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File: 561-02-739

Citation: 2016 PSLREB 85

Public Service Labour Relations and Employment Board Act and *Public Service Labour Relations Act*

Before a panel of the Public Service Labour Relations and Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

and

TREASURY BOARD

Respondent

Indexed as
Public Service Alliance of Canada v. Treasury Board

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

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

For the Complainant: Amanda Montague-Reinholdt, counsel

For the Respondent: Richard E. Fader, counsel

Heard at Ottawa, Ontario,
September 9 to 11, 2015.

I. Complaint before the Board

[1] On February 3, 2015, the Public Service Alliance of Canada ("the complainant", "the bargaining agent", or "the PSAC") filed a complaint with the Public Service Labour Relations and Employment Board ("the Board") against the Treasury Board ("the employer") under s. 190(1)(g) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). In its complaint, the bargaining agent alleges that the employer committed an unfair labour practice, in contravention of ss. 106 and 185 of the *Act*.

[2] At the hearing, the bargaining agent withdrew the allegation that s. 106 had been breached and proceeded solely with its allegations in connection with s. 185. In particular, it alleges that the employer violated s. 186(1)(a) by refusing to grant representatives of its bargaining team access to several employer worksites to observe the workplace and working conditions and to meet with members of the Program and Administrative Services Group ("the PA Group"), the Operational Services Group ("the SV Group"), and the Technical Services Group ("the TC Group") bargaining units. The complainant is the certified bargaining agent for employees working in several of the employer's departments in those three bargaining units.

[3] Paragraph 186(1)(a) provides as follows:

> ***186 (1)*** *Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall*
>
> > ***(a)*** *participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization ….*

[4] The bargaining agent had filed a similar complaint on February 2, 2011, which I heard on November 21 and 22, 2011. In *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2012 PSLRB 58 ("PSAC #1"), I upheld the complaint and declared that the employer's refusal to grant a representative of the bargaining agent access to its premises for the purpose of meeting with employees in the bargaining unit during non-working periods to discuss collective bargaining issues violated s. 186(1)(a) of the *Act*. I further ordered the Treasury Board to cease denying such access in the absence of compelling and justifiable business reasons. That decision, dated May 11, 2012, was not judicially reviewed.

[5] In its initial reply to the complaint, dated March 16, 2015, the employer did not refer to any of the findings articulated in the PSAC #1 decision. Rather, it refuted the bargaining agent's allegations and asserted that access to its premises was addressed by the terms of the relevant collective agreements, citing in particular article 12 of the Agreement between the Treasury Board and the Public Service Alliance of Canada in the Programs and Administrative Services Group, expiring June 20, 2014 (the PA Group collective agreement). That provision provides as follows:

> ***Article 12***
>
> ***Use of Employer Facilities***
>
> ***12.01*** *Reasonable space on bulletin boards, in convenient locations, including electronic bulletin boards where available, will be made available to the Alliance for the posting of official Alliance notices. The Alliance shall endeavor to avoid requests for posting of notices which the Employer, acting reasonably, could consider adverse to its interests or to the interests of any of its representatives. Posting of notices or other materials shall require the prior approval of the Employer except in the case of notices related to the business affairs of the Alliance, including posting of the names of Alliance representatives, and social and recreational events. Such approval shall not be unreasonably withheld.*
>
> ***12.02*** *The Employer will also continue its present practice of making available to the Alliance specific locations on its premises and, where it is practical to do so on vessels, for the placement of reasonable quantities of literature of the Alliance.*
>
> *12.03 A duly accredited representative of the Alliance may be permitted access to the Employer's premises, including vessels, to assist in the resolution of a complaint or grievance and to attend meetings called by management. Permission to enter the premises shall, in each case, be obtained from the Employer. In the case of access to vessels, the Alliance representative upon boarding any vessel must report to the Master, state his or her business and request permission to conduct such business. It is agreed that these visits will not interfere with the sailing and normal operation of the vessels.*
>
> ***12.04*** *The Alliance shall provide the Employer with a list of such Alliance representatives and shall advise promptly of any change made to the list.*

[6] While the complaint refers to several incidents involving eight different departments, at the hearing, the parties agreed to focus solely on incidents involving three departments. Those incidents consisted of the following:

(1) a request to conduct an on-site meeting and a walkthrough of the Veterans Affairs Billings Bridge facility, in Ottawa, Ontario, on November 5, 2014;

(2) a request for a walkthrough and on-site meeting at Health Canada offices located at the Guy Favreau Complex, in Montreal, Quebec, on November 25, 2014; and

(3) requests for on-site meetings and walkthroughs of the Department of National Defence's (DND's) Base Borden on December 11, 2014, in Borden, Ontario, and of the Canadian Forces Housing Agency on Thurston Drive, in Ottawa on January 6, 2015.

