Date: 20230713

File: 561-02-45947

Citation: 2023 FPSLREB 71

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

TARA SEREDIUK

Complainant

and

UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN (UCCO-SACC-CSN)

Respondent

Indexed as
Serediuk v. Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)

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

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Themselves

For the Respondent: Charlie Arsenault-Jacques, counsel

Decided on the basis of written submissions, filed November 9 and 14, 2022, and May 16, 17, 23, and 25 2023.

REASONS FOR DECISION

I. Outline

[1] The complainant alleges that the respondent violated its duty of fair representation towards them. The complainant is an employee of the Correctional Service of Canada in a position within the bargaining unit represented by the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the respondent" or "UCCO-SACC-CSN"). The complainant was also a shop steward for UCCO-SACC-CSN. The complainant accepted a three-day acting assignment in a managerial position in October 2022. The complainant discussed this acting assignment with their Local President before accepting the assignment and was told that any assignment of less than seven days would not impact their ability to be a shop steward. However, despite that advice, UCCO-SACC-CSN removed them from their shop steward position after they started in the acting assignment as required under the UCCO-SACC-CSN's constitution. The complainant alleges that the UCCO-SACC-CSN violated its duty of fair representation by incorrectly advising them that they could remain as a shop steward after their short acting assignment in a managerial position ended.

[2] The issue in this case is whether providing advice about a union constitution falls within the scope of a union's duty of fair representation. The answer is "no." Providing advice about a union constitution falls outside the scope of a union's duty of fair representation.

[3] The duty of fair representation applies only when two conditions are met: (1) a bargaining agent is representing an employee about an issue or matter covered by the *Federal Public Sector Labour Relations Act*, (S.C. 2003, c. 22, s. 2; "the *Act*"), and (2) the representation is about an issue between the employee and the employer. This complaint is that the respondent gave the complainant negligent advice about the terms of its constitution and the complainant's ability to continue serving as a shop steward. The complaint fails both of the conditions to trigger the duty of fair representation. The advice was not about an issue or matter covered by the *Act*, and there is no issue between the complainant and their employer. Therefore, the issues raised in this complaint fall outside the scope of a bargaining agent's duty of fair representation. The complaint is dismissed.

II. Preliminary matters

[4] Before turning to the main issue in this complaint, I will address three preliminary issues that arose: (1) the framework I applied to decide this case, (2) a dispute over the submissions the complainant filed, and (3) how to deal with personal contact information that was filed as part of the submissions in this complaint. I will also address some of the terms used in this decision.

A. The decision is made using the arguable case framework

[5] The Federal Public Sector Labour Relations and Employment Board ("the Board") may decide any matter before it without holding an oral hearing in accordance with s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365). I have exercised that authority to decide this case based on the parties' written submissions.

[6] I invited the parties to make additional written submissions about whether the complainant had made out an "arguable case" that the respondent violated s. 187 of the *Act*. In rendering decisions in duty of fair representation complaints, the Board has often applied an arguable case analysis (see, for example, *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119 at paras. 82 to 84, *Abi-Mansour v. Public Service Alliance of Canada*, 2022 FPSLREB 48 at paras. 48 and 49, *Musolino v. Professional Institute of the Public Service of Canada*, 2022 FPSLREB 46 at para. 32, *Fortin v. Public Service Alliance of Canada*, 2022 FPSLREB 67 at para. 26, and *Corneau v. Association of Justice Counsel*, 2023 FPSLREB 16 at para. 17). The arguable case analysis requires me to treat the facts alleged by the complainant as true (whether in the body of the complaint or in documents appended to the parties' arguments) and then determine whether the complainant has made out an arguable case that the respondent has violated the *Act* (see *Corneau*, at paras. 17 and 34).

[7] In deciding this case, I have applied this arguable case framework. Thus, the facts set out later in this decision are taken from the complaint, the complainant's submissions, and the accompanying documents. I have assessed whether the facts provided by the complainant mean that the complaint has an arguable chance of success.

