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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

and

CANADA REVENUE AGENCY

Respondent

Indexed as
Public Service Alliance of Canada v. Canada Revenue Agency

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

Before: Margaret T.A. Shannon, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Andrew Astritis, counsel

For the Respondent: Stefan Kimpton, counsel

Heard at Ottawa, Ontario, via videoconference,
September 15 and 16, 2020.

REASONS FOR DECISION

I. Complaint before the Board

[1] The complainant, the Public Service Alliance of Canada ("PSAC"), on behalf of its component member, the Union of Taxation Employees ("UTE" or "the union"), alleged that the respondent, the Canada Revenue Agency (CRA or "the employer"), interfered with its rights as an employee organization when it denied the UTE the right to post a communiqué concerning the breakdown of negotiations on bulletin boards in CRA worksites in May 2019. The union alleged that it was a violation of both the collective agreement between the Canada Revenue Agency and the Public Service Alliance of Canada for the Program Delivery and Administrative Services Group that expired on October 31, 2016 parties' collective agreement and ss. 5, 186(1)(a), and 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*").

II. Summary of the evidence

[2] This complaint arose from a stormy round of collective bargaining between the parties during which negotiations had broken down at least twice. One of those times, the UTE sought to post a bargaining update communiqué on the bulletin boards in certain CRA worksites, which set out its version of what had happened at the table and explained why talks had broken down. The CRA had a different version of the events, as is wont to happen, and denied the UTE the right to post the bargaining update, citing management rights, as provided in article 12 of the relevant collective agreement.

[3] For its part, the CRA posited that it was entitled to refuse the UTE the right to post its bargaining update because the communiqué did not comply with the provisions of the collective agreement. It contained false and inaccurate statements concerning events that occurred at the bargaining table, based on the assessment of Marc Bellevance, the CRA's negotiator. Consequently, it was adverse to the CRA's interests.

[4] Clause 12.01 of the collective agreement reads 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 endeavour 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 notices related to the business affairs of the Alliance, including the names of Alliance representatives, and social and recreational events. Such approval shall not be unreasonably withheld.*

[5] Mr. Bellevance claimed that there were false and inaccurate statements in the UTE's May 10, 2019, release that the CRA reneged on its promise to table wage proposals and that it repeatedly sought to discuss increasing evening shifts, contrary to the conclusions in a "Joint Working Group Report" on the administration of shift schedules in call centres, tax centres, and tax services offices. The report had concluded that favouritism and inconsistent practices existed in the administration of shifts.

[6] According to Mr. Bellevance, the truth of what happened at the table that led to the breakdown of negotiations in May 2019 was the CRA's communiqué, posted on its electronic bulletin board named "InfoZone", in which he stated that the UTE had showed no interest in negotiating and that the CRA had made every reasonable effort to address the UTE's key priorities (see the communiqué, Exhibit 1, Tab 8).

[7] Morgan Gay was the PSAC's national negotiator and the UTE's chief negotiator during this round of negotiations. He testified that the UTE is the second largest of the PSAC's bargaining units, with approximately 29 000 members according to the agreed statement of facts who work primarily in CRA call centres, tax services offices, and tax centres. Members of the bargaining unit were canvassed in preparation for bargaining, to identify the key issues at the bargaining table, which were wages, scheduling, issues related to working in the call centres, term employment, work-life balance, and union rights in the workplace. These priorities were identified to the employer at the outset of bargaining, according to Mr. Gay.

[8] The UTE tabled its wage proposal in December of 2018. The employer did not provide a counterproposal as was expected when the two sides met in January 2019, which, according to Mr. Gay, was very perplexing, since other Treasury Board employers had filed their wage proposals. At that point, the UTE expressed its

displeasure and declared an impasse. A request for conciliation was filed with the Federal Public Sector Labour Relations and Employment Board ("the Board") on February 12, 2019, following which a mediator was appointed.

