmunds, Suzanne Gauthier and the PSAC.

[2] In February 1998, the Correctional Service of Canada (CSC) decided to reclassify parole officer positions at the WP-03 group and level to the WP-04 group and level. CSC program officers in the Quebec Region also asked to be reclassified from the WP-03 group and level to the WP-04 group and level. The CSC denied their request, and 30 of them, the complainants among them, filed a group grievance. The grievance was dismissed at the final level of the grievance process in December 2000. The CSC then decided to amend the work description for the program officers and to reclassify their positions to the WP-04 group and level as of April 1, 2002. The CSC’s decision was not retroactive, and the new classification did not come into effect until April 1, 2002.

[3] Because the CSC’s decision was not retroactive, Roger Tousignant and Denis Paradis, co-workers of the complainants and signatories to the 1998 group grievance, filed grievances asking that their positions be reclassified to the WP-04 group and level retroactive to 1998. However, it was not clear from the documentation submitted whether the grievances were in fact classification grievances or whether they were acting pay grievances. The grievances were settled in late 2006 through a confidential agreement signed by the two employees, the PSAC and the employer. Under the agreement, the employer agreed to pay a sum to the two employees in exchange for them withdrawing their grievances. The complainants claim that they were informed of the essence of the agreement in January 2007 in response to an access to information request.

[4] The complainants felt aggrieved because the January 2007 agreement did not apply to them even though their duties and their situations were similar in every way to those of Mr. Tousignant and Mr. Paradis. Therefore, the complainants decided to file grievances on February 28, 2007. The complainants accuse the respondents of refusing to represent them in their grievances of February 28, 2007 at the final level of the internal grievance process and for refusing to refer the grievances to adjudication. The essence of their grievances is as follows:

[Translation]

...

*I filed a grievance for the following reason: documents obtained through an access to information request revealed that two employees had made an agreement to receive an amount of money in compensation for the reclassification that the employer refused to give us from 1998 to 2002.*

*I request that the amount that will be awarded to me be based on the same principle used in granting amounts to Mr. Roger Tousignant and to Mr. Denis Paradis.*

...

[5] The employer dismissed the grievances at the first level of the internal grievance process. They were then referred to the final level. On June 11, 2007, Ms. Gauthier acknowledged receiving the grievances on behalf of the USGE. Ms. Gauthier informed the complainants in writing that the USGE considered the grievances untimely because they had not been filed within 25 working days of the employer's action or inaction. Ms. Gauthier added that the grievances should have been filed several years earlier, i.e., within 25 days of the employer's decision not to compensate the employees from 1998 to 2002. Ms. Gauthier further explained that settling a grievance through an agreement applied only to the employees covered by the agreement. In closing, Ms. Gauthier concluded by writing that the USGE would not support the complainants' grievances but that they were free to pursue the grievances themselves given that they did not involve interpreting the collective agreement. In that case, the complainants themselves would need to bear the costs associated with their representation.

[6] In fall 2007, Mr. Martineau contacted the USGE local, which stated that it was sympathetic to his cause but that it was unable to intervene given that it had been

instructed by the USGE executive not to become involved in the matter. Mr. Martineau alleges that, subsequently on November 18, 2007, he contacted the USGE president, Mr. Edmunds, but without success, as Mr. Edmunds never replied.

[7] On June 19, 2007, Ms. Paradis replied to the letter from Ms. Gauthier to express her disagreement with Ms. Gauthier's analysis of the grievance and to ask her to send her grievance to the PSAC. On July 12, 2007, Ms. Gauthier replied to Ms. Paradis and informed her that she had not changed her position on the grievances. Ms. Paradis and Ms. Gauthier corresponded two more times, on July 31 and August 15, 2007, and confirmed their respective positions and the fact that the grievance would be sent to the final level without the USGE's support. Ms. Paradis then contacted the PSAC on September 6, 2007. The PSAC replied on September 18, 2007, stating that it supported the USGE's decision not to proceed with her grievance and that it considered the matter closed.

[8] The complaints refer to 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.*

...

*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.*

...