B. The submissions considered in this case

[8] There was some dispute over the submissions filed in this case that I want to address in these reasons. I initially directed the parties to provide written submissions about this complaint and the application of the arguable case framework by May 16, 2023. The complainant filed submissions along with some additional evidence to support their complaint. The respondent filed submissions a short time later the same day and complained about the additional evidence filed by the complainant.

[9] The complainant then sent three further emails to the Board's Registry on May 16, 2023 (two written by them and one by a representative, who otherwise did not submit anything to the Board). The respondent sent an email to object to the further emails and to ask me not to consider them. The complainant sent further submissions on May 17, 2023. I directed the Registry to inform the parties not to file additional submissions without making a formal motion for leave to submit them. The complainant wrote again to the Board on May 18 and 19, 2023, to ask about the status of their additional submissions and to ask for leave to file more.

[10] To bring closure to these arguments and requests to file additional submissions, I permitted the complainant to file additional submissions on May 23 but I refused permission to file additional evidence along with those submissions. I directed the complainant to focus on the scope of the duty of fair representation by asking specifically for submissions responding to the paragraphs in the respondent's submissions addressing that issue. The complainant filed additional submissions on May 23, 2023. I also granted leave for the respondent to file a final sur-reply on May 25, 2023, which it did.

[11] I have considered all the complainant's submissions, including the additional evidence filed on May 16, 2023 and their "reply" emails. In light of the outcome of this complaint, I decided not to rule on the respondent's objections to the additional evidence and "reply" emails.

[12] However, I did not consider the complainant's submissions that discussed the mediation held between the parties. One of the complainant's emails on May 16, 2023, referred to the mediation that took place between the parties. The complainant's submissions dated May 23, 2023, also discussed, at length, the positions that the respondent articulated at mediation. Mediation is an entirely confidential and without-

prejudice process. It is confidential in that the parties cannot discuss what was said or done at mediation with outsiders; it is without prejudice in that the parties cannot rely upon what was said or done at mediation when arguing the merits of their case. At the risk of trivializing the importance of this rule, it can be summarized quickly: what happens in mediation stays in mediation.

[13] I therefore did not consider the submissions that discussed mediation: the evidence of what transpired at mediation is inadmissible and also irrelevant to this complaint.

[14] Finally, on May 23, 2023, the complainant asked that an email between two other employees be provided "to this file" and that they be given the opportunity to read that email and ask questions. As I already explained, I have decided that this matter can be decided in writing using the arguable case framework, which means that I have accepted the complainant's statements of fact at face value. I do not require the complainant to prove their allegations; therefore, I have not ordered the production of any documents (emails or otherwise) and have not ordered the examination of any party.

C. Personal contact information

[15] An issue arose about personal contact information included in the Board's file. The respondent's submissions of May 16, 2023 had a cover page that included the complainant's home address and personal telephone numbers (home and cell phones). The complainant requested that their home address be removed from the Board's file. I was also concerned about the complainant's personal telephone numbers being a matter of public record, particularly in light of their position as a correctional officer, and therefore directed the Registry to write to the respondent to seek its position on this issue. The respondent agreed to file a revised set of submissions that redacted the complainant's home address and personal telephone numbers.

[16] I agree with the parties that disclosing the complainant's home address and personal telephone numbers would constitute a serious risk to an important public interest — namely, the complainant's personal safety in light of their correctional officer position. Therefore, the original response containing that information has been removed from the Board's file and replaced with the version redacting that information.

[17] On May 23, 2023, the complainant also pointed out that their home email address, along with the home email addresses of two employees the complainant designated as their representatives, were in the respondent's written arguments. The respondent did not respond to that particular request. The complainant used their home email address throughout when corresponding with the Registry, along with the home email addresses of two representatives. As explained in the Board's *Policy on Openness and Privacy*, when the Board provides access to its files to a member of the public, it will not provide personal identifiers (including personal email addresses). The Board will treat the complainant's personal contact information in accordance with this policy and not provide that personal contact information.