[9] The two sides met with the mediator between April 2 and 4, 2019. They made limited progress, according to Mr. Gay. The UTE's key issues were not addressed. The session held with the mediator between May 7 and 9, 2019, also did not go well. The UTE's bargaining team was frustrated because it had still not received a response from the employer to the wage proposal it tabled in December 2018.

[10] At the first session in May, the employer indicated that it would table a wage proposal that week. Based on this, the UTE's bargaining team made what Mr. Gay called significant concessions; however, the employer did not table a wage proposal but rather a different proposal altogether and demanded that the UTE respond to it. The UTE's bargaining team rejected it. The team felt that the employer was trying to dictate to the union what was reasonable and what was not. Everyone on the UTE's team at the May session understood that the employer would table its wage proposal at that session. There had been no suggestion that what was tabled was part of a wage proposal or that the wage proposal would be conditional on the UTE agreeing to something else.

[11] Mr. Gay testified that the message conveyed very clearly to the employer's bargaining team was that the union needed to see something on money that week. The employer's bargaining team confirmed that a wage proposal was coming but did not indicate that it was conditional on the union accepting anything else that the employer proposed. When it received the employer's proposal, the UTE rejected it. That night, the PSAC advised the Board that the parties had again reached an impasse.

[12] In response to the employer's submission to the Board, the Board's chairperson appointed a Public Interest Commission (PIC) to intervene in the matter. A bargaining update was prepared for the UTE's membership and was sent after the May impasse was declared. Communiqués of this nature are vital to a negotiator's role, according to Mr. Gay. They are a primary means of communication with the membership that update them on the progress of the negotiations. Communiqués are part of the democratic process. Members want to be informed, to know what is happening, and to

have their say in what is done. Without such updates, they receive bargaining updates only from the employer.

[13] The communiqué dated May 10, 2019, identified the issues that the employer refused to discuss, which were wages and term employment. It also stated that the employer refused to accept the UTE's proposals related to term employment, work-life balance, call-centre conditions, and favouritism in scheduling evening and weekend shifts, despite the fact that a joint committee had identified a problem in this area, according to Mr. Gay. The communiqué also stated that the employer had reneged on its promise to table a wage package during the session. This communiqué was sent to the members and to local shop stewards for posting on the UTE's workplace bulletin boards. It was also posted on the PSAC's website under the section on collective bargaining updates. However, according to Mr. Gay, the best way to reach the UTE's membership was through the workplace.

[14] The employer prepared a similar bargaining update, which it posted on InfoZone. The update stated that the UTE showed no interest in bargaining and that it did not respond to the employer's latest proposal. Mr. Gay testified that that was not true. The UTE's bargaining team did respond. It rejected the proposal. The problem was that the employer did not like the union's answer and refused to accept it.

[15] The update also said that the union had walked away from the table, which prevented further discussions, including those on a wage package. According to Mr. Bellevance, the CRA negotiator who wrote the employer's update, the CRA made every reasonable effort to address the UTE's key priorities. Mr. Gay disagreed with this portrayal of the employer's efforts and the events that led to the declaration of the second bargaining impasse.

[16] By stating at the beginning of the week that the UTE would see a wage counteroffer from the employer that week, the employer's chief negotiator made a commitment to the other side, which had to be honoured, according to Mr. Gay. The entire collective bargaining process relies on the parties' good faith. When the employer wanted the UTE to narrow down the issues, its chief negotiator said to the UTE, "… do this and we will present the wage package." In the end, when the employer did not receive the response it wanted to one of its proposals, it reneged on presenting the wage proposal, according to Mr. Gay. The employer was frustrated with the UTE, so

it decided not to present a wage proposal and in fact did not until months later, after the PIC had been appointed.

[17] Shane O'Brien testified that he either drafted or vetted all UTE communiqués, except for the negotiation communiqués, which the negotiator drafted and he and the UTE's national vice-president then vetted. The purpose of the communiqués was to keep the membership informed and motivated to support their bargaining team. Communiqués were sent to the locals for posting on the workplace bulletin boards as well as to personal emails, if available, as well as on the social media websites Facebook and Twitter.

