**Date:** 20230119

**File:** 561-02-44672

**Citation: 2023 FPSLREB 7**

*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

**TREASURY BOARD**

Complainant

and

**CANADIAN MERCHANT SERVICE GUILD**

Respondent

Indexed as
*Treasury Board v. Canadian Merchant Service Guild*

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

**Before:** John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Complainant:** Karl Chemsi and Kieran Dyer, counsel

**For the Respondent:** Samantha Lamb, counsel

Heard via videoconference,
August 29, 30, and 31 and September 2, 2022.

## I. Complaint before the Board

[1] The Treasury Board ("the employer" or TB) is a federal government department and, as set out in the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), is the employer of employees who work in the federal public service in the case of the federal departments named in Schedule I to the *Financial Administration Act* (R.S.C., 1985, c. F-11) or other portions of the federal public administration named in Schedule IV to that Act.

[2] The Canadian Merchant Service Guild ("the respondent" or "the Guild") is an employee organization as defined by the *Act* and is the bargaining agent for the Ships' Officers (SO) bargaining unit.

[3] On May 5, 2022, the Federal Public Sector Labour Relations and Employment Board ("the Board") received a complaint from the employer, made under s. 190 of the *Act*, against the respondent. On May 20, 2022, the respondent filed its response to the complaint. On June 7, 2022, the employer filed a reply to that response.

[4] At section 4 of the complaint, it stated that the Guild has not met its obligations under s. 106 of the *Act*, which imposes an obligation on employers and bargaining agents to bargain collectively in good faith and to make every reasonable effort to enter into a collective agreement. It stated that instead, the Guild has done the following:

- made proposals that the TB could never accept, including some that have failed in every round of collective bargaining, including at arbitration;
- failed to provide a full justification of its bargaining position;
- failed to respond to or make counter-offers to the comprehensive offer that the TB presented;
- failed to respond to the TB's objections to its proposals;
- rejected the TB's lists of plausible issues to discuss at the October 2021 negotiation session and focused the majority of the session on one issue;
- refused to discuss any further issues at the October 2021 negotiation session because the TB could not get sign-off on the particular issue that the Guild would discuss;
- arbitrarily ended the October 2021 negotiation session and the March 2022 mediation;
- despite serving notice to bargain in December of 2020, refused to start negotiations in March of 2021; instead, proposals were exchanged seven-and-a-half months after the notice was given;
- did not make itself available for mediation until March of 2022, six months after walking away from negotiations; and
- on May 3, 2022, prematurely requested arbitration of the collective agreement.

[5] Section 5 of the complaint stated that the date on which the employer knew of the act, omission, or other matter giving rise to the complaint was March 6, 2022.

[6] As corrective action, the employer requested that the Board hear the complaint on an urgent basis, issue a declaration that the Guild did not bargain in good faith, and direct the Guild to return to the bargaining table to bargain in good faith.

[7] The Guild, in its response to the complaint, denied that it breached s. 106 of the *Act* and stated that it made every effort to bargain in good faith and that it has taken all aspects of the bargaining process seriously. The Guild also submitted that the complaint is untimely as virtually all the particulars set out in it took place more than 90 days before it was made. The Guild requested that the complaint be dismissed.

## II. Summary of the evidence

[8] At all material times, Guillaume Hébert was employed by the TB and worked as a negotiator. His duties and responsibilities included engaging in collective bargaining negotiations with designated bargaining teams from different bargaining agents. This bargaining could or would lead to collective agreements being entered into between the TB and the different bargaining agents that represent employees in the federal public service as defined by the *Act*.

[9] At all material times, Nathalie Rodrigue was employed by the TB and worked as an analyst or a senior analyst. Her duties and responsibilities included all facets of work related to collective bargaining negotiations, including but not limited to participating in the development of strategies and proposals, consulting with departments, conducting research and analysis, and attending bargaining sessions. She stated that as part of her duties, she would take notes during bargaining sessions, and those notes would be used to brief (more senior TB personnel) about the status of bargaining.

[10] At all material times, Ted Leindecker was employed by the TB and worked as a negotiator. His duties and responsibilities included engaging in collective bargaining negotiations with the designated bargaining teams from different bargaining agents. This bargaining could or would lead to collective agreements being entered into between the TB and the different bargaining agents that represent employees in the federal public service as defined by the *Act*.

[11] At all material times, Anik Rozon was identified as an analyst with the TB. She did not testify. Some documents produced by her went into evidence on consent.

[12] The Guild represents masters, mates, pilots, engineers, and other officers in bargaining units in the marine industry, of which one bargaining unit is the SO group. The evidence disclosed that the SO group has between 1000 to 1200 members who primarily work for either the Department of Fisheries and Oceans (DFO) or the Department of National Defence (DND). The Guild was first certified as the bargaining agent for the SO group on December 10, 1968 (*Canadian Merchant Service Guild v. Treasury Board*, Board file 143-02-43 (19681210)), and the description of the bargaining unit was amended on May 31, 1999 (*Canadian Merchant Service Guild v. Treasury Board*, Board file 142-02-333 (19990531)). The last collective agreement entered into between the parties, signed on November 15, 2018, actually expired on March 31, 2018, or some 7½ months before it was signed ("the 2018 collective agreement").