D. This decision uses the terms "bargaining agent" and "union" interchangeably

[18] Section 187 of the *Act* states that the duty of fair representation applies to a bargaining agent. The *Act* defines the term "bargaining agent" to describe an employee organization that has been certified by the Board as the exclusive agent for employees in a bargaining unit, and also defines the term "employee organization" to describe an organization that has as one of its purposes the regulation of relations between an employer and employees. UCCO-SACC-CSN is an employee organization and a bargaining agent.

[19] The more common term, though, is a union. An employee organization is a union, and a bargaining agent is a union that that has been certified by the Board. There can be subtle differences between the terms union, employee organization, and bargaining agent so that, sometimes, being specific about these terms matters. This complaint is not one of those times. Therefore, I use the terms "union" and "bargaining agent" interchangeably in this decision.

III. Reasons for dismissing the complaint

A. The scope of the duty of fair representation

[20] To repeat what I stated at the outset of this decision, the duty of fair representation applies only when two conditions are met: (1) a bargaining agent is representing an employee in an issue or matter covered by the *Act*, and (2) the representation is about an issue between the employee and the employer.

[21] The scope of the duty of fair representation is limited because of the purpose behind this duty. The duty of fair representation originated as a corollary to a union's

exclusive right to represent employees with respect to their relationship with their employer. This exclusive representation led courts, and then legislatures, to impose a duty on unions to exercise their exclusive representation rights fairly. As the Supreme Court of Canada tersely put it, "[t]he duty of representation arises out of the exclusive power given to a union to act as spokesman for the employees in a bargaining unit" (see *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509 at 526).

[22] The Board has consistently interpreted the duty of fair representation codified in s. 187 of the *Act* in a way that reflects that purpose. The Board has limited the scope of that duty to issues that arise from a bargaining agent's mandate as the exclusive representative of employees within a bargaining unit. The Board stated this principle concisely in *Brown v. Union of Solicitor General Employees*, 2013 PSLRB 48 at para. 52, as follows:

> ***52*** *Given the mandate of the* Act *and where the duty of fair representation section is situated, my view is that Parliament did not intend to give the Board unlimited jurisdiction to review all the actions of employee organizations and bargaining agents. It only makes sense that the Board's jurisdiction to hear and determine duty of fair representation complaints must in some way arise out of the parameters of the Act or the relevant collective agreement.*

[23] The Board has repeated the principle that the duty of fair representation applies only to issues arising under a collective agreement or the *Act* on many occasions; see, for example, *Abi-Mansour*, at para. 76, *Lessard-Gauvin v. Public Service Alliance of Canada*, 2022 FPSLREB 83 at para. 41, *Abeysuriya v. Professional Institute of the Public Service of Canada*, 2015 PSLREB 26, and *Fidèle v. National Police Federation*, 2023 FPSLREB 48 at para. 16.

[24] Additionally, the duty of fair representation only applies to the representation of employees in issues involving their employer. This is because a bargaining agent is only the exclusive representative of an employee vis-à-vis their employer. Since the duty of fair representation exists as a consequence of a union's exclusive authority to represent an employee in the employment relationship, the duty only extends to issues that arise between an employee and their employer.

[25] Internal union disputes fall outside the scope of the duty of fair representation because the duty of fair representation applies only to the representation of employees vis-à-vis their employer. This Board has repeated this rule that the duty of fair

representation does not extend to internal union affairs on many occasions; see *St-James v. Canada Employment and Immigration Union Component (Public Service Alliance of Canada)*, PSSRB File No. 100-1 (19920331), *Kilby v. Public Service Alliance of Canada*, PSSRB File Nos. 161-02-808 and 150-02-44 (19980427), *Sahota v. The Professional Institute of the Public Service of Canada*, 2012 PSLRB 114, *Sturkenboom v. Professional Institute of the Public Service of Canada*, 2012 PSLRB 81, and *Bernard v. Professional Institute of the Public Service of Canada*, 2020 FPSLREB 11, at para. 60.

