Date: 20121102

File: 561-02-516

Citation: 2012 PSLRB 120

Public Service Labour Relations Act

Before a panel of the Public Service Labour Relations Board

BETWEEN

CECILIA BASIC

Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as
Basic v. Canadian Association of Professional Employees

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

REASONS FOR DECISION

Before: Kate Rogers, a panel of the Public Service Labour Relations Board

For the Complainant: Herself

For the Respondent: Fiona Campbell, counsel

Decided on the basis of written submissions, filed April 23 and May 14 and 22, 2012.

I. Complaint before the Board

[1] Cecilia Basic ("the complainant") was an employee of the Public Health Agency of Canada ("the employer") and was a member of the Canadian Association of Professional Employees (CAPE or "the union"), covered by the collective agreement between the Treasury Board and CAPE for the Economics and Social Science Services (EC) group, expiry June 21, 2011 ("the collective agreement").

[2] On April 27, 2011, the complainant filed this complaint, which made three allegations against what she believed was the failure of her union representatives to represent her in good faith, contrary to the requirements of section 187 of the *Public Service Labour Relations Act,* S.C. 2003, c. 22 ("*PSLRA*"). Responding to the complaint on May 20, 2011, the union objected to the jurisdiction of the Public Service Labour Relations Board (PSLRB) on the grounds that it was filed outside the 90-day time limit prescribed by the *PSLRA.*

[3] In *Basic v. Canadian Association of Professional Employees,* 2012 PSLRB 13, I ruled that two of the three allegations made by the complainant were untimely. However, I found that the third allegation was timely. Given that finding, this decision concerns only the complainant's remaining allegation that the union acted in bad faith during the grievance settlement negotiations conducted between August and December 2010.

[4] Following a pre-hearing conference with the parties, I determined that the remaining allegation could be determined by way of written submissions rather than a hearing. However, following the completion of the written submission process, some issues arose that must be resolved before I turn to the decision on the merits of the complaint.

II. Request to seal documents

[5] The employer, while not a party to the complaint, had been copied on the exchange of submissions and noted that both the complainant and the union made specific reference to the content and scope of the settlement discussions between the complainant and the employer held during mediation sessions conducted by the PSLRB's dispute resolution service. On May 18, 2012, the employer wrote to the PSLRB requesting that my decision omit any reference to the details and amount of the settlement discussed between the parties at mediation. Further, the employer

requested that Tabs 1 to 4 of the union's submissions and Exhibits J, L, M, R and Y of the complainant's submissions be sealed. The employer argued that the settlement discussions had taken place on the express understanding that they would be strictly confidential.

[6] In addition to the employer's request that certain documents be sealed, on May 22, 2012, the complainant asked that personal banking information that she provided in Exhibits J and M be redacted and that Exhibit Z of her submissions be sealed because it contained personal medical information.

[7] In its response to the employer's request of May 22, 2012, the union stated that while it was careful not to refer to the specifics of the settlement negotiations actually conducted with the assistance of the PSLRB's dispute resolution service, it had no choice but to provide details of the negotiations that took place later because they were central to the allegations made by the complainant. Nevertheless, the union supported the employer's request.

[8] In her response, dated May 25, 2012, the complainant also stated that she had tried to respect the confidentiality of the mediation process but that the nature of her complaint was such that it was not possible to withhold information relating to the settlement discussions. Further, she argued that since, in response to various access to information and privacy (ATIP) requests that she had filed, the employer had provided her with documents that specifically detailed the proposed settlement, it had already put into the public domain the very information that it now wanted sealed.

[9] The sealing of documents and records filed in judicial and quasi-judicial hearings is inconsistent with the fundamental principle enshrined in our system of justice that hearings are public and accessible. The Supreme Court of Canada has ruled that public access to exhibits and other documents filed in legal proceedings is a constitutionally protected right under the "freedom of expression" provisions of the *Canadian Charter of Rights and Freedoms*; for example, see *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *R. v. Mentuck,* 2001 SCC 76, *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 (CanLII).

[10] However, occasions arise where freedom of expression and the principle of open and public access to judicial and quasi-judicial hearings must be balanced against

other important rights, including the right to a fair hearing. While courts and administrative tribunals have the discretion to grant requests for confidentiality orders, publication bans and the sealing of exhibits, it is circumscribed by the requirement to balance these competing rights and interests. The Supreme Court of Canada articulated the sum of the considerations that should come into play when considering requests to limit accessibility to judicial proceedings or to the documents filed in such proceedings, in decisions such as *Dagenais* and *Mentuck*. These decisions gave rise to what is now known as the *Dagenais/Mentuck* test.

[11] The *Dagenais/Mentuck* test was developed in the context of requests for publication bans in criminal proceedings. In *Sierra Club of Canada*, the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:

. . .

> *(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
>
> *(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.*

. . .

[12] This test, which the Supreme Court of Canada has ruled applies to all discretionary decisions that would affect the right to free expression and the public interest in open and accessible court proceedings (see *Vancouver Sun (Re)*, 2004 SCC 43 and *Canadian Broadcasting Corp. v. The Queen,* 2011 SCC 3), has been applied by the PSLRB in recent decisions such as *Tipple v. Deputy Head (Department of Public Works and Government Services),* 2009 PSLRB 110 and *Pajic v. Statistical Survey Operations,* 2012 PSLRB 70.

[13] The employer has requested that I seal all documents that describe or detail the particulars of the settlement that were discussed in a mediation process conducted by the PSLRB's dispute resolution service and in the settlement discussions that were conducted later, which were based on the settlement discussed in mediation. Based on

the application of the test enunciated by the Supreme Court of Canada in *Sierra Club of Canada,* I believe that this request should be granted.

[14] One of the objects of the *PSLRA* is the resolution of workplace complaints and grievances. Indeed, the Preamble to the *PSLRA* states that "collaborative efforts between the parties, through communication and sustained dialogue, improve the ability of the public service to serve and protect the public interest" and that "the Government of Canada is committed to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment". Mediation, through the PSLRB's dispute resolution services, is one of the means through which grievances can be resolved and it is clear that the resolutions of disputes is not just in the interests of individual employers and employees within the federal public service, but in the public interest.