[7] According to the complainant, the employer's failure to consider and strike a fair balance between its interests and the complainant's legitimate interests when it denied the requests for on-site meetings and walkthroughs at those workplaces interfered with the complainant's ability to represent its members in bargaining and violated s. 186(1)(a) of the *Act*. For the reasons set out below, I find that the employer engaged in an unfair labour practice in denying the bargaining agent's representatives access to these workplaces.

II. Summary of the evidence

[8] The complainant called two witnesses, Gail Lem and Toni Mathews. The employer called three witnesses, Louis Germain, Anina De Rico, and Mary Sebastian.

A. Ms. Lem

[9] Ms. Lem has been a negotiator with the complainant since 2006. Before that, she acted in the same capacity for 10 years with a different bargaining agent. She is not a public servant and has never been granted a security clearance. She indicated that as the chief spokesperson at the bargaining table, it is imperative that she seek input from members of the bargaining units she represents, which she estimated contain roughly 75 000 members, and that she familiarize herself with their work conditions,

to develop priorities and bargaining proposals.

[10] Ms. Lem testified that the bargaining units she represents are spread over several departments across the country and that the work conditions in those departments can vary considerably. The members she represents occupy a variety of positions. She added that it has been her practice to request on-site visits of her members' workplaces, which consist of walkthroughs and on-site meetings, to gain a better understanding of the work environment and of the different issues the members of her bargaining units face. Being in a position to see things with her own eyes allows her to gain a full understanding of the terms and conditions she is tasked to negotiate.

[11] Ms. Lem indicated that she had visited many workplaces in employer departments over the years, including many DND bases, and that she had never been denied access, until the last round of bargaining in 2014. Before then, several departments had allowed her to conduct escorted walkthroughs and to meet with her members afterwards. She was very surprised when she was denied access during the 2014 bargaining sessions.

[12] Ms. Lem described her on-site visits as not intrusive. She indicated that during walkthroughs, she mainly acts as a quiet observer, but acknowledged that she sometimes says hello to members and asks questions related to their duties. She estimated that walkthroughs normally last between 1 and 1½ hours and that meetings with members afterwards last no more than an hour. She added that she has never received any complaints about her past on-site walkthroughs, including those conducted on Canadian Forces bases.

[13] Ms. Lem testified that before the 2014 negotiations started, she made several requests to conduct on-site walkthroughs, and that although all were initially granted, most were subsequently denied by the departments at issue, including the three departments that are the subject of this complaint.

[14] As for her request to visit the premises of Health Canada, Ms. Lem testified that arrangements to organize a walkthrough and a meeting with members during the lunch hour at the Guy Favreau Complex in Montreal were being coordinated by the local president of the Quebec Region National Health Union, Maryse Veilleux. Ms. Lem referred me to an email exchange between Ms. Veilleux and Ms. De Rico, a regional director of human resources for Health Canada, Quebec Region.

[15] According to that exchange, on November 21, 2014, Ms. Veilleux informed Ms. De Rico that bargaining committee representatives would visit the premises on November 25, 2014, and would subsequently invite the members to meet with them during the lunch hour. Initially, Ms. De Rico acknowledged Ms. Veilleux' email and thanked her for proposing to hold the meeting with the employees during the lunch hour. However, on November 24, 2014, Ms. De Rico informed Ms. Veilleux that meetings with employees would have to take place during coffee breaks or the lunch break outside the employer's premises and that no walkthroughs would be permitted. Ms. Veilleux requested the employer's rationale for denying walkthroughs and on-site meetings and referred Ms. De Rico to the PSAC #1 decision. In her response, Ms. De Rico maintained the employer's position and cited its residual property rights as justification. She did not address the reasons articulated in the PSAC #1 decision.

[16] With respect to her request to visit the DND's premises, Ms. Lem testified that informal arrangements had been made for a walkthrough of two DND facilities, including a walkthrough of the Canadian Forces Housing Authority in Ottawa on January 6, 2015. In each case, the walkthrough was to be followed by an on-site meeting. However, Ms. Lem was later informed that DND would approve no walkthroughs or on-site meetings at any of its facilities. A DND directive ("DAOD 5008-1") that prohibits using DND premises if the activity is related to collective bargaining was cited as the justification for denying the walkthroughs and on-site meetings. In one of her emails, Ms. Lem clearly indicated her intention to be low-key and to not be disruptive while conducting her walkthroughs.

