Date: 20121022

File: 561-34-487

Citation: 2012 PSLRB 114

Public Service Labour Relations Act

Before a panel of the Public Service Labour Relations Board

BETWEEN

KULWANT SAHOTA ET AL.

Complainants

and

THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, DAVID GRAY, RAY LAZZARA and WALTER BELYEA

Respondents

Indexed as
Sahota et al. v. The Professional Institute of the Public Service of Canada et al.

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

REASONS FOR DECISION

Before: Stephan J. Bertrand, a panel of the Public Service Labour Relations Board

For the Complainants: Nao Fernando

For the Respondents: Steven Welchner, counsel

Heard at Vancouver, British Columbia,
October 18, 2011 and June 12 and 13, 2012.

I. Complaint before the Board

[1] On September 24, 2010, Kulwant Sahota and approximately 35 others ("the complainants") made a complaint under paragraph 190(1)(*g*) of the *Public Service Labour Relations Act* ("the *Act*") against David Gray, Ray Lazzara, Walter Belyea and the Professional Institute of the Public Service of Canada ("the respondents"). The complaint alleged that the respondents had breached section 187 of the *Act*, which reads 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.*

[2] The complainants made several allegations in support of their complaint, which I have summarized as follows:

(i) The Professional Institute of the Public Service of Canada ("the Institute") was not mandated to hold talks with the complainants' employer, the Canada Revenue Agency ("the CRA"), with the view of reaching an arrangement on the transfer of employees from several provincial governments (primarily British Columbia and Ontario) outside a specified 60-day window.

(ii) The members of the Institute, including the complainants, were not forewarned or advised of those talks.

(iii) The arrangement reached with the CRA contained essentially the same terms as that of an earlier proposed article for the Audit, Financial and Scientific (AFS) Group collective agreement (article 35), which had been rejected by the AFS Group membership.

(iv) The terms of the arrangement were not revealed to the membership until after it was signed.

(v) The arrangement was agreed to and signed in an allegedly arbitrary fashion, including the failure of the respondents to seek a ratification vote.

(vi) Subsequent town hall meetings held jointly between the Institute and the CRA to convey the terms of the arrangement cast a chill among the members of the Institute, including the complainants, who were not allowed an opportunity to vent their opposition or to ask relevant questions about issues that troubled them.

(vii) The membership was not given a copy of the arrangement until after the joint town hall meetings were concluded and were compelled to familiarize themselves with its terms through a PowerPoint presentation made on projectors.

[3] In their response dated October 14, 2010, the respondents raised the following three preliminary objections: (i) the complaint was out of time, since it was not filed within the prescribed time limit; (ii) the Public Service Labour Relations Board ("the Board") lacks jurisdiction to deal with internal union matters; and (iii), the complainants failed to establish a *prima facie* case of a breach of the duty of fair representation.

[4] The timeliness objection was ultimately withdrawn, and a hearing was scheduled to address the respondents' two remaining objections. This decision deals solely with those objections and not with the merits of the complaint.

II. Summary of the evidence

[5] At the parties' joint request, I dealt with the documentary evidence in the following manner. The complaint form and all the documents attached to it were marked, on consent, as Exhibit #1. The respondents' response and all attached documents, which consisted of attachments "A" though "M", were marked, on consent, as Exhibit #2. And the complainants' reply and all attached documents, which consisted of attachments 1 through 4, were marked, on consent, as Exhibit #3.

[6] The complainants called three witnesses, Mr. Sahota, Paul Skinner and Andrew Adolph. The respondents did not call any witnesses. They choose to rely on the documentary evidence filed at the hearing.

[7] According to the complainants, in April 2009, the Institute bargained with the CRA with a view to renewing the AFS Group collective agreement. A tentative agreement was reached and included article 35, entitled "New Business Acquisitions,"

which was about the transfer of employees from several provincial governments (primarily B.C. and Ontario) that had opted for a harmonized sales tax (HST). Article 35 essentially set out the terms and conditions of employment for those new employees, including calculation of service, vacation and sick leave balances, rates of pay, and economic increases. The AFS Group membership rejected the tentative agreement, in great part, according to Mr. Sahota, because of the wording and potential impact of article 35.