[15] To be effective, mediation is generally conducted with the understanding that the discussions, and the results of the discussions, are confidential. Absent that understanding, the parties may approach the process with caution and restraint, inhibiting success and preventing resolution of the dispute. The need for confidentiality is supported by the *PSLRA*. Section 243 protects mediators of the PSLRB from having to give evidence in any civil action or other proceeding about information obtained in the discharge of their functions and section 244 provides that the mediators' notes and draft reports cannot be disclosed without their consent. See also *Pepper v. Treasury Board (Department of National Defence),* 2008 PSLRB 8, for a full discussion of the need for confidentiality in mediation and settlement discussions.

[16] It seems clear to me that allowing public access to the documents in question would jeopardize an important public interest in effective labour relations in the federal public service because they provide details of the settlement reached through the confidential discussions between the employer and the complainant and her union. The need for confidentiality in mediation outweighs the public interest in having access to the documents. Since no alternatives to sealing the documents were suggested, or are apparent, it seems to me that an order to seal the exhibits that refer to the substance of the negotiations is the most effective means of protecting the interest in question. Furthermore, these documents are not germane to my decision, since the complaint concerns the process used to try to reach a settlement rather than the settlement itself.

[17] I do not agree, however, that the same result should apply to the request made by the complainant to have her doctor's report (Exhibit Z) sealed. The interest that the complainant seeks to protect is her personal privacy. While I accept that privacy is an important personal interest, I do not believe that this interest outweighs the importance of the public interest in open and accessible proceedings. For this reason, I do not agree to seal Exhibit Z of the complainant's submissions.

[18] For all of the reasons given, I order that the following exhibits be sealed:

1. Tabs 1, 2, 3 and 4 of the submissions filed by the Canadian Association of Professional Employees;

2. Exhibits J, L, M, R and Y of the complainant's submissions.

III. Amendments to submissions and right to sur-reply

[19] As noted above, the parties to this complaint agreed that it could be resolved by way of written submissions, and a schedule for the submissions was determined. The complainant was to file her written argument on April 23, 2012; the union was to provide a written response on May 14 and the complainant was to file her rebuttal on May 22, 2012. This was done. However, on May 1, 2012, the complainant requested a slight editorial amendment to her written argument. Then, on May 22, 2012, she requested further amendments to her written arguments. On May 23, 2012, the union requested that it be afforded the right of sur-reply on the basis that the complainant's rebuttal raised new issues and presented additional evidence that the union was not afforded the opportunity to address.

[20] The timelines for the submissions were established at the end of February 2012. There was a great deal of time for the complainant to prepare her submissions and to ensure that they were complete and accurate. If the process is to be efficient and effective, there must be some finality to it. For this reason, I will not consider the amendments requested by the complainant. In the same vein, I will not consider new issues or evidence raised in her rebuttal.

[21] The complainant's rebuttal was her opportunity to address the union's arguments, not an opportunity to advance new ones. The complainant's rebuttal addressed, among other things, alleged promises made by the union in relation to a Canadian Human Rights Commission (CHRC) complaint. This was not a matter that

arose in the union's submissions and is not a proper subject for rebuttal. Therefore I will neither summarize the arguments made by the complainant nor address them in my decision. Similarly, arguments and evidence provided by the complainant in her rebuttal that relate to her attempts to obtain her files and records from the union are not properly the subject of rebuttal because they are new.

[22] Since I am limiting my consideration of the complainant's rebuttal to only those matters that I consider to be within the bounds of rebuttal, there is no reason to grant the employer's request for a sur-reply, which I believe would only give rise to further delay and further procedural wrangling.

IV. Summary of the evidence

[23] The complainant filed two lengthy submissions and 29 exhibits, many of which contained multiple documents, in support of her complaint. The union also filed a comprehensive submission and four exhibits in support of its position. I have tried to summarize the relevant facts chronologically. It should be noted that both of the complainant's submissions address a number of issues relating to her termination of employment, to a human rights complaint before the CHRC, to an internal union complaint process and to other matters. I will not summarize those submissions as they are not relevant to the sole allegation in the complaint before me, which is that the union acted in bad faith during settlement negotiations between August and December 2010. Furthermore, much of the complainant's rebuttal repeated submissions that she had already made. I have only summarized those aspects of her rebuttal that address new fact or argument raised by the employer that were not dealt with in her original submissions.

[24] On or about June 12, 2009, the complainant's employment was terminated while she was on probation. With the union's assistance, she filed a grievance against her rejection on probation, which appears to have alleged that the termination of employment was both disciplinary and a violation of her collective agreement. The complainant was represented throughout the grievance process by the union. The grievance was denied at all levels of the grievance process and was referred to adjudication on January 28, 2010.

[25] On May 19 and 20, 2010, the complainant and her union representative, Isabelle Petrin, participated in an attempted mediation of her grievance with the

employer, under the auspices of the PSLRB's dispute resolution services. During this process, a final offer of settlement was made by the employer. The union states that Ms. Petrin advised the complainant that she considered the offer to be reasonable because she believed that the complainant's chance of success at adjudication on a grievance against a rejection on probation was low. Ms. Petrin also advised the complainant that there was no guarantee that the union would represent her at adjudication should she turn down the offer of settlement. Despite Ms. Petrin's advice, the complainant rejected the settlement.

[26] On May 25, 2010, Ms. Petrin wrote to the complainant confirming the opinion she expressed during mediation (Union's submissions, Tab 1). In particular, she reminded the complainant that the referral of her grievance to adjudication was conditional and "did not indicate a commitment by CAPE to proceed to a hearing." The complainant was again advised that the union thought that the settlement that had been offered was her best option, as the union did not believe that she would be "awarded similar redresses following arbitration or any other process."

[27] The complainant alleges that she had a telephone conversation with Ms. Petrin on the following day in which she specifically invited Ms. Petrin to tell her immediately if the union was planning to withdraw its representation on her grievance. She states that Ms. Petrin did not do so and in fact discussed with her a potential human rights complaint. The union denies that the complainant was ever led to believe that a decision was made to represent her at adjudication.

[28] Both parties agree that, during a telephone conversation on August 4, 2010, Ms. Petrin told her that the union would not support her grievance at adjudication. However, Ms. Petrin told the complainant that if the employer was willing to re-table the settlement offer that it had made during mediation in May, the union was willing to continue to represent her in any resulting settlement negotiations.

