Date: 20090205

File: 561-02-00355

Citation: 2009 PSLRB 14

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

RACHEL AGNES EXETER

Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as
Exeter v. Canadian Association of Professional Employees

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

REASONS FOR DECISION

Before: Dan Butler, Board Member

For the Complainant: Herself

For the Respondent: Fiona Campbell, counsel

Decided on the basis of written submissions
filed November 13 and December 1, 5 and 9, 2008.

I. Complaint before the Board

[1] On October 27, 2008, Rachel Agnes Exeter ("the complainant") filed a complaint with the Public Service Labour Relations Board ("the Board") under section 190 of the *Public Service Labour Relations Act* ("the *Act*"), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22. In her complaint, she alleges that the Canadian Association of Professional Employees (CAPE or "the respondent") violated each of paragraphs 190(1)(*a*) through (*g*) of the *Act*.

[2] The complainant's "[c]oncise statement of each act, omission or other matter complained of" (Section 4, Form 16 specified in the *Public Service Labour Relations Board Regulations*) takes the form of a six-page submission ("Schedule A") with 31 accompanying documents. The submission outlines situations in her workplace that led the complainant to file a series of grievances and complaints against the management of Statistics Canada in Ottawa. Her complaint alleges that the respondent breached its duty of fair representation in representing her, or refusing to represent her, in some of those matters. The complainant summarizes the "Reasons" for her belief that the respondent breached its duty of fair representation as follows:

> . . .
>
> - *A prior history of dispute, ill-will or personal hostility between the member and the union officials, when asked to withdraw grievance on racism;*
> - *Lack of total honesty with the employee (e.g., withholding information);*
>
>   *I made the union aware of potential grievances and asking the union to act on my behalf in decisions regarding the negotiation and administration of the collective agreement but was denied.*
> - *The union did not ensure that progressive discipline was done by employer prior to a Terms and Conditions letter of employment I received.*
> - *I indicated to my Union that the mediator* [mediator's name] *was not to be accepted to mediate in my matter because he has a history of supporting Statistics Canada against employee, that he leaked confidential information of an employee to the employer. The union ignored my pleas. In fact the Union Mr. Claude Archambault said that he never heard of* [mediator's name] *before and this is untrue. This is representation by deception. I feel it did*

affect the union's representation of my interests during mediation. During mediation I could feel that the Union Rep was too submissive.

- *My suspensions were not investigated before they refused to represent me — arbitrary.*
- *Union did not have the relevant information from my employer when they withdrew my termination matter from the Board — arbitrary.*
- *Unjust and excessive discipline/punishment meted out to me for allegations of insubordination and inappropriate communications did not fit the crime and the union did not intervene in some cases. Those the union intervened in were all shelved citing merit but never told what this is. (Blatant and reckless disregard — arbitrary)*
- *Being suspended while on sick leave by my employer and lack of union representation — blatant and reckless disregard (arbitrary)*
- *My Director accosting me in a hostile manner and the union failed to file a grievance on my behalf saying that not much will come out of it because of those who sit at various levels at the hearing.*
- *Flagrant dishonesty in dealing with me (e.g., filing grievance not in totality and colluding with my employer).*

. . .

[*Sic* throughout]

[3] The complainant seeks the following corrective action:

(a) That the Union be ordered to carry my grievance through to adjudication;

(b) That the Union be forced to pay the legal costs for a legal counsel of my choosing in order to ensure that I believe my rights and entitlements as a Union Member are being adequately dealt with by the Union;

(c) That my legal costs to date and any future legal costs related to this employment matter be compensated;

(d) That I receive damages for pain and suffering experienced as a result of the Union's violation pursuant to this subsection; and I receive any further compensation and corrective measures that the Public Service Labour Relations Board deems appropriate; and

> *(e) That I receive verbal and written apologies from the Canadian Association of Professional Employees.*

[4] The documentation filed by the complainant indicates that Statistics Canada terminated her employment on June 6, 2008. Until then, the complainant worked in a position classified at the SI-03 level in the Economics and Social Science Services (EC) Group for which the respondent is the certified bargaining agent.