[18] The traditional place for posting such information is on a workplace bulletin board, which is where the membership still goes for update information, according to Mr. O'Brien. The PSAC has less than 50% of its members' personal email addresses, and InfoZone is not available to the UTE to post its updates. When the employer's update was posted, the UTE's members received an email from the employer stating that it was available for them to read on InfoZone.

[19] The workplace bulletin boards are the PSAC's primary means of communicating with its members, particularly during negotiations. Article 12 of the collective agreement governs what may be posted on them, but there is a long history of not seeking the employer's approval on bargaining communiqués. Since 1989, the practice has been that if the employer considers anything in a bulletin adverse to its interests, its representative will call the UTE's national president. Normally, if the employer has an issue with the content of a bulletin posted on a bulletin board, according to Mr. O'Brien, an employer representative contacts him and identifies the content posing the problem, and they agree to a correction.

[20] That was not followed this time. No one contacted him or the UTE's national president. The employer ordered the communiqué taken down and refused to allow it to be posted, without making any consultation with the UTE or PSAC. Mr. O'Brien learned that the employer considered the content of the communiqué adverse to its interests only from employer emails directing that it be taken down in 5 of 60 regional CRA offices.

[21] As a result of that refusal, the UTE could not keep its members up to date on the status of bargaining. Tax centres and call centres have no public access. Tax

services offices do not have a direct public access. Bulletin boards are in lunchrooms or coffee rooms. If the employer refuses the UTE the right to post its communiqués, then it will not be able to keep the members in those areas up to date. Without this ability, the membership receives only the employer's version of events from the bargaining table. This increases the workload for the union's local and national offices and opens it to criticism. The bargaining team loses the support of its membership, and successful negotiations are difficult.

[22] Without the ability to communicate efficiently with its membership during the negotiation process, it is difficult for the UTE to mobilize its membership when job action is required. This does not necessarily mean strike action but anything leading up to and including it, which indicates to the employer the bargaining unit members' solidarity with the bargaining team.

[23] Mr. O'Brien attended the bargaining sessions and agreed with Mr. Gay that wages were of extreme importance to the members, since they had not received an increase in four years. Wages were a top priority for the union at the table, and when the employer made no counteroffer to the union's wage proposal at the session in the beginning of the May, there was little hope that an agreement would be reached.

[24] From the beginning, the employer's representative said that he had no mandate from the Treasury Board concerning wages but that they would probably be tied to what the Program Administration group in the core public administration would receive if they reached an agreement. On May 7, the employer's negotiator said that the union's team would receive a wage proposal. But that team was told later that none would be forthcoming unless the union first replied to a comprehensive proposal that the employer had put forward. If the union agreed to it, a wage proposal would be tabled on May 8. This tactic frustrated and angered the team, which considered it an act of bad-faith bargaining. The employer was not interested in reaching an agreement. It knew that wages were key to reaching one with the UTE.

[25] Mr. O'Brien testified that he sat on the union-employer joint committee that was formed in the last round of collective bargaining to examine employment in call centres. The parties had a sense that the collective agreement did not suit the type of work being done there. The working group circulated questionnaires to management and union members. The responses showed an excess of term employment,

inconsistent practices on leave approval, leave-blackout periods that violated the collective agreement, years of service not consistently being used as a factor when approving leave, and collective agreement provisions on leave approval not being applied. It appeared from the responses that team leaders were being favoured over other workers in their units. Full-time employees were favoured over term employees. There was a lack of consistency and uniformity in the application of the leave provisions that resulted in favouritism, according to Mr. O'Brien.

[26] The committee's purpose was not to label anything but to identify what was happening in the call centres and to recommend how to fix it. Those recommendations became bargaining proposals. That is what the communiqué referred to and what the employer claimed was untruthful when it told the local presidents to take it off the bulletin boards. This was done without consulting in any way the UTE's national president or Mr. O'Brien. If there was an issue with the communiqué, Mr. O'Brien would have expected that the employer would have consulted one or the other of them first before ordering that it be taken down.