[29] In an email from the complainant to Ms. Petrin on August 4, 2010, the complainant confirmed that she understood the reasons behind the union's decision to withdraw support from her grievance, but did not agree with the analysis. She also stated that she understood that Ms. Petrin had contacted the employer in an attempt to determine whether the offer of settlement was still on the table, and instructed Ms. Petrin "to make every effort possible to receive a response from the employer as

soon as possible so that I can make an informed decision. . . .” (Complainant’s exhibits, Tab E).

[30] On August 16, 2010, the complainant sent an email to Ms. Petrin in which she provided detailed instructions as to the financial aspects of the settlement that she wanted presented to the employer, if the employer was willing to reopen discussions. Although she noted in the email that the instructions related only to the monetary aspects of the settlement, she provided no other instructions. The complainant alleges that Ms. Petrin did not reply to this email and did not “. . . confirm with the Complainant that she had incorporated the information contained in this email into the settlement terms that she would put [sic] provide to the PHAC on August 26, 2010 without the Complainant’s knowledge or providing the Complainant with an opportunity to review the written terms”(Complainant’s submissions, April 23, 2012, paragraph 31).

[31] On August 20, 2010, the complainant sent another email to Ms. Petrin in which she asked, among other things, whether there had been any response from the employer as to whether it was willing to re-table the settlement offer that had been made during the failed mediation in May. The complainant also wanted clarification as to whether she could pursue the disciplinary aspects of her grievance without the support of the union. In her submissions, the complainant states that Ms. Petrin did not respond to her questions until after the complainant asked about them again on August 31, 2010. She notes that Ms. Petrin’s response came only after Ms. Petrin had forwarded a draft settlement to the employer without the complainant’s knowledge.

[32] The complainant and Ms. Petrin spoke on August 23, 2010. In that conversation, the complainant asked again whether there had been any response from the employer on whether it was interested in resuming settlement discussions. Ms. Petrin told the complainant that until the senior manager responsible for approving any settlement discussions returned from vacation, the employer was not in a position to respond. In response to the complainant’s questions about what settlement “template” might be used, Ms. Petrin told the complainant that they would have to wait to see what the employer was willing to put forward. The complainant states in her submissions that she was not told that the union might be “in a position to table the first offer and in-so-doing [sic] choose the language and present the first set of settlement terms.” (Complainant’s submissions, April 23, 2010, para 36). The complainant also notes in

her submissions that this was the last telephone conversation that she had with Ms. Petrin during the settlement negotiations.

[33] On August 25, 2010, in an email exchange with the union on another matter, the complainant expressed a concern that the union would stop helping her with the settlement negotiations and simply withdraw its support for her grievance. She stated that, if the employer re-tabled the settlement offer with the monetary breakdown that she had described in her email to Ms. Petrin on August 16, 2010, she would accept it.

[34] Also on August 25, 2010, Ms. Petrin spoke to the employer representative on the file, who confirmed that the employer was willing to make the same financial offer that it had made during the mediation session in May 2010, but that there was to be no negotiation of the terms. That same day, Ms. Petrin sent a draft settlement document to the employer that contained the financial breakdown requested by the complainant on August 16, 2010.

[35] On August 26, 2010, Ms. Petrin sent a letter to the complainant in which she explained the union's rationale for deciding not to provide representation at adjudication. In the same letter, she noted that she had received confirmation that day from the employer that the settlement offer it had made during mediation was still on the table. Noting that the complainant had told the union that she was now willing to accept the employer's last offer of settlement, albeit reluctantly, Ms. Petrin confirmed that she had proposed the financial breakdown of the settlement requested by the complainant on August 16, 2010. She also asked that the complainant provide some information that was necessary to finalize the draft agreement.

[36] The complainant states that Ms. Petrin's letter of August 26 "marks the first time that the Complainant is made aware by CAPE that the PHAC has agreed to retable a settlement, i.e., Ms. Petrin did not call or send a separate email to the Complainant to inform her of PHAC's willingness to settle" (Complainant's submissions, April 23, 2012, para 44). She further suggests that Ms. Petrin misled her into believing that the employer would be providing a draft of the settlement to her for her review as opposed to the union providing the first draft.

[37] The complainant states that she responded to Ms. Petrin immediately on August 26, 2010 and told her that she would provide further feedback. In her submissions, she states that she "did not express her intention concerning the

employer's offer, nor did she confirm that she was still willing to accept the PHAC's offer". In fact, according to the complainant, having finally received the union's rationale for withdrawing its representation of her grievances at adjudication, "which was a mitigating factor in any decision to settle that the Complainant might now make" (Complainant's submissions, April 23, 2012, para 48), she was reconsidering her options.

[38] The complainant alleges that she was not advised until September 3, 2010, that Ms. Petrin provided the employer with a revised draft of the settlement on August 26, 2010, which contained the financial information that she had provided to Ms. Petrin.

[39] The complainant sent Ms. Petrin an email on August 31, 2010, in which she asked a number of questions relating to her grievances and also asked when she would see a copy of the settlement document. In an email on September 3, 2010, Ms. Petrin answered the questions. She confirmed that she had sent a first draft of a settlement agreement to the employer based on the complainant's requested financial terms and was waiting for a response. She noted that the employer told her that any settlement agreement would have to be approved by management in Ottawa. Ms. Petrin also confirmed that the complainant could pursue the grievance alleging that the rejection on probation was a disciplinary discharge without the union's support. She further explained that any settlement signed with the employer would resolve both grievances against the termination of employment. She also reassured the complainant that the fact that the complainant had filed an internal union complaint against the decision not to provide representation at adjudication would not have an impact on her participation in the settlement discussions.

[40] The complainant states that until Ms. Petrin responded to her August 31 email, she was unaware that the proposed settlement would resolve both her grievances.

[41] On August 9, 2010, the complainant had contacted the Winnipeg office of the Minister of Public Safety for the purpose of bringing to the Minister's attention her knowledge of certain events that occurred during her tenure of employment. She states that she believed that her information was of public importance and that she was performing an important public service. On August 20, 2010, she received a response from the Minister's office that simply advised her to contact the police as the Minister's office did not conduct investigations. According to the complainant, she was

uncertain how to react to this advice. On September 8, 2010, she sent Ms. Petrin an email in which she disclosed her correspondence with the Minister's office and sought Ms. Petrin's advice as to the impact that it might have on the settlement discussions.