[17] As for her request to visit the premises of Veterans Affairs, Ms. Lem testified that arrangements had been made with the employer to conduct a walkthrough and to meet with employees on-site for an hour, between 12:00 and 1:00, on November 5, 2014. Arrangements had also been made to allow employees from other Veterans Affairs worksites to call in and participate. However, at the last minute, Ms. Lem was informed that her request for a walkthrough was denied, that she could meet with her bargaining unit members for only 30 minutes over the lunch break, and that any time employees spent beyond the 30 minutes would be accounted for as leave. She indicated that she felt rushed and that the information session was not very productive. She added that a walkthrough would have allowed her to better understand a security issue that some of her members had raised in connection with changes to the infrastructure of the reception area at the Billings Bridge workplace but

that the employer's denial made it impossible.

[18] Ms. Lem testified that these denials negatively affected her ability to witness the working conditions of the members she represents at the negotiating table and to gain a full understanding of the issues they are faced with at their workplaces.

[19] In cross-examination, when asked if she could simply rely on pictures of the worksites or on descriptions provided by employees working there rather than conducting on-site visits, Ms. Lem replied that it was more beneficial for her to see the workplaces with her own eyes, to fully address issues that come up at the negotiating table.

B. Ms. Mathews

[20] Ms. Mathews is employed with Veterans Affairs at its Billings Bridge location. She is also the president of Local 70012, Union of Veterans Employees, Ottawa and Pembroke region.

[21] In essence, Ms. Mathews' testimony served to corroborate Ms. Lem's version of the events that transpired in connection with the Veterans Affairs visit. She confirmed that she was involved in making arrangements with her area director for Ms. Lem's visit to the Billings Bridge facility on November 5, 2014. According to Ms. Mathews, it had been agreed with the area director both verbally and in writing that Ms. Lem would walk through the workplace, greet members of her bargaining unit, and then meet with them in a boardroom for one hour over the lunch break. Members from other workplaces were permitted to participate by dialing in, at the complainant's cost.

[22] Shortly before the scheduled visit, a Veterans Affairs representative informed Ms. Mathews that the walkthrough was being denied on the basis that it was deemed too disruptive. No other details or particulars were provided. Then, shortly before the scheduled meeting, she was informed that since the lunch break consisted of a 30-minute period, any time employees spent at the meeting beyond the 30 minutes would be docked as leave.

[23] Ms. Mathews indicated that the meeting proceeded but that it was limited to 30 minutes. At least 60 employees attended, and many more joined in by teleconference. She added that everyone felt rushed and that very few issues could be raised or questions answered.

[24] In cross-examination, Ms. Mathews conceded that the concerned members' lunch break consisted of a 30-minute period and that the reasons in the PSAC #1 decision do not stand for the proposition that bargaining agents can meet with their members to discuss collective bargaining issues during working hours. She also conceded that members could raise their concerns through means other than in person and that such meetings could and had in fact been held off-site in the past.

[25] In re-examination, Ms. Mathews testified that she had requested that management reconsider its decision to deny Ms. Lem's walkthrough and specifically referred to a previous decision of the former Public Service Labour Relations Board ("the former Board") that found that such denials violated the *Act*. According to her, no one from Veterans Affairs requested the citation of that decision or a copy of it.

C. Mr. Germain

[26] Mr. Germain is a director of civilian labour relations with the DND. He testified that to his knowledge, the complainant has access to bulletin boards in all DND facilities, including electronic ones, and that it has access to designated spaces to distribute literature. He also referred to the complainant's Internet sites, to its right to obtain its members' updated home contact information on a quarterly basis, and to notices advertising membership meetings outside the workplace that had been posted on DND bulletin boards.

[27] According to Mr. Germain, the DND deals with 10 different bargaining agents, and only 2 of them have requested walkthroughs, one being the complainant.

[28] With respect to Ms. Lem's request to visit the Canadian Forces Housing Authority worksite in January 2015, Mr. Germain acknowledged that he was not involved in the communications that took place between the DND and representatives of the complainant. Nevertheless, he opined on more than one occasion that walkthroughs were inappropriate and disruptive to the workplace. Mr. Germain did not elaborate on why walkthroughs ought to be considered disruptive in every situation or what measures, if any, could be put in place to avoid workplace disruptions. While he was made aware that walkthroughs by Ms. Lem had been authorized by DND officials in the past, including one at the Uplands Base in Ottawa, he could not point to any specific disruption caused during those walkthroughs.