[5] In view of several statements made by the complainant in her filing (in particular, the statement that ". . . the Union Representative, CAPE and Statistics Canada were in a plot against [the complainant]"), the Registry of the Board identified representatives of the Treasury Board ("the employer") as "other persons who may be affected" by the complaint and included those representatives on the distribution list for all submissions related to this complaint.

[6] The Vice-Chairperson of the Board has appointed me as a panel of the Board to hear and determine the matter.

[7] The Board's records indicate that the complainant also had eight grievances concerning discipline before an adjudicator (PSLRB File Nos. 566-02-01162 to 01164, 566-02-01362 to 01364, 566-02-01434 and 566-02-01482) as of the date that she filed her complaint under section 190 of the *Act*. An additional grievance about the termination of her employment (PSLRB File No. 566-02-01593) is scheduled for a future hearing. I note as well that, in *Exeter v. Deputy Head (Statistics Canada),* 2008 PSLRB 29, an adjudicator dismissed five other grievances referred to adjudication by the complainant for lack of jurisdiction. The adjudicator found that the subject matter of all five grievances related to the interpretation or application of the collective agreement for the EC Group and that the complainant lacked the required support of her bargaining agent for the referral of those grievances to adjudication.

[8] This decision considers several preliminary matters related to the complaint.

II. Preliminary matters

A. Applicable paragraphs of subsection 190(1) of the *Act*

[9] The respondent replied to the complaint on November 13, 2008. It argued that the Board should strike the references to paragraphs 190(1)(*a*) through (*f*) of the *Act*

from the complaint because the complainant's pleadings were limited to the allegation that the respondent violated paragraph 190(1)(*g*) (duty of fair representation).

[10] On the same date, representatives of the employer asked the Board to clarify which allegations made by the complainant relate to paragraphs 190(1)(*a*) through (*f*) of the *Act*. Because certain of those paragraphs directly implicate the employer, its representatives indicated that they needed the requested clarification ". . . to conclusively determine what intervention [the employer] may need to pursue in this matter."

[11] The complainant replied on December 5, 2008. She agreed that the subject matter of her complaint is an unfair labour practice. She referred to the complaint as ". . . a relatively simple allegation of Breach of Duty of Fair Representation." She noted that the employer would likely be an interested party ". . . given its role in working with the Respondent Trade Union to assist it in breaching its duty of fair representation . . . ." With respect to the employer's request for clarification concerning the application of the other paragraphs of subsection 190(1) of the *Act* cited by the complainant, she submitted as follows:

> *. . .*
>
> *Insofar as the information contained within her complaint against the Respondent Trade Union refers to the various sections of the Act, to the extent that these facts and these section numbers impact directly or indirectly against the employer, it can respond if it so decides. . . .*
>
> *. . .*
>
> *Although Mr. Sullivan* [a representative of the employer] *is unable to conclude which allegations support the alleged violations, it is the Complainant's position that the facts as pleaded do clearly support the alleged violations. To this end, it would be an abuse of the Board's process to require the Complainant to particularize the substance of her complaint in the manner that Mr. Sullivan is apparently requesting (without doing so in a direct manner). Any objective reading of the complaint document ought to permit Mr. Sullivan or the Respondent Employer's legal counsel to identify the substance of the numerous alleged breaches referred to. The exercise of correlating the facts pleaded with the alleged breaches of specific sections of the Act, is one* [*sic*] *not only not a process which is required by the Act, it would appear to be another delaying tactic by the Respondents. For the Board*

> *to require the Complainant, who is, after all, unrepresented to engage in this needless exercise would be unfair. . . .*

[12] While the complainant refers to the employer as a respondent in the foregoing submission, the Board understands from the record that the complainant did not identify the employer as a respondent in her original complaint nor has the Board made a ruling to include the employer as a respondent in these proceedings. At this time, the representatives of the employer remain "other persons who may be affected" by the complaint rather than the "Respondent Employer."