[27] The UTE had a keen interest in pursuing the negotiations. It agreed to mediation, in the hope that a mediator would help the parties move forward. When the UTE rejected the employer's proposal in May, it was not what the employer wanted to hear. The UTE had clearly identified its key priorities, and no progress had been made. The employer made no good-faith effort to address any of the union's concerns, including those about wages.

[28] Mr. Bellevance was the CRA's negotiator in this round of bargaining. Six or seven local managers contacted him and asked whether the UTE's communiqué was appropriate for posting on workplace bulletin boards. He reviewed the communiqué, and in his opinion, he determined it was false. He testified that he never made any promise on behalf of the employer that he would table a wage proposal in May 2019. Therefore, the UTE's allegations were false. He testified that the union was told that it could talk about wage increases if it narrowed down its proposals, which was the purpose of the proposal that he put forward in May. He categorically denied making a promise to table a wage package on its own.

[29] The allegation that the employer agreed that there was favouritism in scheduling workers in the call centres was also false. Mr. Bellevance testified that he

reviewed the working group's report and that according to his reading of it, there was no indication that the parties had agreed to any such thing.

[30] Mr. Bellevance testified that he applied clause 12.01 of the collective agreement and that he analyzed the content of the communiqué for accuracy and truth, to ensure that it was not adverse to the employer's interests. He went through the communiqué word by word to determine whether it contained anything detrimental to the employer's interests at the bargaining table. In the meantime, he also was involved in drafting the employer's bargaining communiqué, which was 100% truthful. He agreed that sometimes, parties disagree when they characterize events, and that the union might have considered the employer's communiqué untruthful, even though it never expressed any concerns with it. The communiqué he drafted was very factual, in his opinion; the union did not show any interest in bargaining. It did not respond to the employer's proposal tabled in May, to the best of his recollection. If the union rejected it, he could not remember that happening before they declared an impasse. Since he was not on the joint committee that studied the working conditions in the call centres, as was Mr. O'Brien, Mr. Bellevance could rely only on his reading of the committee's report to comment on its content.

[31] The final wage settlement was tabled in the July 2020 negotiations, following the PIC's report. At no time in the mediation process did Mr. Bellevance make a promise to Mr. Gay that he would table a wage proposal before the UTE narrowed its proposals. He testified that he was clear about it; maybe Mr. Gay understood something else.

[32] Twice before, when the employer had issues with UTE communiqués to be posted on workplace bulletin boards, Mr. Bellevance contacted the UTE. Each time, the UTE made changes to address the employer's concerns. This time, he did not contact the UTE or follow the established practice because of the urgency the employer felt to remove the misinformation from the workplace. False information would have led the employees to mobilize against the employer. Posting the communiqué would also have prejudiced the employer's bargaining position. In Mr. Bellevance's opinion, it was perfectly acceptable for the employer to tell the bargaining unit members that their union was not interested in bargaining. However, it was not acceptable for the union to make similar comments about the employer.

[33] Based on all this, Mr. Bellevance recommended to the local managers that they remove the communiqué from the bulletin boards. There was no need to seek any clarification from the union. The employer just needed to act, which it did to prevent the union from mobilizing its membership in the workplace.

III. Summary of the arguments

A. For the complainant

[34] An unfair labour practice under s. 190 is a violation of ss. 5 and 186(1)(a) of the *Act*, which read as follows:

> ***Employee freedoms***
>
> ***5*** *Every employee is free to join the employee organization of his or her choice and to participate in its lawful activities.*
>
> …
>
> ***Unfair labour practices — employer***
>
> ***186 (1)*** *No employer, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*
>
> ***(a)*** *participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization ….*

[35] The case law is clear. Only in extremely limited circumstances can the employer limit the union's right to post communiqués on a workplace bulletin board when that right has been agreed to in the collective agreement. Those circumstances include statements that are illegal, abusive, defamatory, or fraudulent or that do not comply with labour relations standards.