[8] The Institute subsequently resumed negotiations and concluded another tentative agreement with the CRA in September 2009, this time without article 35, which was put to a ratification vote. In addition, the Institute and the CRA had signed a "Letter of Understanding" (LoU) that provided them with an opportunity to negotiate an alternative to Article 35. The LoU provided that the Institute and the CRA would use their best efforts to reach an arrangement on the transfer of the provincial employees within 60 days of the signing of the collective agreement. The existence and content of the LoU were known to the AFS Group membership, including the complainants, before the ratification vote was held for the new collective agreement, as it was attached as an appendix to the tentative agreement.

[9] The collective agreement was eventually ratified by vote by the AFS Group members who had been made fully aware that, although article 35 no longer formed part of the collective agreement, an alternative to it would attempt to be negotiated as a result of the LoU. However, the Institute and the CRA could not reach an arrangement on an alternative to article 35 within the contemplated 60 days and negotiations broke off. Months later, Mr. Gray, a vice-president of the Institute, Mr. Lazzara, President of the AFS Group, and Mr. Belyea, an Institute staff member, held talks with the CRA that resulted in an understanding on an alternative to article 35, known to the parties as the "Memorandum of Understanding" (MoU). The MoU was signed on April 23, 2010.

[10] According to Messrs. Sahota, Skinner and Adolph, the MoU was reached outside the 60-day period and without first consulting the AFS Group membership or putting it to a ratification vote. However, Mr. Skinner, who was at the relevant time the regional representative of the AFS Group in B.C. and a member of the Institute's negotiating committee, clarified that he been provided with a copy of the MoU and that he had been consulted about it the day before it was signed.

[11] The MOUs terms were conveyed to the membership at town hall meetings held jointly by the Institute and the CRA through a detailed PowerPoint presentation delivered on projectors, which set out all the key aspects of the April 23, 2010 MoU. According to the complainants, it cast a chill among the members of the AFS Group, who felt unable to vent their opposition or to ask relevant questions about issues that troubled them. A copy of the MoU was provided to the AFS Group membership sometime after the joint town hall meetings were concluded.

[12] Dissatisfied with how the MoU had been reached, the complainants filed this complaint. Mr. Skinner also indicated that he filed internal complaints with the Institute president and with its board of directors, both of which were rejected at their first review.

[13] At the hearing, the complainants conceded through their representative that they were not challenging the merits of the MoU or alleging that it was not an appropriate alternative for the initially proposed article 35. The complainants led no related evidence.

III. Summary of the arguments

A. For the respondents

[14] The respondents argued that the complainants' allegations were restricted to the Institute's chosen process for entering into an MoU and to how it communicated the MoU to its membership, both of which are internal union matters. They submitted that the Board and its predecessor, the Public Service Staff Relations Board (PSSRB), have consistently held that the duty of fair representation is not engaged for internal union matters and that, absent a specific legislative provision, this Board has no supervisory authority to regulate the internal affairs of a bargaining agent. In support of that argument, the respondents referred me to the following authorities: *Mangat v. Public Service Alliance of Canada*, 2010 PSLRB 52, at para 46; *Shutiak et al. v. Union of Taxation Employees-Bannon*, 2008 PSLRB 103, at paras 10 to 12; *Bracciale v. Public Service Alliance of Canada (Union of Taxation Employees, Local 00048)*, 2000 PSSRB 88, at paras 22 to 29; *St-James et al. v. Canada Employment and Immigration Union Component (Public Service Alliance of Canada) and Cres Pascucci*, PSSRB File No. 100-1 (19920331); *Tucci v. Hindle*, PSSRB File No. 161-02-840 (19971229); *Martel v. Public Service Alliance of Canada*, PSSRB File Nos. 161-02-669 to 671 (19931027); and *White v. Public Service Alliance of Canada*, 2000 PSSRB 62.

[15] The respondents essentially contended that, since the matters that formed the subject of the complaint were internal union matters, they fell outside the scope of the Institute's statutory duty of fair representation. Relying on *Bracciale*, they submitted that the duty of fair representation ought not to apply to the relationship between a bargaining agent and an employee in a bargaining unit it represents and that, instead it ought to apply only to disputes relating directly to the relationship with the employee's employer.

[16] The respondents added that the complaint was exclusively about the complainants' relationship with the Institute and its officers and that it had absolutely nothing to do with the Institute's representation of the complainants vis-à-vis their employer. Relying on *St-James*, *Kilby et al. v. Public Service Alliance of Canada and Daryl Bean,* PSSRB File Nos. 161-02-808 and 150-02-44 (19980427) and *Bracciale*, the respondents argued that the duty of fair representation is engaged for dealings between employees and their employers and that it has no bearing on the regulation of the internal workings of a bargaining agent.

