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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

JEAN-FRANÇOIS BERGERON

Complainant

and

UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN AND YAN GARNEAU

Respondents

Indexed as
Bergeron v. Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

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

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Jean-Yves Bergeron

For the Respondents: Franco Fiori, counsel

Decided on the basis of written submissions, filed April 15 and May 6, 21, 26, and 27, 2021.
(FPSLREB Translation)

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Complaint before the Board

[1] On March 23, 2020, Jean-François Bergeron ("the complainant") made a complaint with the Federal Public Sector Labour Relations and Employment Board ("the Board") against his bargaining agent, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the union"), and Yan Garneau, president of the Donnacona local. The term "the respondents" will be used to designate both the union and Mr. Garneau.

[2] In his complaint, the complainant alleged that the respondents committed an unfair labour practice within the meaning of s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which prohibits an employee organization and its officers and representatives from acting in a manner that is arbitrary or discriminatory or in bad faith when representing any public servant who is a member of a bargaining unit for which it is the bargaining agent. The complainant argued specifically that he was the victim of unfair labour practices for a period of two years.

[3] In his complaint, the complainant requested that the respondents immediately cease the unfair labour practices against him and that they act fairly and equitably when representing all union members.

[4] In their initial response to the complaint, the respondents denied any violation of the *Act*. They also stated their intention to raise an objection based on the prescribed 90-day time limit to make an unfair labour practice complaint.

II. Summary of the facts submitted by the parties

[5] The complainant provided a large volume of information that he said was contextual and that dated from 2017 and 2018. He stated that in fall 2017, he helped some colleagues with files that Mr. Garneau did not consider important. According to the complainant, the local's executive did not welcome his involvement in those files. Some time later, he ran for vice-president of the local and was elected by a large majority over Marie-Ève Lessard, who also ran for the position.

[6] The complainant said that in June 2018, when he returned from a training session in Laval, he was made aware that rumours were circulating at work that he had had an affair with someone at the Donnacona Institution. According to him, Mr. Garneau allegedly then told him that he would have to "[translation] align his story" with the other person, or people would discover the truth. The complainant would have replied that their stories were not the same because his what he did outside his working hours did not concern anyone and that it was better to tell the truth than to make up stories. He said that shortly after that and when he was on leave, Mr. Garneau called him and told him that he had received an email stating that the complainant should resign from his union position because he did not respect the union's code of conduct. The complainant reportedly replied that such a code did not exist. He said that a bit later that same day, Mr. Garneau called him, this time accompanied by two others, and explained that the complainant's resignation from his union position had been requested and that it would be a good thing if he resigned. According to the respondents, a petition had circulated that asked that the complainant be removed from his union position. Exasperated by the callers' attitudes, and feeling that he was not being heard, he presented them with his resignation from the union position that he occupied.

[7] According to the complainant, a few days later, the vice-president position was "[translation] given" to Ms. Lessard. According to the respondents, she was appointed as a temporary replacement for the complainant until the next election could be held, which was in accordance with the internal procedures in place.

[8] On December 30, 2019, the complainant learned that one of his colleagues had made a harassment complaint against him with the employer. I will refer to the colleague as Ms. X for the purposes of this case (my analysis for reaching that conclusion appears later on). He also maintained that he then learned that Mr. Garneau and Ms. Lessard would be witnesses in Ms. X's complaint.

[9] The complainant stated that on January 6, 2020, he contacted Frédérick Lebeau, regional union president for all Quebec, and asked him if someone from the union's regional level could accompany him to the hearing of Ms. X's harassment complaint. According to the complainant, Mr. Lebeau apparently replied that he had nothing else to do than deal with the complainant's problems. The complainant said that he ended

the conversation "[translation] impolitely" after he concluded that Mr. Lebeau was not interested in supporting him. According to the respondents, Mr. Lebeau would in fact have used those words, but he also would have made sure to point out that despite his busy schedule, he would deal with the complainant's file. The respondents also submitted a copy of a text message that Mr. Lebeau sent to the complainant on January 6, 2020, after the conversation that day. In it, Mr. Lebeau wrote that he thought it was a shame that the complainant hung up before the discussion ended. He added that it was his job was to represent all union members in all situations and that the complainant's right to representation would never be in doubt.

