Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Sylvain Soucy,

complainant,

and

Syndicat National des Convoyeur(e)s de Fonds (SNCF)–Canadian Union of Public Employees, Local 3812,

respondent,

and

Garda Cash-in-Transit, Limited Partnership,

employer.

Board File: 30561-C

Jean-Marc Guay,

complainant,

and

Syndicat National des Convoyeur(e)s de Fonds (SNCF)–Canadian Union of Public Employees, Local 3812,

respondent,

and

Garda Cash-in-Transit, Limited Partnership,

employer.

Canada

Board File: 30565-C
Neutral Citation: 2015 CIRB **771**
March 31, 2015

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. Daniel Charbonneau and Richard Brabander, Members.

Parties' Representatives of Record

Mr. Sylvain Soucy, on his own behalf;
Mr. Jean-Marc Guay, on his own behalf;
Mr. Jacques Lamoureux, for the Syndicat National des Convoyeur(e)s de Fonds (SNCF)–Canadian Union of Public Employees, Local 3812;
Mr. Robert Champagne, for Garda Cash-in-Transit, Limited Partnership.

These reasons for decision were written by Mr. Richard Brabander, Member.

I. Background and Nature of Complaints

[1] This matter involves two separate complaints filed by two employees of Garda Cash-in-Transit, Limited Partnership (Garda or the employer) against the Syndicat National des Convoyeur(e)s de Fonds (SNCF)–Canadian Union of Public Employees, Local 3812 (the union).

[2] While their claims are different, both complainants allege that the union breached its duty of fair representation (DFR) in respect of the former employees of G4S Secure Solutions (Canada) Ltd. (G4S) following the latter's merger with Garda, a representation vote and the Board's certification of the union as the bargaining agent for a single bargaining unit comprising the employer's employees in the province of Quebec.

[3] Pursuant to section 18.1(2)(*a*) of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*), the Board gave the parties an opportunity to reach an agreement on the adjustments required to integrate the employees into the new bargaining unit and to settle any issues arising from the merger of the bargaining units.

[4] The parties reached agreement on those aspects on June 20, 2014, and the Board acknowledged and approved the agreement on June 26, 2014.

A. Mr. Soucy's Complaint–File No. 30561-C

[5] On July 28, 2014, Mr. Sylvain Soucy filed a complaint in which he alleged that the seniority of G4S employees was not being respected following the dovetailing of the seniority lists and under an arbitral award issued on May 22, 2014, by Mr. Jean-Pierre Lussier, a copy of which was appended.

[6] The complainant also produced a copy of a group grievance alleging failure to comply with the said arbitral award and failure to respect seniority rights. He criticizes the union for refusing to act on and proceed with the group grievance, which he and several other employees signed on July 24, 2014.

[7] The grievance refers to an alleged violation of article 11.06 of the collective agreement, which deals with seniority rights, following the interpretation of that article by Arbitrator Lussier.

[8] As an example of the union's arbitrary conduct, the complainant refers to a case where two employees worked outside the unit, as a supervisor or in another capacity, but only one was given his hiring date upon his return to the unit. He claims that the union should have referred the matters to an arbitrator.

[9] The complainant submits that the union misinterpreted the article of the collective agreement authorizing a lottery to determine who, among employees with the same hiring date, would be deemed to have the most seniority. In his view, former G4S employees should not have been considered new employees for the purposes of that article.

[10] In the complaint, the complainant also summarizes some of the steps he took to protect the seniority rights of former G4S employees.

[11] By way of redress, Mr. Soucy is asking that the group grievance be referred to arbitration.

B. Mr. Guay's Complaint–File No. 30565-C

[12] On August 6, 2014, Mr. Jean-Marc Guay filed a complaint, with supporting documentation, in which he claimed that former G4S employees were at a disadvantage when compared with Garda employees and that they had also suffered a wage loss.

[13] He explained that the agreement signed on June 20, 2014, was not in line with what former G4S employees had been seeking.

