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*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

CHRIS O'HARA

Complainant

and

**UNION OF TAXATION EMPLOYEES AND LOCAL 90006, UNION OF TAXATION
EMPLOYEES**

Respondents

Indexed as

O'Hara v. Union of Taxation Employees and Local 90006, Union of Taxation Employees

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

REASONS FOR DECISION

Before: Renaud Paquet, Board Member

For the Complainant: Himself

For the Respondents: Krista Devine, Public Service Alliance of Canada

Decided on the basis of written submissions
filed March 10, August 29 and September 22, 2008, and March 9, April 21
and June 1, 2009.

REASONS FOR DECISION

I. Complaints before the Board

[1] On February 12 and July 25, 2008, Chris O'Hara ("the complainant") filed complaints against the Union of Taxation Employees and Local 90006 of the Union of Taxation Employees ("the respondents"). The Union of Taxation Employees is a component of the Public Service Alliance of Canada, the bargaining agent of the complainant. The complainant alleges that the respondents committed unfair labour practices within the meaning of paragraph 190(1)(g) of the *Public Service Labour Relations Act* ("the Act"). The complainant alleges that the respondents prevented him from attending a local executive union meeting and that they refused to select him as union steward. He also alleges that the respondents refused to represent him or that they improperly represented him with respect to grievances that he filed against the employer, the Canada Revenue Agency.

[2] The complaint involves 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.

...

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

...

(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

...

Summary of the complainant's submissions

[3] In March 2006, the complainant became a union steward for Local 90006 of the Union of Taxation Employees ("the local"). In September 2006, he became the chief union steward after the local president offered him the position.

[4] In April 2007, the complainant filed a grievance against the employer's decision not to allow his leave request for a doctor's appointment. Ginger Cole represented the complainant at the first level of the grievance procedure. After the first-level hearing, Ms. Cole, according to the complainant, informed him that his grievance was an embarrassment to the union and that it should not be referred to the higher levels of the grievance process. After that event, the complainant stopped attending the local executive meetings. It should be noted that, on April 21, 2009, the complainant admitted to the Board that Ms. Cole's behaviour did not constitute an unfair labour practice.

[5] At an unspecified date, the employer disciplined the complainant for an interaction he had with his supervisor. The complainant filed a grievance. He claimed that the grievance hearing was scheduled at a time when he was not at work so that he would miss the hearing.

[6] At an unspecified date, the local executive advised the complainant that he was being placed on "sick leave," from the union. After a period on "sick leave", the complainant advised the local executive that he wished to attend one of its meetings to discuss returning to his union functions. The complainant did attend the meeting, but

the issue of his return was only discussed at a following meeting where he was not present. After that meeting, the local executive asked the complainant to extend his absence for another six months.

[7] The complainant attended a subsequent meeting of the local executive. Discussions took place about his involvement in the executive. Some individuals present at the meeting stated that they would quit the union if the complainant were to return.

[8] The complainant also referred to an incident that occurred when the employer initially refused him access to the workplace to attend a meeting of the local executive. Later, the complainant learned that the employer's refusal had resulted from a notice it had received from the local president informing the employer that the complainant had not been invited to attend the meeting. After that incident, the complainant wished to file a grievance, but the local refused to assist him.

[9] In April 2008, the complainant informed the local executive that he would like to become a union steward. The local executive refused the request. On April 25, 2008, the local president wrote to the complainant, explaining that his candidacy for union steward was rejected based on his ability to work with management at all levels, the potential impact on the local executive and the existing mutual trust and respect required when dealing with each other and with management. The local president added that the executive felt that the complainant's involvement in the union would affect the ability of the executive to perform the work required to accomplish making the workplace better for the membership. According to the complainant, one of the local vice-presidents said that the complainant was not chosen to be a steward because he could not be trusted. The local vice-president cited as an example the complaint filed by the complainant with the Public Service Labour Relations Board ("the Board") in February 2008.

[10] The complainant felt penalized by the respondents' action. He invoked paragraph 188(e) of the *Act* saying that the respondents refused to give him the steward position because of his complaint to the Board.

Summary of the respondents' submissions

[11] The respondents point out that the complainant acknowledged that the April 2007 incident about a grievance on leave for a doctor's appointment did not

constitute an unfair labour practice on the part of the bargaining agent. As for the complainant's discipline grievance, he did not specify when or where the discipline happened or who was involved. The complainant did not establish that an unfair labour practice had occurred.

[12] The respondents submit that the other elements of the complaint relate to internal union matters. For that reason, the complaint should be dismissed since the Board does not have jurisdiction. The union did not take any disciplinary action against the complainant. Rather, the complaint is about the internal selection process for union stewards. After its decision not to select the complainant, the local executive provided its reasons to him in writing. The complainant also related some problems that he incurred when he tried to access the employer's premises for a meeting of the local executive. That is also an internal union matter.

Reasons

[13] The complainant submitted that the respondents violated paragraph 188(e) of the *Act* by not accepting him as a union steward. According to what the complainant had heard from the local vice-president, the local executive did not trust the complainant, one of the reasons being that he had filed a complaint with the Board in February 2008. However, the day after the decision was made not to accept the complainant as a steward, the local president provided detailed explanations to him of the reasons for his refusal.

[14] The complainant had to present a credible case that the local executive did not select him as a union steward because he had filed a complaint with the Board in February 2008. Once that established, he also needed to establish that it represented a penalty under paragraph 188(e) of the *Act*. The complainant did not establish that he was not selected as a steward because he had filed a complaint with the Board. The facts are that the local executive provided its reasons in writing to the complainant for its decision of not selecting him as a steward. I have no reason to believe that those reasons were not the real reasons for not selecting the complainant. Those reasons satisfy the Board that this is an internal union matter. Consequently, I do not have jurisdiction to intervene.

[15] The complainant also alleged that he was not properly represented or supported by the local in three grievance situations: a leave request for a doctor's appointment, a

disciplinary action related to an interaction with the complainant's supervisor and an incident related to access to the employer's premises to attend a meeting of the local executive.

[16] In April 2009, the complainant advised the Board that he no longer believed that the local's action in the first grievance was an unfair labour practice.

[17] The complainant did not provide any details in his complaint about the second grievance, except that the hearing was scheduled at a time when he was not at work. There was absolutely no obligation for the local to advise the complainant of the date of the hearing or to invite him to the hearing. Furthermore, the complainant did not provide any details on the date, the individual involved and the specific alleged violation of the *Act*. In such a context, it is impossible for the respondents to provide an explanation for their action.

[18] As for the third grievance, the complainant did not submit anything that would lead me to conclude that there was an unfair labour practice. The local did not control access to the building for its meetings, the employer did. It seems that the local executive provided a list of employees who were supposed to attend the meetings, and the employer would grant them access. If the local did not initially provide the complainant's name to the employer, it becomes ludicrous for local or the complainant to blame the employer through a grievance that it denied him access to the building. Furthermore, the Board will certainly not get involved in establishing whether the local executive may decide who can attend its executive meetings. That is well beyond the Board's mandate, interest and jurisdiction.

[19] A bargaining agent does not have an obligation to represent a member. In *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509, the Supreme Court of Canada established that it is sufficient for a bargaining agent to demonstrate that it has examined the circumstances of the grievance, considered its merits and made a reasoned decision whether to support it. In this case, the complainant did not convince me that the respondents did not meet their legal obligation by refusing to support his grievances.

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

(The Order appears on the next page)

Order

[21] The complaints are dismissed.

June 17, 2009.

**Renaud Paquet,
Board Member**