[13] At all material times, Tom Spindler was employed by the Guild as the secretary treasurer of its Eastern Branch, which geographically comprises that part of Canada including Manitoba east to and including Newfoundland. He has been with the Guild since 2005. He stated that the Eastern Branch represents 58 bargaining units, one of which is the SO group. In his position, he stated that he was the chief financial officer for the branch and the chief operating officer for the day-to-day operations of it. His responsibilities included the activities of 4 district offices and the day-to-day activities of 7 labour relations officers and 3 administrative staff. Part of his duties and responsibilities included participating on bargaining teams involving the different bargaining units represented by the Guild, one of which was the SO group, of which he was one of 3 co-chairs and the lead negotiator.

[14] At all material times, Joy Thompson and Bernard Talbot were employed by the Guild. I was not provided with the specifics of their employment, only that they, along with Mr. Spindler, acted as the co-chairs of the Guild's bargaining team.

[15] Part 1 of the *Act* deals with labour relations, and Division 6 of Part 1, s. 103, sets out the two different dispute resolution processes a bargaining agent can choose between if collective bargaining is unsuccessful — conciliation and strike, or arbitration. With respect to the SO bargaining unit, the Guild chose arbitration.

[16] On December 8, 2020, by email, Mr. Spindler sent to Sandra Hassan, the assistant deputy minister for compensation and labour relations at the TB, the Guild's "Notice to Bargain" for the SO group in the matter of the 2018 collective agreement ("the Notice to Bargain"). On December 11, 2020, Daniel Cyr, the acting senior director for compensation and collective bargaining management, in the office of the Chief Human Resources Officer, at the TB, wrote back to Mr. Spindler, acknowledging receipt of the Notice to Bargain.

[17] Mr. Hébert was assigned to be the TB negotiator for bargaining with the Guild. In December and early January of 2021, he and Mr. Spindler exchanged emails with respect to preliminary issues related to bargaining, such as who would be representing each side and on what range of dates each side would be available.

[18] On January 15, 2021, a telephone conference call took place between Mr. Hébert and Ms. Rodrigue on behalf of the TB and Messrs. Spindler and Talbot and Ms. Thompson, the three co-chairs of the Guild bargaining team. Ms. Rodrigue kept notes of the meeting that were entered into evidence. During the call, the Guild identified that its bargaining team would count about 11, the 3 co-chairs and the balance being made up of its members. The parties initially spoke of potentially starting in March. After the call, Ms. Rodrigue sent an email summary of the January 15, 2021, meeting to Mr. Hébert.

[19] Mr. Spindler testified that the Guild bargaining team ("the Guild team") was composed of 10 people, including the 3 full-time Guild employees, who were him, Mr. Talbot, and Ms. Thompson and 7 bargaining unit members representing the different "work systems" that are found in the SO group. These 7 members were often referred to in documents and evidence as "the committee" ("the Guild committee"). The specifics of who the Guild committee members were was not made known to me.

[20] At times, documents and employer witnesses, would simply use the term "Guild", generically, without specifying exactly who within the organization they were referring to; the inference though was clear that it was either the Guild team or one of its members.

[21] I will refer to the TB bargaining team as the TB team.

[22] The evidence disclosed that by the time the Notice to Bargain had been sent by the Guild and discussions about scheduling bargaining sessions had taken place, the

TB, as the employer of employees in the core public service (which amounts to well over 200 000 employees) had already entered into collective agreements for the 2018 bargaining session with all but 3 small groups, one of which was the SO group.

[23] On February 5, 2021, Mr. Hébert sent Mr. Spindler a draft negotiations protocol for his review and comment. In that email, he also suggested a preliminary bargaining session for the week of March 22, 2021. On February 26, 2021, Mr. Hébert emailed the Guild team co-chairs, inquiring about the February 5, 2021, email and draft protocol, as he had heard nothing back from Mr. Spindler or anyone else from the Guild team.

[24] It was not until May 3, 2021, that Mr. Spindler emailed a reply to Mr. Hébert. He and Mr. Hébert exchanged emails that day and on May 4 and 5, 2021. The parties discussed the potential first negotiation session. A number of dates were discussed between June and September of 2021. During these exchanges, Mr. Hébert indicated to Mr. Spindler that there was something else he wished to discuss; it took place by phone and was about whether the Guild was interested in something called a "pattern agreement", as opposed to engaging in normal bargaining.

[25] In cross-examination, Mr. Hébert confirmed that although he heard nothing back from the Guild team after the February 5 and 26, 2021, emails, he did not send any further emails; nor did he phone Mr. Spindler or anyone else associated with the Guild team.

[26] Mr. Hébert described a pattern agreement for the hearing. He said that the SO group was one of only two bargaining units in the core public administration (one of three if you include the separate agencies) left from the outstanding 2018 collective agreement bargaining that had not reached an agreement with the TB, and that by this time, those other groups were starting to engage in the next round. Given these circumstances, Mr. Hébert said that the TB team had a pretty good sense of what all the other groups and bargaining agents had settled for. This discussion also continued in an email exchange between Messrs. Hébert and Spindler on May 14, 2021. Mr. Hébert said that he was told that the Guild team did not have a mandate for that but to raise it again at the start of the bargaining sessions. The May 14, 2021, email exchange also confirmed that the first bargaining dates were set for July 14 to 16, 2021.