[14] He criticizes the union for negotiating the agreement in connection with the bargaining unit merger without including a freeze of wage levels, which were higher for former G4S employees, and without putting the agreement to a vote at a general meeting. In his view, this is evidence of the bad faith shown generally by the union which, in his opinion, is not happy about the former G4S employees having joined the unit.

[15] Mr. Guay also makes the same criticisms as Mr. Soucy regarding errors on the dovetailed seniority list established by the union. He criticizes the union for its refusal to accept the grievance against the union's action and for the eventual effects of the merger of the former bargaining units. He deplores the way in which the merger was implemented, carried out and conducted by the union.

[16] By way of remedy, Mr. Guay is seeking a freeze of the wages of former G4S employees "until such time as Garda staff have caught up" (translation), the freedom to choose between the Garda pension plan and the RRSP contributions provided for in the collective agreement between Teamsters Québec Local 931 (Teamsters) and former employer G4S, and a general meeting of the union membership for a vote on the said agreement signed by the union.

[17] Finally, Mr. Guay indicates that a request was made to have some shop stewards appointed from among former G4S employees with a view to improving relations between the union and those employees, and complains about what he calls the union's categorical refusal in this regard.

II. Union's Response

[18] The union denied any alleged breach of its DFR in both cases and made detailed and fairly comprehensive submissions.

[19] In its submissions, the union methodically describes the relevant events, points out the efforts it made and steps it took, and provides a summary of the verifications carried out and review procedures undertaken in committee to manage the situation in a responsible manner.

[20] Additionally, the union provides explanations regarding the actions and decisions criticized by the complainants who, it will be recalled, filed their complaints on behalf of the former G4S employees.

[21] The Board sees no need to reproduce all the details of the union's response here, but does consider it appropriate and advantageous to set out the key points dealing with the essence of the two complaints.

A. Response to Mr. Soucy's Complaint–File No. 30561-C

[22] To begin with, the union raises a preliminary objection in regard to the complaint filed by Mr. Soucy, noting that the complainant did not himself experience any problem related to seniority but purports to be representing the interests of other employees or would like to do so. The union adds that the complainant was a Teamsters shop steward for G4S employees prior to the merger of the units referred to earlier.

[23] The union stresses that the parties, including the Teamsters, elected to take the rather complex issue of the dovetailing of the seniority lists to arbitration, that Arbitrator Lussier set the parameters, and that the union applied the arbitral award in good faith.

[24] Among other things, the union explains the initial challenge it faced in having to establish seniority dates based on data in the Teamsters computer system, which showed seniority dates using a day/month/year format and seniority rankings based on three criteria (vacation/routes/branch or collective agreement), meaning that changes were required to incorporate that information into a Canadian Union of Public Employees (CUPE) list, which showed seniority dates using a year/month/day format and seniority rankings based on two criteria (seniority and vacation date, which was the hiring date).

[25] As soon as the seniority lists were posted in early June 2014, when some employees approached the union about filing a grievance, the provincial grievance officer carried out an analysis to ensure compliance with the arbitral award and checked with the person who had held the lotteries provided for in the collective agreement to ensure that "everything had been done properly" (translation).

[26] The request to file a grievance was also discussed with members of the union executive, who checked their position with the union advisor, who in turn checked with counsel assigned to the matter.

[27] In response specifically to the allegation that it refused to pursue the group grievance, the union begins by submitting that the complainant did not raise the issue or share his concerns with the union representatives.

[28] The union had carefully reviewed the grievance form used and noted that it could not identify with any certainty some of the people who had signed the form based on their signatures. However, the union had contacted one of them by telephone at the number indicated on the form.

[29] A week later, the union provided a highly detailed account of the group grievance request in the August 1, 2014, issue of its newsletter, *L'Informateur*. It used the opportunity to explain why it had not acted on the request, pointing out that, according to its analysis, both the collective agreement and the arbitral award had been satisfied.