[26] The complainant submits that the duty of fair representation applies even to conflicts between two or more members of the same bargaining unit over internal union matters. The complainant relies upon *Beaulne v. Public Service Alliance of Canada*, 2009 PSLRB 10 at para. 281 and *Nkwazi v. Professional Institute of the Public Service of Canada*, 2015 PSLREB 93 for that proposition.

[27] These two cases, however, are unhelpful for the complainant's position. In *Beaulne*, the complaint was about the fact that the president of a bargaining unit wrote to the employer to impact the complainant's terms and conditions of employment (in particular, his working hours). This action was clearly related to the representation of an employee vis-à-vis their employer.

[28] In *Nkwazi*, the complainant has taken paragraph 32 of that decision out of context. That paragraph reads as follows:

> *32 The duty of fair representation has long been recognized in the context of the federal public service. Bargaining agents negotiate on behalf of the employees in their bargaining units, and the duty of fair representation extends beyond the grievance procedure.* ***It also includes representing the employee's interests*** *(Benoit v. Trimble, 2014 PSLRB 46 at para. 43, aff'd 2014 FCA 261).*
>
> [Emphasis added]

[29] The complainant relies upon the bolded sentence above. The subject-matter of *Nkwazi*, though, concerned the way a bargaining agent dealt with the complainant's grievance against their employer. The phrase "representing the employee's interests" meant representing their interests under the *Act* vis-à-vis the employer, not representing all their interests. Nothing in *Nkwazi* suggests that the duty of fair representation extends to the representation of an employee in internal union disputes.

[30] The complainant also submits that the duty of fair representation encompasses all matters that are coextensive with the extent of a union's authority as bargaining agent, which includes general and daily representation and dealing with its members. The complainant goes so far as to submit that "… all union executives are fairly viewed as representing everyone in all interactions." The complainant cites *Lopez v. Canadian Union of Public Employees*, 1989 CanLII 3472 (ON LRB), in support of this proposition. However, I agree with the respondent that the Ontario Labour Relations Board was clear at paragraph 18 of that case that the duty of fair representation is not about internal union affairs:

> *… The Board has consistently refused to extend the* [duty of fair representation] *into matters properly characterized as internal union affairs because representational rights with respect to an employer are not involved … except where the union's conduct pursuant to its usual practice has a direct impact on the right of an employee to grieve ….*

[31] The complainant tries to distinguish the case law stating that internal union disputes fall outside the duty of fair representation by stating that there is a difference between the administration or application of a union constitution on the one hand, and the interpretation of that constitution on the other. The complainant submits that interpretation necessarily means that there is representation. I agree with the respondent, though, that almost everything is subject to interpretation and that it cannot be enough that a document requires interpretation to trigger the application of the duty of fair representation.

[32] The respondent has cited paragraph 33 from the Canada Industrial Relations Board's ("CIRB") decision in *McLean v. Canadian Union of Postal Workers*, 2021 CIRB 962 that summarizes the principle that the duty of fair representation does not extend to internal union affairs as follows:

> *[33] The Board and its predecessor have consistently held that the scope of the duty* [of fair representation] *under section 37 of the* Code *does not extend to internal union affairs. Among other things, that means that in the normal course,* ***the Code does not give the Board the power to examine a union's activities in purely internal matters such as the administration or application of its constitution or by-laws*** *(see Vézina, 2010 CIRB 540). This falls under the union's internal procedures.*
>
> [Emphasis added]

[33] I must exercise some caution before applying CIRB decisions about the scope of the duty of fair representation. Section 37 of the *Canada Labour Code* (R.S.C., 1985, c. L-2) expressly limits the duty of fair representation to an employee's "… rights under the collective agreement that is applicable to them." By contrast, s. 187 of the *Act* does not contain that limitation. This is why the Board has extended the duty of fair representation beyond collective agreement grievances to other issues governed by the *Act*, unlike the CIRB's approach limiting the duty of fair representation to collective agreement issues only.