[17] For the complainants' allegation that the Institute was obliged to ensure that the MoU was first ratified by the AFS Group membership, the respondents argued that labour boards have consistently ruled that ratification is an internal union matter not covered by the scope of the duty of fair representation, regardless of whether ratification is required by a union's constitution. The respondents suggested that, if the complainants were concerned in principle about the absence of a consultation or ratification practice, their recourse was not with this Board but with the Institute. On that point, the respondents referred me to the following authorities: *Connolly* (1998), 107 di 120 (C.L.R.B.), at para 107; *Burrows et al.* (1984), 57 di 205 (C.L.R.B.); *Laking* (1996), 101 di 71 (C.L.R.B.), at para 11; *Air Canada*, 2010 CIRB 539, at para 49; *Threlfall (Re)*, [2001] B.C.L.R.B.D. No. 37 (QL); and *King (Re),* [2006] B.C.L.R.B.D. No. 61 (Q.L.).

[18] The respondents also referred me to two recent decisions of the Canada Industrial Relations Board (CIRB), *Air Canada,* 2010 CIRB 539, and *Air Canada*, 2010 CIRB 539, in which the CIRB suggested that labour boards have no business dealing with the aspects of a duty of fair representation complaint that alleges a bargaining agent's failure to comply with internal bylaws or to hold ratification votes.

[19] Finally, the respondents contended that the Institute's statutory duty of fair representation was never engaged in this case, as all the complainants' allegations

were directed exclusively at challenging the respondents' internal process for negotiating and entering into the MoU and then communicating it to its members. According to the respondents, those actions were about internal union matters, which were not covered by section 187 of the *Act*, meaning that I do not have jurisdiction over them.

[20] The respondents' counsel also provided detailed arguments about the complainants' alleged failure to establish *a prima facie* case. For reasons that will become obvious later in this decision, I have not summarized them.

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

[21] The complainants argued that the respondents acted in a manner that was arbitrary first because they had no mandate to negotiate with the CRA once the 60 days to do so had expired, after they failed to secure the membership's mandate though an extension of that deadline, and second because the MoU was reached in secrecy and without a ratification vote. According to the complainants, the requirement to seek the membership's approval of the MoU through a ratification vote was pivotal, and the respondents' failure to hold one was a clear indication of arbitrariness.

[22] The complainants' representative agreed with the state of the law argued by the respondents as it applies to internal union matters. However, he contended that this complaint does not pertain to internal union matters and that the respondents failed to demonstrate, through *viva voce* (oral) evidence, how it does.

[23] According to the complainants, the signing of a memo about a matter that had been rejected earlier by the membership, without a ratification vote and in secrecy, could be seen only as arbitrary.

[24] The complainants also argued that the MoU was part and parcel of the collective agreement that the membership had already ratified and that, therefore, it required a ratification vote to be considered legitimate.

[25] The complainants suggested that, even though this case deals with ratification issues, I could nevertheless assume jurisdiction over it if the respondents' actions were arbitrary or in bad faith.

[26] The complainants referred me to the following authorities: *Bracciale*; *Shutiak*; *Canadian Merchant Service Guild v. Gagnon et al.,* [1984] 1 S.C.R. 509; *Ontario (Ministry of the Environment and Energy),* [2005] O.L.R.D. No. 2337 (QL); *Abitibi-Consolidated Co. of Canada,* [2004] O.L.R.D. No. 1472 (QL); and *Boshra v. Canadian Association of Professional Employees*, 2009 PSLRB 100.

C. The respondents' reply

[27] The respondents reiterated that the decision as to whether membership ratification is necessary is internal and is made by the bargaining agent concerned. Similarly, whether the respondents could or should have sought an extension of the 60-day window from the membership to negotiate an alternative to article 35 is an internal union matter.

[28] The respondents submitted that the complainants were never without recourse, as they could have pursued their challenge under the Institute's constitution rather than before this Board.

IV. Reasons

[29] In addition to considering the testimonial evidence that was presented at the hearing, I also gave due consideration to the documentary evidence that was filed on consent by the parties.