[42] On September 8, Ms. Petrin received a copy of the memorandum of settlement from the employer. She reviewed it and sent an email to the employer requesting a change to the complainant's termination date. In the email to the employer, she asked whether the employer was now ready to sign the agreement, with the new termination date. The employer representative responded by sending a new draft of the agreement with some amendments. He also noted that the employer was unable to change the termination date because it would have an impact on some of the other provisions of the agreement. The union stated that Ms. Petrin believed that the document that the employer representative sent to her had been agreed to because it was identified as a final draft.

[43] Ms. Petrin sent a copy of this document to the complainant on the morning of September 9, 2010. She noted the changes made by the employer to the financial arrangements requested by the complainant and explained the reasons given by the employer for these changes. In that email, she also addressed the complainant's earlier email about her approach to the office of the Minister of Public Safety and her intention to contact the police, by noting that these actions could jeopardize the settlement discussions. Ms. Petrin told the complainant that if the employer pulled out of the settlement discussions because of the complainant's activities, the union would not continue to represent her.

[44] In response, the complainant advised Ms. Petrin that she required 10 days from the day that she received copies of the documents in the mail in order to review the proposed settlement. The complainant states that she was also concerned to learn that, while Ms. Petrin had signed the proposed settlement, the employer had not yet done so. In an email to Ms. Petrin, she indicated that she felt she was being asked to simply ratify a settlement negotiated by the union and the employer, without being afforded an opportunity to make changes. At the same time, she was concerned that while she was being asked to sign the settlement without delay, there was no guarantee that the employer would sign it promptly.

[45] Ms. Petrin responded to this email on September 9, 2010. She explained that the language of the proposed memorandum of settlement respected the terminology

requested by the complainant and was clear and unambiguous. She noted that, in her experience, the employer generally signed the agreement last and returned the original copies to the union, which would keep a copy for the file and forward another copy to the union member. She also stated that, in the complainant's case, there should be no delay in securing the employer's signature on the memorandum of settlement as all the necessary approvals, both in Winnipeg and in Ottawa, had already been given.

[46] In fact, the employer did not have all the necessary approvals to sign the memorandum of settlement. According to the union, at some point after Ms. Petrin left the office on September 9, the employer representative left a voicemail message stating that the memorandum of settlement that he had sent on September 8 had not yet been approved by management at the employer's headquarters in Ottawa. Ms. Petrin spoke to the employer representative after she received that voicemail message and confirmed that she had received the message. She also confirmed to the employer representative that she had sent the draft memorandum of settlement to the complainant.

[47] According to the union's submissions, Ms. Petrin decided that no useful purpose would be served in telling the complainant that the agreement that had been sent to her still did not have the employer's final approval. The union stated that Ms. Petrin believed that the approval was merely a formality and that she was concerned that if the complainant was aware that the employer had not yet finally approved the settlement, she might try to reopen negotiations. The union explained that Ms. Petrin knew from her discussions with the employer representative that the employer was not interested in further negotiations. The union also stated that Ms. Petrin believed that the settlement was the best that she could hope to achieve.

[48] The complainant responded to Ms. Petrin's email of September 9 the following day. She made it clear that she wished to review the proposed agreement in detail and that she would only sign it if she had no changes to propose. She observed that changes had been made to the financial arrangements that she had requested and she felt that this justified careful examination of the document. She also reiterated her concern that she was being asked to simply ratify a proposed settlement without being given the opportunity to suggest further changes and asked to be told as soon as possible if this was indeed the case. In her submissions, the complainant alleges that

she felt "bullied by CAPE into signing an agreement that she would have to live under for the rest of her life." (Complainant's submissions, April 23, 2012, para 66).

[49] On September 13, 2010, the complainant sent an email to Ms. Petrin in which she noted that, while she was still reviewing the proposed settlement documents, she wanted the settlement to contain a provision that substituted resignation for rejection on probation in her employment records and that also provided that her records would be destroyed. In an email to the complainant the following day, Ms. Petrin confirmed that she had requested the changes the complainant sought. Ms. Petrin also observed that the complainant's request to change the settlement might cause the employer to reopen negotiations and also request changes. The complainant alleges that, even though Ms. Petrin knew that the employer did not have all the approvals necessary to sign a final settlement agreement, she led the complainant to believe it was the complainant's desire for changes to the agreement that caused the employer to seek changes of its own.

[50] The following day, the complainant sent Ms. Petrin an email raising a number of issues and concerns. The most pressing issue concerned which "matters" would be resolved by the settlement. The complainant wanted reassurance that the term "matters" did not encompass all her outstanding complaints and issues. In particular, the complainant wished to be able to continue to make ATIP requests, to continue her complaint to the Privacy Commissioner and to continue to pursue issues that she had raised with the Minister of Public Safety.

[51] Ms. Petrin responded to the complainant's email promptly. She stated that she believed that the settlement would certainly limit the complainant's ability to pursue any issues that arose out of her employment. She also undertook to raise the questions concerning the privacy complaint and the ATIP requests with the employer, which she did later that day in an email to the employer representative.

[52] The employer representative responded to Ms. Petrin's email the same day. He forwarded a copy of an email from his superior expressing concern that the complainant had requested changes to the agreement when he had said that there was to be no further negotiation. The employer representative noted that there was frustration that the complainant wished to be able to pursue further ATIP requests. He told Ms. Petrin that they would have to work carefully if they were to achieve a settlement.

[53] Ms. Petrin responded to the employer representative's email on September 14, 2010. She stated that she believed that, as long as the money and the substitution of resignation for the rejection on probation was in place, there should not be any problem in placing limitations around the agreement, such as language concerning the complainant's right to pursue further ATIP requests and privacy complaints.

[54] The complainant states that she was not made aware of this exchange between Ms. Petrin and the employer representative and she says that, given that she had made her intentions concerning ATIP and her privacy complaints known to Ms. Petrin, she would not have agreed to the position taken by Ms. Petrin.

[55] The union acknowledges that Ms. Petrin did not discuss the email to the employer representative with the complainant. It states that Ms. Petrin was motivated by her desire to keep the negotiations alive and that she believed that it would be possible to reach an agreement if the money requested by the complainant and the substitution of resignation for termination were present in the agreement.