[10] On January 20, 2020, accompanied by his representative, the complainant returned Mr. Lebeau's call. Mr. Lebeau was accompanied by François Ouellette, a union advisor. The complainant requested that Mr. Garneau's resignation be demanded. His request was denied on the grounds that the union could not require the resignation of a duly elected union officer. According to the complainant, the parties to the conversation agreed all the same to meet on February 17, 2020, at the union's Montreal offices. After thinking about it, and based on the comments that Mr. Lebeau apparently made to him previously about the fact that several members of the complainant's family held key positions with the Correctional Service of Canada, the complainant stated that he decided to cancel the February 17, 2020, meeting. He stated that instead, he chose to make this complaint to end Mr. Garneau's unfair treatment of him.

[11] The complainant stated that Ms. X's allegations against him in her complaint changed twice. He said that he wanted to end the mentoring and his bond of friendship with her because he had lost confidence in her. He also stated that he had defended her dozens of times by reminding people not to rely on gossip. He thought it best to sever his ties with her because according to the terms he used, she "[translation] left" with the spouse of someone close to him, whom she had earlier told him she had no attraction to.

[12] According to the complainant, Mr. Garneau was well aware of his conflict with Ms. X. Mr. Garneau could have intervened and settled the conflict between two members of his union unit to ensure fair representation for each of them.

[13] The complainant submitted sworn statements from two colleagues to support his complaint. In one, the person explained how she appreciated him and how he had

helped her in the past. After a few derogatory remarks about Ms. X, she stated that Ms. X had obtained the union's assistance, while the complainant had to manage alone. According to that person, the harassment investigation had been malicious and had been intended to harm him. In the other statement, the person said that she worked often with the complainant and that he had never spread rumours or misinformation about Ms. X in her presence. She also stated that a shop steward had reportedly told her that the complainant was "[translation] in trouble" shortly after Ms. X's complaint was made. Also, according to that person, Ms. Lessard supposedly asked the complainant, insistently six times in the kitchenette, how he was doing, thus causing him to become impatient.

[14] The complainant submitted the preliminary report of the investigator appointed to investigate Ms. X's complaint against him. According to the report, dated July 15, 2020, the investigator did not question Mr. Garneau. In addition, Mr. Garneau's name was not on the list of 11 witnesses included in the report. Based on what was submitted to me, the investigator presented the conclusions of his investigation on September 25, 2020. He completely dismissed 1 of Ms. X's 4 allegations, as well as part of another. However, he retained her other 2 allegations against the complainant.

[15] According to the submissions made to me, the complainant's employer imposed a disciplinary measure on him based on the investigation's conclusions, which he challenged in a grievance. The union offered its representational services to him as part of the grievance process. According to the documents submitted, Hugues Demers, a shop steward, also sent the complainant the completed grievance form on January 12, 2021. The union represented him when the grievance was filed. Later, Mr. Ouellet referred the complainant's grievance to adjudication.

III. Summary of the complainant's arguments

[16] The complainant asked that the complaint be allowed. He asked that all forms of discrimination against him cease and that this type of situation not be repeated with any other employee. He also asked that he be reimbursed the dues he paid to the bargaining agent's Donnacona local since October 25, 2017. Finally, he asked that his two colleagues' sworn statements be sealed to prevent reprisals from the union. He also asked that the personal information involving him be redacted from the text messages exchanged with Mr. Lebeau.

[17] The complainant argued that he tried to resolve the problems with Mr. Lebeau progressively as they occurred, even though the absence of representation after Ms. X's complaint led him to make the complaint. According to the facts, Mr. Garneau's actions were part of a continuum and could not be considered separate events. Therefore, the Board must consider all the items that the complainant submitted that demonstrate the arbitrary and discriminatory way he was treated.

[18] Mr. Lebeau referred to the fact that members of the complainant's family held key positions with the Correctional Service of Canada. According to the complainant, this violated several provisions of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*) with respect to family status. He alleged that after Mr. Lebeau's remarks, he decided to stop asking the union to represent him.