[36] If the employer alleges that the union's communiqué limits the employer's ability to function or remain discipline-free, it must demonstrate the harm. Speculation is not enough. Neither are inaccurate statements. It is to be expected that the rhetoric of both sides in the bargaining context reflects their positions. The employer's statements were adverse to the union's interests and highly editorialized, by the employer's admission.

[37] Through collective bargaining, the union has secured access to the workplace bulletin boards. The employer did not meet the threshold for denying the union the

right to post the bargaining communiqué. There is no restriction on what the employer can post for its employees to read. Under the collective agreement, the employer, acting reasonably, can review a communiqué and deny the union access to the workplace based on a judicial and arbitral standard that has been established over 40 years.

[38] In *Canadian Union of Postal Workers v. Treasury Board (Post Office Department)*, PSSRB File Nos. 169-02-159 and 160 (19781221), [1978] C.P.S.S.R.B. No. 19 (QL), the former Public Service Staff Relations Board (PSSRB) held that it is impossible to define in positive terms what constitutes a valid reason for which an employer could withhold its approval of the contents of a union document proposed for posting when the collective agreement contains an article providing the union access to workplace bulletin boards. The criteria for determining whether there is a valid reason for withholding approval are the illegality of the document's contents; its abusive nature, as evidenced by abusive, defamatory, or fraudulent statements; and its non-compliance with the standards governing the current labour relations system.

[39] The employer cannot unduly limit the union's professional role or interests. Negative connotations are not sufficient to be deemed defamatory or abusive. Truth is a defence to defamation, and the complainant merely presented to its members the truth of the events that occurred at the bargaining table.

[40] Neither party has a complete and unfettered right when it comes to the issue of posting notices on workplace bulletin boards. The employer has legitimate interests in pursuit of its rights over the union's when it seeks to protect its right to control and direct its workforce in relation to productivity and to maintain a workforce free of discipline. It has a right to a clear, clean, and orderly workforce. However, the union also has legitimate workplace interests in promoting such things as negotiations and health-and-safety and other employment-related issues. The employer must objectively approve messages related to these matters. The employer is not to be a censor that denies approval simply because its sensitivities may be raised. Any adverse impact that it claims would result from posting any union notice must be real and not merely imaginary or speculative. It must also be demonstrated (see *Casco Inc. v. United Food Processors Union, Local 483*, [2002] O.L.A.A. No. 151 (QL)).

[41] Hyperbole and the partisan nature of a notice do not make it ineligible for posting (see *Quality Meat Packers Ltd. v. U.F.C.W., Locals 175 and 633*, [2003] O.L.A.A. No. 790 (QL)). The employer should not be unduly sensitive to statements made during negotiations that are exaggerated with respect to the status of the negotiations. Adjudicators are very reluctant to interfere with the negotiated right of unions to communicate with their members through workplace bulletin boards. The breadth of what may be posted is interpreted broadly, and there are no special restrictions against messages contrary to the employer's position.

[42] This is not the first time that the Board or one of its predecessors has examined clause 12.01 of the collective agreement. In *Public Service Alliance of Canada v. Canada Customs and Revenue Agency*, 2001 PSSRB 103, the employer refused the union the right to post materials on bulletin boards in its workplace after alleging that they contained untrue statements. The PSSRB held that the test for determining whether the employer acted reasonably in denying the union its right to post the materials was not the veracity of the criticism that they contained but whether the employer could reasonably consider them contrary to its interests.

[43] The complainant is left with no mechanism to challenge the employer's statements posted on InfoZone, except under s. 190 of the *Act*, if the employer has unilateral authority to control the rhetoric internal to the workplace. The restrictions placed on what may be posted on workplace bulletin boards are not to prevent the union from exercising its legitimate right to promote its professional interests and those of the employees its legally represents.

[44] Section 186(1)(a) of the *Act* makes it an unfair labour practice for an employer or a manager in its employ to interfere with the administration of an employee organization or the ability of that organization to represent its members. In *Public Service Alliance of Canada v. Treasury Board*, 2011 PSLRB 106, the adjudicator found that the employer's directive in which it squarely refused the posting of pension petitions on workplace bulletin boards, without an explanation and without demonstrating how doing so would be adverse in a concrete sense to its interests, constituted a violation of s. 186(1)(a).

