

Date: 20090604

File: 561-02-379

Citation: 2009 PSLRB 68



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

IRENE T. PSYLLIAS

Complainant

and

**JEANNETTE MEUNIER-MCKAY AND JACQUELINE WHEYWAY-BACON
AND
CANADA EMPLOYMENT AND IMMIGRATION UNION**

Respondents

Indexed as
Psyllias v. Meunier-McKay et al.

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: Herself

For the Respondents: Jacque de Aguayo, Public Service Alliance of Canada

Decided without a hearing.

REASONS FOR DECISION

Complaint before the Board

[1] On December 15, 2008, Irene T. Psyllias (“the complainant”) filed a complaint with the Public Service Labour Relations Board (“the Board”) under subsection 190(1) of the *Public Service Labour Relations Act* (“the Act”) against Jeanette Meunier-McKay and Jacqueline Wheyway-Bacon (“the respondents”) under paragraphs 190(1)(a), (c), (f) and (g).

[2] In her complaint she alleged that the respondents took discriminatory disciplinary action against her in the form of legal proceedings in the Ontario Superior Court of Justice; that the behaviour of the respondents’ legal counsel during mediation in the Ontario Superior Court of Justice proceedings was harassment; that the respondents denied her employment when they dismissed her as a bookkeeper/accountant for the Canada Employment and Immigration Union (CEIU), Ontario Region.

[3] On February 2, 2009, the respondents’ representative requested that this complaint be consolidated with Board File No. 561-02-356, since this complaint duplicates allegations already raised in Board File No. 561-02-356.

[4] She also objected that the complaint was untimely and that it failed to establish a *prima facie* violation of the Act, and she, therefore, requested that it be dismissed.

Uncontested facts

[5] The complainant is a current member of Local 543 of the CEIU, which is a component of the Public Service Alliance of Canada (PSAC), and presently occupies the position of local president.

[6] In the fall of 2006, a number of federal government departments underwent restructuring, which affected certain PSAC components. As a result, the entire membership of Local 543 was going to be relocated to other work locations. Local 543 determined not to dissolve and determined to address issues related to its membership and its reorganization.

[7] One of the issues was Local 543’s ability to disburse a strike fund to the membership. The membership had in previous years resolved to contribute \$15 per paycheque above and beyond the regular deductions of union dues, and resolved to

have those monies placed in what the local determined to call the strike fund. That fund was separate from the regular monies received from the PSAC and never appeared on the members' T4 slips as a deduction for union dues.

[8] During a meeting of Local 543 in November 2006, the members voted in favour of allocating \$680 gift certificates to all individual members of the local. Gift certificates were purchased and distributed to all local members.

[9] In March 2008, Ms. Meunier-McKay, on behalf of the CEIU, commenced an action in the Ontario Superior Court of Justice against the complainant and others for the repayment of union dues improperly disbursed by union officials to other local union members.

[10] The complainant was hired in August 2008, as a bookkeeper for the CEIU region and then dismissed in December 2008.

[11] Mediation took place on November 7, 2008, with regards to the Ontario Superior Court case without success.

Summary of the arguments

[12] The respondents' representative indicated that the litigation surrounding the issue of misappropriation of funds began in March 2008. Accordingly, the respondents' representative submitted that the issue raised by the complainant regarding the action taken by the respondent on the issue of misappropriation of funds was raised well beyond the time limit prescribed by subsection 190(2) of the *Act*. That time limit cannot be extended by the Board (*Walters v. Public Service Alliance of Canada*, 2008 PSLRB 106, at para 10).

[13] The respondents' representative noted that the complainant alleged violations of subsection 190(1) of the *Act* on the form regarding Ms. Meunier-McKay and to paragraphs 190(1)(a), (c), (f) and (g) on the form regarding Ms. Wheyway-Bacon. She stated that paragraphs 190(1)(a) to (f) do not apply as they relate to obligations of the employer and bargaining agent arising out of the bargaining and organizing processes. Accordingly, the respondents' representative submitted their arguments with the understanding that the complaints were filed in relation to paragraph 190(1)(g) of the *Act*. In addition, the respondents determine the portions of section 185 of the *Act*, on

which the complainant relies, could not support her complaint. The respondents will, therefore, assume for the purposes of this response, that the complaint is based on allegations under section 188 of the *Act*, which deals with unfair labour practices of employee organizations.

[14] The respondents' representative submitted that the allegations in the complaint relate exclusively to internal union affairs under paragraph 188(c) of the *Act*. Under those provisions, the Board has jurisdiction to inquire about internal union business under a very narrow set of circumstances requiring both a decision by the union to discipline a member and conduct in doing so that constitutes discrimination within the meaning of the *Canadian Human Rights Act* (*Shutiak et al. v. Union of Taxation Employees-Bannon*, 2008 PSLRB 103, at para 13-16).

[15] The complainant does not raise any claim of discrimination on a prohibited ground (i.e., race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability or conviction for which a pardon has been granted) found in the *Canadian Human Rights Act*.

[16] Moreover, the complainant continues to hold office as president of Local 543 of the CEIU. She has not, at any time, been subjected to internal union discipline and, accordingly, the conditions prior to the disciplinary action have not been established.

