Date: 20140218

File: 525-34-52
XR: 561-34-499

Citation: 2014 PSLRB 17

Public Service Labour Relations Act

Before a panel of the Public Service Labour Relations Board

BETWEEN

FRANCINE BOUCHARD

Applicant

and

SYLVIE LAHAIE, ANDRÉ BÉLANGER, MICHEL DÉSILETS, PATRICK SIMONEAU, JEAN-YVES MARTEL, DANIÈLE BÉDARD, JEAN-PIERRE FRASER, BETTY BANNON, PUBLIC SERVICE ALLIANCE OF CANADA AND UNION OF TAXATION EMPLOYEES, LOCAL 10005

Respondents

Indexed as
Bouchard v. Lahaie et al.

In the matter of a request for the Board to exercise any of its powers under section 43 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Renaud Paquet, a panel of the Public Service Labour Relations Board

For the Applicant: Lise Pronovost

For the Respondents: James Cameron, counsel

Decided on the basis of written submissions
filed December 18, 2013, and January 21 and February 5, 2014.
(PSLRB Translation)

Request before the Board

[1] On December 18, 2013, Francine Bouchard ("the applicant") filed an application for a reconsideration of *Bouchard v. Lahaie et al.,* 2013 PSLRB 143 ("the 2013 decision"), under section 43 of the *Public Service Labour Relations Act* ("the *Act*"). Ms. Bouchard requested that the 2013 decision, rendered by Board Member Stephan Bertrand, be reviewed, rescinded or amended.

[2] On January 12, 2011, Ms. Bouchard filed an unfair labour practice complaint against a number of Public Service Alliance of Canada representatives ("the respondents"). The complaint was heard in Trois-Rivières on September 19, 2011. At the hearing, the parties agreed to participate in a mediation session, and on the same day, they reached an agreement about their dispute.

[3] On February 29, 2012, the applicant requested a hearing so that the Public Service Labour Relations Board ("the Board") could annul the September 19, 2011, agreement on the basis that the respondents failed to comply with one of its terms. The parties were called to a hearing to deal with Ms. Bouchard's February 29, 2012, request, which was held on September 5, 2013, and resulted in the 2013 decision that is the subject of this application for reconsideration.

[4] Therefore, I am seized of an application for a reconsideration of a decision, the scope of which was relatively limited, given that the 2013 decision was to examine only the implementation of the agreement between the parties and not the merits of the dispute that existed before the agreement, that is, the incidents that led Ms. Bouchard to file an unfair labour practice complaint in 2011. In fact, as stated by the Federal Court of Appeal in *Amos v. Canada (Attorney General),* 2011 FCA 38, and by the Board in *Fillet v. Public Service Alliance of Canada,* 2013 PSLRB 43, once the parties to a dispute have reached an agreement, the Board has jurisdiction to determine whether the agreement is final and binding and whether the parties fulfilled their respective obligations. In the event of a lack of compliance, the Board determines the remedy.

[5] In the 2013 decision, Board Member Bertrand determined that the agreement signed by the applicant and the respondents on September 19, 2011, was final and binding and that the respondents had complied with its terms. He denied Ms. Bouchard's application to annul the agreement and ordered the file closed. He also

stated that he agreed with the respondents' position that Ms. Bouchard's annulment application was frivolous and vexatious and nothing less than an abuse of process.

[6] This application for reconsideration was made under subsection 43(1) of the *Act,* which reads as follows:

> ***43.*** *(1) Subject to subsection (2), the Board may review, rescind or amend any of its orders or decisions, or may re-hear any application before making an order in respect of the application.*

[7] The case law, which I will return to in my reasons, clearly establishes the meaning of subsection 43(1) of the *Act.* That subsection must not be interpreted as meaning that the Board should act as an internal appeal tribunal for decisions already rendered. As stated in subsection 51(1) of the *Act,* Board decisions are final. A reconsideration under subsection 43(1) of the *Act* instead enables a party to present new evidence or arguments that could not reasonably have been presented at the original hearing. The Board must ensure that a compelling reason exists to proceed with a reconsideration.

Applicant's position and arguments

[8] Given the legal framework of Ms. Bouchard's application for reconsideration, I will not summarize the 89 paragraphs of arguments that she filed with her application or the additional comments that she filed on February 5, 2014. Instead, I will limit myself to the basics.

[9] In her document dated December 18, 2013, after introducing her application, Ms. Bouchard questions a part of what Board Member Bertrand wrote in the 2013 decision. She disagrees with how he related the facts. She criticizes him for making decisions that she states are tainted with favouritism by comparing how he managed earlier hearings with the 2013 hearing, which Ms. Bouchard's representative was unable to attend.

