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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

**JUAN ANDRES LEON, GREG HAYMES, ABOUBAKAR MOUNCHILI, BAKHTIAR
ANWAR, MATHIEU STIERMANN, DAN MARKEL, ULRICK AUGUSTE, AND
ANTHONY COLES**

Complainants

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as

Leon v. Canadian Association of Professional Employees

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

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Complainants: Nick Giannakoulis

For the Respondent: Colleen Bauman, counsel

Decided on the basis of written submissions,
filed March 8 and October 1 and 13, 2021.

REASONS FOR DECISION

I. Complaints before the Board

[1] On January 17, 2021, Juan Andres Leon, Greg Haymes, Aboubakar Mouchili, Bakhtiar Anwar, Mathieu Stiermann, Dan Markel, Ulrick Auguste, and Anthony Coles (“the complainants”) made complaints to the Federal Public Sector Labour Relations and Employment Board (“the Board”) alleging that the employee organization to which they belong, the Canadian Association of Professional Employees (“the respondent” or CAPE), imposed a penalty on them in a discriminatory manner, contrary to s. 188(c) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[2] All the complainants are represented by the same representative, and all the complaints relate to the respondent’s actions when it held elections for positions within CAPE in the fall of 2020. The complainants allege that the respondent prevented them from freely participating in the election process. Since all the complaints deal with the same subject matter, and since the respondent provided a single response to them, I refer to them in the singular form.

II. Objection and motion to dismiss in a summary fashion

[3] The respondent objected to the Board’s jurisdiction to hear this complaint. According to the respondent, this is an internal union matter over which Parliament has not given the Board any authority. The respondent made a motion for the Board to dismiss the complaint in a summary fashion for want of jurisdiction.

[4] This decision deals only with the motion to dismiss the complaint in a summary fashion on the basis of the jurisdictional issue; it does not deal with the merits of the complaint.

A. The complaint

[5] In the paragraphs that follow, I briefly summarize the facts alleged in the complaint. All the complainants are part of CAPE local 512 and work at Health Canada, and all of them, except Mr. Coles, applied for the position of Director on CAPE’s National Executive Committee in August 2020. Mr. Coles applied for the position of President on September 1, 2020. Except for that difference, the facts alleged are the same (the details may vary, but the same summary applies to all the complainants).

[6] On September 13, 2020, the complainants received notice that their applications did not comply with CAPE's by-laws 3.4, 3.5, and 3.7. After some exchanges, the complainants submitted a formal request for the reconsideration of that decision. The decision was maintained, and the complainants formally appealed to the National Executive Committee Election Appeal Sub-Committee. On October 20, 2020, they received a letter from the sub-committee rejecting their appeal and ruling that they were not eligible for the election because their applications had not been signed by hand. Yet, they were aware of other applications that had been accepted with an electronic signature (used for the application), and instructions had been provided that doing so would be acceptable because of the COVID-19 situation.

[7] According to the complainants, the entire process had numerous defects, and the Elections and Resolution Committee that had originally rejected their applications acted in a discriminatory fashion by accepting some applications and not others, without a proper explanation.

[8] Several other applicants were also screened out, with the result that positions were filled by acclamation. This means that decisions made during the election process, especially those concerning valid or invalid applications, were made by members of the Executive Committee who were acclaimed into positions as there were no other contenders.

[9] At the CAPE's annual general meeting, the Elections and Resolution Committee did not present any report about the elections, contrary to its usual practice, and members had no opportunity to address their many concerns about the elections. In general, all responses to questions and challenges were anonymous, so in the end, no one could be held accountable for the election process.

[10] The complainants base their complaint on s. 188(c) of the Act, which reads as follows:

188 No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall

...

(c) take disciplinary action against or impose any form of penalty on an employee by applying the employee

organization's standards of discipline to that employee in a discriminatory manner;

B. The objection and request for dismissal in a summary fashion

[11] The respondent submits that the Board does not have jurisdiction to hear and decide this complaint. According to the respondent, s. 188(c) finds no application in this case; no disciplinary action was taken against or penalty imposed on the complainants that engaged the respondent's standards of discipline. Rather, this is an internal union matter, and the *Act* does not give the Board any authority over such a matter.

