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File: 161-2-960

Citation: 2000 PSSRB 62



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

WADE WHITE

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

RE: Complaint under section 23 of the
Public Service Staff Relations Act

Before: [Anne E. Bertrand, Board Member](#)

For the Complainant: [Wade White, Complainant](#)

For the Respondent: [Michael Tynes, Public Service Alliance of Canada](#)

Heard at Halifax, Nova Scotia,
May 19, 2000 hearing

DECISION

[1] This matter came before this Board upon the filing of a complaint of unfair representation by the complainant Wade White, a member of the Public Service Alliance of Canada, Local 80406, against the Public Service Alliance for having placed and maintained the Local 80406 into Trusteeship, thereby infringing upon certain rights of the membership. The complaint raises an alleged violation of subsection 10(2) of the Public Service Staff Relations Act. The Public Service Alliance brought a preliminary objection as to the jurisdiction of this Board to hear this complaint arguing that the matter fell within the internal affairs of the bargaining agent and therefore not within the realm of the Board's power to interfere.

FACTS

[2] At this hearing, the Board sought first to hear the parties on the matter of the preliminary objection as to its jurisdiction to entertain the complaint of Wade White. The parties agreed that a ruling on the objection was essential before proceeding to the merits of the complaint. The Board therefore heard evidence and argument in respect of the jurisdictional issue only. For the preliminary objection, the evidence consisted of sworn testimony of the complainant Wade White and documentary evidence. The respondent chose not to call evidence.

[3] Michael Tynes on behalf of the respondent Public Service Alliance of Canada ("the PSAC") argued that the complaint lodged by Wade White raises a matter in regard to the internal affairs of the bargaining agent, such as that of placing the Local in trusteeship of which White is a member. As such, the Board has no jurisdiction to interfere in internal matters of the bargaining agent, and cannot hear this complaint.

[4] Furthermore, the PSAC stated that in the event that the Board would not agree, the complainant ought to show in writing why his complaint should be heard, and why the Board would have jurisdiction given the precedent decision of this Board in **Martel vs. Public Service Alliance of Canada and Treasury Board** ruling otherwise.

[5] The respondent's arguments were submitted in writing to the Board by letter dated April 8, 1999 and also served upon Mr. White. Mr. White replied by letter dated April 21, 1999 that the prior decision of this Board had no application due to the fact that the circumstances of the present case were different. Mr. White argued in that letter that while the bargaining agent has the right to place a Local into trusteeship, and to manage its internal affairs, the decisions of the bargaining agent must not be

arbitrary, conspicuous, discriminatory or wrongful, as per the provisions of subsection 10(2) of the *Public Service Staff Relations Act* (the “PSSR Act”).

[6] The position of the complainant was such that section 23 of the *PSSR Act* permitted the Board to act and the Board indeed had jurisdiction to hear cases in which the actions of the bargaining agent violated subsection 10(2).

[7] The earlier decision of this Board referred to by Mr. Tynes involves **Martel vs. Public Service Alliance of Canada and Treasury Board**, (Board Files 161-2-669 to 671, October 27, 1993), a decision of Deputy Chairperson Muriel Korngold Wexler. In that decision, the Board dealt only with the complaints against the PSAC. One of those complaints stemmed from failure on the part of the PSAC to inform the employer that the union dues of Local 10006 had been reduced to one dollar. The complainant Martel was asking the Board to order the PSAC to inform the employer of this reduction. The PSAC, in reply, argued that those were matters of internal management of the bargaining agent and that the Board did not have jurisdiction.

[8] In an other complaint, Martel alleged that the PSAC had not replaced the local union representatives of Local 10006 and that this infringed sections 41 and 91 of the *PSSR Act* as well as the framework and specific collective agreements between Treasury Board and the PSAC. In response thereto, the PSAC stated that the complaint concerned the internal management of the bargaining agent and the Board did not have jurisdiction. Both these complaints had been brought under section 23 of the *PSSR Act*.

[9] The Board in that case ruled that these complaints indeed involved the internal management of the affairs of the bargaining agent, in particular, the actions of putting a Local under trusteeship, choosing Union representatives, and deciding to hold meetings without the participation of the trustee, and were not within the jurisdiction of the Board.