[29] According to Mr. Germain, the justification for denying walkthroughs and on-site meetings, such as the one requested in October 2014 for the Canadian Forces Housing Authority Ottawa facility, can be found in DAOD 5008-1, entitled, "*Defence Administrative Order and Directive (DAOD) 5008-1, Use of Departmental Premises and Equipment, and Electronic Networks, for Bargaining Agent or Union Business*".

[30] In essence, that directive provides that bargaining agents' use of DND departmental premises will be denied if it is related to collective bargaining. When asked whether the findings articulated in the PSAC #1 decision, especially those found at paragraph 9, 10, 11, and 48 to 54, could be reconciled with the refusal to allow bargaining agents to use departmental premises for collective bargaining purposes found in DAOD 5008-1, Mr. Germain made it clear that he disagreed with the findings articulated in the PSAC #1 decision and that he was not willing to abide by them. He added that if the complainant wishes to use DND departmental premises for collective bargaining purposes, then it ought to bargain that right at the negotiating table.

[31] Mr. Germain also testified that employees could be called on during bargaining sessions to act as advisors or technical experts to the bargaining agent and that provision in the PA Group collective agreement allowed for leave in such circumstances.

D. Ms. De Rico

[32] Ms. De Rico was involved in the discussions about a walkthrough and a meeting with PSAC members during the lunch hour at the Guy Favreau Complex in Montreal. Ultimately, she denied the walkthrough and any on-site meetings, insisting that such meetings would have to take place during breaks and outside Health Canada's premises.

[33] Ms. De Rico testified that bulletin boards and space to distribute literature were made available to the complainant on Health Canada's premises. She gave examples of using the premises or the employer's electronic network that she had authorized in the past, which had included an authorization to disseminate the names of the individuals sitting on the complainant's board of directors, an authorization to use the employer's premises for electing PSAC directors, and an authorization to allow the complainant to send an invitation to its membership for an annual general assembly. Ms. De Rico pointed out that none of these examples dealt with collective bargaining.

[34] As for the access request to visit the Health Canada facility in Montreal, Ms. De Rico testified that she was not comfortable with the idea of having representatives of the complainant walk through three floors of the Guy Favreau Complex and then hold a meeting on the premises. She felt it would disrupt employees during working hours that employees would become emotional, and that such a walkthrough would spark conversations among employees during working hours. Ms. De Rico acknowledged that she did not express those concerns in her email exchange with Ms. Veilleux and that she had not provided a rationale as to why the proposed meeting could not occur on-site and during break periods. When asked to provide one, she simply reiterated that it was inappropriate to hold such meetings at the workplace and that she relied on the employer's residual property rights.

[35] She also indicated that the Guy Favreau Complex offered a number of common areas where such meetings could take place but later acknowledged that the Complex was a large venue and that going from the 11th floor of the building where some employees worked to and from the ground floor, where the common areas are located, would essentially consume an entire 15-minute break.

[36] In cross-examination, Ms. De Rico was asked whether the fact that Ms. Lem had testified that she simply acted as an observer during walkthroughs and that she limited her interactions with employees to short conversations, leaving the longer conversations for the on-site meetings that followed, had any impact on her position. Her response consisted of a categorical "No". Ms. De Rico also acknowledged that she was provided with a copy of the PSAC #1 decision and that she had reviewed it before refusing the requested walkthrough and on-site meetings. The findings articulated in the PSAC #1 decision had no influence on the position she expressed, as she candidly reiterated her belief that a bargaining agent using the employer's facilities for collective bargaining purposes can be denied on the basis of the employer's residual property rights, despite those findings.

E. Ms. Sebastian

[37] Ms. Sebastian is an area director, north-east, with Veterans Affairs Canada. She was involved in the discussions that took place about a walkthrough and an on-site meeting with PSAC members during an hour-long lunch break on November 5, 2014, at the Billings Bridge facility in Ottawa. She ultimately denied the walkthrough and

limited the requested on-site meeting to the employees' scheduled 30-minute lunch break, insisting that any time they used beyond the 30 minutes would have to be taken as leave. She indicated that while she had been lenient in similar circumstances in the past, she decided to seek the advice of her human resources department for this request and was counseled to limit the meeting to the 30-minute lunch break.

[38] As for Ms. Lem's request for a walkthrough of the Billings Bridge premises, Ms. Sebastian testified that her denial was founded on the fact that she felt that an hour-long walkthrough was excessive. She later added that she was concerned that employees there worked mainly in cubicles and discussed sensitive information over the phone with clients. None of these concerns was communicated in writing to Ms. Mathews at the time.

