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File: 561-34-146

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*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

LINDA SHUTIAK

Complainant

and

UNION OF TAXATION EMPLOYEES

Respondent

Indexed as

Shutiak 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: [Michel Paquette, Board Member](#)

For the Complainant: [Linda Shutiak](#)

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

Decided on the basis of written submissions
filed November 10 and 28 and December 9, 2008.

REASONS FOR DECISION

Complaint before the Board

[1] On February 12, 2007, Linda Shutiak (“the complainant”) filed a complaint with the Public Service Labour Relations Board (“the Board”) a complaint under paragraph 190(1)(g) of the *Public Service Labour Relations Act* (“the Act”) against the Union of Taxation Employees (UTE or “the respondent”), a component of the Public Service Alliance of Canada (PSAC). In the complaint, she alleged that the respondent had contravened the PSAC constitution as well as its own regulations by applying them arbitrarily and discriminatorily, thereby violating section 185 of the *Act*.

[2] She asked as corrective measures that subsections 192(1) and 202(1) of the *Act* be applied.

[3] On March 13, 2007, the PSAC, which is the bargaining agent, replied on behalf of the UTE that first, the complaint was untimely and second, that the complainant had failed to demonstrate a *prima facie* violation of the *Act* and that therefore the complaint should be dismissed.

[4] On October 13, 2008, the Board directed that a determination of the issues of timeliness and jurisdiction proceed by way of written submissions.

Summary of the evidence

[5] On April 13, 2006, the complainant filed a harassment complaint pursuant to the PSAC’s constitution and its anti-harassment policy against Betty Bannon, UTE Component President and Terry Dupuis, Regional Vice-President, UTE Rocky Mountain Region.

[6] The president of the PSAC at that time, Nycole Turmel, acknowledged receipt on April 28, 2006. On behalf of the PSAC Executive Committee (“the Executive Committee”), she explained that due to the nature and the targets of the complaint, the matter was being referred to Bob Campbell, 1st National Vice-President, UTE, for handling.

[7] On May 4, 2006, the complainant wrote to the Executive Committee, indicating that she did not agree with their decision, and she cited UTE Regulation 26.2(2)(e):

26.2 Investigation Procedures

(1) Any and all allegations against a member shall be in writing, signed by the member(s) putting forth the allegation(s), and submitted to the appropriate body for consideration:

(2) (a) allegations at the local level shall be submitted to the Local Executive;

(b) allegations that involve member(s) from more than one Local in a region shall be submitted to the Regional Vice-President;

(c) allegations that involve member(s) from more than one region shall be submitted to the President;

(d) allegations against Regional Vice-Presidents or Vice-Presidents shall be submitted to the President;

(e) allegations against the President shall be submitted to the PSAC Executive Committee;

(3) The appropriate executive body receiving the allegation(s) shall determine whether *evidence warrants an investigation. If so, it shall establish an internal or external impartial investigation committee consisting of three (3) people to investigate and assess the allegation(s), including the receipt of oral and written evidence. (*evidence in that there must be some supporting documentation that the allegations are valid. It does not mean that conclusive evidence must be presented nor does it mean that the body concerned is accepting or rejecting the supporting documentation.)

[Emphasis in the original]

[8] Effective June 6, 2006, UTE Regulation 26.2(2)(e) was changed to:

26.2 Investigation Procedures

...

(2) (e) allegations against the President in the capacity of Component President shall be submitted to the 1st Vice-President responsible for Finance;

(f) allegations against the President in the capacity of a member of the National Board of Directors shall be submitted to the PSAC Executive Committee.

[9] On July 19, 2006, Mr. Campbell wrote to the complainant, informing her of his decision. In the case against Mr. Dupuis, he decided not to set up an investigation committee. One had previously been created in a harassment complaint filed by Mr. Dupuis against the complainant in October 2005 concerning the same issues, and it determined that the allegations had been unfounded. As for the complaint against Ms. Bannon, after reviewing the documentation he concluded that no investigation was warranted.

[10] Mr. Campbell replied that he had confirmed with John Gordon that the UTE Regulations were not *ultra vires* to the PSAC Constitution and therefore, as stated before, the matter was closed.