[56] On September 21, 2010, the complainant sent an email to Ms. Petrin outlining in some detail her concerns about the settlement negotiations. In particular, the complainant expressed her worry that either the employer or the union would back out of the negotiations and withdraw the settlement. On the other hand, she was concerned that the settlement under discussion was not the same as the one that had been tabled when the parties were in mediation under the auspices of the PSLRB's mediation services. She noted that she believed that the union and the employer had already agreed on settlement terms without consulting her. She also noted her disagreement with the scope of the settlement and in particular with Ms. Petrin's interpretation of the phrase "all matters" used to describe the scope of the matters to be resolved in the settlement agreement. She asked again for clarification as to how Ms. Petrin determined what was included in the scope of the settlement. She also asked if it was possible to recall the PSLRB mediator to assist with the negotiations.

[57] Jean Ouellette, who was the Director of Labour Relations for CAPE at the relevant time, responded to this email because Ms. Petrin was on vacation. He told the complainant that the employer told him that a final version of the settlement would not be ready for three weeks. Given this fact, Mr. Ouellette told the complainant that nothing would be served by speculating as to what the final settlement offer would be,

but that it was clear that whatever it was, the employer intended it to be final. He told the complainant that in these circumstances, the union would not take action in her case until the final settlement offer was made. He further advised the complainant that, in his view, the scope of the agreement was clear.

[58] The complainant responded to Mr. Ouellette's email on September 22, 2010. The union states that Mr. Ouellette either did not receive this email or deleted it accidentally, as there is no record of it in his files. The union acknowledges, however, that the email was sent to Mr. Ouellette by the complainant but was not answered.

[59] The complainant's letter to Mr. Ouellette on September 22 sets out in some detail her dissatisfaction with the negotiation process. In essence, she complained that she had been excluded from the process and that the settlement that was sent to her on September 10, 2010 was the product of an agreement between Ms. Petrin and the employer, without any input from her. Of particular concern to her was the fact that the agreement sent to her for signature did not contain any reference to substituting resignation for termination or to the clearing of her employment records. She again raised the issue of the scope of the settlement and her concern about the meaning of the phrase "this matter," since she did not want to foreclose her right to pursue other issues.

[60] On October 6, 2010, the complainant sent another email to Mr. Ouellette in which she stated, "By forcing me into a settlemnet [sic], CAPE failed to shine a strong enough light onto the PHAC's discriminatory management practices" (Complainant's exhibits, Tab Q). Mr. Ouellette responded on the same day. He noted that, while he could understand that she was upset, her comments were unjustified and inappropriate. He also reminded her that, if she was not satisfied with the settlement that the union was trying to negotiate on her behalf, she could reject it. If the union considered that the settlement was reasonable in all the circumstances, it would withdraw its support. At that point, she would be able to pursue the disciplinary aspect of her grievance on her own and at her own expense.

[61] On October 8, 2010, the complainant responded to Mr. Ouellette's email of October 6. Among other things, she repeated her belief that the union was forcing her to accept a settlement. She also stated that she believed that, by withdrawing its support of her grievances, the union had ended any hope that she might have had in further recourse through the CHRC or other agencies. She continued to ask for an

explanation as to why the union believed that the phrase "this matter," used in the scope clause of the memorandum of agreement, meant any issue arising from her employment. She also quite plainly expressed her dissatisfaction with the service that had been provided by the union.

[62] Mr. Ouellette responded to the complainant on October 14, 2010. He said simply that, since the employer had not yet sent the final settlement offer and since Ms. Petrin would be returning from vacation the following week, she would resume carriage of the complainant's file and would respond to the complainant.

[63] On October 19, 2010, Ms. Petrin forwarded to the employer a copy of a letter from the CHRC to the complainant, dated June 18, 2010. Although the letter was addressed to the complainant, it had originally been copied to the employer by the CHRC.

[64] On November 8, 2010, the complainant sent a lengthy email to Ms. Petrin in which she expressed her concern about the length of time that it was taking to finalize the settlement. She stated that she believed that she was without an advocate in the settlement process and that the employer was in complete control. She described the process as "mental harassment" (Complainant's exhibits, Tab U) and complained to Ms. Petrin about her perception of Mr. Ouellette's lack of support and action on her behalf. Finally, she told Ms. Petrin that she would now like to accept the offer of settlement sent to her on September 9, 2010. She stated that, since she had received no other offer of settlement, she believed that offer must still be on the table.

[65] The complainant sent another lengthy email to Ms. Petrin on November 8, in which she summarized some of the information that she received as a result of her ATIP request. On November 9, 2010, she sent another email to Ms. Petrin in which she reiterated her desire to accept the settlement offered on September 9, 2010, and stated that she hoped that this decision would not cause the union to withdraw its representation of her immediately.

[66] Ms. Petrin responded on November 10, 2010 to the complainant's desire to accept the September 9 settlement. She stated that the offer made on September 9 was no longer available as the complainant had requested changes to it and that, by reopening the agreement, the employer also decided to make changes to it. She told the complainant that the employer had advised that it would be in a position to send

the revised agreement to the complainant in the near future. She explained that, as the negotiation process was outside any formal process, she had no mechanism to force the employer to act promptly and that trying to enforce deadlines might jeopardize the process. She reassured the complainant that she was following up on the complainant's file regularly and would communicate with the complainant as soon as she had some news from the employer. She also assured the complainant that the union had not advised the employer that it would not represent the complainant at adjudication. Finally, she requested that the complainant cease criticizing the union or other CAPE employees to her.

[67] On December 10, 2010, Ms. Petrin forwarded a copy of the terms of settlement provided by the employer. On December 17, 2010, the complainant advised the union that she rejected the settlement as offered. On December 21, 2010, Ms. Petrin sent a letter confirming that the complainant had rejected the settlement, and therefore, the union would no longer represent her on the grievances. She also forwarded to the complainant a copy of a letter to the PSLRB advising that the union was no longer representing the complainant and no longer supported the complainant's collective agreement grievance.

V. Summary of the arguments

A. For the complainant

[68] Citing *Canadian Merchant Service Guild v. Gagnon,* [1984] 1 S.C.R. 509, the complainant argued that while the union has considerable discretion in the decisions that it might make in representing its members, it must exercise that discretion in good faith, objectively and honestly, with competence and integrity, weighing both the importance of the grievance and the interests of the union. There must be no major negligence or hostility against the union member.

[69] The complainant submitted that her union representative was dishonest, disingenuous and negligent and failed to act with integrity. In support of this allegation, she argues that Ms. Petrin knew by September 14, 2010 that the settlement negotiations had not been approved by the employer's senior management, but she failed to advise the complainant of that fact.