[39] According to Ms. Sebastian, she was not told that the purpose of the walkthrough was simply to observe PSAC members' working conditions. However, when asked in cross-examination whether she would have taken a different position had she been so informed, she replied that she would not have because she felt an hour-long walkthrough was too long. Ms. Sebastian acknowledged that the documentation filed in connection with this request does not suggest that she ever proposed a shorter period for the walkthrough, to address her concern.

[40] Ms. Sebastian indicated that bulletin boards and space to distribute literature were made available to the complainant on Veterans Affairs' premises. She added that the home contact information of its members was also provided to the complainant.

[41] All three of the employer's witnesses, including Ms. Sebastian, indicated that they were not aware of any individual or group grievance that had been filed in connection with the denials that are the subject of this complaint. The complainant did file a grievance on February 13, 2015, in connection with a similar access denial at an Environment Canada facility.

III. Summary of the arguments

A. For the complainant

[42] According to the complainant, the reasons articulated in the PSAC #1 decision apply to this complaint and should be followed. It added that there is no reason to depart from the reasoning of that decision, as this complaint pertains to the same

issues and relates to the same parties. It argued that the finality of the adjudication process suggested a preference for maintaining the effect of earlier awards of the Board and its predecessors and that adjudicators should be averse to disregarding prior decisions, particularly those involving the same parties and the same disputed clauses of a collective agreement (see *Stafford v. Canadian Food Inspection Agency*, 2011 PSLRB 123 at para. 54, and *Timson v. Treasury Board (Correctional Service of Canada)*, 2011 PSLRB 8 at para. 22).

[43] The complainant characterized the respondent's decision not to challenge the PSAC #1 findings by way of judicial review and to later wilfully disregard the directives of the "the former Board" in that decision as shocking.

[44] The complainant reminded me that the following significant facts remained either unchallenged or uncontested:

(i) Ms. Lem had visited many workplaces in several employer departments over the years, including many DND bases, and she had never been denied access until the last round of bargaining in 2014;

(ii) before 2014, several departments had allowed her to conduct escorted walkthroughs and to meet with the members of the bargaining units she represents afterwards;

(iii) her on-site visits were not intrusive, and she mainly acted as a quiet observer during walkthroughs;

(iv) walkthroughs normally last between 1 and 1½ hours, and meetings with members afterwards last no more than an hour; and

(v) she had never received any complaints about her past on-site walkthroughs.

[45] According to the complainant, the walkthroughs and on-site meetings that follow are valuable and lawful union activities. They allow its representatives to gain a better understanding of work environments and of its members' issues, in preparation for bargaining. By denying PSAC representatives access to the workplaces of its members without a compelling and justifiable business purpose, the employer is interfering with the complainant's ability to represent its members at bargaining

within the meaning of s. 186(1)(a) of the *Act*.

[46] It argued that in each of the three denials covered by this complaint, the respondent failed to consider and strike a fair balance between its interests and the complainant's legitimate interests, preferring to rely on the access provisions of the PA Group collective agreement and residual property rights, an approach that was rejected in the PSAC #1 decision. No operational or security concerns were communicated to the complainant to justify the employer's denials.

[47] In the case of the DND denial, the complainant contended that the employer's reliance on a policy that ran contrary to a final and binding decision of the former Board called for the Board's intervention. In the case of the Health Canada denial, the complainant contended that taking the position that it is inappropriate to use the employer's premises for collective bargaining reasons, when provided with a copy of the PSAC #1 decision before taking that position, amounts to no less than a blatant disregard of a final and binding decision of the former Board.

[48] The complainant argued that this complaint and the one adjudicated in the PSAC #1 decision have no significant factual differences. Both results should be the same, in its view.

[49] By way of remedy, the complainant sought a declaration that the employer violated s. 186 of the *Act* and an order that the employer cease denying PSAC representatives access to its premises in the absence of compelling and justifiable business reasons.

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

[50] According to the respondent, the parties have cast their minds to the use of the employer's facilities and have negotiated specific provisions to that effect. It specifically referred me to article 12 of the PA Group collective agreement, which is reproduced earlier in this decision this decision. That provision stipulates when a PSAC representative will be granted access to the employer's facilities and does not mention walkthroughs or on-site meetings to discuss collective bargaining.

[51] Relying on *Merriman v. MacNeil*, 2011 PSLRB 87, the respondent argued that there is no right for employees or bargaining agents to use the employer's property or to access its facilities, absent specific provisions in the relevant collective agreement.

The respondent added that it enjoys exclusive control over its property, subject only to a specific limitation in the collective agreement. And to the extent that there was a past practice of allowing such walkthroughs or on-site meetings, or a different practice elsewhere in the federal public administration, the respondent argued that such a practice could not be deemed an acquiescence on its part and was irrelevant to the fact that it has the power to exercise its authority subject only to those specific limitations.