[27] It should be noted that due to the COVID-19 pandemic, which began in early 2020, all the meetings that took place between the parties and that are referred to in this decision were virtual and not held in person. In addition, at times, the times of

emails sent by members of the Guild team could be off by an hour as at times, they were operating out of an east-coast office.

[28] All of Messrs. Hébert, Leindecker, and Spindler and Ms. Rodrigue were present at the first round of bargaining in July of 2021, albeit Mr. Hébert stated that Mr. Leindecker was there for only two of the three days. Ms. Rodrigue also kept notes of the meetings. Ms. Rodrigue stated that her notes, while not verbatim, were extremely accurate, which appeared to be something that the Guild did not take issue with. The evidence disclosed that the first day was quite short, starting at around 13:00 and ending at shortly after 15:00. The Guild team presented to the TB team, and walked the meeting through, its "Proposals to Amend the Collective Agreement between Treasury Board of Canada Secretariat and The Canadian Merchant Service Guild", which contained 72 pages. A copy was entered into evidence.

[29] By email on July 14, 2021, at 15:52, Ms. Rodrigue identified to Mr. Spindler the people who formed the TB team who would be present for bargaining and sent a copy of the TB's "Non-Monetary Proposal for the Ships' Officers (SO) Group". A copy of that proposal was entered into evidence.

[30] The evidence disclosed that on July 15, 2021, the parties met at 14:15 and that their meeting ended just after 16:00. The testimony of Mr. Hébert was that the two sides spent most of the day meeting with their own teams. Ms. Rodrigues' briefing email to Mr. Cyr indicated that when the parties met, there were some questions asked with respect to the proposals, and that the Guild had agreed to minor housekeeping changes put forward by the TB team. In the note, she further stated, "The parties will proceed with signing off on these."

[31] The evidence disclosed that on July 16, 2021, the parties met at 12:10 and that their meeting ended after just about an hour. They then met again starting at around 14:00 and ending before 15:00. In his evidence before me, Mr. Hébert said that the day was a light day and that the parties spent some of it in caucuses with their own teams. He said that there were some questions asked, that he thought it went well, and that the Guild team agreed with some further TB proposals. Ms. Rodrigues' notes reflect that the agreement by the Guild team was on housekeeping proposals. They also indicate that, to which Mr. Hébert testified, the parties were looking to reconvene and continue their discussions in September of 2021. Her notes further stated the following: "The Guild expressed disappointment that the Employer was not able to agree with any of their proposals over the course of this first negotiation session."

[32] Entered into evidence was a series of emails between Messrs. Hébert and Spindler between July 15 and 20, 2021; some of the latter emails in the chain also included Ms. Rodrigue, and the topic was the actual sign-off by the parties of the TB's housekeeping proposals.

[33] Mr. Hébert testified that nothing further was accomplished in July and that after these sign-offs occurred, he handed the file over to Mr. Leindecker, as he was involved in negotiations with other bargaining agents with respect to other groups.

[34] Entered into evidence was a long email exchange, starting August 4, 2021, and ending October 1, 2021, which included, at times, Messrs. Hébert, Spindler, and Leindecker and at times Mses. Rodrigue, Thompson, and Rozon as well as Mr. Talbot. The first email in the chain was from Mr. Spindler to Mr. Hébert, stating that he was following up on the proposal to meet again in September to resume negotiations and stating that the Guild team was "ready, willing and available to meet". Mr. Hébert responded the same day, indicating to Mr. Spindler that he understood that it was Mr. Leindecker's intention to contact Mr. Spindler that week, to discuss potential dates. In fact, the next email in the chain is from Mr. Leindecker to Mr. Spindler, in which he followed up, indicated that not all the TB team would be available in September, and suggested that the week of October 4 would be the first and best date for them to resume negotiations.

[35] At a date that is unclear, the parties agreed to hold their second round of bargaining on October 4, 5, and 6, 2021. On September 8, 2021, a conference call meeting ("the Sept. 8 meeting") was scheduled to take place between Mr. Leindecker and Ms. Rodrigue on the TB team side and Messrs. Spindler and Talbot and Ms. Thompson on the Guild side to discuss the October 2021 bargaining session. An email dated September 8, 2021, was sent by Mr. Leindecker to Mr. Spindler in which he put together a list of possible issues or subjects that he proposed for the October 4 to 6 round of bargaining.

[36] Ms. Rodrigue took notes of the Sept. 8 meeting, a copy of which was entered into evidence. One of the issues raised during the discussion was the "Caretaker Convention". On August 15, 2021, the House of Commons was dissolved, and the writs of election were issued by the Governor General. The election was held on September 20, 2021. The new government was sworn in by the Governor General on October 26, 2021. The evidence disclosed that once an election is called and during the period that lasts until a new government is sworn in, the government operates under what is

colloquially known as the "caretaker convention". This means that normal, everyday government functions continue, but many things, including entering into a collective agreement, are forestalled. In short, as Mr. Leindecker testified, the TB team could not make any agreement at the bargaining table and had to wait until the new government was sworn in to confirm their mandate for negotiations.