[70] The complainant also contended that Ms. Petrin did not advise her that the union was not placing any restrictions on what the employer could put in the settlement, nor did Ms. Petrin advise the complainant that the union had decided that any settlement offer presented by the employer would be acceptable to the union.

[71] The complainant argued that Ms. Petrin was disingenuous, dishonest, failed to behave with integrity and committed misconduct by providing the employer with a copy of a letter addressed to her from the CHRC and by failing to tell the complainant that she had done so.

[72] The complainant further argued that the union failed to explain to her satisfaction the meaning of a clause in the settlement proposed by the employer concerning the scope of the issues to be resolved by the settlement. She contended that that failure demonstrated the union's failure to act with integrity.

[73] The complainant argued that, by accepting that the employer's offer of settlement was final, Ms. Petrin did not try to negotiate or change the specific language of the settlement proposed by the employer. She contended that this demonstrated inflexibility by the union.

[74] The complainant suggested that Ms. Petrin failed to explore or investigate the complainant's knowledge about specific workplace issues that the complainant believed were relevant to the settlement negotiations.

[75] The complainant submitted that the union's representation of her throughout the settlement negotiations was hostile. She argued that that hostility was evident in the union's failure to address her concerns around the scope of the settlement agreement, through its characterization of her comments as "inappropriate, uncalled for and unjustified," through its failure to present her demands to the employer, and through its failure to enter into any meaningful dialogue with her.

[76] The complainant asked that her complaint be allowed and that she be compensated for the legal costs incurred when she retained outside counsel to assist her in settlement discussions with the employer. She also asked for reimbursement of the costs incurred by her because the emotional and psychological damage resulting from the union's representation caused her to seek psychological counselling.

B. <u>For the union</u>

[77] The union submitted that the onus is on the complainant to establish that the union failed in its duty of fair representation. Unions enjoy considerable discretion in their handling of grievances, as long as the discretion is exercised in good faith and the representation is not arbitrary or discriminatory. The union cited *Ouellet v. Luce St-Georges and Public Service Alliance of Canada,* 2009 PSLRB 107, *Canadian Merchant Service Guild v. Gagnon,* and *Manella v. Treasury Board of Canada Secretariat and Public Service Alliance of Canada,* 2010 PSLRB 128, in support of that principle.

[78] The union argued that bad faith conduct is conduct that is motivated by an improper or deceitful purpose. It pointed to examples of bad faith representation such as a refusal to represent because of personal hostility or collusion with the employer. The union contended that, to result in a finding of bad faith, the conduct engaged in by a union must have affected the quality of its representation of the member's interests. It cited *Judd v. Communications, Energy and Paperworkers' Union of Canada, Local 2000,* (2003), 91 CLRBR (2d) 33 (BCLRB) at paras 49 to 54, in support of this proposition.

[79] The union argued that the only issue is whether it acted in bad faith during the settlement negotiations conducted between August and December 2010. It argued that the evidence clearly demonstrated that it acted professionally and diligently. There was no evidence to suggest any improper purpose or any intention to deceive the complainant in a manner that affected the quality of the representation. In fact, the union attempted to act in the complainant's best interests at all times.

[80] The union stated that, on the specific allegation that Ms. Petrin knew that the settlement still had to be approved by senior management in Ottawa but did not advise the complainant of that fact, Ms. Petrin was motivated by what she believed to be the complainant's best interests. She believed not only that the approval was merely a formality, but also that no useful purpose would be served by telling the complainant that management still had not approved the settlement, especially since the complainant wanted changes to this version of the agreement. The union argued that Ms. Petrin's actions were not motivated by bad faith or any improper purpose.

[81] With respect to the allegation that Ms. Petrin misrepresented the complainant's interests by telling the employer that the two key elements of the settlement were the money and the substitution of resignation for rejection on probation when, in fact, Ms. Petrin knew that the complainant was also concerned about protecting her right to pursue further ATIP issues against the employer, the union argued that Ms. Petrin was simply responding to what she believed was the possible breakdown of negotiations. She believed that compromise would be necessary and she was simply trying to protect what she saw as the important elements of the settlement. The union argued that this is simply the normal flow of negotiations and in no way represents bad faith conduct.

[82] The union submitted that there was nothing improper in providing to the employer a copy of a letter from the CHRC to the complainant, since the employer had been copied on the original letter. The union stated that it was not obligated to obtain the complainant's consent to copy the letter to the employer as it was not a confidential document.

[83] The union stated that, with the exception of the complainant's email to Mr. Ouellette on September 22, 2010, it responded to all the complainant's emails concerning the interpretation of the scope clause of the proposed memorandum of agreement. The email of September 22, 2010 may have been misfiled or accidentally deleted and therefore Mr. Ouellette's failure to respond to it cannot be characterized as bad faith or a breach of the union's duty of fair representation.

[84] The union argued that the complainant fundamentally misunderstood the nature of the settlement negotiations. The employer, not the union, determined whether it was willing to negotiate the settlement and whether it was willing to entertain further discussion on the offer that it had made.

[85] The union denied that it was hostile to the complainant. Mr. Ouellette's failure to respond to one of the complainant's emails was inadvertent. Further, he was well within his rights to express his concern about the language used by the complainant in one of her emails.

[86] The union argued that, in the event that the complaint was allowed, it would not be appropriate for the complainant to be awarded the remedies that she seeks. It contended that the PSLRB does not have the jurisdiction to award legal costs. Furthermore, these costs are not rationally connected to the complaint. The union also

argued that the complainant's request to have the costs of her psychologist covered is not logically connected to the complaint. The union contended that the complainant is not entitled to the remedies that she is seeking and that the complaint should be dismissed.

C. Complainant's rebuttal

[87] The complainant argued that the union refused to explain to her how the settlement could cover all aspects of her employment. She maintained that the union only represented her on the discrimination aspect of her grievances but claimed to have negotiated a settlement that covered other matters relating to her employment. She argued that the union should have discussed this with her and explained it.

[88] The complainant argued that the union's failure to inform itself about all aspects of her case, and in particular her belief that her termination of employment was a reprisal for whistleblowing, led it to concentrate on the monetary aspects of the settlement even though other aspects of the settlement were important to her. Furthermore, she argued that the union's failure to inform itself put it at a disadvantage with the employer in the settlement negotiations.

[89] The complainant reiterated that, although Ms. Petrin apparently was aware that the employer was not interested in negotiating the terms of settlement, she did not ever tell the complainant that fact.