[30] According to several minutes of meetings of the AFS group executive and of the Institute's board of directors, shortly after the talks between the AFS group executive and the CRA broke off, the CRA announced that the transferred employees from the provinces would be placed in a different bargaining unit and that Institute members currently performing HST or provincial sales tax audits would also be moved to that unit. In that scenario, the AFS group executive believed that the AFS Group would lose thousands of members. The fact that the Institute continued to have discussions with the CRA outside the 60-day period referred to in the LoU was known and authorized by the AFS group executive, which held a formal vote to authorize the signing of the MoU at its meeting of April 22, 2010. The AFS group executive approved the MoU, which was then entered into with the CRA the following day.

[31] Contrary to the complainants' allegation, the MoU was substantially different from the proposed article 35, which the AFS Group membership had rejected. The

proposed article 35 established certain terms and conditions of employment for the provincial employees who would be transferred to the AFS bargaining unit. Other than a requirement for the CRA to "consult the Institute in a timely manner," no concrete protections appeared to be offered for existing bargaining unit members. According to an AFS "Bargaining Update," that was insufficient to protect the AFS group members. In contrast, the MoU ultimately signed by the Institute and the CRA contained extensive protections for existing bargaining unit members in the AFS group. Given that the complainants are not challenging the merits of the MoU or arguing that it was not an appropriate alternative for the initially proposed article 35, I have not listed those additional protections. In any event, they are readily apparent by simply comparing the wording of the proposed article 35 and that of the MoU (attachments "A" and "H" of Exhibit #2).

[32] In addition, the complainants' suggestion that there is an obligation to seek the ratification of an LoU or an MoU concluded outside the negotiation of a collective agreement does not appear supported by the Institute's bylaws, by those of the AFS group executive, by the jurisprudence, or the *PSLRA*.

[33] As indicated earlier in this decision, section 187 of the *Act* sets out the statutory duty of fair representation. It states 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.*

[34] In my view, the duty of fair representation does not apply to the relationship between a bargaining agent and an employee in a bargaining unit that it represents. Both the PSSRB and the present Board have dealt with that issue on several occasions. In *Bracciale*, the complainants in that case complained to the national president of their bargaining unit and the Public Service Alliance of Canada (PSAC) about irregularities with the election of their bargaining unit local's executive council and the day-to-day operations of that local. The local investigated the incident for a possible violation of its bylaws. In response to the duty of fair representation complaint filed by the complainants in that case, the PSAC objected to the PSSRB's jurisdiction to hear the complaint on the basis that the matters that formed the subject of the complaint were internal union matters. The PSSRB agreed that the matters fell outside the scope of the

PSAC's statutory duty of fair representation and found that the duty of fair representation did not apply to the relationship between a bargaining agent and an employee in a bargaining unit that it represents. Instead, the PSSRB found that the duty was intended to apply only to disputes relating directly to the relationship between an employer and its employee in a bargaining unit. At paragraphs 28 and 29 of *Bracciale*, the PSSRB made the following statement:

> ***28.*** *As can be seen above, the Board has no more powers than those conferred upon it by legislation. Subsection 10(2) of the Act has been consistently interpreted by the Board as applying exclusively to a bargaining agent's representation of its members in matters directly relating to their relationship with the employer. I see no reason to differ from that line of reasoning.*
>
> ***29.*** *In the case at hand, the complainants are disputing the Local 00048's Executive Council's day-to-day operations of the Local 00048 as well as other internal union matters. Their dispute relates directly to their relationship with their bargaining agent, not with their employer. In other words, their dispute concerns exclusively their membership in the bargaining agent, not their employment with the employer.*

[35] The same principle can be found in other PSSRB decisions. In *St-James*, it stated the following:

> . . .
>
> *It has been widely recognized that at least in the absence of specific provisions to that effect in its enabling statute, a labour relations board does not have supervisory authority to regulate the internal affairs of a bargaining agent. For example, George Adams, the former Chairman of the Ontario Labour Relations Board (now Mr. Justice Adams) stated the following in his text, Canadian Labour Law (1985) Canada Law Book, at page 721:*
>
> > Labour relations boards have made it clear that the statutory duty of fair representation does not apply to regulate the internal workings of trade unions. The duty applies only to a trade union in the representation of its members in terms of their relations vis-à-vis their employer. Accordingly, labour relations boards have been unwilling to interfere with: the conduct of ratification votes, the suspension of an employee from membership in the trade union, the exclusion of non-members from votes on contract matters during collective bargaining, an allegedly unfair appeal procedure