[10] The Board in **Martel** , supra, added at page 33 of its decision:

It may very well be that Mr. Martel was treated in a discriminatory, biased, wrongful, capricious and arbitrary manner by Mr. Flinn, the UTE and the PSAC, but the Board has no jurisdiction to interfere in the internal affairs of the bargaining agent. Caselaw recognizes that the Public Service Staff Relations Board has no power to control and

govern the internal affairs of the union in the absence of any specific legal provision giving it jurisdiction to decide such matters.

The Board went on to cite authority for this proposition from the former Justice George Adams in Canadian Labour Law (1985).

[11] As for the allegation by Mr. White that the PSAC has violated subsection 10(2) of the *PSSR Act*, in that the respondent acted in a discriminatory and bad faith manner by putting the Local into trusteeship, again Mr. Tynes argued that putting a Local under trusteeship is strictly an internal matter and falls outside the jurisdiction of this Board.

[12] In support of this contention, Mr. Tynes referred to the decision in **Kilby vs. Public Service Alliance of Canada and Daryl Bean** (Board Files 161-2-808 & 150-2-44, April 27, 1998) a decision of P. Chodos, Vice-Chairperson of the Board. In that case, Kilby held a number of offices in the PSAC and its component Union CEIU, and as such, had dealings with the National President of CEIU, Cres Pascucci. Her complaints of harassment, discrimination and abuse of power by Pascucci led to the formation of a Review Committee which found that the complaints were valid and which recommended that the President's membership be suspended for five years. The National Board of Directors did not pass a resolution allowing for the imposition of this suspension and President Pascucci remained in Office. The complainant Kilby argued that the process under which the proposed suspension was defeated was inherently discriminatory because the President's colleagues actually composed the Board of Directors who were charged with the duty to judge him. While the Board considered the able arguments of the complainant, the Board at pages 14 and 15 had to find that the Board has no jurisdiction to deal with the dispute under subsection 10(2) of the *PSSR Act*:

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.

As Mr. Wilson has candidly noted in his written argument, the Board has consistently held that its jurisdiction under section 10 does not extend to the regulation or oversight of the internal affairs of employee organization. See for example the decision in *Tucci and Hindle*, (*supra*, dated December 29, 1997) where the Board very recently reaffirmed this conclusion. The Board's view of the ambit of the unfair representation provision is in fact no different than that of labour relations boards in other jurisdictions in Canada where such provisions are found. Thus, in his text *Canadian Labour Law* (2nd ed.), Canada Law Book, (1993) former Mr. Justice George Adams makes the following observation:

(paragraph 13.210)

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, the hiring-hall methods chosen by a trade union to select back-up workers to receive work after the dispatch of all available union members and the alleged failure of a trade union to provide an adequate pension plan.

The complainants' representative suggests that this Board should take jurisdiction in respect of the union's internal affairs where issues of discrimination and human rights

violations are concerned. Clearly however, that would be entirely beyond the scope of subsection 10(2), and would fly in the face of substantial and long established jurisprudence. Accordingly, I must find that the Board is without jurisdiction under that provision to address the concerns raised by the complainants.

[13] Mr. Tynes submits that the complainant White has alleged the violation of subsection 10(2) of the *PSSR Act* on the part of the respondent, and that the respondent has acted in a discriminatory and bad faith manner. Yet, nothing in this matter shows that the respondent has represented their members, ie. employees vis-à-vis their employer in an unfair manner. The essence of this matter is the placing of a Local under trusteeship, which again Mr. Tynes states is an internal matter, and a matter in which this Board lacks jurisdiction as per the wealth of jurisprudence on the subject.

[14] The complainant Wade White responded to the respondent's objection by stating that the **Martel** and the **Kilby** decisions have no application to this matter as both these decisions involved Executives of the bargaining agent. Mr. White argues that he is not an Executive but rather a member of the bargaining agent. Mr. White presented his own sworn oral evidence to present his reply to the preliminary objection.