[11] Mrs. Shutiak wrote to Mr. Gordon on January 29, 2007 for a confirmation but he did not reply.

[12] After receiving the July 19, 2006 letter, the complainant tried to challenge the decision based on the changes to the UTE By-Laws, but an interpretation was provided by the PSAC's President on September 7, 2006. The complainant again wrote to the UTE on January 15, 2007, arguing the same issue and demanding that an investigation be conducted.

[13] On August 18, 2006, the complainant wrote to Mr. Campbell, stating that she did not agree with his decision and questioning his jurisdiction in spite of the changes made to UTE Regulation 26.2.

[14] On September 7, 2006, the new PSAC President, John Gordon, wrote to the complainant and explained that UTE Regulation 26.2 had been amended because, as previously written, it was *ultra vires* ("beyond the powers") the PSAC's constitution. Therefore, he maintained that the appropriate process was followed to address her complaint.

[15] On January 15, 2007, the complainant wrote to the UTE and the Executive Committee submitting that the UTE Regulations were not consistent with the PSAC Constitution and that therefore, the PSAC Constitution prevailed and an internal investigation committee should be formed to investigate her complaint. The PSAC did not reply.

Summary of the arguments

[16] The respondent argued that the complainant's repeated requests for an investigation could not serve to extend the time limits provided in the *Act* for the filing of a complaint. She knew, upon receipt of Mr. Campbell's letter dated July 19, 2006, that the matter was considered to be closed by the UTE. She knew or ought to have known, that the decision was final and she should have filed her complaint within 90 days. That action was not sufficient to extend the time limit.

[17] The respondent argued that subsection 190(2) of the *Act* is mandatory, and she cited *Martel et al. v. Public Service Alliance of Canada*, 2008 PSLRB 19, at para 10, and *Cuming v. K. Butcher et al.*, 2008 PSLRB 76, at para 35.

[18] As for the Board's jurisdiction under section 185 of the *Act*, the respondent submitted that a determination of this issue requires an assessment of whether a *prima facie* violation of the *Act* has been made out in the complaint's allegations. If the assessment determines that even if the allegations are taken as true, no violation occurred, then the Board is without jurisdiction.

[19] Even though it is not clear what section of the *Act* is alleged to have been violated, the PSAC submitted that, in the case of an unfair labour practice complaint filed against an employee organization, the Board's jurisdiction is limited to two provisions: allegations under section 187 that a bargaining agent has acted in an arbitrary or discriminatory manner or in bad faith in the "... representation of any employee in the bargaining unit" or, under section 188, specifically in paragraphs 188(b) and (c), that the bargaining agent expelled or suspended an employee or engaged in disciplinary action against an employee in a discriminatory manner.

[20] The respondent's representative stated that there is nothing in the complaint that relates to representation by the employee organization in its dealings with the employer.

[21] Similarly, there is nothing in the complaint that relates to discipline by the bargaining agent towards the complainant.

[22] The respondent's representative stated that the complaint deals exclusively with internal bargaining agent matters and cited *Kraniauskas v. Public Service Alliance of Canada et al.*, 2008 PSLRB 27.

[23] In her submissions, the complainant acknowledged that her complaint deals with the bargaining agent refusing to deal with her allegations of harassment against Ms. Bannon and Mr. Dupuis filed on April 13, 2006. She is questioning the process that was used to handle her complaint.

[24] The UTE Regulation that was in effect when the complainant filed her harassment complaint was changed, and she is questioning the timing of that change and alleging that it is not a coincidence. On that basis, the complainant challenged the decision rendered by Mr. Campbell.

[25] She argued that her queries following Mr. Gordon's letter of September 7, 2006, in fact extended the start date for calculating the 90-day deadline and she is therefore timely.

[26] The complainant also submitted that in her January 14, 2007, correspondence to the UTE, she was presenting new facts and not "re-arguing the entire issue". In her letter, she questioned the inconsistencies present when comparing the provisions of the UTE Regulations with those of the PSAC Regulations.