[37] The Sept. 8 meeting notes and the testimony before me indicated that during the call, Mr. Leindecker confirmed that the caretaker convention was in place and that the employer was frozen in time in terms of its mandate. The notes on this topic state as follows:

> …
>
> *TED: … WE'RE ACTUALLY FROZEN IN TIME IN TERMS OF MANDATE. DOESN'T MEAN WE CANT GO TO THE TABLE. WE CAN TALK ABOUT PRINCIPLES.*
>
> *LEGALLY TECHNICALLY, THERE IS NO GOVERNMENT RIGHT NOW, WHICH MEANS THAT NO BODY CAN REALLY MAKE DECISIONS AT THIS POINT.*
>
> *EVEN WHEN ELECTION IS OVER, CARETAKER CONVENTION IS SUSTAINED UNTIL NEW PRIME MINISTER APPOINTED. AND THEN WE NEED TO GET OUR MANDATES REAFFIRMED. IN 2019 – ELECTION IN OCTOBER. ASSERMENTATION IN NOVEMBER*
>
> …
>
> *TOM: LAST ROUND, MANDATE FROZEN IN JULY. ER COULDN'T EVEN AGREE TO SOME HOUSEKEEPING PROPOSALS. WAS SURPRISING TO SOME.*
>
> …

[38] The evidence disclosed that the Guild team did not commit to discussing the employer's list of proposed items from the Sept. 8 meeting. However, during the course of those discussions, a particular article that dealt with the "Memorandum of Understanding (MOU) Between the Treasury Board of Canada and the Canadian Merchant Service Guild with Respect to Implementation of the Collective Agreement" ("the MOU Article"), which addresses issues that have come to the fore since the employer's implementation of the Phoenix pay system and its difficulties, was noted as being of significant interest to the Guild team. The parties discussed having an expert from Public Services and Procurement Canada (PSPC) (formerly known as Public Works and Government Services Canada (PWGSC)) provide an overview of the MOU Article. This topic was raised again by Mr. Leindecker to Mr. Spindler in an email dated September 29, 2021, indicating that a representative from the PSPC who was

knowledgeable on the MOU Article was available during the October 4 to 6, 2021, bargaining session and could make a presentation and answer questions.

[39] Mr. Spindler replied to Mr. Leindecker on September 29, 2021, indicating that he would discuss this with the Guild committee on October 4, 2021, and let him know if it was something that they were prepared to receive on either October 5 or 6. On Friday, October 1, 2021, in an exchange of emails, Messrs. Leindecker and Spindler agreed that they would speak on the Monday, October 4, 2021, sometime around noon EDT.

[40] Mr. Leindecker testified that when the TB team arrived for bargaining on October 4, Mr. Spindler advised him that the Guild team wanted the presentation on the MOU Article, and Mr. Leindecker said that he asked him if it had any questions as well, which were forwarded by Mr. Spindler late in the morning of October 4 by email to Mr. Leindecker. Entered into evidence was a copy of the end-of-day report sent by Mr. Cyr. According to Mr. Leindecker, the analyst (either Ms. Rodrigue or Ms. Rozon) would have prepared it, and it would have been reviewed by him. The report stated that each team met in caucus in the morning and that in the afternoon, the PSPC's presentation on the MOU took place, following which the teams returned to caucus. He said that the Guild team asked good questions, took the information, and indicated to him that they would discuss it. Mr. Leindecker expected a counter-proposal with respect to the MOU the next day.

[41] On October 5, 2021, the Guild team provided the TB team with a counter-proposal with respect to the MOU provisions. Mr. Leindecker said that they took it, looked it over, discussed it, and then came back together with the Guild to ask questions and to discuss it. The employer responded to the Guild team's counter-proposal. In short, he said that the employer said "No" to most of the items in it but explained why. He referenced that the Guild was looking for changes that were similar to those found in one other collective agreement. He said that it is hard to respond to prospective changes when all other collective agreements have the same language. He said that he got nothing back from the Guild team and stated that in his view, when you give a rationale, it is a reasonable expectation that you get something back and that he could not negotiate with himself. In short, he said that it was an unreasonable demand, given that all the other collective agreements had that language. He said that he could not make hard changes.