## **II. Summary of the parties' arguments**

[9] The complainants allege that the respondents must exhibit fairness and integrity in their representation. The complainants do not feel supported by the respondents and do not understand their basis for refusing to defend them. In November 2007, Ms. Paradis had to represent herself alone for the hearing of her grievance at the third level and had to cover the costs of her travel to Ottawa. Mr. Martineau tried several times to set a date to have his grievance heard at the third level, but he never received a reply from the employer. Furthermore, the PSAC refused to refer the two grievances to adjudication.

[10] The complainants allege that the respondents acted in a manner that was arbitrary, discriminatory and in bad faith in refusing to represent them and in excluding them from the 2006 agreement under which retroactive payments were made to Mr. Tousignant and Mr. Paradis.

[11] The complainants allege that, under section 47.2 of the *Quebec Labour Code*, R.S.Q. c. C-27 ("the *Code*"), the bargaining agent is required to represent its members. They referred me to an article from a Montreal newspaper and an article by Ms. Sylviane Noël. Ms. Noël's analysis is based on several rulings on interpreting sections 47.2 or 47.3 of the *Code*.

[12] The respondents claim that they have not violated section 187 of the *Act*. They ask that the complaints be dismissed. The respondents argue that the facts of the complainants' grievances were carefully reviewed and that the decision not to refer the grievances to adjudication was not arbitrary, discriminatory or made in bad faith. The complainants were informed countless times that an agreement or adjudication decision does not confer a specific right on employees who are not subject to the settlement in question.

## **III. Reasons**

[13] The facts at the basis of this complaint are fairly simple. The complainants' dissatisfaction stems from the employer's decision not to grant them the same treatment as their co-workers, Mr. Tousignant and Mr. Paradis. In the complainants' opinion, they are entitled to the same treatment in all fairness because they are in the same situation as their two co-workers. They ask for that fairness in their grievances filed on February 28, 2007.

[14] The respondents refused to represent the complainants' grievances at the final level of the internal grievance process and then refused to refer them to adjudication. In doing so they violated the *Act*, according to the claimants.

[15] Even had the complainants proven to me that the respondents were wrong in not representing their grievances and then in refusing to refer them to adjudication, I would not then find that the respondents violated the *Act* because respondents have the right to be wrong (see *Jakutavicius v. Public Service Alliance of Canada*, 2005 PSLRB 70). Rather, the complainants would have to prove that the respondents acted in bad faith or in an arbitrary or discriminatory manner. The case law is clear on that point (see *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509; and *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298).

[16] Nothing in the complainants' submissions leads me to conclude that the respondents acted in a manner that was arbitrary, discriminatory or in bad faith in their decision about the complainants' grievances. After analyzing the grievance files, the respondents decided not to represent the complainants at the final level of the internal grievance process. That decision was based on the respondents' conclusion that the grievances were untimely and that they were based on an agreement that did not apply to the complainants. The respondents' obligation was to conduct a serious review of the grievances, and I have no reason to believe that they did not do so. The same conclusion applies to the respondents' decision not to refer the grievances to adjudication.

[17] The complainants also alleged that the respondents acted in a manner that was arbitrary, discriminatory or in bad faith when they failed to include them in the 2006 agreement under which Mr. Tousignant and Mr. Paradis received compensation in exchange for withdrawing their grievances. However, it was precisely in exchange for withdrawing their grievances that those two employees received compensation. Although they could have done so, the two complainants did not file grievances in a timely manner. The respondents cannot be held responsible for that decision, which was made by the complainants and not by them. The duty of fair and equitable representation does not go as far as to compel the bargaining agent to file grievances for members of the bargaining unit.

[18] Although the 1998 classification grievance was a group grievance and the complainants were part of the group of employees that was a signatory to the grievance, the subsequent grievances filed by Mr. Tousignant and Mr. Paradis were not. Those two employees asked that the decision to reclassify their positions be applied retroactively. Their situation was the same as that of the complainants but for the fact that the complainants did not file grievances on the retroactive application of the reclassification. The respondents cannot be blamed for that.

[19] The complainants' references to the *Code* are not pertinent to disposing of the complaints given that they must be dealt with under the *Act* and not the *Code*, which applies only to provincially regulated companies and unions in Quebec. Rather, section 187 of the Act applies in this case.

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

*(The Order appears on the next page)*

**IV. Order**

[21] The complaints are dismissed.

October 19, 2009.

PSLRB Translation

**Renaud Paquet,  
Board Member**