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## Reasons for decision

Public Service Alliance of Canada,

*complainant,*

*and*

Hamlet of Kugaaruk,

*respondent.*

Board File: 27886-C

Neutral Citation: 2010 CIRB **502**

March 17, 2010

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The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. André Lecavalier and John Bowman, Members.

Section 16.1 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this complaint without an oral hearing.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

## **I - Nature of the Complaint**

[1] On December 23, 2009 during the course of a certification proceeding, the Board received an unfair labour practice complaint from the Public Service Alliance of Canada (PSAC) with regard to the Hamlet of Kugaaruk's (Hamlet) communications with its employees.

[2] PSAC applied for certification on August 31, 2009 for a bargaining unit composed of most of the Hamlet's employees. While the certification process was ongoing, the Hamlet sent a letter to employees setting out its views on certification.

[3] PSAC argued that that correspondence to employees constituted an unfair labour practice under the *Code*.

[4] The Hamlet subsequently revoked the letter and sent a second letter to employees, which included an apology. The parties completed their written pleadings on January 21, 2010.

[5] The Board has found that the Hamlet committed an unfair labour practice and has issued declaratory relief.

## **II - Facts**

[6] The Hamlet had named Mr. Guido Tigvareark as its Acting Senior Administrative Officer (ASAO) pending the hiring of a Senior Administrative Officer (SAO).

[7] On or about November 18, 2009, Mr. Tigvareark distributed a letter to all of the Hamlet's employees. In that letter, Mr. Tigvareark suggested that the Hamlet's employees might lose the benefit of certain work practices by certifying PSAC as their bargaining agent:

To our understanding, you may loose the following by join the Union .

1. No more Christmas Bonus
2. No more Turkeys at Christmas
3. Shopping anytime during working hours
4. being late

5. Maybe loose payroll advances .
  6. Missing days with out good reason.
  7. Not working when you are suppose to be working after you punch your time.
  8. Taking day off with out two weeks notice , like going on the land or by boat any day .
  9. You will also loose to ability to come straight to the management, you will have to go through your union representative
- [sic]

[8] Mr. Tigvareark also wrote in his letter that “by joining the union you may get better pay , less freedom and may lose other benefits”.

[9] PSAC learned of Mr. Tigvareark’s letter on December 17, 2009.

[10] PSAC had concerns about the impact the letter might have should the Board order a vote for the certification application it filed. The Board recently certified PSAC for a bargaining unit at the Hamlet (file no. 27695-C).

[11] The Hamlet did not deny that its ASAO sent the letter to employees. The Hamlet agreed that it could not “remove the unfortunate consequences of the letter having been sent”, but it did send a letter from the new SAO, Mr. André Larabie, which stated as follows:

Recently you received a letter from our Acting SAO, Guido Tigvareark outlining certain benefits you might lose if the employees of the Hamlet decided to join the Public Service Alliance Union. We are sorry that this letter was sent to you. It was a mistake, and an internal investigation is being done to find out how it was sent, but we want you to know that none of the comments in that letter are correct.

You are free to decide on your own as to whether you wish to join the union. You will not lose any of the benefits listed in that letter if you do. The Hamlet believes that our employees are the best and we appreciate your contributions to our community, but we also understand that any decision on whether to join a union is yours alone.

Again, we apologize for the sending of the letter of November 16, 2009, and we look forward in 2010 to working together according to the principles of Inuit Qaujimajatuqangit, and in particular Sanaqaligittiaqtuuk.

### **III - Analysis and Decision**

[12] PSAC alleged that the Hamlet’s actions in this case violated sections 94(1)(a), 94(3)(a)(i) and 96 of the *Code*:

94. (1) No employer or person acting on behalf of an employer shall  
(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union;

...

94. (3) No employer or person acting on behalf of an employer shall  
(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person  
(i) is or proposed to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union,

...

96. No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union.

[13] In its reply, PSAC asked the Board to issue an automatic certification under section 99.1:

99.1 The Board may certify a trade union despite a lack of evidence of majority support if  
(a) the employer has failed to comply with section 94; and  
(b) the Board is of the opinion that, but for the unfair labour practice, the trade union could reasonably have been expected to have had the support of a majority of the employees in the unit.