[42] Mr. Leindecker said that after that, the rest of the day was spent with their respective teams in caucus. He said that the Guild team expressed to the TB team its

frustration and that it felt that they were at an impasse. He said that he was told that it would move with that to the Board to expedite its position. He said that he offered to continue negotiations but said that the Guild was not interested. At 18:46 on October 5, an email briefing note was sent to the Deputy Minister from Mr. Cyr on the day's session. The parts relevant to this decision are as follows:

> …
>
> *• The parties spent part of the morning in caucus and met at 11:30am where the Guild tabled, as expected, a counter proposal on the Memorandum of Understanding (MOU) regarding the Implementation of the Collective Agreement. The Guild also agreed in principle with one of the Employer's proposal (on gender-inclusive language). The Employer then provided a response to the Bargaining Agent's proposal on a new article that would require the Employer to act reasonably, fairly and in good faith in administering the collective agreement. The Employer confirmed it had no interest in entertaining the proposed new language.…*
>
> …
>
> *• The parties returned in caucus until the Bargaining Agent negotiator called the Employer negotiator to signal that the Guild intended to declare an impasse on negotiations. The Bargaining Agent negotiator shared that they are hoping this will force the government to accelerate the negotiations process.*
>
> *• The Employer negotiator responded by reiterating how the negotiation process is impacted by the Caretaker Convention and that updated instructions can be expected in the near future. He nevertheless concluded by stating that the Employer respects the Guild's decision.*
>
> …

[43] Entered into evidence was a copy of the email exchange on October 6, 2021, between Messrs. Leindecker and Spindler, which at times copied Mr. Talbot and Ms. Thompson. The relevant portions of that exchange are as follows:

> [Mr. Leindecker to Mr. Spindler, at 09:32:]
>
> …
>
> *I briefed up to my principals last night on the outcome of our discussions over the past two days and the position you are contemplating.*
>
> *Regardless, we remain willing and available to return to the table to continue our negotiations on all of the parties [sic] outstanding issues. Although now may not be the appropriate time to sign off on changes, it does not prevent the parties from continuing their discussions.…*
>
> …

> [Mr. Spindler to Mr. Leindecker, at 18:39:]
>
> *Good evening Ted and thank you for the offer to return to the table to continue discussions. Our committee met again today in caucus and we can report there has been no change in their stance. They reaffirmed the mandate they gave to Bernard and I yesterday which is to proceed under the provisions provided for by the Code and file an application for the assistance of a Federal Conciliator to try and engage the employer in meaningful negotiations.…*
>
> …
>
> [Mr. Leindecker to Mr. Spindler, at 20:11:]
>
> …
>
> *So if I understand, you will be requesting the Board to intervene (under the Act) and assign a "mediator" (e.g., Tom Clairmont?) to bring the parties back to the table and assist them in reaching a settlement?*
>
> …
>
> [Mr. Spindler to Mr. Leindecker, at 19:33:]
>
> *Hello Ted appreciate the correction on process terminology and individuals (its been some time since we met with Tom) and yes your understanding is correct.*
>
> …
>
> [Mr. Leindecker to Mr. Spindler, at 20:50:]
>
> *Hi Tom, not a correction at all! Like you it has been a long time since I have been through this and I'm not necessarily clear on the process any more [sic]. I just wanted to make sure I understood so thanks for clarifying – mediation can be a good thing.*
>
> …

[44] On November 23, 2021, Ms. Thompson, on behalf of the Guild, wrote to the Chairperson of the Board and requested the assistance of a mediator under s. 108 of the *Act*. On December 6, 2021, the Board's Mediation and Dispute Resolution Services (MDRS), which handles mediation for the Board, sent by email a letter to the parties confirming the appointment, on December 2, 2021, of a team of two mediators for the parties and advising the parties that the mediators would be in touch with them to schedule a mediation.

[45] Entered into evidence was an email sent by Mr. Leindecker to Mr. Cyr, dated December 8, 2021, at 16:19, the relevant portion of which stated as follows:

> *Good evening Dan, are you sitting down…*

> *I just spoke with Tom Clairmont. He contacted Joy Thompson (Guild) and she told him they were not prepared to do mediation until early in March 2022!!!*
>
> *We don't really have much choice so Tom and I settled on March 1 – 3, 2022.…*
>
> …

[46] In his testimony, Mr. Leindecker stated that when he heard from the Guild that they were at an impasse, he thought that the Guild would take steps immediately, yet it did not file for mediation with the Board until November 23, 2021. Mr. Leindecker also testified that once the new minister was named, his mandate was back in play.

[47] Mr. Spindler testified that for the mediation session, the entire Guild team was present.

[48] The mediation session was scheduled to be held, virtually, from March 1 to 3, 2022. Entered into evidence was a copy of the notes made by Ms. Rozon of the first day of the mediation session. They were reviewed with Ms. Rodrigue, who stated that they reflected what she recalled happened on that day. The parties met with the Board's mediator, Tom Clairmont, at 11:35. Reflected in those notes was the following exchange:

> …
>
> *Tom [Clairmont] – Any thoughts on how we could get things started.*
>
> *Guild - Working with a list of proposal that are non-monetary – 5-6 items that we would like to discuss with the Employer. Would like to know what the Employer has in mind in terms of these proposals.*
>
> *Tom – Your proposal?*
>
> *Guild – Yes, part of our package. We would like to start with these and see where we go.*
>
> *Ted – Yes, on our end, we would be ready to put comprehensive offer on the table. A lot of proposal for simple admin changes. Agreement in principal [sic] on 4-5 on gender neutral – we could get this out of the way and then table comprehensive package. Full package for you to consider. May contain the items that you are thinking of putting down. If it hadn't been for the election, this is the approach that we wanted to consider. Up to you.*
>
> *Tom – Comp offer that is ready to be shared?*
>
> *Ted - Yes, but would like to get rid of the admin changes first. And then comprehensive offer on the table. It may include same items. If it doesn't, you can come back to us with the missing items.*
>
> …

[49] In his testimony, Mr. Spindler was shown a copy of Ms. Rozon's notes of the mediation session of March 1, 2022, and stated that the notes appeared to his recollection to be accurate with respect to what had occurred when they were together.