[34] Despite that caution, I agree with the CIRB's statement of legal principles emphasized in that paragraph as it is consistent with the Board's earlier decisions. The duty of fair representation does not extend to internal union disputes.

B. This complaint falls outside the duty of fair representation

[35] The complaint boils down to this: the Local President wrongly told the complainant that they could act as a correctional manager (referred to as a "CM") for less than seven days without losing their office of shop steward. When he learned differently, he did not correct that wrong advice in time for the complainant to drop the acting assignment and remain a shop steward. The Local President's actions fall outside the scope of the duty of fair representation. I will set out the facts about this incorrect advice, spell out the complainant's specific allegations and the respondent's response, and then explain why this complaint falls outside the scope of the duty of fair representation.

1. The incorrect advice about eligibility to be a shop steward, and the failure to correct that advice in a timely fashion

[36] In early October 2022, the complainant was offered an acting assignment as a CM that would last from October 11 to 13. An employee in a CM position is excluded from the bargaining unit represented by the respondent.

[37] On October 5, 2022, the complainant spoke with the President of their local about the consequences of accepting this acting assignment. The complainant was a shop steward with the respondent. The Local President told the complainant that acting for anything less than seven days was "fine" — by which he meant that that she could remain a shop steward. The complainant asked to be removed from the

WhatsApp group (an electronic communication application) for union officials with the respondent for the three-day period that they would act as a CM.

[38] On October 12, 2022 (the second day of the complainant's three-day acting assignment), the Local President spoke with the complainant by telephone. The Local President explained that the respondent's constitution prohibited union officials from accepting any acting assignments in a managerial position, no matter how short. The Local President also told the complainant that some members of the Local executive team were firm that the complainant could not return as a shop steward at the end of their acting assignment and that his phone "blew up" about this issue on October 10, 2022, when the complainant was removed from the WhatsApp group. The Local President confirmed that decision by email later that evening.

[39] The Local President referred to article 10.09 of the UCCO-SACC-CSN's constitution, which states that "[a]ny elected or appointed union representative who applies to any managerial position shall be considered to have resigned from their union position." The complainant and Local President continued to email each other for the next few days about this issue.

2. The specific allegation of a breach of the duty of fair representation

[40] The complainant states that the Local President violated the duty of fair representation in these three ways:

1) by being unaware of article 10.09 of the UCCO-SACC-CSN's constitution and advising them that they could accept the acting assignment for up to seven days without jeopardizing their shop steward position;
2) by not advising them on October 10, 2022 about the opposition to their acting assignment and, as the complainant put it, "the possibility that another interpretation of the Constitution could be apparent". Had the complainant been told about this opposition, they could have turned down the short acting assignment; and
3) by denying to other members of the union executive that he allowed this situation to happen or otherwise misrepresenting certain facts.

[41] The respondent admits that the Local President provided incorrect information to the complainant on October 5, 2022. The respondent states, however, that the Local President did not have an obligation to discuss the concerns raised by other union executive members on October 10, 2022 and denies that any attempt was made to mislead the local executive. The respondent also points out that the UCCO-SACC-CSN's constitution is a public document and that there was nothing improper about applying

it to the complainant. The respondent's submissions on elements two and three of the complaint miss the point somewhat. The complaint is that the Local President should have corrected his incorrect advice at the earliest opportunity (on October 10, 2022) when the complainant could still have dropped their acting assignment instead of waiting until after the acting assignment commenced and it was too late to save their shop steward position. The complaint is also that the Local President should have acknowledged his error immediately instead of implying that the complainant was at fault. Suggesting that the Local President had no obligation to disclose concerns raised by other members of the executive misses the point that he should have corrected his earlier mistake at the earliest opportunity, and that he should have done so in time for the complainant to drop the acting assignment and remain a shop steward.