[10] Ms. Bouchard then discusses the September 19, 2011, agreement and explains in her opinion how the respondents failed to comply with it, in particular with respect to two letters of apology that their representatives sent her. She also denounces the fact that some of the persons against whom she initially filed her complaint did not sign

the letters of apology, the agreement for mediation on September 19, 2011, or the settlement agreement reached that same day.

[11] Finally, in her document of December 18, 2013, Ms. Bouchard criticizes the 2013 decision and findings of Board Member Bertrand. She blames the Board for waiting until September 5, 2013, to hold a hearing to examine the implementation of the September 19, 2011 agreement. She states that the Board Member acted unreasonably and that he favoured one of the parties. She ends by stating that her application for reconsideration is well founded and that the Board has a duty to determine the merits of the complaint she filed on January 12, 2011, that the 2013 decision was unreasonable and that it infringed on her fundamental right to be heard.

Respondents' position and arguments

[12] The respondents reiterate most of the applicant's arguments and express their disagreement with them. The respondents believe that Board Member Bertrand always acted impartially. According to them, the accusations are vexatious and frivolous and, as set out by the Federal Court of Appeal in *Gandhi v. Public Service Alliance of Canada,* 2013 FCA 223, the accusations are grave and could have serious implications, particularly since they have no basis in the evidence or in Board Member Bertrand's decision. In this case, the respondents note that the Board Member is a member of an independent quasi-judicial tribunal.

[13] The respondents point out that the reconsideration must not be a relitigation of the merits of the case and must be based on a material change in circumstances. The reconsideration must consider only new evidence that could not reasonably have been presented at the original hearing. That is not so in this case.

Reasons

[14] This application for reconsideration was made under subsection 43(1) of the *Act,* quoted in paragraph 6 of this decision. Ms. Bouchard seeks to have the 2013 decision by Board Member Bertrand reviewed, rescinded or amended. In the decision, the Board Member determined that the agreement signed by the applicant and the respondents on September 19, 2011, was final and binding and that the respondents complied with its terms.

[15] The reconsideration under subsection 43(1) of the *Act* is not an appeal of the original decision. As I stated earlier, the purpose of reconsideration is to enable a party to present new evidence or arguments that could not reasonably have been presented at the original hearing, or is valid when there is a compelling reason for the reconsideration. On that point, after reviewing the relevant case law, the Board wrote the following in *Chaudhry v. Treasury Board (Correctional Service of Canada),* 2009 PSLRB 39, at para 29:

> *[29] A review of the jurisprudence shows the following guidelines or criteria for reconsidering a decision of the PSLRB (see* Quigley, Danyluk, Czmola *and* Public Service Alliance of Canada*). The reconsideration must:*
>
> - *not be a relitigation of the merits of the case;*
> - *be based on a material change in circumstances;*
> - *consider only new evidence or arguments that could not reasonably have been presented at the original hearing;*
> - *ensure that the new evidence or argument have a material and determining effect on the outcome of the complaint;*
> - *ensure that there is a compelling reason for reconsideration; and*
> - *be used ". . . judiciously, infrequently and carefully . . ." (*Czmola*).*

[16] Even if I were to accept Ms. Bouchard's statements as true, which is far from the case, I would deny her application. In her 89 paragraphs of arguments, Ms. Bouchard does nothing but criticize or question the impartiality of Board Member Bertrand and maintain the theory that the September 19, 2011, agreement was breached. Contrary to the criteria set out in *Chaudhry,* Ms. Bouchard relitigates the merits of the case (the breach of the agreement), fails to raise a change in the circumstances known at the September 2013 hearing and fails to present new evidence that could not reasonably have been presented then. Therefore, there is no compelling reason behind the application for reconsideration, and it would certainly not be judicious to grant it.

[17] Therefore, I deny Ms. Bouchard's application for reconsideration, which has no basis and that, on its face, must be dismissed.

[18] I would also add that the application is frivolous and vexatious, as the respondents argued. In *Steiner v. Canada,* 1996 CanLII 3869 (FC), the Court describes as vexatious a proceeding that is begun maliciously or without cause or that will not lead to any practical result. In *Yearsley v. Canada,* 2001 FCT 732, the Court describes as frivolous and vexatious a request that will not lead to any practical result and that obviously cannot be granted. I am not suggesting that Ms. Bouchard's application was filed maliciously; however, it will not lead to any practical result and obviously cannot be granted.

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

(The Order appears on the next page)

Order

[20] I declare that the application for reconsideration is frivolous and vexatious.

[21] The application for reconsideration of the decision in 2013 PSLRB 143 is denied.

February 18, 2014.

PSLRB Translation

Renaud Paquet,
a panel of the
Public Service Labour Relations Board