[19] Another part of the complaint arose from Ms. X's harassment complaint against the complainant. Mr. Garneau and Ms. Lessard, the local's respective president and vice-president, respectively, were clearly identified as witnesses to support Ms. X. That demonstrated unfair, arbitrary, and discriminatory representation, as well as bad faith by Mr. Garneau.

[20] According to the submitted facts, the complainant alleged that the respondents violated ss. 66(1), 66(2), 93(2), 98(a), 98(b), and 187 of the *Act* and s. 3(1) of the *CHRA*.

IV. Summary of the respondents' arguments

[21] According to the respondents, several facts that the complainant raised occurred well before the 90-day time limit set out at s. 190(2) of the *Act*. Respecting the time limit is mandatory, which the Board's case law eloquently confirms.

[22] By raising ss. 66(1), 66(2), 93(2), 98(a), and 98(b) of the *Act*, the complainant attempted to broaden the scope of his complaint and basically misrepresent it. In reciting the events that he submitted, in no way are those provisions and their contents at issue. The provisions in question were cited frivolously.

[23] The facts that the complainant raised in no way meet the criteria set out in s. 190 of the *Act*, and the complaint must be dismissed. None of the facts submitted justifies allowing the complaint, especially since the respondents did a good job of

dealing with his case. They offered him representation, they helped him file a grievance, and they referred it to adjudication.

[24] The respondents did not agree with the request to seal the sworn statements that the complainant submitted to support his complaint. The open court principle is well established, and the complainant's request did not meet the criteria established by the Supreme Court of Canada to depart from that principle. However, the respondents asked that the confidentiality of the name of the person who made a harassment complaint against the complainant be protected.

[25] To support their arguments, the respondents referred me to the following decisions: *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78; *Martel v. Public Service Alliance of Canada*, 2008 PSLRB 19; *Cuming v. Butcher*, 2008 PSLRB 76; *Shutiak v. Public Service Alliance of Canada*, 2009 PSLRB 29; *Psyllias v. Meunier-McKay*, 2009 PSLRB 67; *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109; *Myles v. Professional Institute of the Public Service of Canada*, 2017 FPSLREB 30; *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39; *Presseault*, 2001 CIRB 138; *McRaeJackson*, 2004 CIRB 290; *Renaud v. Canadian Association of Professional Employees*, 2010 PSLRB 118; *Jean-Pierre v. Arcand*, 2012 PSLRB 23; *Ewart-Wilson v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 32; *Grievor X v. Canada Revenue Agency*, 2020 FPSLREB 74; *Olynik v. Canada Revenue Agency*, 2020 FPSLREB 80; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835; *Carignan v. Deputy Head (Correctional Service of Canada)*, 2019 FPSLREB 86; and *N.J. v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 129.

V. Analysis and reasons

[26] The complaint cited s. 190(1)(g) of the *Act*, which refers to s. 185. Among the unfair practices mentioned in that provision, s. 187 is the one of interest in this complaint. Those provisions read as follows:

> ***190(1)*** *The Board must examine and inquire into any complaint made to it that:*
>
> …
>
> ***(g)*** *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*

…

> ***185*** *In this Division,* **unfair labour practice** *means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*
>
> …
>
> ***187*** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*
>
> [Emphasis in the original]

[27] The respondents alleged that several of the facts that the complainant submitted occurred well before the time limit set out in s. 190(2) of the *Act*. The complainant alleged that Mr. Garneau's actions were ongoing. Section 190(2) reads as follows:

> ***(2)*** *Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*

[28] I carefully reviewed the complainant's submissions, and I found that only the respondents' behaviours or actions as they related to Ms. X's complaint could be considered as they occurred within the 90 days before the complaint was made. In addition, the rest had nothing to do with the duty of fair representation provided in the *Act*; rather, it arose from internal, intra-union tensions, over which the Board has no jurisdiction. In its decisions (see *Leach v. Public Service Alliance of Canada*, 2020 FPSLREB 101, for a recent example), the Board has repeatedly determined that its role does not include interfering in such situations.