[13] The Board disagrees with the complainant's position that there is no requirement that she particularize the basis for her complaint under the various paragraphs of subsection 190(1) of the *Act* cited by her or that it would be unfair that she be required to do so. Any complainant bears a responsibility to outline the details of his or her complaint to the extent necessary to establish how the alleged act or omission breaches a specific prohibition under the *Act* on a *prima facie* basis. Should the complainant fail to do so, the Board may dismiss the complaint or may strike from it references to cited provisions of the *Act* for which it finds no *prima facie* foundation.

[14] In this instance, the complainant has the onus to establish on a *prima facie* basis how the allegations she makes relate to each of paragraphs 190(1)(*a*) through (*g*) of the *Act* as cited on Form 16. The threshold requirement is not high. A *prima facie* basis exists for the allegation where the purported facts — assumed for this preliminary purpose to be true — reveal an arguable case that there has been a breach of the statute. Through her original complaint, or through her subsequent submissions in reply to the employer's request for clarification, the complainant needed to establish to the Board's satisfaction that there is an arguable case that the respondent breached each of paragraphs 190(1)(*a*) through (*g*).

[15] Each of paragraphs 190(1)(*a*) through (*g*) of the *Act* refers to prohibitions stated elsewhere in the statute. Complaints filed under paragraph 190(1)(*a*) allege that the employer has failed to comply with section 56 which reads as follows:

> ***56.*** *After being notified of an application for certification made in accordance with this Part, the employer may not, except under a collective agreement or with the consent of the Board, alter the terms and conditions of employment that are applicable to the employees in the proposed bargaining unit and that may be included in a collective agreement until*

> (a) *the application has been withdrawn by the employee organization or dismissed by the Board; or*
>
> (b) *30 days have elapsed after the day on which the Board certifies the employee organization as the bargaining agent for the unit.*

[16] Complaints filed under paragraph 190(1)(*b*) of the *Act* allege that the employer or a bargaining agent has failed to comply with section 106 which reads as follows:

> ***106.*** *After the notice to bargain collectively is given, the bargaining agent and the employer must, without delay, and in any case within 20 days after the notice is given unless the parties otherwise agree,*
>
> (a) *meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and*
>
> (b) *make every reasonable effort to enter into a collective agreement.*

[17] Complaints filed under paragraph 190(1)(*c*) of the *Act* allege that the employer, a bargaining agent or an employee has failed to comply with section 107 which reads as follows:

> ***107.*** *Unless the parties otherwise agree, and subject to section 132, after the notice to bargain collectively is given, each term and condition of employment applicable to the employees in the bargaining unit to which the notice relates that may be included in a collective agreement, and that is in force on the day the notice is given, is continued in force and must be observed by the employer, the bargaining agent for the bargaining unit and the employees in the bargaining unit until a collective agreement is entered into in respect of that term or condition or*
>
> (a) *if the process for the resolution of a dispute is arbitration, an arbitral award is rendered; or*
>
> (b) *if the process for the resolution of a dispute is conciliation, a strike could be declared or authorized without contravening subsection 194(1).*

[18] Complaints filed under paragraph 190(1)(*d*) of the *Act* allege that the employer, a bargaining agent or a deputy head has failed to comply with subsection 110(3) which reads as follows:

> ***110.*** *(1) Subject to the other provisions of this Part, the employer, the bargaining agent for a bargaining unit and the deputy head for a particular department named in Schedule I to the* Financial Administration Act *or for another portion of the federal public administration named in Schedule IV to that Act may jointly elect to engage in collective bargaining respecting any terms and conditions of employment in respect of any employees in the bargaining unit who are employed in that department or other portion of the federal public administration..*
>
> *. . .*
>
> *(3) The parties who elect to bargain collectively under subsection (1) must, without delay after the election,*
>
> (a*) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and*
>
> (b*) make every reasonable effort to reach agreement on the terms.*

[19] Complaints filed under paragraph 190(1)(*e*) of the *Act* allege that the employer or an employee organization has failed to comply with sections 117 or 157 which read as follows:

> ***117.*** *Subject to the appropriation by or under the authority of Parliament of money that may be required by the employer, the parties must implement the provisions of a collective agreement*
>
> (a*) within the period specified in the collective agreement for that purpose; or*
>
> (b*) if no such period is specified in the collective agreement, within 90 days after the date it is signed or any longer period that the parties may agree to or that the Board, on application by either party, may set.*
>
> *. . .*
>
> ***157.*** *Subject to the appropriation by or under the authority of Parliament of any money that may be required by the employer, the parties must implement the provisions of the arbitral award within 90 days after the day on which the award becomes binding on them or within any longer period that the parties may agree to or that the Board, on application by either party, may set.*

[20] Complaints filed under paragraph 190(1)(*f*) of the *Act* allege that the employer, a bargaining agent or an employee has failed to comply with section 132 which reads as follows:

> ***132.*** *Unless the parties otherwise agree, every term and condition of employment applicable to employees in a bargaining unit in respect of which a notice to bargain collectively is given that may be included in a collective agreement and that is in force on the day the notice is given remains in force in respect of any employee who occupies a position that is identified in an essential services agreement and must be observed by the employer, the bargaining agent for the bargaining unit and the employee until a collective agreement is entered into.*

[21] The Board has reviewed the details of the complaint as set out in Schedule A submitted by the complainant with her Form 16. As reported above, the complainant herself describes the reasons for her complaint by referring to the respondent's alleged breached of the duty of fair representation that it owed her. Section 187 of the *Act* establishes the duty of fair representation, to which the complainant refers, 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.*

[22] Violations of section 187 of the *Act* are defined as "unfair labour practices" under section 185 and are the subject of complaints under paragraph 190(1)(*g*):

> ***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).*

[23] Based on a review of the details of the complaint as well as the complainant's own depiction that the duty of fair representation constitutes the subject matter of her complaint, the Board finds that the allegations made by the complainant concern only section 187 of the *Act.* The complaint and the complainant's subsequent submissions of December 5, 2008, do not reveal an arguable case that the respondent violated the other referenced prohibitions. The Board, therefore, rules that paragraph 190(1)(*g*) is the provision that applies to the complaint and strikes from the complaint the references to paragraphs 190(1)(*a*) through (*f*).

B. <u>Individual grievances before the Board</u>

[24] In its letter of November 13, 2008, the employer asked for clarification whether matters pertaining to individual grievances filed by the complainant that are already before the Board will be considered as part of the complaint.

[25] The Board understands that its jurisdiction in this matter is strictly limited to determining whether the respondent has breached section 187 of the *Act* as alleged by the complainant. As such, the Board has no jurisdiction to consider the merits of any individual grievance referred to adjudication by the complainant. As previously noted, the complainant's individual grievances are, or will soon be, before an adjudicator appointed under Part 2 of the *Act*.

[26] To that extent, the Board concurs with the complainant when she states as follows in her submissions of December 5, 2008:

> . . .
>
> *Different issues are being decided upon by different decision makers and the parties to each litigation are not the same . . . . the merits of an individual grievance, as the jurisprudence clearly reveals, is not dispositive of the issue of whether the Respondent Union has adequately discharged its obligation to represent its members fairly . . . .*
>
> . . .

C. <u>Timeliness of the complaint</u>

[27] Subsection 190(2) of the *Act* establishes the time limit for the submission of a complaint under paragraph 190(1)(*g*) as follows:

> *(2) Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*

[28] The respondent, in its written submissions of November 13, 2008, and its further submissions of December 9, 2008, argues that all of the claims raised in the complaint are untimely and that the Board should dismiss the complaint on that basis. Citing *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, the respondent maintains that the 90-day time limit stipulated by subsection 190(2) of the *Act* is mandatory and that the Board has no authority to extend it. In this case, the complainant filed her complaint on October 27, 2008. For her complaint to be timely, the respondent contends that the complainant must show that she only knew the circumstances that gave rise to her complaint within the preceding 90 days (that is, on, or after, July 29, 2008). Based on its review of the allegations made by the complainant, the respondent argues that she knew, or ought to have known, the basis for all of her claims before July 29, 2008, and in some cases well before that date. The respondent notes, in particular, that the respondent herself listed June 6, 2008, in section 5 of Form 16 as the "[d]ate on which [she] knew of the act, omission or other matter giving rise to the complaint."