3. The incorrect advice about eligibility to be a shop steward falls outside the scope of the duty of fair representation

[42] Despite the respondent acknowledging the Local President's error, I still must dismiss this complaint because the duty of fair representation in s. 187 of the *Act* does not extend to the subject matter of this complaint. The complaint is not about some right under the *Act*, and it is not about anything that happened to the complainant vis-à-vis their employer; the complaint is entirely about their eligibility to be a shop steward.

[43] The Board has recently concluded that the duty of fair representation does not apply to disputes over who may be a shop steward. In that case, one union steward raised a concern over the fact that another steward had been appointed into a managerial role over her. The union did not remove that managerial employee from their steward role. The first steward filed a duty of fair representation complaint over that issue along with many others. The Board dismissed that part of complaint because "… [i]ssues relating to the behaviour or actions of stewards are clearly internal union matters and are not subject to the duty of fair representation" (see *Hancock v. Professional Institute of the Public Service of Canada*, 2023 FPSLREB 51 at para. 86). More specifically, the Board concluded that it has no jurisdiction over the "… rules (or lack of rules) related to stewards in manager positions" (see *Hancock*, at para. 87). I agree.

[44] Comparing *Hancock* with this case also demonstrates why labour boards are so reluctant to regulate internal union affairs. Ms. Hancock complained because there was

no rule in her union against a shop steward acting in a managerial position; by contrast, the complainant complains that there is such a rule in her union. This shows that reasonable people may reasonably disagree about the best rules for the eligibility to be a shop steward. The Board should not decide which approach to follow; that should be up to each union to decide internally.

[45] The Ontario Labour Relations Board has also dismissed a number of duty of fair representation complaints about removing a shop steward or about a person's eligibility to serve as a shop steward; see *Kolacz v. Labourers International Union of North America, Local 837*, 2022 CanLII 90955 (ON LRB), *Sajder v. Service Employees International Union (Brewery General & Professional Workers' Union, Local 2)*, 2007 CanLII 56054 (ON LRB), and *Moore v. Elementary Teachers Federation of Ontario*, 2007 CanLII 1286 (ON LRB). Those decisions all concluded that decisions over which employees may be a shop steward are internal union affairs that fall outside the duty of fair representation.

[46] The CIRB has also stated that "[d]isputes about such things as steward votes do not fall within this Board's [duty of fair representation] jurisdiction. Remedies, if any, lie elsewhere" (see *Gill*, 2011 CIRB LD 2528 at 4 and 5, cited in *Torabi v. Society of Professional Engineers and Associates*, 2015 CIRB 781 at para. 48). The CIRB came to the same conclusion in *Reid v. Canadian Union of Postal Workers*, 2016 CIRB 807 at para. 42, stating that the union's "… decision to revoke her position as a shop steward … fall[s] outside the scope of a [duty of fair representation] complaint."

[47] I agree with the outcome in those cases that decisions about who can serve as a shop steward are outside the scope of the duty of fair representation. Logically, this principle also extends to advice given to employees about their eligibility to be a shop steward.

[48] The complainant tries to link their complaint to their relationship with their employer by stating that their reputation with management suffered as a result of their removal from the local union executive. Assuming this to be true, reputational harm does not transform an internal union dispute into an issue between an employee and their employer.

[49] The complainant's eligibility to serve as a shop steward is an internal matter for their union. The *Act* does not impose a duty on a bargaining agent to provide accurate

advice to a member about its constitution or that member's eligibility for union office. If such a duty exists, the recourse for a breach of that duty lies with civil courts and not the Board.

