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File: 561-02-403

Citation: 2010 PSLRB 17



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

GWEN ANNE WARREN

Complainant

and

**PUBLIC SERVICE ALLIANCE OF CANADA
(Union of Solicitor General Employees)**

Respondent

Indexed as

Warren v. Public Service Alliance of Canada (Union of Solicitor General Employees)

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 Respondent: [Nathalie St-Louis, Public Service Alliance of Canada](#)

Decided on the basis of written submissions
filed November 2, 13 and 18, 2009, and January 6, 2010.

REASONS FOR DECISION

Complaint before the Board

[1] On October 9, 2009, Gwen Anne Warren (“the complainant”) filed a complaint with the Public Service Labour Relations Board (“the Board”) against the Union of Solicitor General Employees (USGE) and the Public Service Alliance of Canada (“the respondent”) under paragraph 190(1)(g) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (“the Act”). The USGE is a component of the Public Service Alliance of Canada, the bargaining agent. The complainant alleged that the respondent had committed an unfair labour practice within the meaning of section 185 of the *Act*.

Summary of the complainant’s submission

[2] In 1986, the complainant was working for the Correctional Service of Canada (CSC) at Millhaven Institution. The complainant occupied the position of Office Services Supervisor, classified at the CR-04 group and level. On November 4, 1986, the CSC informed the complainant that her position had been identified as surplus to its requirements, effective November 13, 1986. The complainant challenged the CSC’s decision alleging that the decision was not made according to a reverse order of merit assessment. The complainant also challenged the CSC’s decision to not consider her for an acting appointment at the CR-05 group and level in February 1987 and later challenged the decision to not permanently appoint her to that position.

[3] To avoid a layoff, the complainant accepted, on December 15, 1986, a voluntary demotion to a position at the GS-STS-04 group and level. The demotion resulted in longer hours with less pay after the salary protection period expired. According to the complainant, she was left in a poisonous work environment with no available recourse. She began facing serious health issues, but she trusted that her bargaining agent representatives and the CSC would take corrective action. Neither did. The complainant suffered a work injury in May 1989 and resigned in June 1989 with a permanent disability.

[4] In August 2008, the complainant consulted Ken Veley, a retired USGE representative, to try to get some justice. Mr. Veley helped the complainant prepare an access to information request for everything in her files at the CSC and at the Public Service Commission, where she had filed a complaint. On reviewing the documents, the complainant realized the wrong that had been done to her.

[5] On February 25, 2009, the complainant and Mr. Veley wrote to Don Head, Commissioner of the CSC, explaining her issues and asking for a meeting to discuss her case. Mr. Head agreed to meet with the complainant, Mr. Veley and John Edmunds, National President of the USGE, on May 5, 2009. However, the CSC did nothing after the meeting to address the complainant's concerns. In reaction to the CSC's lack of action, the complainant again wrote to Mr. Head on June 19, 2009, asking him to reconsider her case and to uphold the core values of the CSC.

[6] On July 13, 2009, Mr. Edmunds wrote to the complainant. He stated that he anticipated that the CSC would take no action after the May 5, 2009 meeting considering the time that had elapsed since the problems occurred. Mr. Edmunds also wrote that the complainant should not have waited all that time to attempt to correct what she perceived as wrong. Mr. Edmunds added that the complainant had to take responsibility for her lack of action and that there was nothing further that could be done to help her.

[7] The complainant felt that the content of Mr. Edmunds' letter was inappropriate and that it deterred her from requesting any further assistance from the USGE. In response to that letter, the complainant filed this complaint on October 9, 2009.

[8] The complainant argued that she filed a workforce adjustment policy complaint in the 1980s which she at no time withdrew. In 1989, she suffered a work-related injury, was placed on workers' compensation and subsequently resigned in June 1989. The fact that she resigned did not make her complaint null and void. During all those years, the USGE did nothing about her complaint, thus contravening the *Act*.

[9] The complainant admitted that she is no longer an employee or a member of the bargaining agent. However, when she recently asked to rejoin the bargaining agent and the USGE, she was denied membership.

Summary of the respondent's submission

[10] The respondent argued that the complainant is no longer an employee as defined by the *Act* since she resigned from her position in 1989. Consequently, the provisions of the *Act* do not apply to her.

[11] The respondent also argued that the complaint is untimely. Under subsection 190(2) of the *Act*, a complaint must be filed within 90 days of the alleged violation of the *Act*.

[12] Finally, the respondent argued that the complainant has failed to demonstrate that it acted in a manner that was arbitrary or discriminatory or that was in bad faith in the representation that it provided.

Reasons

[13] In subsection 2(1), the *Act* defines an employee as a person employed in the public service. The complaint also 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.

(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.

...

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.

...

[14] What the respondent did or did not do in the 1980s about the problems that the complainant experienced with the CSC at that time cannot, by the express terms of

subsection 190(2) of the *Act*, be used as an argument against the respondent in an unfair labour practice complaint filed some 20 years later.

[15] The respondent do not contest the content of Mr. Edmunds' letter of July 2009. It also does not contest that Mr. Edmunds clearly indicated in his letter that the USGE would not provide any representation to the complainant though it had been instrumental in arranging a meeting in May 2009 with the CSC's commissioner. However, the respondent did not violate the *Act* by refusing to represent the complainant. The respondent had no obligation to represent her. It was decided not to pursue her case because the CSC's alleged wrongdoing had occurred 20 years earlier.

[16] Furthermore, in coming to its decision, the bargaining agent did not act in a manner that can be characterized as arbitrary, discriminatory or in bad faith. Despite the time that had elapsed, the complainant was assigned to a representative whose competence she does not question, and the USGE undertook serious steps to assist her. When it did not meet with success, it evaluated the situation and decided not to pursue the matters. The USGE was within its rights to make the decision it did.

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

(The Order appears on the next page)

Order

[18] The complaint is dismissed.

January 28, 2010.

**Renaud Paquet,
Board Member**