[29] The complainant submits that she did not know, nor could she have been expected to know, about the substance of her complaint until she had an opportunity to review a series of documents and emails resulting from an application that she made under the *Privacy Act*. The complainant states that she received the documents in early April 2008. The complainant contends that she was ". . . medically unable to review, let alone process and act upon the contents of . . ." those documents until mid-October 2008, at which time she promptly filed her complaint. She submits that the respondent has in its possession evidence to substantiate the nature and severity of her medical status.

[30] The complainant also refers to an email from the respondent dated July 18, 2008, that advised her that it would no longer represent her. She appears to argue that the 90-day time limit should be calculated from the date of that email. With respect to that date, her filing the complaint on October 27, 2008, involves only a "minor" or "minimal" delay of "a few short days." Given the shortness of the delay and the diligence of the complainant ". . . in trying to have her grievance referred to

adjudication," she submits that the Board may disregard the respondent's timeliness objection: see *Palmer v. Canadian Security Intelligence Service*, 2006 PSLRB 9.

[31] The respondent counter-argues that the complainant has not plead any evidence that her health prevented her from reviewing documents during the period in question and maintains that it does not, as claimed by the complainant, have any such evidence in its possession. Furthermore, the respondent contends that there was "extensive correspondence" between it and the complainant during the period of her alleged medical incapacity that demonstrates her ability to read and review documents. Those documents were submitted by the complainant as part of her own argument on the timeliness objection.

[32] The respondent also maintains that *Palmer* does not apply as argued by the complainant because the reasons given in that decision for extending a time limit relate only to grievance adjudication and, at that, to grievance adjudication under the former *Public Service Staff Relations Act* and its regulations.

[33] The Board has closely considered all the written submissions of the parties regarding the timeliness of the complaint. The burden of proof for the jurisdictional objection lies with the respondent. To that end, it has, in the Board's view, offered credible arguments to support its contention that the complaint is untimely. The respondent's analysis of the history of its interaction with the complainant concerning the grievances, complaints and appeals that are the subject of her allegations of unfair representation suggests on its face that the complainant knew, or ought to have known, the circumstances that gave rise to her complaint before July 29, 2008.

[34] The complainant's defence, on the other hand, appears to lack the aura of credibility. In particular, the Board has significant concerns about her (as yet) unsubstantiated claim that she was ". . . medically unable to review, let alone process and act upon . . ." until October 2008 the contents of the documents that she received in April 2008 as a result of her application under the *Privacy Act*. In Schedule A to her original complaint, and in her own submissions of December 1, 2008, she provides copies of a number of documents and emails that suggest that she was actively engaged during May and June 2008 (at least) in communications with the bargaining agent and with others that was highly unlikely to have occurred without her being medically able to read and review documents. Two examples serve to illustrate. On

May 14, 2008, the complainant sent the following letter to an adjudicator at the Workplace Safety and Insurance Board:

> . . .
>
> *The following is to confirm, that I wish to file an appeal in accordance with the Workplace Safety and Insurance Act, against your decision dated November 23, 2007, for matters under claim 23272395.*
>
> *On March 11, 2008, I provided you with my comments and additional facts to your report dated November 23, 2007, however to-date I have not received your position whether you will reconsider your decision dated November 3, 2007.*
>
> *To that end, it is important that I and my union representative obtain your decision on this matter as soon as possible. My Union representative is . . . .*
>
> . . .

The complainant's letter appears to prove that she was medically able to file a formal letter in a legal proceeding at a time when she claims that she was unable "to act upon" documents.

[35] The second example is an email from the complainant to the respondent dated June 13, 2008, part of a lengthy email exchange. It reads as follows:

> . . .
>
> *Please note that I am entitled to fair representation from my union, which is CAPE. The attachments above and another G1-304 have denied me this.*
>
> *By this email it is my intention to pursue this matter.*
>
> *I will be communicating with you again on this subject.*
>
> . . .

The email strongly suggests not only that the complainant was able to review and marshal documents at that time but also that she had formed the opinion no later than June 13, 2008, that she had been denied fair representation by the bargaining agent and that she had decided to do something about it.