4. The respondent did not admit that this Board has jurisdiction by recognizing the possibility of a complaint

[50] The complainant states that the Local President referred to the possibility of a "190 complaint" in one message; therefore, he must have known that he was providing representation to the complainant. I agree with the respondent that the Local President's concern about the possibility that a complaint might be made is not an admission that the duty of fair representation applies to these facts. The Local President simply recognized that the complainant could complain — which they did.

[51] Regardless, even if the Local President did admit that the duty of fair representation applied to this case, this admission would not be binding on the Board. "The Board is a creature of statute and not a court with inherent jurisdiction. The parties cannot give it jurisdiction where it has none" (from *Green v. Deputy Head (Department of Indian Affairs and Northern Development)*, 2017 PSLREB 17 at para. 340). This complaint falls outside the boundaries of the duty of fair representation in s. 187 of the *Act*; nothing the Local President said changed that.

C. Allegations of discriminatory treatment

[52] The complainant alleges that they were singled out for losing their shop steward position and that other members were given a seven-day period during which they could work as a CM before losing their shop steward positions. Therefore, I have considered whether the complaint raises an arguable case that the complainant has been discriminated against, contrary to s. 188(c) of the *Act*.

[53] I acknowledge that the complainant alleges a breach of s. 187 of the *Act* and not s. 188(c); however, the arguable case framework requires that I be "cautious" before dismissing the complaint (see *Corneau*, at para. 18), and it is possible that the failure to refer specifically to s. 188(c) is simply a "… defect in form or a technical irregularity" that I may ignore under s. 241(1) of the *Act*.

[54] Nevertheless, I have decided that the complaint does not raise an arguable case that the respondent breached s. 188(c) of the *Act*, for two reasons.

[55] First, s. 188(c) of the *Act* only prohibits the discriminatory application of an employee organization's discipline standards. Prohibiting an employee from serving as a shop steward is not necessarily a "disciplinary" action (see *Myles v. Professional Institute of the Public Service of Canada*, 2017 FPSLREB 30 at para. 102). More importantly, the complainant does not allege that the decision to remove them as a shop steward was made using the UCCO-SACC-CSN's disciplinary standards, which is a precondition for s. 188(c) of the *Act* (see *Myles*, at para. 102).

[56] Second, the complainant has not demonstrated an arguable case that they were treated differently from other stewards. In alleging differential treatment, the complainant relies upon a message from another shop steward, stating that "today marks the 7 day mark" and "that [she] is **out of UCCO**" [emphasis added]. The complainant submits that this shows that someone else was allowed to act in a managerial position for up to seven days. The complainant has misapprehended that message. The UCCO-SACC-CSN's constitution contains a provision stating that members who act as managers for longer than seven days are ineligible to remain **members** in good standing. The earlier situation was not about removing someone from a shop steward role but about removing them as a member entirely. That one example involved a different issue and, therefore, does not support the allegation that the complainant has been treated differently from other stewards.

[57] The complainant also refers to a managerial employee who was permitted to participate in a blood drive organized by the UCCO-SACC-CSN and to a member who resigned after applying for a managerial position and was permitted to return to the membership when they were unsuccessful. Permitting a manager to participate in a blood drive or permitting a member to rejoin the respondent after unsuccessfully applying for a managerial position is not an indication of differential treatment, as neither of those situations involved eligibility to be a shop steward. The complainant finally mentions a circumstance in which a shop steward's position was "held" while they were acting in a position in another province; however, the complainant does not allege that this other position was managerial in nature. The complainant has not disclosed an arguable case that they were treated differently from other shop stewards in a similar situation.

[58] Finally, section 190(3)(a) of the *Act* requires a complainant to exhaust a union's internal grievance or appeal procedure before making a complaint alleging a breach of

s. 188(c). I asked both parties whether the constitution in this case included such a procedure, but the parties did not agree on whether such a procedure exists; therefore, I will not comment further upon whether s. 190(3)(a) was a third bar to any complaint under s. 188(c).

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

(The Order appears on the next page)

IV. Order

[60] The complaint is dismissed.

July 13, 2023.

Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board