[30] In that same issue of its newsletter, the union explained its understanding of the matter, based primarily on the arbitral award and on practice relating to seniority issues. It summarized the grievance procedure to be followed and the outcome of the latest grievance committee meeting, held on July 30, 2014.

B. Response to Mr. Guay's Complaint–File No. 30565-C

[31] In response to Mr. Guay's complaint regarding lost wages, the union begins by submitting that the sale of business and the integration of employees followed a legal process overseen by the Board on the one hand and Arbitrator Lussier on the other.

[32] CUPE signed a collective agreement with the employer in December 2013 and, following the merger of the businesses and bargaining units, determined the necessary adjustments, which became the subject of an agreement with the employer, to reconcile the different collective agreements then in effect.

[33] The union submits that, by following those steps, it demonstrated its concern that former G4S employees would be gradually integrated and that monetary clauses in their regard would be applied fairly.

[34] While admitting that the wages of the former G4S employees were not maintained at their previous levels, the union submits that it took into account certain improved conditions and benefits, such as the pension plan, vacation, sick leave and group insurance.

[35] The union further acknowledges that Mr. Guay's conjectures regarding wage settlements might have been conceivable in a period of collective bargaining, but indicates that it was not in that position, it did not renegotiate the collective agreement, and it had no obligation to put the agreement to a vote at a general meeting of the membership before having it approved.

[36] The union stresses that the agreement on adjustments and settlement of issues following the merger was not merely a collective agreement.

[37] The union admits that some issues regarding the lack of shop stewards from among former G4S representatives and regarding a vote on the agreement of June 20, 2014, are legitimate. However, it insists that the complainant could have and should have raised them with union representatives, "who would certainly have responded" (translation) rather than raise them by means of this complaint to the Board.

[38] In response to the criticisms respecting the seniority list, the union provides the same detailed explanations that it provided in Mr. Soucy's file. In addition, it repeats the argument that the complainant has no legal interest in raising errors relating to hiring dates on the seniority list if his own rights were not affected in this regard.

[39] The union again submits that it conducted a careful review of the file, taking into account the interests of all the employees in the unit and the consequences for those employees, in order to arrive at an objective and honest understanding of the matter, in good faith.

[40] With respect to the appointment of former G4S employees as union stewards within CUPE to improve the situation, the union states that it did not insist that the employees had to be members of the union for at least a year; also, the union executive met with a few of the employees in early June 2014 in an attempt to take better account of the interests of the entire membership.

[41] Finally, the union submits that it fulfilled its duty of fair representation in respect of all the employees in the bargaining unit and did not act in an arbitrary manner or in bad faith.

[42] In short, the union's position in response to the two complaints in this matter may be summed up by its submission that the agreement "was inconsistent with what former G4S employees were seeking" (translation).

[43] The union cites a number of Board decisions in support of its conclusions that the burden of proof on the complainants requires them to do more than make mere claims, and also that a process to merge businesses and bargaining units often leads to some discontent and it is impossible to satisfy everyone concerned in such cases. Several of the decisions in question highlight and reinforce the basic principle that, in making decisions, the union is required to take into account the interests of all the members of the bargaining unit.

III. Complainants' Replies

[44] Mr. Soucy explains that, even though he did not complain about his own seniority date at the time, other employees asked him for help given that he was a former Teamsters shop steward with more than 10 years of experience with union matters.

[45] He repeats what he understands to be the process to be followed in determining seniority dates and his opinion regarding exceptions affecting two people.

[46] Mr. Guay provides a fairly detailed reply in which he makes a number of points in support of his arguments, including the following:

- the fact that the union failed to suspend collective bargaining or even apply for an injunction to suspend collective bargaining in 2013 rather than proceed with the renewal of the collective agreement with the employer in December 2013, shows bad faith;
- a comparison of various employment conditions and benefits (pension plan, vacation, costs of licenses and permits required, night premium, and group insurance covering health, drugs and others costs and eye care) shows that the plan with G4S was more advantageous;
- several examples of other approaches for resolving the issues and correcting seniority errors;
- other points of disagreement with the alleged effects of the agreement of June 20, 2014.