The Board also notes that the complainant herself identified June 6, 2008, on Form 16 as the "[d]ate on which the complainant knew of the act, omission or other matter giving rise to the complaint."

[36] Weighing the written submissions from the respondent and the complainant to date, the Board considers that it could make a ruling granting the respondent's objection. However, it recognizes that the parties have alleged critical facts without an explicit agreement on their truthfulness and have tendered documents with allegedly probative content that have not been tested through cross-examination. While the Board believes that it would be entitled in this case to make a ruling based solely on the written submissions received from the parties, it nevertheless prefers to take a further step to afford both parties the maximum opportunity to be heard on a point that is obviously crucial to the future of the complaint.

[37] Therefore, the Board will reserve its final ruling on the respondent's timeliness objection until such time as an oral hearing is convened. The issue to be examined in the hearing is the following: When did the complainant know, or ought she to have known, the circumstances that gave rise to her complaint? In that regard, should the complainant maintain her defence that she was medically unable to act on her complaint until sometime in October 2008, the Board will require evidence of her medical condition. It will need to understand how that medical condition prevented her from knowing the circumstances that gave rise to her complaint and acting upon that knowledge within the time limit for filing a complaint stipulated by the *Act*. For the purpose of its final ruling on the timeliness objection, the Board will accept as proven other facts in the existing written submissions that are not related to the issue of the complainant's medical condition unless those facts are contested at the hearing. The Board will entertain further oral arguments by the parties on the timeliness objection should either of the parties or both so choose.

[38] In the Board's view, the current status of the employer's representatives as "other persons who may be affected" by the complaint does not entitle the employer to full participation rights at the hearing. Should the employer wish to intervene in the hearing, it should indicate its desire to do so in the appropriate manner, stating the reasons for its application, within ten days of the date of this decision. The Board will provide the parties with an opportunity to make submissions on any such application.

D. Clarification of documents

[39] The employer raised in its submissions several questions about the identification of documents provided by the complainant. In her submissions of December 5, 2008, the complainant responded to the issues raised by the employer. She also provided two additional documents on December 9, 2008.

[40] It is unclear to the Board whether any issues remain concerning the identification or disclosure of documents. The parties or the employer's representatives are free, as always, to raise any outstanding issues by writing to the Registry of the Board.

E. Contact list

[41] In her submissions of December 5, 2008, the complainant states as follows:

. . .

> *. . . it seems unreasonable for the Complainant to have to respond to both the Respondent Employer in the person of Mr. Sullivan, as well as to the Respondent's legal counsel. Accordingly, henceforth the Complainant will only correspond with the Employer's legal counsel (Ms. Champagne) as identified in one of the parties copied to Mr. Sullivan's November 13, 2008 letter.*

. . .

[42] The Board notes that the complainant is obligated to copy all correspondence and documents to each person whose name appears on the official contact list provided by the Registry of the Board, as modified by the Registry of the Board from time to time. The complainant may chose to copy other persons whose names do not appear on the official contact list but is not required to do so. (During the period that the parties made written submissions on the timeliness objection, neither the name of Mr. Sullivan nor that of Ms. Champagne appeared on the list.) She may not discontinue providing copies to any person whose name does appear on the official contact list.

III. Conclusion

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

(The Order appears on the next page)

IV. Order

[44] The Board strikes the references to paragraphs 190(1)(*a*) through (*f*) of the *Act* from the complaint.

[45] The Board requests that the Director of Policy and Registry Operations consult with the parties to establish dates for a hearing. The hearing will be limited to consideration of the respondent's timeliness objection and, specifically, to the following issues: When did the complainant know, or ought she to have known, the circumstances that gave rise to her complaint? Did a medical condition prevent the complainant from knowing the circumstances that gave rise to her complaint and acting upon that knowledge within the time limit for filing a complaint stipulated by the *Act*?

[46] Should the employer wish to apply to intervene in the hearing, it shall make application to the Board to that effect within ten days of the date of this decision.

February 5, 2009.

Dan Butler,
Board Member