

Canada Industrial Relations Board



Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4^e étage Ouest, Ottawa (Ont.) K1A 0X8
Fax/Télécopieur: 613-995-9493

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McInnes Cooper Lawyers
P.O. Box 5939, Station C
St. John's, Newfoundland
A1C 5X4 709-722-1763

Attention: Mr. Darren C. Stratton

Raven, Cameron, Ballantyne & Yazbeck LLP
Barristers & Solicitors
Suite 1600
220 Laurier Avenue West
Ottawa, Ontario
K1P 5Z9 613-567-2921

Attention: Mr. Andrew J. Raven

Dear Sirs:

In the matter of the *Canada Labour Code (Part I-Industrial Relations)* and a complaint of unfair labour practice filed pursuant to section 97(1) thereof by the St. John's International Airport Authority, complainant, alleging violation of section 50(a) of the *Code* by the Public Service Alliance of Canada, respondent. (29744-C)

Canada

A panel of the Canadian Industrial Relations Board (the Board) composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. André Lecavalier and Norman Rivard, Members, has considered the above-cited unfair labour practice complaint filed by the St. John's International Airport Authority (SJIAA or the employer) on December 19, 2012.

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 an oral hearing. Having reviewed the parties' written submissions, the Board is satisfied that the documentation before it is sufficient to determine this complaint and therefore exercises its discretion to dispense with an oral hearing.

I—Background

The Public Service Alliance of Canada (PSAC or the union) is the certified bargaining agent for a unit of some 85 airport operations personnel employed by the St. John's International Airport Authority in St. John's, Newfoundland. The most recent collective agreement between the parties expired on November 30, 2009. Although notice to bargain for renewal of this agreement was served on October 6, 2009, the parties delayed bargaining by mutual consent while they negotiated a joint job evaluation plan. Consequently, collective bargaining did not commence until January 2011. A number of negotiating meetings were held in the period from October 17, 2011 to February 7, 2012.

As direct bargaining had been unsuccessful, the employer filed a notice of dispute with the Minister of Labour on February 17, 2012. Two conciliation officers were appointed in early March 2012. Conciliation meetings took place in April and May, 2012. Despite the numerous meetings that had taken place in direct bargaining, the union's full monetary proposal was only tabled on May 10, 2012. The employer's monetary proposal was provided during conciliation meetings held May 28 to June 1, 2012.

The conciliators' mandate was extended by agreement of the parties to June 3, 2012. However, there was no resolution of the issues identified by each side as necessary for a new collective agreement as of that date. A mediator was appointed on June 12, 2012, and mediation meetings took place June 22 to 24, 2012. The employer tabled a comprehensive proposal for settlement on the last day of those meetings. The union responded with a counter-proposal but the employer maintained its position and the meetings concluded without an agreement. The union put the employer's offer to a vote by its membership on September 6, 2012. The offer was unanimously rejected by the union members in a secret ballot vote. The members concurrently gave the union a strike mandate. The union gave a 72-hour strike notice the following day, for strike action to commence on September 11, 2012.

The parties met with the mediator on September 7-10, 2012, but remained unable to conclude a new collective agreement. A lawful work stoppage commenced on September 11, 2012. By virtue of a maintenance of activities agreement entered into by the parties and filed with the Board pursuant to section 87.4 of the *Code*, certain services necessary to prevent an immediate and serious danger to public health or safety have continued to be provided by bargaining unit members notwithstanding the work stoppage.

In October, the employer issued a document entitled "Summary of St. John's International Airport Authority Key Principles 15 October 2012". This document provided an overview of the nine outstanding issues that the employer believes need to be addressed in any comprehensive settlement. The employer reiterated its concerns to the PSAC in a public letter dated November 1, 2012. The union responded to the employer's "Key Principles" document by means of a letter dated November 8, 2012, addressed to the mediator. In this letter, the union indicated its willingness to return to the bargaining table when the mediator felt that there was "real potential to be able to negotiate a tentative agreement which will end this dispute."

On November 21, 2012, the SJIAA presented the PSAC with a new comprehensive proposal for settlement, and requested that the union advise it as soon as possible whether it served as a basis to resume negotiations. When it did not receive a response, the SJIAA invited the union to return to the bargaining table on December 18, 2012. At the request of the mediator, the PSAC representatives attended the December 18 meeting. At that meeting, the union continued to reject the employer's proposals for changes to the collective agreement language regarding Job Security and Contracting Out, characterizing them as concessionary.

In the absence of settlement, the employer filed this unfair labour practice complaint on December 19, 2012.

II-Positions of the Parties

A-The Employer

The SJIAA submits that the PSAC has not bargained in good faith and made every reasonable effort to reach a collective agreement, and has thereby violated section 50(a) of the *Code*.

The employer alleges that the union has refused to discuss certain business issues of central importance to the SJIAA, namely the Health Care Plan, Job Security and Contracting Out. The SJIAA objects to the union's characterization of the employer's proposals as concessionary. It alleges that the union has not only been unwilling to discuss the employer's issues, it has been unwilling to provide any cogent reason for its refusal to explore resolution of the employer's issues. The employer submits that the union's rigid stance regarding the issues of importance to the employer demonstrates that it is not sincerely trying to conclude a new collective agreement.

The SJIAA alleges that the union failed to prepare for the meeting of December 18, 2012, and failed to provide a comprehensive response on all of the outstanding issues. It alleges that the union has not presented any proposals aimed at settling the dispute since June 24, 2012, despite

numerous efforts by the employer to provoke dialogue. The employer alleges that the union has instead made it very clear that it would not discuss or explore any resolution to the SJIAA's issues.