IV. Issues for the Board

1. Does a DFR complaint meet the requirements under the *Code* for it to be filed on behalf of other members of the unit by an employee who is not alleging that he himself suffered any prejudice?

2. Does a complainant have a legal interest in including in such a complaint an allegation that there were hiring date errors in the dovetailed seniority list if he himself was not affected by any such error?

3. If so, did the union breach its duty of fair representation toward the complainants or the former employees of G4S

    - by entering into the agreement of June 20, 2014?
    - by handling the request that it file a group grievance as it did?
    - by acting in an arbitrary manner or in bad faith?

V. Single Decision for Both Complaints

[47] Under section 20 of the *Canada Industrial Relations Board Regulations, 2012*, the Board may order, in respect of two or more proceedings, that they be consolidated, heard together or heard consecutively.

[48] Given that the above-noted complaints raise similar concerns and questions in relation to the same set of events following the merger of bargaining units with the employer in Quebec, the Board has decided to consolidate the matters and issue one decision that deals with them both.

VI. Board Decision Without an Oral Hearing

[49] Overall, the complainants and the union were effective in providing the Board with a realistic and quite classic picture of the challenges and issues that arise as a result of a business merger followed by a merger of bargaining units and the selection of a bargaining agent. The salient facts are not disputed, though the viewpoints and characterizations of the complainants and of the union concerning different actions, steps taken, decisions and circumstances of course reflect their respective understanding of such.

[50] Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. In this matter, the Board is satisfied that the documents on file and the parties' written submissions are sufficient for it to decide the matter without an oral hearing.

VII. Analysis and Decision

[51] Both complainants allege that the union breached its DFR. Since they are the ones making the allegations of such a breach, the burden of proof lies with them.

[52] The complainants bear the burden of providing the Board with sufficient evidence to show that the union breached its DFR under section 37 of the *Code*, which reads as follows:

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[53] The complainants disagree with the union's interpretation and implementation of Arbitrator Lussier's arbitral award and with its interpretation of the collective agreement.

[54] They also disagree with the process followed by the union to enter into the agreement of June 20, 2014, without first putting it to a vote in a general meeting. In addition, they disagree with the content and effects of the agreement.

[55] The Board is frequently called upon to consider how a union proceeded in cases of disagreement or dispute respecting seniority among the employees its represents. Seniority is an attribute that is earned and recognized based on an employee's work and is often used to determine certain rights of an employee in comparison with similar rights held by co-workers.

[56] Any uncertainly, dispute, claim or error in respect of seniority can of course lead to potential conflict. In the case before the Board, the parties used arbitration to decide the issues. Only rarely will a decision or award in which issues of seniority are decided please everyone concerned, and the union is required to invariably take into account the interests of all the unit's members and proceed carefully, objectively and in good faith.

[57] In *Mallette*, 2012 CIRB 645, the issue was a disagreement concerning the complainant's ranking on the seniority list. The Board recognized that, in principle, the bargaining agent has ultimate responsibility for deciding on its interpretation of the collective agreement:

> [14] The decision in *Crispo* 527 also coincidentally described the obligations of a union toward the members of the bargaining unit. At times, the interests of some members may be at odds with those of the membership as a whole, especially in matters involving ranking on a seniority list. Resolving this type of issue is difficult for a union, which must represent all members of the unit:
>
> > [16] The duty of fair representation found in section 37 of the *Code, supra,* obliges the Board to examine a trade union's process in order to ensure that it did not act in an arbitrary, discriminatory or bad faith manner with regard to bargaining unit members' rights under the applicable collective agreement.
> >
> > [17] However, the Board does not sit in appeal of a trade union's decisions and does not decide whether the trade union was "correct" in the conclusions it reached.
> >
> > [18] A trade union often has to make difficult decisions which will benefit some members of the bargaining unit, with a corresponding detriment to others. **For example, when dealing with contested issues involving seniority, the trade union's decision will not please all members. As long as the trade union did not act in an arbitrary, discriminatory or bad faith manner in arriving at its determination, the Board will not intervene.**
> >
> > …
> >
> > (emphasis added)