[90] The complainant contended that the copy of the letter from the CHRC that Ms. Petrin gave to the employer was marked "protected" and was therefore clearly confidential. She stated that even though it had originally been copied to the employer, Ms. Petrin should not have sent a copy to the employer without discussing the action with the complainant.

[91] The complainant argued that she was treated with hostility by the union and that its representation of her was passive-aggressive. She suggested that Ms. Petrin's bad faith resulted in a breach of trust.

[92] The complainant argued that the remedies she requested were directly related to the harm she suffered. She stated that she did incur legal costs to settle her case and she did suffer psychological trauma during the period of the settlement negotiations. She stated that the evidence she received in early 2011 through her ATIP

requests, which showed the union's actions during the settlement negotiations, simply verified and further substantiated her knowledge of the bad faith representation she had received from the union.

VI. Reasons

[93] This is a complaint filed under paragraph 190(1)(*g*) of the *PSLRA* alleging that the union committed an unfair labour practice, as defined by section 185, in that it violated the duty of fair representation, as set out in section 187, which provides as follows:

> ***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.*

[94] At all material times, the complainant had been an employee in the bargaining unit represented by the union. Her employment was terminated by the employer and the union provided representation to her during the grievance process related to that termination, as well as during a mediation under the auspices of the PSLRB's dispute resolution services. Following mediation, the union determined that it would not support the complainant's grievance at adjudication but that it would continue to provide representation during settlement negotiations, if the complainant wished to pursue settlement discussions. The resulting settlement discussions are the subject of this complaint.

[95] This complaint is a portion of a larger complaint. Following an objection to jurisdiction based on timeliness, I ruled in an earlier decision that only that portion of the complaint that related to the settlement discussions was timely. Accordingly, the complaint that is the subject of this decision, filed on April 27, 2011, reads as follows:

> *Acted in bad faith during the Aug. to Dec. 2010 settlement negotiations following their announcement August 7, 2010, that they planned to withdraw support. I did not ratify the offer and CAPE withdrew on December 21/10.*

[96] The complainant alleged, in essence, that the union acted in bad faith during the settlement negotiations in question by withholding critical information from her, by failing to consider and use information about the underlying facts of her grievances that she provided to the union during the settlement negotiations and failing to inform

itself of the underlying circumstances of her grievances, by violating her privacy rights by sending a copy of a letter addressed to her to the employer, and by treating her with hostility during the discussions.

[97] Part of the larger complaint that I found to be untimely concerned the union's decision not to provide representation at an adjudication hearing on the complainant's grievance against her rejection on probation. Despite the fact that I had ruled that portion of the complaint to be untimely, the complainant's dissatisfaction with the union's decision not to represent her at adjudication was an underlying theme in her submissions.

[98] Unions may, of course, make decisions about the grievances that they choose to carry forward. Even if the union's decision not to represent the complainant at adjudication was an issue that I must consider, I would not be examining the correctness of the union's decision but the process that it used to come to it. The case law is very clear that unions may exercise a great deal of discretion in their decisions on grievance representation. See, for example, *Bahniuk v. Public Service Alliance of Canada,* 2007 PSLRB 13; *Cox v. Vezina,* 2007 PSLRB 100; *Boshra v. Canadian Association of Professional Employees,* 2009 PSLRB 100; and *Martell v. Research Council Employees' Association and Van Den Bergh,* 2011 PSLRB 141.

[99] The discretion that a union may exercise in determining which grievances to support also extends to the decisions that it makes while providing representation. As noted by the Board member in *Bahniuk,* at paragraph 69:

> *. . . the duty of fair representation does not require the bargaining agent to take the direction of individual members when deciding what grievances to pursue, when to negotiate extensions of time and what grievances to settle. Finally, an individual member of a bargaining agent has the right to representation, but that is not an absolute or unlimited right. It does not mean, for example, that the member can insist that the bargaining agent provide a representative whenever he wants one. As long as the bargaining agent is not arbitrary or discriminatory or acting in bad faith when it exercises its judgment in these matters, it is entitled to distribute the limited resources of the organization in a reasoned fashion.*

[100] Just as a union has considerable discretion in determining for which grievances it will provide representation and which grievances it will settle, it also has considerable discretion in determining how the cases that it supports should be argued. The fact that a union does not rely on the arguments or case law that a union member wants presented does not necessarily establish that it has violated its duty of fair representation. As noted in *Boshra*, at para 61:

> *There is much in the complainant's submissions that quite obviously suggests a pronounced disagreement between him and the respondent as to the grounds on which his case should have been argued and perhaps the specific representations that should have been made at different points in the grievance process. However, disagreement does not substantiate a complaint. To be sure, it could be the case that the respondent made "incorrect" decisions as to the grounds on which the complainant's grievances should have been argued and perhaps even debatable choices concerning strategies and tactics along the way. However, being "incorrect" or making debatable decisions about what to do during the grievance process is not in itself proof of arbitrary, discriminatory or bad-faith conduct.*

[101] The complainant bore the onus to establish that the union's representation of her during the settlement discussions was arbitrary or discriminatory or that the union was acting in bad faith. Given the legal principles established in the case law, as described in the foregoing cases and others that apply to this issue, I do not believe that the complainant met this onus.

[102] While I will explain my decision as it applies to each of the particular concerns raised by the complainant, I think that it is important to make a few general comments. It is clear from the documents submitted in evidence that the union was motivated by its belief that settlement represented the complainant's best option for achieving some resolution of her grievances. From the union's letter to the complainant on May 25, 2010 (Union's submissions, Tab 1), advising her to accept the settlement offer made by the employer at mediation because "it is our professional opinion that you will not be awarded similar redresses following arbitration or any other process," to its letter of August 26, 2010, which contained similar statements, as well as various emails throughout the process, the union's motive to encourage the settlement discussions was clear and consistent.

[103] It is equally clear from the documents presented in evidence that the complainant never accepted the union's assessment of her grievance. She believed that the union applied an improper analysis to the grievances. She stated, in a letter to Mr. Ouellette dated August 20, 2010, that Ms. Petrin viewed her grievance "through the narrow optics of labour laws" and did not consider other issues important to her. As noted above, the union is entitled to make decisions as to how a grievance should be approached but I believe that this fundamental difference of opinion caused the complainant to respond to the union's advice with suspicion and mistrust and coloured her reaction to subsequent events.