[17] The conduct of the parties during mediation in an Ontario Superior Court of Justice proceeding is governed by that jurisdiction's *Rules of Civil Procedures* and is not captured by the prohibitions in section 188 of the *Act*, given the statutory requirements for disciplinary action by an employee organization against a member and based on a representative relationship as contemplated by the *Act*.

[18] The complainant had taken a term position with the CEIU's Ontario Region that dealt with the CEIU operations within the region. The non-renewal of that contract of employment between the CEIU as employer and the complainant as employee does not fall within the parameters of the *Act*. Section 188 of the *Act* addresses the conduct of a bargaining agent with respect to the discipline of its members.

[19] The respondents' representative stated that the complaint ought to be dismissed without a hearing under section 41 of the *Act*.

[20] The complainant submitted that the respondents took discriminatory disciplinary action against her in the form of legal proceedings. In response to the respondents' objections, she believes that, even if the allegations brought against her are dealt with in Superior Court, the union must be held accountable for its actions.

Reasons

[21] Board File No. 561-02-356 and Board File No. 561-02-379 raise the same allegation of the respondents taking discriminatory disciplinary action against the complainant in the form of a legal proceeding. I have already ruled that that complaint is untimely (see *Psyllias v. Meunier-McKay and Canada Employment and Immigration Union*, 2009 PSLRB 67), and I will, therefore, not address it in this decision.

[22] This complaint was filed under subsection 190(1) of the Act, and the form did not specify the Act omission nor other matters complained of. The allegations had to be surmised from various attached documents.

190. (1) The Board must examine and inquire into any complaint made to it that

(a) the employer has failed to comply with section 56 (duty to observe terms and conditions);

(b) the employer or a bargaining agent has failed to comply with section 106 (duty to bargain in good faith);

(c) the employer, a bargaining agent or an employee has failed to comply with section 107 (duty to observe terms and conditions);

(d) the employer, a bargaining agent or a deputy head has failed to comply with subsection 110(3) (duty to bargain in good faith);

(e) the employer or an employee organization has failed to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award);

(f) the employer, a bargaining agent or an employee has failed to comply with section 132 (duty to observe terms and conditions); or

(g) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.

Time for making complaint

(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.

Limitation on complaints against employee organizations

(3) Subject to subsection (4), no complaint may be made to the Board under subsection (1) on the ground that an employee organization or any person acting on behalf of one has failed to comply with paragraph 188(b) or (c) unless

(a) the complainant has presented a grievance or appeal in accordance with any procedure that has been established by the employee organization and to which the complainant has been given ready access;

(b) the employee organization

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or

(ii) has not, within six months after the date on which the complainant first presented their grievance or appeal under paragraph (a), dealt with the grievance or appeal; and

(c) the complaint is made to the Board not later than 90 days after the first day on which the complainant could, in accordance with paragraphs (a) and (b), make the complaint.

[23] Paragraphs 190(1)(a) to (f) of the Act are related to Bargaining Rights (a), Collective Bargaining and Collective Agreements (b), (c), (d), (e), Arbitration (e) and Essential Services (f). Only paragraph 190(1)(g) deals with unfair labour practices. Based on the allegations submitted by the complainant, I find that this case falls under paragraph 190(1)(g).

[24] Section 185 of the Act reads 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).

[25] Section 186 of the Act deals with prohibitions against certain actions of the employer. Section 187 deals with the obligations of an employee organization in its

representation of an employee before the employer. Subsection 189(1) deals with prohibitions on belonging to an employee organization or exercising rights under the Act. Only paragraph 188(c) could be related to the allegations raised by the complainant.

[26] Section 188 of the Act reads as follows:

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

(a) except with the consent of the employer, attempt, at an employee's place of employment during the employee's working hours, to persuade the employee to become, to refrain from becoming, to continue to be or to cease to be a member of an employee organization;

(b) expel or suspend an employee from membership in the employee organization or deny an employee membership in the employee organization by applying its membership rules to the employee in a discriminatory manner;

(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;

(d) expel or suspend an employee from membership in the employee organization, or take disciplinary action against, or impose any form of penalty on, an employee by reason of that employee having exercised any right under this Part or Part 2 or having refused to perform an act that is contrary to this Part; or

(e) discriminate against a person with respect to membership in an employee organization, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person has

(i) testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part or Part 2,

(ii) made an application or filed a complaint under this Part or presented a grievance under Part 2, or

(iii) exercised any right under this Part or Part 2.

[27] For the allegation regarding the behaviour of the respondents' counsel during mediation in the Ontario Superior Court of Justice proceedings, I agree with the

respondents' submission. It does not fall within the prohibitions set out in paragraph 188(c) of the *Act*.

[28] As for the allegation on the dismissal, again, I agree with the respondent's counsel, the action is not covered by the prohibitions in paragraph 188(c) of the *Act*.

[29] I would add that the complainant has also failed to comply with subsection 190(3) of the *Act* by not presenting either a grievance or a complaint in accordance with the PSAC internal procedures.

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

(The Order appears on the next page)

Order

[31] The complaint is dismissed.

June 4, 2009.

**Michel Paquette,
Board Member**