[50] Entered into evidence was a copy of the employer's briefing note to the Deputy Minister after the first day of mediation, dated March 1, 2022, at 17:49. Ms. Rodrigue was shown the note and stated that from her recollection, it was an accurate summary. The relevant portion of that note stated as follows:

> *…*
>
> *• The Employer met briefly with the mediator at 11:30a.m. to reiterate its objectives for the mediation session. The Guild joined the session shortly after and shared their intent to table a list of non-monetary proposals (5-6) to initiate the discussions. In turn, the Employer relayed its goal to address outstanding administrative changes and to table a comprehensive offer, which could include the proposals entertained by the Guild. The Guild appeared responsive but requested additional time in caucus to consider the Employer's proposed approach.*
>
> *• The parties went into caucus and reconvened at 3p.m. where the mediator requested rationales on some of the Employer's proposal further to completing the same exercise with the Guild.*
>
> *• Shortly after, a discussion was held between the Negotiators and Mediator only. During this time, the Guild presented the changes to the provisions they would like considered in exchange for the Employer's administrative changes. These include for example changes that the Employer is willing to entertain under bereavement leave that are in line with that negotiated in other collective agreements. However, agreeing to these changes would be lieu [sic] of other amendments the Employer included as part of the comprehensive offer on bereavement leave. With that said, the Employer is not willing to move on some suggested amendments related to overtime and hours of work and sick leave with pay.*
>
> *• It should be noted that the Employer did not get an opportunity to table its comprehensive offer today.*
>
> *…*

[51] Mr. Spindler stated that after the Guild team had met with the mediator(s) and the employer team, they retired to their own caucus room and discussed their position and the five or six items that they wished to present to the employer for discussion. He said that they made it clear to the mediator(s) that they wanted to hear the employer's response; yes, no, or even maybe. A copy of the Guild's six items was emailed to the

mediator(s) by Mr. Talbot on March 1, 2022, at 14:22, and it was emailed by the mediator(s) to Mr. Leindecker that same day at 15:55.

[52] With respect to the employer's advice at the outset of the mediation that it would be presenting a comprehensive package, Mr. Spindler stated that the Guild committee was happy to hear that it would be coming and was optimistic. He said that by the end of March 1, 2022, the Guild team had not heard back from the TB team with respect to its six items.

[53] Mr. Spindler testified that the second day of the mediation (March 2, 2022) started at 12:00 Atlantic Standard Time. On that day, at 13:15, Mr. Leindecker forwarded to the mediators the employer's comprehensive offer. A copy of the comprehensive offer (or comprehensive package) was entered into evidence. Mr. Spindler stated that upon receipt of the comprehensive offer, the Guild committees' early reaction to a quick review was that they were disappointed; however, he said that after that review, they went through it point by point. He said that in the end, they were disappointed to the point of being crestfallen.

[54] Mr. Spindler said that after the Guild committee had done their thorough review of the comprehensive offer, the Guild team discussed whether they could put a counter-proposal to the employer. He said that he, Mr. Talbot, and Ms. Thompson put to the Guild committee whether they wanted to put forward a counter-proposal and that their response was "No"; they felt that the parties were too far apart. He said that they also posed a question as to whether they, the members, could accept the employer's counter-offer as a tentative agreement for putting forward to the full membership for ratification. Again, the answer was "No." He said that although given that it was late in the day, they agreed that they would adjourn for the day, get back at it the next morning, and see if things looked different in the morning.

[55] Mr. Spindler said that they caucused the next morning (March 3, 2022) and that the situation had not changed for the committee's members. There was no interest in putting forward a counter-proposal as they felt that the parties were too far apart. He said that when they reconvened with the mediator(s), they conveyed this to them. He said that they told the mediator(s) that they felt that they had not been heard by the employer. The message was conveyed by the mediator(s) to the employer's side. When he was asked by the Guild's counsel if he received any request from the employer's side asking to wait and talk about it, he replied that he did not.

**III. Summary of the arguments**

[56] The employer referred me to *Boshra v. Canadian Association of Professional Employees*, 2009 PSLRB 100, *British Columbia Teachers' Federation v. British Columbia*, 2015 BCCA 184, *Canadian Federal Pilots Association v. Canada (Attorney General)*, 2020 FCA 52, *Canadian Federal Pilots Association v. Department of Transport*, 2018 FPSLREB 91, *C.A.S.A.W. v. Royal Oak Mines Inc.*, [1996] 1 SCR 369, *C.U.P.E. v. Iberia Airlines of Spain* (1990), CLRB Decision No. 796 ("*Iberia Airlines of Spain*"), *Digby Municipal School Board v. C.U.P.E., Local 1185*, [1983] 2 SCR 311, *Professional Association of Foreign Service Officers v. Treasury Board*, 2013 PSLRB 110, *Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency*, 2008 PSLRB 78, *Professional Institute of the Public Service of Canada v. Treasury Board*, 2009 PSLRB 102, *Public Service Alliance of Canada v. Canada (Treasury Board)*, PSSRB File No. 148-02-16 (19770630), [1977] C.P.S.S.R.B. No. 16 (QL), and David J. Corry, *Collective Bargaining and Agreement*, Chapter 8, "Duty to Bargain".