…

> [23] As indicated in the excerpt from *Crispo* 527, *supra*, the Board accepts the fact that the bargaining agent has ultimate responsibility for deciding on its interpretation of the collective agreement. Such responsibility includes the discretion to correct its opinion regarding the interpretation of a particular clause.
>
> [24] In his complaint, Mr. Mallette challenges the interpretation of the collective agreement. However, there is no evidence that the CAW arrived at its position based on arbitrary or discriminatory factors or bad faith. The facts set out indicate that the CAW had to rule on a question of seniority that involved several members of the unit.

[58] While they disagree with the union, the complainants have failed to show that the union breached its duty of fair representation.

[59] Consequently, for the reasons set out below, the Board is of the view that it would not be appropriate for it to intervene in the manner requested since it is unable to find that there has been a violation of section 37 of the *Code*.

1. Complaint Filed on Behalf of Other Employees

[60] The Board dismisses the union's preliminary objection that Mr. Soucy filed a complaint that he did not have the right to file since he had no personal legal interest in doing so, not having suffered any prejudice as a result of a seniority error, and did not have a mandate or power of attorney to do so on behalf of others.

[61] Pursuant to section 37 of the *Code*, reproduced earlier in this decision, a trade union or representative of a trade union shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[62] This provision codifies the principles established through earlier case law and that are part of a union's duty of fair representation under the *Code*.

[63] In *Canadian Merchant Service Guild* v. *Gagnon et al.*, [1984] 1 S.C.R. 509, the Supreme Court of Canada indicated the following, among other things:

> The duty of representation arises out of the exclusive power given to a union to act as spokesman for the employees in a bargaining unit.
>
> (page 526)

[64] In that same decision, the Court noted that this exclusive power of a union:

> 1. … entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
>
> (page 527)

[65] Additionally, the Court stated that the DFR also requires the following:

> 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.
>
> (page 527)

[66] Section 37 of the *Code* provides that the union's DFR pertains to a class of persons described as "the employees in the unit."

[67] Further, the DFR applies "with respect to their rights under the collective agreement that is applicable to them," which wording is not restricted to the specific rights of one employee who files or may file a complaint with the Board or who personally has had his or her rights infringed upon.

[68] The wording of section 37 of the *Code* does not limit the DFR to cases where an employee personally suffers prejudice in a particular case. Rather, it is a broad duty that encompasses all members of the bargaining unit.

[69] When considering the aspect relating specifically to standing to make a DFR complaint with the Board, our foremost guide is the *Code*.

[70] Section 97(1) of the *Code* provides that any person may make a complaint to the Board that a trade union has contravened or failed to comply with section 37:

> 97. (1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that
>
> > (*a*) an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has contravened or failed to comply with subsection 24(4) or 34(6) or section 37, 47.3, 50, 69, 87.5 or 87.6, subsection 87.7(2) or section 94 or 95.

[71] Insofar as such a complaint alleges a violation of the rights of a person protected under the *Code*, anyone may file the complaint with the Board (see *Galarneau*, 2003 CIRB 239; and *VIA Rail Canada Inc.*, 2001 CIRB 127).

[72] While “any person or organization” may make such a complaint with the Board, a complainant must have an actual or real interest in the matter in order to do so. Not just anyone, whether or not he or she is concerned by the outcome of the matter, may make a DFR complaint against a union.

[73] To avoid unnecessary proceedings and also ensure effective use of its resources, the Board seeks to further the *Code*’s objectives by considering complainants’ legal interest before commencing its usual procedures. In this way, the Board fulfills its role of supporting sound labour-management relations.

[74] To take account of the rights and privileges of a bargaining agent, as well as the scope, parameters and extent of its DFR, there are restrictions on standing, to ensure that no wrongful or superfluous complaints are filed by persons unconnected to the certification or by troublemakers in regard to the circumstances at issue.