[52] The respondent contended that allowing PSAC representatives an unfettered right to use employer boardrooms on off-duty time and to walk about the workplace offends the collective bargaining process and is out of step with the employer's property rights, its broad grant of legislative authority under the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*), and free collective bargaining. It added that the suggestion that the employer can exercise its property rights only when a business case can be made to establish that any particular access would be detrimental to operations is out of step with the reality of the federal public workforce.

[53] The respondent reminded me that the complainant has the home contact information of all its members and has access to union bulletin boards and the ability to provide literature at the workplace. It contended that the suggestion that the complainant cannot communicate with its members without unrestricted access to the workplace is out of step with modern communications reality.

[54] With respect to the question of whether the same arguments were made and addressed in the PSAC #1 decision, the employer pointed out that an important submission it was now presenting about the wide grant of authority granted to it under the *FAA* was not advanced at that time. In particular, ss. 7 and 11 of the *FAA*, which deal with personnel management, empower the respondent to exercise its managerial authority as it sees fit and to do that which is not specifically restricted by statute or a collective agreement. The employer maintained that failing to provide access to the workplace cannot amount to interfering with the administration or representation by the bargaining agent of its members unless it can be said that the bargaining agent has an unfettered right to use the employer's property, which it argued is not the case.

[55] In support of that position, the respondent referred me to two decisions of the former Board issued after the PSAC #1 decision: *Professional Association of Foreign*

Service Officers v. Treasury Board (Department of Foreign Affairs, Trade and Development), 2013 PSLRB 111 ("*PAFSO*"), which was about the employer exercising control over its electronic resources, and *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2013 PSLRB 138 ("*PSAC-2013*"), a case in which the bargaining agent was prevented from distributing an invitation for a meeting via the desk drop method at some employer locations, a method that was found very disruptive to a workplace (at paragraph 92).

[56] The respondent contended that having a union negotiator strolling around the workplace and speaking to employees while at work would disrupt the employer's operations and that collective bargaining discussions at the workplace are, by their very nature, damaging to the employer's interests. It added that while an individual negotiator may hold a legitimate desire to visit as many workplaces as possible to speak to or observe employees at work, such a desire does not elevate a denial of access to actual interference with representing members. According to the respondent, suggesting that a negotiator needs to see a particular workplace to bargain for the PA group is without basis.

IV. Reasons

[57] The issue that I have to decide is whether by preventing the complainant's representatives from accessing some of its facilities to conduct walkthroughs and on-site meetings during off-duty hours, the respondent violated s. 186(1)(a) of the *Act*.

[58] While the parties referred me to many decisions in support of their arguments, and while some of the facts and issues outlined in those decisions bear some resemblance to those in this complaint, they remain, in my view, different, and, with few exceptions, I will not refer to them.

[59] I must also point out that I am not bound by prior decisions of the Board or its predecessors, including those the employer relied upon in support of its *FAA* argument (*PAFSO* and *PSAC-2013*). It is interesting to note that these two decisions did not address the reasons articulated in the PSAC #1 decision or attempt to distinguish it, even though the bargaining agent specifically relied on it in *PSAC-2013*. I can only deduce that in *PSAC-2013*, the adjudicator felt that the facts and issues involved in the PSAC #1 decision were different from those before her, as suggested in paragraph 77 of her reasons. Similarly, I am of the view that the facts and issues involved in those

two decisions are different, and I will not refer to them any further.

[60] Despite the fact that the employer raised no concerns or compelling business reasons in any of the three incidents covered by this complaint, the respondent argued that a negotiator's need to see a particular workplace to bargain for a bargaining unit is, by its very nature, disruptive and without basis. I disagree. Ms. Lem's suggestion that it is more beneficial for her to see a workplace with her own eyes to fully address issues that come up at the negotiating table is in my view completely legitimate, especially given the fact that she represents approximately 75 000 members, who occupy a variety of different positions in several departments across the country.

[61] During the hearing, the respondent's counsel reminded me that he had visited a certain correctional institution at least 20 times over the years to prepare for hearings, which is not surprising, given the nature of his work. It is also common knowledge that the Board and its predecessors have conducted many on-site visits of employer facilities to gain a better understanding of issues being raised by parties. In both cases, counsel or the Board could have relied on pictures or on the accounts of witnesses familiar with the workplaces at issue. However, it goes without saying that is it always preferable, whenever practical and justifiable, to see a subject with one's own eyes, rather than relying on the lens or accounts of others.