The employer alleges that this is clear evidence that the union is not bargaining in good faith and not making reasonable efforts to negotiate a new collective agreement.

B-The Union

The union denies the employer's allegations and states that it has given and continues to give full consideration to the employer's proposals. It states that, while both parties have taken a hard bargaining approach to negotiations, the PSAC has remained open-minded and flexible and has suggested solutions to the issues in dispute between the parties.

The union points out that the parties have negotiated three previous collective agreements since the union was certified in 1999, and that the parties have a history of using hard bargaining tactics. It states that the union did not agree with the employer's decision to file the notice of dispute with the Minister of Labour in February 2012, as neither party had yet presented its monetary proposals at the time.

The union states that it has always been clear as to what its objectives are in this round of bargaining, but that its overarching goal is to obtain the best agreement possible for its members without diminishing rights that have been in place since the first agreement was negotiated between the PSAC and the SJIAA. The union is of the view that the concessionary nature of the SJIAA's proposals would create economic differences between current and future employees. Its position is that the existing collective agreement language on Job Security and Contracting Out should be renewed.

The PSAC submits that the employer has failed to provide sufficient justification for the changes it is seeking in the existing contractual language. The union states that, without such

justification, it will not entertain the changes to the collective agreement provisions that the employer is seeking. However, the union indicates that it would be willing to consider other approaches, such as a Memorandum of Agreement, that would address the employer's concerns. The union suggests that it is the employer that is taking an intransigent position by refusing to agree to any solution other than changing the language in the collective agreement.

The union states that it was prepared to negotiate when it attended the December 18, 2012 meeting at the behest of the mediator, despite the fact that it had originally taken the position that the employer would have to withdraw its demand to renegotiate existing contractual language. The union submits that it has communicated its willingness to examine specific situations identified as problematic by the SJIAA, in order to address the employer's business concerns without changing the collective agreement language.

Following the filing of this unfair labour practice complaint, the union responded to the employer with a comprehensive proposal on December 30, 2012. This proposal was amended on January 11, 2013. The union states that it has indicated to the mediator that it has flexibility with respect to certain issues and that it is prepared to return to the bargaining table if both parties agree to remove the preconditions each has articulated.

The union makes a distinction between hard bargaining, which is lawful, and surface bargaining, which is not. It submits that it is not improper to use economic sanctions to resolve a bargaining impasse. In this case, the union submits that both parties are engaged in hard bargaining. The union recognizes that a lengthy strike may be necessary before the parties reach an agreement. It suggests that this has historically been the case at the St. John's airport, and at other comparator airports. It submits that disagreement between the parties does not mean that either party is failing to meet its obligations under section 50(a) of the *Code*. The union also states that it has relied on the mediator to advise it on the appropriate timing for a return to the bargaining table, as it would be counter-productive to engage in meetings if there is no prospect of success.

III--Analysis and Decision

The Board has consistently held that section 50(a) of the *Code* contains two separate obligations: the duty to bargain in good faith, and the duty to make every reasonable effort to reach a collective agreement (see *Nav Canada*, 1999 CIRB 13; and *Société Radio-Canada*, 2001 CIRB 150). As the Board observed in *Serco Facilities Management Inc.*, 2008 CIRB 426, collective bargaining is a dynamic process, and it is not surprising to see either or both sides to a negotiation endeavoring to position themselves strategically. So long as it is evident that a party is working towards achieving a collective agreement, the Board will not normally question the strategies and tactics that it uses to achieve that objective.


In the instant case, the Board is not persuaded that there is any merit to the employer's allegations that the union is not bargaining in good faith and/or not making every reasonable effort to reach a collective agreement. While the employer has set specific objectives for itself in this round of collective bargaining, so too has the union. At the present moment in time, both parties are entrenched in their respective positions and thus the achievement of all of their respective objectives is not possible. However, at some point in time, the economic sanctions that each can bring to bear on the other will inevitably produce the compromises that are necessary for a settlement.

The right to impose economic sanctions is a crucial feature of the collective bargaining process. In the words of the eminent Professor H.D. Woods, collective bargaining is designed to resolve conflict through conflict; it is an adversary system in which two basic issues must be resolved: how available revenue is to be divided, and how the clash between management's drive for productive efficiency and the workers' quest for job, income and psychic security are to be reconciled (see H.D. Woods et al., *Canadian Industrial Relations: The Report of Task Force on Labour Relations* (Ottawa: Privy Council Office, 1968), paragraph 392).

The Board can find nothing in the union's conduct to date that would support a finding that it is not bargaining in good faith or making every effort to conclude a collective agreement. The union has responded to the employer's proposals, although not necessarily within the time frames that the employer would prefer. Although the union has rejected the employer's demands for changes to the collective agreement language, it has indicated a willingness to consider alternatives that would address the employer's business concerns. The duty to bargain in good faith obliges both parties to consider potential compromises, it does not require one party to agree to every demand made by the other. In the Board's view, while the parties are clearly engaged in hard bargaining, there is no evidence that the union is not bargaining in good faith or not making every reasonable effort to conclude a collective agreement.

Accordingly, the complaint is dismissed.

This is a unanimous decision of the Board and is signed on its behalf by



Elizabeth MacPherson
Chairperson

c.c.: Mr. John Vines (CIRB-Dartmouth)