[45] In this case, the breach of clause 12.01 constituted a violation of the *Act* and an unfair labour practice under s. 190. The employer's basis for refusing the right to post

the communiqué did not pass the test established in the jurisprudence. The communiqué was not abusive, defamatory, or fraudulent; nor was it non-compliant with labour relations standards. If the employer does not pass the test, it *de facto* commits an unfair labour practice.

[46] Nothing in the complainant's communiqué was abusive or defamatory. It was a reasonable explanation of why the union had walked away from the bargaining table a second time. Perhaps the employer was offended by a statement about favouritism in the report on working conditions in the call centres, but ruffled feathers or hurt sensitivities are not sufficient to meet the requirements of the test. The employer had no justification for its actions. The union provided good-faith reasons for its statements, which were not challenged on cross-examination. There was no basis to refuse it the right to post the communiqué.

[47] Alternatively, regardless of the accuracy of the statements in the communiqué, they were made in good faith. Even if there was a misunderstanding of the contents of the joint committee's report, it was not sufficient to discharge the requirements of the test. A word-by-word analysis of the communiqué is not required. Its overall context matters.

[48] The employer's communiqué also contained similar inaccurate statements. Mr. Bellevance said that had the union complained about the employer's document, he would have taken it down. In the overall labour relations context, the employer's editorialized message gunned for the union while preventing it from commenting on the employer's behaviour at the table.

[49] The employer censored the union's communication with its members. Mr. Bellevance acknowledged that he knew that the union was trying to mobilize its members and that he would not allow it to happen. He would not allow communiqués to be posted in the workplace to help the union reach its goal.

[50] In summary, the employer's actions did not meet the test outlined in *Quality Meat Packers Ltd.* It did not act reasonably when it withheld permission to post the bargaining communiqué in the workplace, violating article 12 of the collective agreement, all of which constituted a violation of ss. 186(1)(a) and 190 of the *Act*. The complainant seeks a declaration that the employer violated s. 190 and that the declaration be posted in the workplace and on InfoZone for not less than 90 days.

B. For the respondent

[51] There is no right under the *Act* that allows a union to access employees in the workplace. That right must be in the collective agreement. The employer can restrict workplace communications; the bargaining agent does not have an independent right to contact employees in the workplace (see *Bernard v. Canada (Attorney General)*, 2014 SCC 13). The *Financial Administration Act* (R.S.C., 1985, c. F-11) gives the employer the right to manage and restrict the workplace. The only rights that the employer has given to the union are under the collective agreement and are limited, to not interfere with its operations.

[52] The employer did not prevent the union from communicating with its members. It restricted what could be posted in a workplace that it controls (see *Merriman and Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada (UCCO-SACC-CSN) v. MacNeil and Justason, 2011 PSLRB 87.*The employer's posts on InfoZone are not subject to the collective agreement, so it is entitled to update its employees as it deems fit. This complaint should be dismissed because the union should have filed a grievance instead of a complaint of an unfair labour practice. Regardless, the employer acted reasonably because the communiqué in question was adverse to its interests.

[53] Mr. Bellevance testified that he never promised to table a wage proposal, so the allegation that he reneged on such a promised was false. The union's language was very strong and abusive. It attacked the employer's character and integrity, and it was obviously adverse to the employer's interests. The references to favouritism in the joint report were the union's interpretation of the study. The fact that Mr. Bellevance did not follow past practice is also irrelevant as he applied the collective agreement. The communiqué would have had a negative impact on the employer's operations. According to his testimony, it would have been disruptive. His recommendations were justified.

[54] There must be a distinction between interfering with the union's affairs and interpreting the collective agreement. The employer did not deny the union the right to communicate with its membership. It merely denied it the right to post its propaganda on employer bulletin boards, in accordance with the collective agreement, because in the employer's evaluation, in its language, the content was adverse to the employer's interests.