[62] And while such on-site visits, by their very nature, have the potential to disrupt a workplace, they are routinely allowed to occur, given the obvious benefits they provide parties that are attempting to resolve outstanding issues.

[63] While it may be true that employees can be called during bargaining sessions to act as advisors or technical experts to the bargaining agent and that provisions in the PA Group collective agreement allow for leave in such circumstances, in my view, it would not always be an efficient way to deal with the many issues that arise during collective bargaining. It is but one option that is available to the bargaining agent in its quest to best represent its members during collective bargaining.

[64] It is important to bear in mind that Ms. De Rico's reasons for refusing the request for a walkthrough and on-site meeting at a Health Canada facility were never communicated to Ms. Veilleux. It is difficult, in such circumstances, to conclude that compelling business reasons and objective facts justified her access denial. While I am not suggesting that the principles enunciated in the PSAC #1 decision created a

positive duty on the employer to provide a lengthy account of its business reasons, some essence of the business reasons must be offered in a timely fashion, otherwise, the genuineness of these reasons can easily be called into question.

[65] As for Ms. Lem's request for a walkthrough of the Veterans Affairs Billings Bridge premises, Ms. Sebastian testified that her denial was founded on the fact that she felt an hour-long walkthrough was excessive and that she was concerned that employees there worked mainly in cubicles and discussed sensitive information on the phone with clients. But once again, none of these concerns was communicated in writing to Ms. Mathews at the time of the access denial. At that time, no reasons were given. For the same reasons, it is difficult to conclude that compelling business reasons and objective facts justified Ms. Sebastian's denial.

[66] In the case of the DND visit denial, it was based strictly on the basis of an employer policy that prohibits using its facilities for collective bargaining purposes.

[67] In each of the three cases presented by the parties, the employer failed to demonstrate that it attempted to reconcile its claimed compelling and justifiable business reasons with the bargaining agent's legitimate objectives. In fact, the employer raised no business concerns when it denied access to its premises. Rather, it appears as though its denials were founded upon its property rights, a non-binding policy that provides it with authority it does not have, or a strict interpretation of the PA Group collective agreement.

[68] I share the employer's view that on-site meetings and walkthroughs can be bargained at the table and remain convinced that the parties should continue to strive, through collective bargaining, to agree on a use of the employer's premises that is tailored to their mutual legitimate interests.

[69] In PSAC #1, I made the following findings:

…

> ***45*** *I disagree with the employer's argument that clause 12.03 of the collective agreement is a complete code of access to the employer's premises. Having considered the broader context in which the* Act *ought to be interpreted, and in particular the purposes of effective labour-management relations, collaborative efforts, expression of diverse views in the establishment of terms and conditions of employment,*

credible and efficient resolution of matters arising in respect of terms and conditions of employment, bargaining agents' representation of the interests of employees in collective bargaining, bargaining agents' participation in the resolution of workplace issues, mutual respect and harmonious labour-management relations that are expressly stated in its preamble, I am of the view that the representation of employees that is envisioned by the Act *ought not to be limited to assisting in the resolution of a complaint or grievance and attending meetings called by management. It also ought to envision the equally important responsibility of advancing legitimate demands and positions at the bargaining table, which can only be achieved through some form of dialogue with the constituency, which in turn emphasizes the need to have access to employees in the bargaining unit. Representatives of employee organizations are the common vehicle for conveying the demands and positions of the employees to the employer. Hindering their ability to gain a better contextual understanding of the issues, without compelling and justifiable business reasons, can only harm the collective bargaining process.*

46 *In its reply to the complaint, the employer proposed that while subsection 186(3) of the* Act *provides that permitting a bargaining agent to use the employer's premises for the purposes of the employee organization does not constitute an unfair labour practice, no provision in the* Act *is suggesting that the converse would constitute an unfair labour practice. While that may be the case, I am mindful of the fact that the legislator saw fit to include such a provision in the* Act *which would appear indicative that such a practice was and continues to be a common and acceptable one. Subsection 186(3) provides as follows:*

> 186. (3) The employer or a person does not commit an unfair labour practice under paragraph (1)(a) by reason only of
>
> > (*a*) permitting an employee or a representative of an employee organization that is a bargaining agent to confer with the employer or person, as the case may be, during hours of work or to attend to the business of the employee organization during hours of work without any deduction from wages or any deduction of time worked for the employer; or
> >
> > (*b*) permitting an employee organization that is a bargaining agent to use the employer's premises for the purposes of the employee organization.

