Date: 20091030

File: 561-02-391

Citation: 2009 PSLRB 143

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

CAROLLE LAVOIE

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA AND ALAIN LACHAPELLE

Respondents

Indexed as
Lavoie v. Public Service Alliance of Canada and Lachapelle

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 Respondents: Nathalie St-Louis, Public Service Alliance of Canada

Decided on the basis of written submissions
filed May 25 and October 14, 2009.
(PSLRB Translation)

Complaint before the Board

[1] On April 30, 2009, Carolle Lavoie ("the complainant") made a complaint against her bargaining agent, the Public Service Alliance of Canada (PSAC), and Alain Lachapelle, a PSAC representative ("the respondents"). The complaint is based on paragraph 190(1)(*g*) of the *Public Service Labour Relations Act* ("the *Act*"), which refers to section 185. The complainant alleges that the respondents breached their duty of representation by ceasing to represent her before the Commission des lésions professionnelles du Québec (CLP). The complaint refers to 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.*
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> . . .
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> ***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).*
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> . . .
>
> ***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.*

. . .

[2] On a date not specified in the submitted documentation, the complainant applied to the CLP for the recognition of an industrial accident or occupational disease so that she could access the benefits resulting from the recognition. According to the complainant, until February 2009, the respondents asked her to provide them with a great deal of information to prepare for the case. In December 2008, the complainant's case was scheduled for a hearing on April 20, 2009. On March 20, 2009, Mr. Lachapelle wrote to the complainant to inform her that he no longer intended to represent her

before the CLP. According to the complainant, his decision was based on information in his possession since 2007, the year he began handling her case.

[3] After Mr. Lachapelle refused to represent her, the CLP postponed the hearing at the complainant's request. For the rest of the CLP proceedings, the complainant asked to be represented by a labour relations lawyer. She also asked that the PSAC pay the cost of that representation.

[4] The complainant argues that the respondents did very little work on her case and that they dealt with it in a manner that was arbitrary, negligent and superficial. She further argues that the respondents negotiated with her employer about her case without her.

[5] The respondents submit that they met with the complainant several times to prepare a complete case that they could present to the CLP. They met with the complainant's psychologist and were able to review her physician's clinical notes. The complainant also twice mandated them to reach a settlement. They began negotiations to reach an agreement that would be satisfactory to all parties. The respondents admit that they withdrew from the complainant's case before the CLP a month before the scheduled hearing date. On March 20, 2009, they wrote to the complainant and told her that she had very little chance of succeeding before the CLP. They also explained the reasons for their decision to withdraw from the case.

[6] The respondents argue that the complaint should be dismissed because the duty of fair representation does not extend to handling the complainant's industrial accident compensation claim. On that point, the respondents referred me to *Elliott v. Canadian Merchant Service Guild et al.*, 2008 PSLRB 3. In that case, the Public Service Labour Relations Board established that the duty of representation under section 187 of the *Act* refers only to representation in matters related to a collective agreement or the *Act*. Since representing an employee before the CLP is not such a matter, the respondents had no duty to represent the complainant before the CLP.

Reasons

[7] The facts of this complaint are not contested. The complainant made an industrial accident claim to the CLP. The respondents agreed to help her with that process. However, one month before the CLP was to hear the complainant's application, the respondents informed her that they would not represent her and that

they were withdrawing. They wrote to her to inform her of the reasons for their decision. At the request of the complainant, who no longer had a representative, the CLP agreed to postpone her hearing scheduled for April 20, 2009.

[8] I agree in large part with the respondents' argument that the duty of representation applies only to the subject matters of disputes governed by a collective agreement or the *Act*. Indeed, that position is well supported in *Elliot*, from which I cite the following:

. . .

> *[183] As a statutory tribunal, the PSLRB's authority to act in this regard is derived exclusively from the* PSLRA. *Section 187 of the* PSLRA, *much like the provisions regarding the duty of fair representation in the British Columbia* Labour Relations Code *and the Ontario* Labour Relations Act *cited above, does not specify the ambit of the duty of fair representation. In my view, since that duty is set out in the* PSLRA, *it relates to rights, obligations and matters set out in that* Act. *Since one of the main objectives of the* PSLRA *is to regulate the relationship between employees and their employer, in my view the ambit of the duty of fair representation relates to that matter.*
>
> *[184] As in the private sector, the* PSLRA *gives unions important representation powers. For example, a bargaining agent certified under the* PSLRA *has the exclusive right to bargain for members in its unit (paragraph 67(*a*)). An employee cannot present an individual grievance relating to the interpretation or application of a provision of a collective agreement unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit (subsection 208(4)). In my view, the duty of fair representation applies to those matters since they are set out in the* PSLRA *and they concern the relationship of employees vis-à-vis their employer. Also, in light of the genesis of the duty of fair representation, the fact that the union has exclusive representation rights in the negotiation of a collective agreement and has exclusive approval rights for those grievances gives greater support to the conclusion that the duty of fair representation applies to those matters.*
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> . . .
>
> *[193] To accept the argument put forth by the complainant would mean that the duty of fair representation would apply to all services a union decides to offer to its members, whether or not it is obliged to offer that service and whether or not the service is related to the* PSLRA *or the collective*

> *agreement relationship. It would also mean that Parliament intended to give this Board the broad mandate to supervise the provision of representation services offered voluntarily by a union in relation to claims before workers' compensation tribunals, disciplinary matters before professional organizations, claims relating to the Canada Pension Plan, matters relating to unemployment insurance, matters before transportation tribunals, actions before courts of law, etc., all areas over which this Board has no special expertise. In my view, if Parliament had intended to give this Board such a broad jurisdiction over matters unrelated to the* PSLRA *or the collective agreement relationship, it would have given an indication to that effect. In this case, there is no such indication.*
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> . . .

[9] There is no doubt in my mind that section 187 of the *Act* does not exist to examine or scrutinize the fairness of an employee's representation before an administrative tribunal like the CLP. Instead, that section concerns representation in matters or disputes covered by the *Act* or a collective agreement.

[10] The respondents would have been entitled to refuse from the outset to help the complainant with her case before the CLP. Although they were not obligated, they nonetheless chose to help her. Therefore, the complainant expected them to represent her. I would not go so far as to say that the duty of fair representation applied from the time the respondents agreed to handle the case. However, from that moment on, the respondents at least had to act fairly toward the complainant because they had created a certain expectation on her part.

[11] Based on the facts before me, I find that the respondents acted fairly toward the complainant. After reviewing the case, they decided to withdraw their support for her CLP application. They explained their position and notified her one month before the hearing. That gave her enough time to have her CLP hearing postponed so that she could find different representatives had she wished to continue.

[12] Therefore, the respondents did not contravene the *Act* by withdrawing their support from the complainant. They had no duty to represent her before the CLP. Once they decided to withdraw their support, they acted fairly toward her by giving her notice a month before the hearing and by explaining their decision to her.

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

(The Order appears on the next page)

Order

[14] The complaint is dismissed.

October 30, 2009.

PSLRB Translation

Renaud Paquet,
Board Member