IV. Reasons

[55] It is not my role to determine whether the version of events in either the complainant's or the employer's communiqué was true and accurate. Each rendered its version and blamed the other for the breakdown in negotiations, as is common in labour relations and is to be expected when animosity may exist between the parties at the table. Each of the communiqués I read was equally unflattering in terms of the opposing side as the other, and each used hyperbole and accusatory language.

[56] Each side intended its communiqué to be read by the bargaining unit members in hopes of garnering their support in the bargaining process. The problem in this case is that the respondent exercised its management rights to prevent the complainant from exercising its right, collectively bargained, to post its version in the workplace, where it was most likely to be seen by shift workers and other members of the bargaining unit. By its admission, the respondent did so to frustrate the complainant's attempts to mobilize the membership.

[57] It is trite law that management has the right to manage its workplace unless that right has been constricted by the collective agreement, which it was in this case by article 12. Management had agreed that the complainant could post communiqués in its workplace, subject to certain conditions, and that it would not unreasonably withhold that permission. Given the nature of this communiqué, the similarity in content to the respondent's communiqué, and the stage that the negotiations had reached, I find that it was arbitrary and unreasonable for the respondent to deny the complainant the right to post its communiqué in the workplace, for the reasons that follow. As a result of the chief negotiator's unreasonable and arbitrary action, the respondent interfered with the bargaining process and the complainant's ability to represent its membership.

[58] Applying the criteria set out in *Canadian Union of Postal Workers* and *Quality Meat Packers Ltd.*, I can find no legitimate reason that the employer withheld its approval of the communiqué in question. There was nothing illegal in its contents, and it was not abusive, defamatory or a fraudulent statement particularly when compared with what the employer had posted on InfoZone. Both parties engaged in hyperbole and unflattering language to describe the conduct of the other. The language, tone, and content of the union's message were practically mirror images of what the employer had posted and obviously complied with the standards governing the parties' present

labour relations system, or the employer's communiqué would have been equally offensive to the complainant. The sole purpose of controlling the posting was that as Mr. Bellevance stated in his evidence, he wanted to prevent the union's ability to mobilize its members in the workplace.

[59] The employer has legitimate interests in pursuit of its rights over the union's when it seeks to protect its right to control and direct its workforce in relation to productivity and to maintain a workforce free of discipline. It has the right to direct an orderly and productive workforce. However, the union also has a legitimate interest in the workplace in promoting negotiations. The employer must objectively approve messages related to these matters.

[60] The employer is not to be a censor and is not to deny its approval simply because its sensitivities may be raised or to prevent the union from pursuing its rights during negotiations. The employer must demonstrate any adverse impact it claims would result from posting a union notice. It must be real and not merely imaginary or speculative (see *Casco Inc.*). I have no evidence of any adverse impact that the employer would have suffered had the communiqué in question been posted. Instead, I have evidence that Mr. Bellevance did not want the complainant to have the opportunity to rally its members to job action.

[61] I am particularly concerned with Mr. Bellevance's testimony, specifically his evidence that previously, when the employer had issues with UTE communiqués to be posted on workplace bulletin boards, he or someone from the employer had contacted the UTE. Each time, the UTE had made changes to address the employer's concerns. This time, he did not contact the UTE or follow the established practice because of the urgency the employer felt to remove the misinformation from the workplace. He wanted to control the alleged false information, to prevent the employees from mobilizing against the employer.

[62] Posting the communiqué would also have prejudiced the employer's bargaining position, according to Mr. Bellevance, and his primary role was to protect that position. In his opinion, it was perfectly acceptable for the employer to tell the bargaining unit members that their union was not interested in bargaining. However, it was not acceptable for the union to make similar comments about the employer.

[63] The employer argued that there must be a distinction between interfering with the union's affairs and interpreting the collective agreement. That is true, but when the purpose of denying the union a right guaranteed to it under the collective agreement was to prevent it from mobilizing its members, the distinction no longer exists. The employer used the collective agreement as a tool to interfere in the union's representation of its members.