Subsection 186(3) also suggests that such a practice is a

> *reality that can occur in the absence of a collective agreement provision authorizing such use. Otherwise, there would be no need to resort to subsection 186(3) to legitimize the permitted use, as it would already be permissible under the collective agreement.*
>
> ***47*** *Many prior decisions of the Public Service Labour Relations Board and of the Federal Court of Appeal have recognized that employees can legitimately express their views on a collective bargaining issue by wearing stickers or buttons in the workplace. I fail to see why employees should be prohibited from expressing similar views in private with a negotiator of the bargaining agent during non-working periods, especially when no compelling and justifiable business reason for such prohibition has been offered by the employer, other than the fact that such activity or usage of the employer's premises is not specifically mentioned in the collective agreement.*
>
> ***48*** *An employer should not unilaterally prevent a bargaining agent from meeting in the workplace employees that it represents to discuss bargaining issues during off-duty hours, unless it can justify such prohibition with reference to compelling business reasons and objective facts, such as a disruption of productivity, order, safety or security, or some other legitimate business interest. In stating this, I am especially mindful of Ms. Therriault-Power's concession that allowing Mr. Gay to access CBSA worksites would allow him to gain a better contextual understanding of workplace issues and could be beneficial to the collective bargaining process.*
>
> …
>
> (Emphasis added)

[70] Neither the facts of this complaint nor the respondent's arguments have convinced me that I should find differently in this case. In my view, the findings articulated in PSAC #1 apply to this complaint, with one exception. I do not believe that the PSAC #1 decision stands for the proposition that on-site meetings, such as the ones contemplated in this complaint, ought to take place during working hours, and I am not proposing to expand its meaning in that fashion. Therefore, I do not believe that the restriction Veterans Affairs Canada representatives imposed on November 5, 2014, which was to limit the on-site meeting to the 30-minute lunch break, amounted to a violation of s. 186(1)(a) of the *Act*. Having said that, nothing would prevent the parties from agreeing to a one-hour on-site meeting by the bargaining agent's representatives with employees by allowing them combine their lunch and other daily

breaks.

[71] While I recognize that legislation confers certain rights to the respondent, namely, ss. 7 and 11 of the *FAA*, which deal with human resources management, I believe that this broad grant of statutory authority must be exercised in harmony with other relevant statutes, most notably the *Act*. To suggest otherwise would enable the employer to not comply with key provisions of the *Act* based strictly on its broad grant of statutory authority.

[72] Sections 7 and 11 of the *FAA* clearly give general authorities to the employer with respect to personnel management, but they do not serve and ought not to serve as a means of escaping the mandatory language enunciated in s. 186(1)(a) of the *Act*. Articulating compelling business reasons and objective facts to justify denying access to an employer's facility, whether for walkthroughs, on-site meetings, or both, in my view, is not inconsistent with the meaning and purpose of ss. 7 and 11.

[73] I find that the bargaining agent's purported activities, as described by its witnesses in their testimonies, were lawful and part and parcel of its administration of the employee organization and of its representation of employees in the bargaining units. I also find that the refusal to allow a complainant representative to conduct a walkthrough of the Veterans Affairs Billings Bridge facility on November 5, 2014, to allow a representative to conduct a walkthrough and an on-site meeting during off-duty hours at Health Canada's Guy Favreau Complex on November 25, 2014, and to allow a representative to conduct a walkthrough and an on-site meeting during off-duty hours at DND facilities on December 11, 2014, and January 6, 2015, all amounted to violations of s. 186(1)(a) of the *Act* by the respondent and by the departments involved.

[74] Those actions interfered with the bargaining agent's administration of its organization and with the representation of employees in the bargaining unit. They ran contrary to fostering effective and harmonious labour-management relations, collaborative efforts, the expression of diverse views in the establishment of terms and conditions of employment, the credible and efficient resolution of matters arising in respect of terms and conditions of employment, bargaining agents' representations of the interests of employees in collective bargaining, bargaining agents' participation in the resolution of workplace issues and mutual respect, which are legislative purposes

expressly stated in the preamble of the *Act*.

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

(The Order appears on the next page)

V. Order

[76] I declare that the refusal to allow a complainant representative to conduct a walkthrough of the Veterans Affairs Billings Bridge facility on November 5, 2014, to conduct a walkthrough and an on-site meeting during off-duty hours at Health Canada's Guy Favreau Complex on November 25, 2014, and to conduct a walkthrough and an on-site meeting during off-duty hours at DND facilities on December 11, 2014, and January 6, 2015, all constituted violations of s. 186(1)(a) of the *Act* by the respondent and by the departments involved.

[77] I order the respondent to cease denying such access in the absence of compelling and justifiable business reasons that such access might undermine its legitimate workplace interests.

September 14, 2016.

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