[57] The employer submitted that the Guild acted in bad faith, failed to bargain in good faith, and sought a declaration of the Board that this is the case and that the parties be ordered back to the bargaining table, where they will continue to bargain.

[58] The Guild referred me to the *Act*, the definition of "comprehensive" in the *Cambridge Dictionary* and the *Merriam-Webster Dictionary*, the 2012 and 2018 arbitral awards between the employer and respondent, *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, *Delice-Charlemagne v. Public Service Alliance of Canada*, 2021 FPSLREB 143, *A.T.U., Local 1374 v. Brewster Transport Co.*, 1986 CarswellNat 940, and George W. Adams, *Canadian Labour Law*, 2nd edition, Chapter 10, "Unfair Labour Practice Proceedings", section VIII, "The Duty to Bargain".

[59] The Guild submitted that it did not act in any manner that was in bad faith, and it has asked that the complaint be dismissed. In addition, the Guild submitted that any action alleged by the employer outside the 90-day time limit set out in s. 190 of the *Act* is outside the period in which it was allowed to make the complaint, and therefore, the Board is without jurisdiction to entertain it.

**IV. Reasons**

[60] For the reasons that follow, the complaint is dismissed.

[61] The basis of the complaint is that the Guild has not met its obligations under s. 106 of the *Act*, which states as follows:

| | |
|---|---|
| ***106*** *After the notice to bargain collectively is given, the bargaining agent and the employer must, without delay, and in any case within 20 days after the notice is given unless the parties otherwise agree,* | ***106*** *Une fois l'avis de négociation collective donné, l'agent négociateur et l'employeur doivent sans retard et, en tout état de cause, dans les vingt jours qui suivent ou dans le délai éventuellement convenu par les parties :* |
| ***(a)*** *meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and* | ***a)*** *se rencontrer et entamer des négociations collectives de bonne foi ou charger leurs représentants autorisés de le faire en leur nom;* |
| ***(b)*** *make every reasonable effort to enter into a collective agreement.* | ***b)*** *faire tout effort raisonnable pour conclure une convention collective.* |

[62] Section 190(2) of the *Act* states that subject to ss. (3) and (4), a complaint made under s. (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.

[63] As set out at paragraph 55 of *Castonguay* and paragraph 8 of *Delice-Charlemagne*, the time limit for making a complaint under s. 190(2) of the *Act* is mandatory, and the Board has no discretion to extend it. As the complaint in this matter was made on May 5, 2022, the action being complained of must have occurred within the previous 90 days, which would fall between February 4, 2022, and May 5, 2022.

[64] The employer referred me to *Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency*, 2008 PSLRB 78, in which the predecessor Board, the Public Service Labour Relations Board (PSLRB), held at paragraph 56 that the evidence admissible in a bad-faith bargaining complaint can go well beyond the facts raised at the time of the complaint, the goal being to examine the behaviour of the parties during collective bargaining. It referred to page 170 of the decision in *Iberia Airlines of Spain*, which states the following:

> *…*
>
> *The continuous and ongoing nature of the duty to bargain in good faith therefore gives* the *Board authority, in hearing a complaint,*

> *to examine the entire collective bargaining process and to hear evidence of all facts that are relevant to such bargaining, at whatever time these facts may have arisen. The Board has recognized and applied these rules consistently since the case referred to above….*
>
> …

[65] Paragraphs 80 to 83 of *A.T.U., Local 1374* state the following with respect to bad-faith bargaining complaints:

> *80 The issue of bad faith bargaining is, unfortunately, one that appears regularly before the Board.*
>
> *81 It is an area where there is considerable jurisprudence by this Board and by other labour relations tribunals. It is an area where the basic ground rules to be followed by adjudicative bodies have essentially been established. The basic premise followed by the Board in trying to establish a violation of section 148(a) is found in the decision of* CKLW Radio Broadcasting Limited *(1977), 23 di 51 ….*
>
> > *This background established the context within which the Board must administer and give meaning to the concepts of good faith bargaining and reasonable efforts… the Board should not judge the reasonableness of bargaining positions, unless they are clearly illegal, contrary to public policy, or an indicia, among others, of bad faith. Because collective bargaining is a give and take determined by threatened or exercised power, the Board must be careful not to interfere in the balance of power and not to restrict the exercise of power by the imposition of rules designed to require the parties to act gentlemanly or in a genteel fashion. At the same time, the Board must ensure that one party does not seek to undermine the other's right to engage in bargaining or act in a manner that prevents full, informed and rational discussion of the issues.*
>
> …
>
> *It is clear from the excerpt that the Board's role is not to assist any one party in a bargaining dispute to achieve its ends, but rather to ensure that one party does not take advantage of the other by illegal or unlawful tactics at the bargaining table.*
>
> *82 In* CKLW Radio Broadcasting Limited, supra, *the Board quoted from and adopted the passage from* Canadian Industries Limited, *[1976] OLRB Rep. May 199 …:*
>
> > *The duty to bargain in good faith is set out in the following terms: '… They [the parties] shall bargain in good faith and make every reasonable effort to make a collective agreement'. It is not necessary to enter into a full elaboration of the content of this duty. This task has already been undertaken by the Board in* De Vilbiss (Canada) Ltd.*[[1976] 2 Can LRBR 101]. In that decision, the Board made it clear that satisfaction of the duty to*