[75] In the matter before the Board, Mr. Soucy is an employee who is a member of the bargaining unit that could necessarily be affected by the interpretation of the seniority provisions in the collective agreement. Other employees asked him questions in that regard, conceivably because of his former role and experience as shop steward with another union. He filed his complaint as a member of the unit to raise certain relevant issues and to challenge the union’s decisions.

[76] The Board finds that Mr. Soucy’s personal stake is fairly clear and is sufficient to give him standing to act as a complainant on behalf of some of the other employees in the unit. He is not unconnected to the bargaining unit, without any ties to or association with the issues raised and their outcome.

2. Legal Interest of Complainant Not Affected by Error Alleged

[77] The same applies to the union’s objections respecting the right of Mr. Guay to raise the issue of the errors on the seniority list.

[78] The complainant need not himself be a victim of an error to be able to raise the issue and allege a breach of the DFR, thereby asserting the interests of the other members of the unit.

[79] The first two issues to be determined have accordingly been addressed.

3. Merit of the Complaints

[80] The Board will now turn to the evidence related to the main issue, that is, whether the union breached its DFR by signing the agreement and denying the request for a group grievance, or in some other way.

[81] The Board notes that its role in a DFR complaint is to consider the union's actions and determine whether the union acted in a manner that was arbitrary, discriminatory or in bad faith.

[82] It is not the Board's role to consider whether the union's decisions are correct or to substitute its own view for that of the union. Nor is it its role to consider on appeal the merits of the union's decision to send, or not send, a grievance to arbitration.

[83] When determining a DFR complaint, it is the Board's duty to ensure that the issue is an issue of employee rights pursuant to section 37 and to consider the process followed by the union and how it acted in making its decisions in order to determine whether it fulfilled its DFR without acting in one of the three manners prohibited by the *Code*, that is, in a arbitrary manner, in a discriminatory manner or in bad faith (see *McRaeJackson*, 2004 CIRB 290; *Presseault*, 2001 CIRB 138; and *Coulombe*, 1999 CIRB 25).

[84] To that end, the Board always takes account of the context of the circumstances at issue and carefully reviews the facts brought to its attention to weigh their effect on or implications for labour relations.

[85] In all cases, the Board determines whether the union breached its DFR by considering, in the applicable context, the means used and steps taken by the union. The Board is not required to consider differences of opinion as to the interpretation of an arbitral award.

[86] In this matter, no discrimination has been alleged, and the Board has not noted any discrimination in the evidence adduced.

a. Transition Agreement

[87] The parties agreed that the collective agreement of the union chosen would apply to the new bargaining unit, with the required adjustments. The collective agreement between CUPE and the employer is effective from December 19, 2013, to September 30, 2018.

[88] In its order no. 10562-U dated May 22, 2014, the Board gave the parties the opportunity to reach an agreement and to advise it, by June 23, 2014, at the latest, of any agreement reached

in respect of adjustments and the settlement of issues related to the merger, in accordance with section 18.1(2)(*a*) of the *Code*.

[89] The Board ordered that the collective agreements in effect continue to apply during the transition period until the necessary adjustments were worked out.

[90] Given the importance for the complainants of the issue of the agreement signed by the union and the employer on June 20, 2014, an understanding of the overall effect of section 18.1 of the *Code* on the circumstances in this matter is both necessary and illuminating. The relevant portion of that section reads as follows:

> 18.1(1) On application by the employer or a bargaining agent, the Board may review the structure of the bargaining units if it is satisfied that the bargaining units are no longer appropriate for collective bargaining.
>
> (2) If the Board reviews, pursuant to subsection (1) or section 35 or 45, the structure of the bargaining units, the Board
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> > (*a*) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review; and
> >
> > (*b*) may make any orders it considers appropriate to implement any agreement.
>
> (3) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board determines any question that arises and makes any orders it considers appropriate in the circumstances.
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> (4) For the purposes of subsection (3), the Board may
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> > …
> >
> > (*d*) amend, to the extent that the Board considers necessary, the provisions of collective agreements respecting expiry dates or seniority rights, or amend other such provisions;
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> > …
> >
> > (*f*) authorize a party to a collective agreement to give notice to bargain collectively.