> provided by a trade union with respect to decisions whether to pursue grievances, allegations concerning a trade union's constitutional procedures with respect to elections, the right of a trade union member to run for the office of area steward, the method in which delegates are selected for the purpose of participating in a union convention and the fact that the trade union may have departed from its internal by-laws, the alleged improper removal of the complainant from a trade union office and membership when it was clear that the complainant was not an employee in the bargaining unit, and the alleged failure of a trade union to provide an adequate pension plan.
>
> *The Public Service Staff Relations Board has only the authority conferred on it by statute. It is quite clear that the Public Service Staff Relations Act does not confer the authority on this Board to regulate the internal affairs of a bargaining agent. The granting of certification pursuant to section 28 of the Act undoubtedly imposes certain obligations on the bargaining agent. However, as noted by the representative of the respondents, unless and until the actions of the bargaining agent affect the employment relationship, the Board clearly has no role to play. . . .*
>
> . . .
>
> [Emphasis in the original]

[36] In *Kilby et al.*, the complainants challenged the process followed by their bargaining agent to deal with harassment complaints that they had filed against one of its officers. The PSSRB declined jurisdiction over the matter, stating as follows:

> . . .
>
> *With respect to the complaint under subsection 10(2), it is readily apparent that the Board has no jurisdiction to deal with this dispute under that provision. The complainants' representative acknowledged that there is at best a tenuous link between the complaints and the complainants' relationship with the employer. In fact, it is crystal clear that the complaint concerns exclusively the complainants' relationship with the bargaining agent and its officers; it has nothing to do with the employee organization's representation on behalf of the complainants vis-à-vis the employer.*
>
> . . .

[37] Other labour boards have also delved into this issue. In *Burrows*, the former Canada Labour Relations Board (CLRB) stated as follows (part V of that decision):

. . .

> *. . . While this Board considers that it has no power to interfere in respect of such internal union matters as the way in which ratification takes place - or indeed in respect of whether there is any membership ratification at all – We [sic] do observe that the absence of consultation or ratification, which plays such a large part in Mr. Burrows' complaint, is not inconsistent with the normal way in which the union does pipeline business. If Mr. Burrows is concerned in principle about the absence of a consultation or ratification practice, his recourse is not to this Board but to the union itself. He might start and carry on a campaign in the local and, beyond, to the convention of the U.A. to have a rule established requiring such consultation or ratification. This Board would be acting beyond its jurisdiction if it sought to impose such a rule for him.*

. . .

[38] At paragraph 107 of *Connolly*, the CLRB also made the following statement:

> *107. This Board has, in past decisions, indicated that it has no power to interfere in respect of such internal matters as the way in which ratification takes place, or indeed in respect of whether there is any membership ratification at all (Nelson G. Burrows et al., supra, at page 215; Raymond M. Laking (1996), 101 di 71 (CLRB no. 1161), at pages 73-74; Dennis Dohm (1983), 52 di 160 (CLRB no. 439), at page 164). The decision as to whether membership ratification is necessary and the manner in which it is conducted is primarily the business of trade unions. It is only when there is evidence that the union has acted dishonestly or in bad faith that the Board may intervene. . . .*

[39] In this case, neither party introduced evidence suggesting that the Institute's actions directly affected the complainants' employment relationship with their employer. In addition, even were I to accept the complainants' pretension that I have jurisdiction over internal union matters in the case of proven arbitrariness or bad faith, the complainants also failed to demonstrate dishonest conduct or bad faith on the part of the respondents. They simply argued that the failure to hold a ratification vote before signing the MoU was arbitrary.

[40] This is not a case in which the respondents promised to put the alternative to Article 35 to a ratification vote to obtain a mandate to negotiate such an alternative,

only to subsequently renege on that promise and sign an MoU that included such an alternative. In fact, the respondents' actions, as depicted in the documentary evidence, appeared anything but dishonest and there is no evidence that they were either arbitrary or in bad faith. They were focused on negotiating the best outcome for the AFS Group members. In fact, their efforts led to a better outcome than the terms that article 35 initially proposed for them. In saying this, I am not suggesting that if the bargaining agent had made such a representation that it would be bound to carry it out, nor that reneging on such a representation would automatically amount to bad faith. Rather, I am simply stating that contrary to the complainant's pretensions, there was nothing arbitrary in the union's actions.