[15] Mr. White affirms that the placing of the trusteeship is certainly within the respondent's rights and obligations as bargaining agent, and that being so, it is an internal matter and thus outside the competence of this Board. Rather, Mr. White complains that by virtue of the placing of the Local into trusteeship, the rights of the members of the Local under trusteeship have been affected. Mr. White explains that members have restrictions on their ability to attend union meetings, on their opportunity to participate fully, on their right to run for office, the right to attend conventions, and vote in national and local elections, and it is these restrictions which give rise to the discrimination.

[16] Mr. White finds support for his position in subsection 10(2) of the *PSSR Act* which provides that:

No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary,

discriminatory or in bad faith in the representation of any employee in the unit.

[17] For instance, Mr. White says that a Local under trusteeship cannot select delegates to attend the respondent's National Convention, and a member cannot run for offices in the UNDE unless the member attends the National Convention. Holding an office in the UNDE permits attendance at the PSAC Convention.

[18] In cross-examination, Mr. White did admit that a meeting of his Local was held on January 11, 2000 at which time a resolution was passed to lift the trusteeship. He was unable to attend that meeting due to a death in the family the day before. Mr. White admitted to not having been able to attend other meetings of his Local due to time constraints of his new job, and also to not having contacted Doug Pike, the Vice President for Nova Scotia for UNDE, because of personality conflicts.

[19] Mr. White candidly admitted that he has truly been busy with his new job and he may not have received material or information sent to him on bargaining agent business. That is why Mr. White was not aware that at the last meeting of his Local, not all of the positions for the Executive were filled. There remain two positions to be filled. Mr. White has not applied to obtain a position with the Executive.

[20] Mr. White concluded his argument by reiterating that this Board has no jurisdiction in matters of the placing of the trusteeship, but argues that this Board can examine the impact of the trusteeship upon the members of the Local to ensure that there is no discrimination. The Complainant did not wish to bring further evidence and requested that this Board make a determination on the preliminary objection before proceeding further.

ISSUE

[21] Does this Board have jurisdiction to examine the impact upon the members of a Local by the placing of that Local under trusteeship?

DECISION

[22] While any tribunal is, by its very nature, mindful of complaints of unfair or discriminatory treatment or bad faith conduct in any situation, it must also be cognizant of its duty to act only where its empowering legislation has permitted it to do so.

[23] This Board has reviewed the relevant caselaw on the very issue of its power to interfere in matters which are termed “internal affairs” of the bargaining agent. In **Hibbard vs. PSAC** (Board File 161-2-136, May 21, 1976), the Board restated the meaning of the principle of duty of fair representation as extending to matters concerning rights of employees vis-à-vis their employers, and not to matters concerning rights of members and within their bargaining agent.

[24] Again in the case of **St. James vs. CEIU and Pascucci** (Board File 100-1, March 31, 1992), this Board maintained that it would not interfere in the internal affairs of a bargaining agent unless the actions of the bargaining agent affected the employment relationship.

[25] The **Martel** and **Kilby** decisions described above also support this view. The Public Service Staff Relations Board has no jurisdiction to interfere in the internal affairs of the bargaining agent, given the established jurisprudence that the Board has no power to control and govern the internal affairs of the bargaining agent in the absence of any specific legal provision giving it jurisdiction to decide such matters. While in those cases, discrimination may have very well been established, still the Board could not act.

[26] With respect to the Complainant in this case, while an argument can be made that members of the Local are prevented from participating fully in union business, such as attending national conventions as delegates due to the very fact that their Local has been placed under trusteeship, such matters are nevertheless internal matters of the bargaining agent. Moreover, these situations bear no connection or substantial link to the employment relationship, and thus prevent the Board from interfering.

[27] As for the argument of Mr. White that the **Martel** and the **Kilby** cases are distinguishable on the basis that they involve Executives of the employee organization and not just members, with respect, that argument cannot succeed. That distinction alone does not alter the principles at play and those principles are applicable to the case before me.

[28] On the basis of the foregoing, the Board sustains the preliminary objection of the Respondent and the Board must dismiss the complaint for want of jurisdiction.

ISSUED at Fredericton, New Brunswick, this 5^h day of July, 2000.

ANNE E. BERTRAND
Board Member