[64] It was improper for the employer, through its chief negotiator, to attempt to control the bargaining process and the rhetoric surrounding it by censoring the union. As was said in *Casco Inc.*, the employer is not a censor. It cannot be allowed to determine what the bargaining unit members hear about bargaining, to prevent them from mobilizing to job action in the workplace. Doing so would be an unfair advantage and control over the bargaining process. Job action is one of the greatest tools a union has in the bargaining process, which in this case, by his admission, Mr. Bellevance sought to disarm the union of.

[65] Every story has at least three versions: the storyteller's, the listener's, and the truth. There is no doubt that each side will put its spin on a story to promote its interests and to portray the other in the least-positive light, particularly in an adversarial process, which the round of bargaining at issue had become. In my assessment, it was unreasonable for the employer's chief negotiator not to allow the union to work to rally its members via information communiqués, which is certainly part of the union's business. Under the collective agreement, it was entitled to post them in the workplace.

[66] According to the employer, the language used by the union was very strong and abusive. It attacked the employer's character and integrity and was obviously adverse to its interests. He did not comment on the employer's use of similar strong language or what the union claimed was false and misleading information. Nor did he comment on the employer's true motive for refusing the union the right to post the communiqué that according to Mr. Bellevance, was to interfere with the union's ability to mobilize it members.

[67] Mr. Bellevance did not seek the opportunity to amend the communiqué to address the employer's objections, as was done in the past, because that was not really the issue. In his testimony, he was clear that his intent was to prevent employee

mobilization in the workplace, which was clearly interference with union representation in the negotiation process and a violation of ss. 185 and 190(1)(g) of the *Act*.

[68] The employer was correct that there is no right under the *Act* for a union to access employees in the workplace. That right must be contained in the collective agreement, which in fact it is in this case, in the form of access to bulletin boards. Where the employer was wrong in his argument was that the employer no longer had the unilateral right to determine what could and could not be posted on its bulletin boards because it had bargained that right away. It could no longer restrict the communications posted in the workplace without some evaluation of whether its action in so doing was reasonable and done in good faith, and with evidence of harm. In this case, none of that existed.

[69] By his actions, Mr. Bellevance clearly violated s. 186(1)(a) of the *Act*, as I have highlighted here:

> ***Unfair labour practices — employer***
>
> ***186 (1)*** *No employer, and, whether or not they are acting on the employer's behalf,* ***no person who occupies a managerial or confidential position*** *and no person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*
>
> > ***(a)*** *participate in or* ***interfere with*** *the formation or administration of an employee organization or* ***the representation of employees by an employee organization*** *….*
>
> [Emphasis added]

[70] The union's statements were not illegal, abusive, or defamatory; nor were they outside labour relations standards, given the circumstances of having arrived at a second impasse. There was no evidence of the employer's inability to function or remain discipline-free or of any harm it would have suffered had the communiqué been posted. It had no reasonable grounds to deny the union its rights under article 12 of the collective agreement. The fact that it could have been posted on the union's website is not relevant. The parties bargained the union's right to post communiqués in the workplace on bulletin boards, subject to certain restrictions. The employer violated that right, and by doing so, through the actions of its chief negotiator, it violated the unfair-labour-practice provisions of the *Act*.

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

(The Order appears on the next page)

V. Order

[72] The complaint is allowed.

[73] I declare that the respondent committed an unfair labour practice by refusing to allow the complainant the right to post its bargaining update of May 10, 2019, on bulletin boards within the respondent's workplace, pursuant to clause 12.01 of the collective agreement, without reasonable cause.

[74] It is also declared that the respondent has violated sections 5 and 186(1)(a) of the Act, as well as articles 12.01 and 19.01 of the collective agreement.

[75] I order that this decision be posted in a prominent location for 90 days, commencing no later than 5 days from the date of this decision, in all employer worksites, and that it also be posted on InfoZone for the same length of time.

January 6, 2021.

Margaret T.A. Shannon,
a panel of the Federal Public Sector
Labour Relations and Employment Board