[41] As suggested by the respondents, the CIRB also found that a labour board should not involve itself in reviewing internal union decisions about ratification votes. At paragraph 67 of 2010 CIRB 539, it affirmed the following:

> *67 As stated at Part V of this decision, in the normal course, the Board has no power under section 37 to investigate internal union affairs. The Board has no power, therefore, to deal with the various aspects of the duty of fair representation complaints that allege the union's failure to comply with the by-laws of IAM 140 or to hold a ratification vote. Accordingly, the Board makes no findings in those areas.*

[42] In 2010 CIRB 540, the CIRB again reiterated that principle at paragraph 49, by stating the following:

> *49 The Board finds that the union's decision to hold a further ratification vote on July 14, 2009, on the tentative agreement following the issuance of the four letters of clarification by the employer, is solely a matter of internal union affairs. The Board's jurisdiction under the* Code *to determine complaints alleging that a union has breached its duty of fair representation to its members does not extend in these circumstances to an examination of whether the union's decision to hold a further vote was or was not consistent with its constitution or by-laws.*

[43] Clearly, the facts have established that this complaint is exclusively about internal union matters. The LoU provided that the Institute and the CRA would use their best efforts to reach an arrangement on the transfer of the provincial employees within 60 days of the signing of the collective agreement. It afforded the Institute an opportunity to negotiate an alternative to article 35. Its existence and content were

well known to the AFS Group membership, including the complainants, before the ratification of the collective agreement. According to the complainants' representative, a complaint would still have been filed had the MoU been signed within the 60-day window stipulated in the LoU because the MOU's ratification was required in any event.

[44] In my view, nothing prevented the Institute and the CRA from coming to an arrangement outside the contemplated 60 days; nor was there a requirement to seek the ratification of the MoU, whether the memo was concluded within or outside the 60-day window. By virtue of the fact that the Institute is the certified bargaining agent, it has the right and obligation to negotiate on behalf of its members at any time. No ratification was required under any bylaw or statutory provision. And, even had a ratification vote been required under the Institute's bylaws, a failure to hold one would still not necessarily have brought this matter under the scope of section 187 of the *Act*.

[45] As for the complainants' argument that the MoU was part and parcel of the collective agreement that had previously been ratified by the membership, hence requiring a further ratification vote to be considered legitimate, it fails to consider that the LoU that gave birth to the MoU clearly stated in its last paragraph that it did not form part of the collective agreement and that the MoU, which was signed after the collective agreement came into effect, did not provide that it was to be considered a part of or read into the collective agreement. In addition, nothing in the LoU guaranteed or promised a ratification vote on the negotiated alternative. It rather stated as follows:

. . .

> *The purpose of this letter of understanding is to confirm an agreement reached between the Professional Institute of the Public Service of Canada-Audit, Financial and Scientific Bargaining Unit (PIPSC-AFS) and the Canada Revenue Agency (CRA) with respect to a commitment to consult with a view to reaching an agreement on issues relating to both existing CRA employees and new employees who join the CRA as a result of taking on new business responsibilities on behalf of the Ontario and British Columbia provincial governments, including recognition of years of service.*
>
> . . .
>
> *In accordance with this letter of understanding, the parties agree to fully engage and in good faith demonstrate best efforts to reach an agreement through a consultative process*

> *that addresses the parties mutual interests and concerns of existing CRA employees and new employees relating to provincial employees who join the CRA as a result of the Agency's mandate to administer new business requirements and responsibilities on behalf of the Ontario and British Columbia provincial governments, including recognition of years of service. The parties agree to initiate discussions within two weeks of the signing of this letter of understanding with the intent to conclude an agreement no later than 60 calendar days from the commencement of discussions.*
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> . . .
>
> *This letter of understanding does not form part of the collective agreement.*

[46] I have no hesitation finding that the complainants' allegations and the nature of their complaint deal exclusively with internal union matters and that they fall outside the scope of the respondents' statutory duty of fair representation. Therefore, I lack the jurisdiction to deal with it.

[47] Since I have decided that I do not have jurisdiction to deal with this matter as it relates to internal union matters, I will not address the respondents' second objection, which was about the complainants' failure to establish a *prima facie* case.

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

(The Order appears on the next page)

V. Order

[49] The complaint is dismissed.

October 22, 2012.

Stephan J. Bertrand,
a panel of the Public Service
Labour Relations Board