The PSAC Regulation dealing with Discipline does not allow for "the body receiving the allegations to determine if there is sufficient evidence to proceed with an investigation" as does the UTE Regulation. The PSAC Regulation 19.7(a) states "The members of the national body against whom the charge or charges have not been alleged shall appoint an internal or external impartial review committee of three (3) people to investigate and assess the charges and receive evidence."

She therefore asked, in that correspondence to UTE, that a committee be formed to investigate her allegations.

[27] As for jurisdiction, the complainant submitted that even though the Board's jurisprudence on section 187 of the Act deals with representation before employers, she maintains that the bargaining agent has a responsibility to represent members where allegations of harassment have arisen. She cited the PSAC's Policy 23B on anti-harassment:

...

Where allegations of harassment have arisen, the Alliance is committed to ensuring that all members of our union have:

- *the right to fair and due process and to confidentiality, subject to appropriate disclosure to those involved, and*
- *assistance in settling the matter at the earliest stage possible.*

...

[28] Based on that policy, the complainant proposed that section 187 of the Act applies and that the respondent has to “represent” her. The complainant also added that paragraph 188(c) applies. The complainant felt that she was, in fact, disciplined in October 2005 when she had to endure a harassment investigation following allegations filed against her by Mr. Dupuis. The complainant expected that an investigation would be conducted when she filed allegations against Mr. Dupuis and Ms. Bannon in April 2006. Refusing to deal with her allegations against Mr. Dupuis is evidence of applying the employee organization’s standards of discipline to that employee in a discriminatory manner.

Reasons

[29] The appropriate provisions of the Act read as follows:

...

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.*

188. *No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall*

...

(c) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization’s standards of discipline to that employee in a discriminatory manner;

...

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.

(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.

...

[30] The complainant alleges that the UTE violated section 187 and paragraph 188(c) of the *Act* because it contravened its own constitution and regulations and those of the PSAC by applying them arbitrarily and in a discriminatory manner.

[31] The complainant's reasons for her allegations are that the UTE conducted a harassment investigation when another member, Mr. Dupuis, filed a harassment complaint against her in October 2005 but did not conduct an investigation when she filed a harassment complaint against Mr. Dupuis and Ms. Bannon. She alleges that subjecting her to an investigation was a disciplinary act that was discriminatory in nature.

[32] I must first rule on the timeliness of the complaint.

[33] The complainant filed her harassment complaint on April 13, 2006. She received an answer from Mr. Campbell on July 19, 2006, stating that he would not investigate her complaint as per his discretion under the UTE Regulations. He concluded by stating that the matter was closed.

[34] I find that the complainant ought to have known at that point that the matter was closed, therefore becoming aware of the action or circumstance giving rise to her complaint, and that she should have filed a complaint with the Board within 90 days of that date.

[35] The complainant did not file her complaint at that point and, on August 18, 2006, challenged Mr. Campbell's authority to render a decision.

[36] The complainant received a ruling from the National President of the PSAC on September 7, 2006, stating that Mr. Campbell had jurisdiction to act as he had. The complainant could have filed a complaint at this point, arguing that she should at least be given an opportunity to appeal the PSAC National President's decision before the time limits begin to run against her. Without deciding whether or not I would have accepted such an argument, I need only point out that she did not file her complaint at this point either.

[37] The complainant wrote to the UTE again in January 2007 to challenge the process used to deal with her complaint. She received an answer from Mr. Campbell but pursued it with Mr. Gordon on January 29, 2007. This time she waited only two weeks to file a complaint with the Board when she did not receive an answer.

[38] The *Act* is very clear in section 190. The 90-day time limit is mandatory and no extension is possible. The Board has been clear on this issue since the coming into force of the new *Act*: *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, *Martel et al. v. Public Service Alliance of Canada*, *Cuming v. K. Butcher et al.*

[39] I find that her complaint was filed outside the mandatory time limit. The complainant should have filed her complaint, at the latest, when she received her answer from Mr. Gordon in September 2006. However, she waited four months to challenge the process and by then, it was too late.

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

(The Order appears on the next page)

Order

[41] The complaint is dismissed.

March 11, 2009.

**Michel Paquette,
Board Member**