[14] The *Code* contains a reverse onus provision, section 98(4), for complaints which invoke section 94(3) of the *Code*:

98. (4) Where a complaint is made in writing pursuant to section 97 in respect of an alleged failure by an employer or any person action on behalf of an employer to comply with subsection 94(3), the written complaint is itself evidence that such failure actually occurred and, if any party to the complaint proceedings alleges that such failure did not occur, the burden of proof thereof is on that party.

[15] The *Code* also explicitly allows employers to express a personal point of view, as long as that viewpoint does not include intimidation or other threats:

94. (2) An employer is deemed not to contravene subsection (1) by reason only that they

...

(c) express a personal point of view, so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

[16] The Board agrees with PSAC and the Hamlet that the November 18, 2009 letter to employees was inappropriate. While the letter suggested that employees might lose some of the benefits of their existing work-related practices, but did not threaten termination or layoffs, the Hamlet nonetheless sent the letter during an initial certification proceeding.

[17] The suggestion of the loss of existing workplace accommodations could have a serious impact on employees and the exercise of their fundamental freedoms under section 8 of the *Code*:

8. (1) Every employee is free to join the trade union of their choice and to participate in its lawful activities.

[18] While section 94(2)(c) enshrines certain employer free speech, the November 18, 2009 letter goes beyond the permissible communications the *Code* envisages.

[19] While the Hamlet did retract its November 18, 2009 letter, that retraction took place almost two months later. The Board acknowledges the Hamlet's written apology to employees, but agrees with PSAC that the bell cannot be unrung.

[20] Given the presumption in section 98(4), the Hamlet has not met its burden to demonstrate that no *Code* violation occurred when it sent its November 18, 2009 letter.

[21] The Board has also been satisfied by PSAC that the Hamlet's November 18, 2009 letter interfered with its relations with its members, especially during a certification proceeding. This violated section 94(1)(a) of the *Code*. Given these findings, the Board does not need to deal with PSAC's allegation of a violation of section 96.

#### **IV - Remedies**

[22] The Board has considered PSAC's request that automatic certification take place. That request became academic when the Board recently certified PSAC. The Board has only exercised this extreme power to certify, despite an absence of evidence about employee wishes, in *Transx Ltd.*, 1999 CIRB 46 (*Transx Ltd.*).

[23] The Hamlet's letter, while ill-advised and an unfair labour practice, does not constitute the type of repeated conduct that the Board found in *Transx Ltd.* In *Transx Ltd.*, the employer breached the *Code* and ignored the Board's orders.

[24] The Board declares that the Hamlet violated the *Code* and committed an unfair labour practice by sending the November 18, 2009 letter to its employees. By way of remedy, the Board orders that the Hamlet:

1. Post the attached notice (Appendix A) in a conspicuous place at its establishment where it is most likely to come to the attention of all of its employees;
2. Deliver personally a copy of this decision to all of its employees;
3. Refrain from using coercion, intimidation, threats, promises or undue influence with regard to its employees' fundamental right to participate in a trade union's lawful activities.

[25] This is a unanimous decision by the Board.

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Graham J. Clarke  
Vice-Chairperson

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André Lecavalier  
Member

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John Bowman  
Member

Appendix A

***Canada Labour Code***

**Notice to Employees**

**Posted by order of the Canada Industrial Relations Board**

The Canada Industrial Relations Board (Board) has ordered the Hamlet of Kugaaruk (Hamlet) to post this notice and to refrain from using coercion, intimidation, threats, promises or undue influence with regard to its employees' right to belong to a trade union.

The Board has found that the November 18, 2009 letter the Hamlet sent to its employees constituted an unfair labour practice under the *Canada Labour Code* (*Code*). Every employee is free to join the trade union of his or her choice and to participate in its lawful activities. Employees have the right not to be discriminated against or penalized by an employer because they seek to exercise their rights under the *Code*.

Section 94(2)(c) of the *Code* permits an employer, or a person acting on behalf of an employer, to express a personal point of view regarding a trade union, so long as the employer does not use coercion, intimidation, threats, promises or undue influence. The Board found that section 94(2)(c) did not protect the Hamlet with regard to its November 18, 2009 letter.

The Board has extensive remedial authority to counteract violations of the *Code*.

This is an official notice of the Board and must not be removed or defaced.

This notice must remain posted for 60 consecutive working days in a place where it is most likely to come to the attention of the Hamlet's affected employees.

Dated this 17<sup>th</sup> day of March, 2010.