[91] In this matter, the parties managed to reach agreement on the necessary adjustments, the terms and conditions for applying those adjustments, and the issues associated with the merger. The Board acknowledged the agreement reached and signed on June 20, 2014, and approved it in order no. 732-NB dated June 26, 2014, all pursuant to the provisions of the *Code*.

[92] There was no need or reason in the circumstances to authorize a party to a collective agreement to give the other party notice to bargain collectively. The *Code* does not require it and the complainants did not submit that there was any need or reason to do so.

[93] In his complaint, Mr. Guay submits that the union should have put the agreement to a vote at a general meeting of the membership, but does not cite any provision of the *Code* or of a collective agreement in support of his submission.

[94] If the request for a vote was based on expectations or presumptions of the complainants, possibly inspired by a union rule or practice, such expectations or presumptions were not set out in the files. Based on the evidence in the files, the Board is unable to identify any issue involving the exercise of the employees' rights under a collective agreement, as contemplated by section 37 of the *Code*.

[95] The Board is of the view that, under the circumstances described herein, holding a vote to ratify the agreement was not mandatory under the applicable legislation.

[96] More precisely, the Board is of the view that the sole fact that no vote on the agreement of June 20, 2014, was held at a general meeting, even considering all the evidence in the files, does not demonstrate bad faith that would lead the Board to find that the union breached its DFR towards the employees under section 37 of *Code*.

b. Request to File a Group Grievance

[97] In this matter, the Board must consider the way in which the union handled the request for it to file a group grievance. The Board must rule on the union's decision-making process rather than the merits of the grievance.

[98] The evidence in the files shows that the parties opted to resolve the issue of the dovetailing of the seniority lists through arbitration and that the union subsequently ensured that Mr. Lussier's arbitral award was applied in accordance with his interpretation of the collective agreement. In so doing, the union took its responsibilities seriously, and it subsequently explained its actions in an objective and reasonable manner.

[99] The fact that the complainants are not satisfied with the union's interpretation of the arbitral award or disagree with the union on the interpretation of the collective agreement is not a sufficient basis for filing a DFR complaint.

[100] The Board considers that, given that it asked its provincial officer to ensure compliance with the arbitral award and discussed the request for a grievance and the file with the union executive and the union advisor, who then checked the union's position with union counsel, the union did not demonstrate a perfunctory approach or bad faith in handling the seniority issue.

[101] On the contrary, the evidence shows that the union carefully considered and took a reasoned view of the problem and arrived at a thoughtful and informed judgment about what to do after considering the various relevant and sometimes conflicting considerations.

[102] It is worth noting in this respect that the union carefully considered the request for it to file a group grievance and a week later even published the text of that request, along with an explanation of its position and of its decision not to act on the request.

[103] Consequently, there is no evidence before the Board that the union acted negligently, in bad faith or arbitrarily. Further, the files do not show, for instance, that the union's decisions relating to any seniority issues were completely unreasonable in the sense of being unacceptable in terms of the requirements of the *Code* and the *Code*'s objective of fostering sound labour relations.

[104] Under the circumstances, the Board does not intend to call into question the position taken by the union, which was endorsed by the union executive and the union advisor, nor does it intend to call into question union counsel's legal interpretation.

[105] It is important to note that not every decision made by a union will please every member, especially every member of a bargaining unit newly formed as a result of the merger of several units. The interests of the former G4S employees were previously represented by a different union, the Teamsters, and their working conditions had been established under a different collective agreement.

c. All Other Allegations

[106] The mergers of the businesses and bargaining units changed things significantly for everyone concerned by these matters. The transition to the new union circumstances posed a major challenge for the union.