[104] The complainant's mistrust of the union is evident in her allegation that the union treated her with hostility. She argued that the union's refusal to address her concerns around the scope of the proposed settlement agreement demonstrated hostility. She contended that the fact that the union forced her to sit back and wait for the employer to make a settlement offer instead of making representations on her behalf demonstrated its hostility toward her. She stated that the union's failure to engage in meaningful dialogue with her, its refusal to listen to her concerns and its characterization of her concerns as "inappropriate, uncalled for and unjustified" proved its hostility toward her.

[105] In fact, there is no real evidence of hostility toward the complainant by the union. The email correspondence between the complainant and the union during the period in question is extensive and much of it was put in evidence by the complainant. On reviewing that evidence, it is clear that Ms. Petrin treated the complainant with unfailing courtesy, even in the face of some of the complainant's critical outbursts. While Mr. Ouellette's response to the complainant's claim that the union was forcing her into a settlement was undoubtedly sharp, I do not believe that it is representative of the relationship between the parties over the course of the negotiations. It appears to me to have been an isolated and fairly mild response to a particular accusation made by the complainant.

[106] The complainant suggested that the union's hostility toward her was evident in the fact that it did not keep her informed about the negotiation process. The evidence does not support this allegation. For example, in her submissions, the complainant suggested that Ms. Petrin did not call her or send her a separate email when she received word that the employer was willing to re-table its offer of settlement. In fact, a

letter from Ms. Petrin to the complainant on August 25, 2010, confirms that Ms. Petrin received word that day that the employer was willing to reopen negotiations, and that she had proposed to the employer the financial terms requested earlier by the complainant. Overall, the evidence shows that the union corresponded regularly with the complainant and informed her in a reasonably timely fashion of any developments in the negotiations.

[107] The complainant contended that Ms. Petrin deliberately misled her about some facts. In particular, she notes that, while Ms. Petrin knew that the employer still had to get approval from senior management in Ottawa before signing a final settlement, Ms. Petrin told her that all employer approvals had been received. The union acknowledged that Ms. Petrin did not correct her statement to the complainant that all approvals had been received when she learned that senior management still had not approved the settlement. The union contended that Ms. Petrin was simply motivated by her desire to keep the process moving and was concerned that if the complainant were aware that the employer still had not finally approved the settlement, she would have taken the opportunity to ask for further changes to the document, which might have frustrated the negotiations. In fact, even believing that the document was final, the complainant requested further changes.

[108] The complainant also argued that the union acted in bad faith when Ms. Petrin advised the employer that the key elements of any settlement would be the financial provisions and the substitution of resignation for rejection on probation, even though Ms. Petrin was aware that there were other issues of importance to the complainant. The complainant argued that this demonstrated that the union was not representing her interests. The union acknowledged that Ms. Petrin told the employer what she believed the key elements of the settlement to be. It again argued that Ms. Petrin was motivated by her desire to keep the settlement alive and that she genuinely believed that the complainant would compromise on the other issues.

[109] It seems to me that both these circumstances arose from the union's desire to keep the settlement discussions alive and not from any improper motive. The union's explanation is reasonable. Given the complainant's repeated statements that if the settlement contained the financial arrangements she requested and the substitution of resignation for rejection on probation, she would reluctantly accept it, it is not surprising that Ms. Petrin would consider these terms to be of primary importance and

everything else to be negotiable. It is certainly clear from the employer representative's email to Ms. Petrin that their goal was the achievement of a negotiated settlement (Complainant's exhibits, Tab N). While another union representative might have adopted a different approach to such negotiations, it is not my role to determine whether Ms. Petrin's approach was correct. Rather, it is to determine whether it was motivated by bad faith, arbitrariness or discrimination, and I find no evidence of any of these factors.

[110] The complainant also alleged that the union violated its duty of fair representation when neither Ms. Petrin nor Mr. Ouellette would explain to her how they interpreted the scope clause of the tentative settlement agreement. In fact, both Mr. Ouellette and Ms. Petrin did explain what they understood was meant by the clause; the complainant simply did not accept the answer they gave her. The union believed that the settlement being proposed would resolve all outstanding matters arising from the complainant's employment, as is generally the case in such settlements; the complainant believed that, while the settlement would resolve issues relating to her termination of employment, it ought not prevent her from using information that she had acquired while employed against the employer in other processes. It appears that there was a genuine difference of opinion between the union and the complainant on this matter that did not arise from any arbitrary, discriminatory or bad faith conduct on the part of the union.

[111] The complainant argued that Ms. Petrin should not have sent to the employer a copy of a letter addressed to her from the CHRC without advising her. She contended that this action demonstrated Ms. Petrin's lack of integrity. As this letter was originally copied to the employer, it is not clear why the complainant was so concerned that Ms. Petrin provided another copy to the employer. In my opinion, there was nothing improper in Ms. Petrin's action and certainly nothing to suggest that it was motivated by any arbitrariness, discrimination or bad faith.

[112] It is clear from reading the email correspondence between the complainant and the union that the complainant believed that her case was much stronger and more complex than the union believed it to be. She believed that the union should be pushing the employer harder, but the correspondence demonstrates that the union was concerned that the employer might walk away from the negotiations. She felt that the union should be making representations to the employer on her behalf and

controlling the pace of negotiations, while the union was evidently more cautious. However, despite its concern that the employer might walk away, the union advanced every demand for changes to the settlement that the complainant wanted. There is no evidence that the union's approach to the negotiations was motivated by any bad faith, arbitrariness or discrimination or even hostility, as argued by the complainant.

[113] The complainant criticized almost every aspect of the union's involvement in the settlement negotiations, from the pace of the negotiations, to the contents of the settlement, to the fact that she believed that she was being forced to accept an inferior settlement. Her dissatisfaction with the process stemmed, as I have noted, from her refusal to accept the union's assessment of the strength of her grievances and from the union's decision that it would not represent her at adjudication, neither of which is an issue before me. There is no evidence that the union approached the settlement negotiations in anything other than a professional and diligent manner. There is no evidence of bad faith, arbitrariness or discrimination in its treatment of the complainant and therefore, I cannot allow the complaint.

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

(The Order appears on the next page)

VII. Order

[115] The complaint is dismissed.

November 2, 2012.

Kate Rogers,
a panel of the Public Service
Labour Relations Board