[29] The complainant blamed Mr. Garneau and Ms. Lessard, two officers from the local, for being witnesses in Ms. X's complaint. I read the investigation report adduced into evidence, and Mr. Garneau's name did not appear in the list of witnesses. Be that as it may, this in itself would not constitute a breach of the duty of fair representation or a violation of the *Act*.

[30] The complainant contacted Mr. Lebeau, the union's regional president, and asked for help after Ms. X made her harassment complaint. According to the complainant, Mr. Lebeau apparently told him that he had nothing else to do other than deal with the complainant's problems. Mr. Lebeau apparently said those words, but he reportedly specified that he would deal with the complainant's case. He also texted the complainant, affirming that his job was to represent all members in all situations and that the complainant's right to representation would never be in doubt. Therefore, Mr. Lebeau certainly did not breach his duty of fair representation by reaffirming the complainant's right to representation.

[31] Mr. Lebeau allegedly commented earlier that several members of the complainant's family held key positions with the Correctional Service of Canada. The complainant said that he decided to cancel the meeting with Mr. Lebeau because of those comments. That was his choice; he cannot blame the union. Then he argued that that was discrimination based on family status. Absolutely nothing in the submissions to me supports such an allegation or could lead me to believe that the respondents refused to represent him or that they provided him with less service on that basis.

[32] Based on the submissions to me, my view is that the respondents did not act in an arbitrary or a discriminatory manner or in bad faith when representing the complainant.

[33] Section 187 of the *Act* does not impose on an employee organization an obligation of representation in all cases; rather, it prohibits the employee organization from acting in an arbitrary or discriminatory manner or in bad faith. The employee organization must exercise its discretionary authority within those guidelines. In *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509, the Supreme Court of Canada stated the following at page 527:

> …
>
> *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*

> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

[34] The complainant did not demonstrate to me that the respondents breached their duty of fair representation. Instead, he convinced me that he had a conflict with Mr. Garneau, Ms. Lessard, or Ms. X. Such a conflict is not the Board's responsibility or concern.

[35] The complainant asked me to seal the two sworn statements from colleagues. He also asked that his personal information be redacted from Mr. Lebeau's messages. The respondents asked me to protect the identity of the person who made a harassment complaint against the complainant, as well as the identity of that person's spouse.

[36] I reviewed those requests by considering the open court principle with respect to confidentiality orders and by referring to the criteria that the Supreme Court of Canada established in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, and in *R. v. Mentuck*, [2001] 3 S.C.R. 442.

[37] Based on those criteria, there is no reason to seal the two sworn statements of the complainant's colleagues to prevent the public from accessing them. According to him, those people could be subject to reprisals from the union. But in the context of this case, the bargaining agent already received copies of the statements, and in any event, the open court principle does not apply to the parties' access to the documents in the case but instead to the public's access to them. I also do not see the relevance of naming the complainant's colleagues in this decision or of naming the person who made a harassment complaint against the complainant or that person's spouse. In short, apart from the complainant, I named only Mr. Garneau, Ms. Lessard, Mr. Ouellet,

Mr. Demers, and Mr. Lebeau. As of the events at issue, they were all union officers. Therefore, I dismiss the respondents' request for a confidentiality order.

[38] However, to prevent serious security risks, all the personal information, namely, the telephone numbers and email and residential addresses, of everyone named in the case documents who works for the Correctional Service of Canada will be redacted.

[39] Finally, the complainant alleged that the respondents also violated ss. 66(1), 66(2), 93(2), 98(a), and 98(b) of the *Act*. I agree with the respondents that the allegations were far-fetched. It does not seem useful to me to reproduce those provisions of the *Act*. They deal with union certification, certification conditions, or the revocation of certification. Additionally, the complainant presented no details that justify those allegations.

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

(The Order appears on the next page)

VI. Order

[41] The complaint is dismissed.

[42] I order Board Secretariat staff to redact all the personal information, namely, telephone numbers and email and residential addresses, of everyone named in the case documents who works for the Correctional Service of Canada.

June 18, 2021.

FPSLREB Translation

Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board