[107] The issue of the union's refusal to appoint shop stewards from among former G4S employees was raised in support of the allegation that the union had shown hostility toward

those employees and, consequently, had demonstrated bad faith and breached its DFR under section 37 of the *Code*.

[108] The Board has carefully noted this. It has also noted that, despite the requirement under article 11.16 of the union's constitution and by-laws, that an employee must have been a member for one year before standing for a position, the members of the union executive began discussions in June 2014 with three former G4S employees whose names had been put forth by their peers or who had applied on their own.

[109] In regard to this issue, the collective agreement contains no provision establishing an employee right in this respect or a connection to section 37 of the *Code*. Under the circumstances, the Board finds that this is much more a case of an internal union matter than of interference with a right under a collective agreement. The Board accordingly concludes that the link is too oblique and the evidence insufficient to establish a breach of the DFR.

[110] In regard to the other allegations brought forth, the union explained, for instance, that the employee whose hiring date had been used as his seniority date had benefitted from that advantage as a result of an earlier merger of units. The employee was one of the employees originally from Mouvement Desjardins who had had that protection, which was recognized in the collective agreements signed following the merger of units. The other supervisor merely failed to contact the union to have his hiring date corrected.

[111] With regard to the use of lotteries to establish new seniority list rankings with the employer for some employees with the same hiring date, the union stated that it had proceeded according to its understanding of the relevant article of the collective agreement. It also submitted that it had accepted all the requests for corrections of initial errors sent by various employees, and produced supporting evidence.

[112] In the event of a disagreement on the interpretation of a collective agreement between the union that signed the agreement and an employee protected by said agreement, the Board will not question or correct the union's position unless there is evidence that the union acted in an arbitrary or discriminatory manner or in bad faith, which is not the case in this matter.

[113] The union is ultimately responsible for interpreting the collective agreement, though in doing so it must always demonstrate thoughtfulness in the exercise of its responsibilities toward all the employees it represents as bargaining agent and take into account legitimate issues raised by those employees. As long as the union carefully considers a request that a grievance

be filed, conducts the investigation that is warranted under the circumstances, makes an informed decision supported by reasons and informs the employee thereof, it is not always necessary for it to agree to act on an employee's request that it file a grievance or refer a grievance to arbitration.

[114] Having carefully considered all the evidence in this matter, the Board has not noted anything that would lead it to a finding that the union breached its duty of fair representation under section 37 of the *Code*.

VIII. Remarks and Disposition of the Matter

[115] While the foregoing findings are final, the Board considers it appropriate to add the following remarks.

[116] The Board is mindful of the challenges and difficulties that can sometimes arise in the industrial relations environment for employees and for unions and employers. The large quantity of documents filed with the Board in this matter effectively conveyed what the parties had to go through and the special nature of a transition process that proved quite difficult for those affected.

[117] The union had to carry out the difficult task of considering the interests of all the members of the new bargaining unit, carrying out a responsible analysis of what was being sought and possible solutions and, to as great an extent as possible, addressing those imperatives while making reasonable and considered decisions.

[118] The role of the Board in DFR complaints is to ensure that the union complies with the requirements of section 37 of the *Code*. So long as the union does not violate the *Code*, the Board will not seek to change or improve the steps taken or decisions made by the union, which enjoys a measure of latitude in decision-making under such circumstances.

[119] The disagreement between the complainants and the union derives first from a difference of opinion on the interpretation of Arbitrator Lussier's arbitral award.

[120] The fact that the complainants were unhappy with the union's decisions and criticized its methods is perhaps not completely unexpected in the circumstances. However, understandable though the complainants' concerns and worries may be, the evidence does not reveal any merit to their complaints.

[121] There is no evidence before the Board that the union acted in a manner that was arbitrary, discriminatory or in bad faith toward the complainants, in violation of the *Code*.

[122] Consequently, for the foregoing reasons, the complaints in this matter are dismissed.

[123] This is a unanimous decision of the Board.

Translation

Graham J. Clarke
Vice-Chairperson

Richard Brabander
Member

Daniel Charbonneau
Member