[12] The respondent also denies the complainants' allegations, stating that the Elections Appeal Sub-committee and the Elections and Resolution Committee at all times acted in conformity with the respondent's constitution and by-laws. It states that the members of the Elections and Resolution Committee were "neutral volunteer CAPE members" not running as candidates in the election.

[13] The complaint should be dismissed summarily as it does not disclose an arguable case. The complainants disagree with the conduct of the election — they do not allege that they received any disciplinary action or penalty. They have not shown which standard of discipline was applied to them. The respondent submits that none of CAPE's standards of discipline was applied.

[14] The Board has stated numerous times that it does not have jurisdiction over internal union matters, notably in *Gilkinson v. Professional Institute of the Public Service of Canada*, 2018 FPSLRB 62, *Pronovost v. Professional Institute of the Public Service of Canada*, 2020 FPSLRB 24, *Myles v. Professional Institute of the Public Service of Canada*, 2017 FPSLRB 30, and *Nolet v. Public Service Alliance of Canada*, 2019 FPSLRB 38.

C. The complainants' response to the objection and request for dismissal in a summary fashion

[15] In their response, the complainants argue that the irregular election process falls under the broad category of an unfair labour practice. They allege that they have witnesses who can attest to the irregularities throughout the election process.

[16] The complainants argue that the Board's case law does not deal with allegations related to an election process. They also argue that in fact, they have been penalized by their exclusion from the election process and that disguised discipline was applied to them. In short, they submit that they have been punished for exercising their democratic rights and that the Board should intervene to address a matter that is more than an internal union matter, as it concerns CAPE's broad membership.

D. The respondent's reply

[17] The respondent maintains its arguments as to the Board's lack of jurisdiction and its request for dismissal in a summary fashion. It also objects to the complainants raising "disguised discipline" in their response, since discipline was not raised in the initial complaint.

III. Analysis

[18] The complainants made very serious allegations about the election process. The issue I must decide is not whether the allegations are founded. The question before the Board is the following: by taking the allegations as true for the purposes of the discussion only, is there an arguable case of a violation of the prohibitions contained in s. 188(c) of the *Act*? If the answer is yes, the complaint should be heard on the merits. If the answer is no, the complaint could be dismissed in a summary fashion.

[19] Section 188(c) of the *Act* states:

188 No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall

...

(c) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization's standards of discipline to that employee in a discriminatory manner

[20] It is trite law that an administrative tribunal has only the authority that its enabling statute (or statutes, in the case of the Board) give it. The complainants argue that s. 188(c) gives the Board jurisdiction over their dispute with the respondent with respect to the 2020 election for the governing positions in CAPE. I cannot find such jurisdiction in the wording of s. 188(c). The scope of the Board's authority to intervene in union matters is narrow. As stated in *Bremsak v. Professional Institute of the Public*

Service of Canada, 2009 PSLRB 103, the legislator allows the Board to intervene when a disciplinary action was discriminatory:

...

[73] It is clear that Parliament intended the Board to intervene when a bargaining agent applies disciplinary standards in a discriminatory manner. I also accept that this has a procedural aspect so that disciplinary procedures may be applied in a discriminatory manner. However, I am unable to find in section 188 the authority for the Board to adjudicate disputes about the interpretation and application of a bargaining agent's internal by-laws (or policies) beyond the issue of discrimination. Similarly, I cannot find there is authority for the Board to adjudicate whether a by-law was deficient in some way, or whether a by-law is required in a specific area....

...

[77] With this in mind, the issue is not whether the interpretation or application of a by-law or policy was deficient generally or whether the by-law or policy was itself deficient. Instead, the issue is whether the evidence supports the elements set out in paragraph 188(c) of the [FPSLRA]....

...

[21] There is no denying that the complainants feel wronged by the decisions made during the election process that allegedly deprived them of their right to run in the elections. However, there is no arguable case of disciplinary action taken against or penalty imposed on them under CAPE's standards of discipline; nor have they alleged any ground of discrimination (see *Myles*). As I cannot find an arguable case of a violation of the prohibitions contained in s.188(c), it is appropriate to dismiss the complaints in a summary fashion. Again, as stated in *Gilkinson*, the Board will not intervene in the internal matters of employee organizations.

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

(The Order appears on the next page)

IV. Order

[23] The motion to dismiss the complaints in a summary fashion is granted.

[24] I order Board files 561-02-42464 to 42471 closed.

December 24, 2021.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**