*bargain in good faith depends on the manner in which negotiations are conducted, and not upon the content of the proposals brought to the bargaining table. To take the latter approach would mean that the Board would be put in the position of an interest arbitrator, having to assess the relative merits of the bargaining proposals of both parties. It is reasonable to assume, therefore, that the legislature did not intend that the obligation to bargain in good faith should be defined by the content of bargaining.*

*Good faith bargaining is then left to be defined in terms of the manner in which collective negotiations should be conducted. The approach taken by the parties, as evidenced by their conduct, becomes important, two factors being of particular significance – one is recognition, the other is the quality of discussion. As was stated in* De Vilbiss (Canada) Ltd., supra,

> *The duty reinforces the obligation of an employer to recognize the bargaining agent and, beyond this somewhat primitive purpose, it can be said that the duty is intended to foster rational, informed discussion thereby minimizing the potential for "unnecessary" industrial conflict.*

*Recognition requires each party to approach collective bargaining with the objective of entering into a collective agreement. This means that a failure to reach a collective agreement cannot be motivated by an unwillingness to recognize the other party. The requirement to recognize the other party does not mean, however, that a party can establish a failure to bargain in good faith by simply proving that its terms were not accepted by the other party. This type of proof, going to content of the proposals rather than to the conduct of the negotiations, would be insufficient to establish a lack of recognition.*

*The conduct of negotiations is not only judged in terms of mutual recognition but also in terms of quality of discussion. This latter factor is somewhat broader in its application, extending to those situations where there may be present the common objective of entering into* [a] *collective agreement, but where there is absent any willingness to discuss how that common objective might be reached. Reference to this aspect of the duty was made … in* Regina ex rel. Hodges v. Dominion Glass Co. Ltd., *[1964] 2 O.R. 239 at p. 247:*

> *There may be some subtle distinction between bargaining in good faith and making every reasonable effort to make a collective agreement but it is so tenuous and elusive as to lose any legal significance.*
>
> *… Good faith is demonstrated by an honest and reasonable effort to make a collective agreement so that where the one exists so also does the other. This relationship between the two was thus expressed in* National Labor Relations Board v. George P. Piling & Son Co. *(1941), 119 F. 2(d) 32 at p. 37:*

> *Bargaining presupposes negotiations between parties carried on in good faith. The fair dealing which the service of good faith calls for must be exhibited by the parties in their approach and attitude to the negotiations as well as in their specific treatment of the particular subjects or items for negotiation. For such purpose, there must be common willingness among the parties to discuss freely and fully their respective claims and demands and, when these are opposed, to justify them on reason.*

…

> *The requirement of rational discussion imposes upon the parties a duty to communicate with each other, recognizing that proper collective bargaining depends upon effective communication. Although a failure to communicate might not appear to be the same kind of wrong as an unwillingness to recognize the other party, it does, in fact, have a very serious effect on the collective bargaining process as a whole. The breakdown of established bargaining relationships, because of an unwillingness to engage in full discussion with the other party, is likely to lead to more frequent resort to economic sanctions, and to greater dissatisfaction with the collective bargaining process. The obligation to bargain in good faith recognizes the importance of collective bargaining as a structure within which a full dialogue can be conducted between a trade union and the employer.*

…

*This Board also proposed the following principles in* CKLW Radio Broadcasting Limited, supra*:*

> *… This does not mean parties cannot, in the exercise of free collective bargaining, engage in hard or ruthless bargaining.*

…

> *… There is no rule in collective bargaining, like chess, that either party must move first….*

…

> *… The duty to bargaining [sic] does not cease when a work stoppage commences, although actions of the parties must be appraised in that climate…*

…

> *… In the absence of an indication of a change in positions a refusal to meet was not contrary to the Code.*

…

*83 …*

> *… "Surface bargaining" is a term which describes a going through the motions, or a preserving of the surface indications of bargaining without the intent of*

> *concluding a collective agreement. It constitutes a subtle but effective refusal to recognize the trade union. It is important, in the context of free collective bargaining, however, to draw the distinction between "surface bargaining" and hard bargaining. The parties to collective bargaining are expected to act in their individual self-interest and in so doing are entitled to take firm positions which may be unacceptable to the other side… the mere tendering of a proposal which is unacceptable or even "predictably unacceptable" is not sufficient, standing alone to allow the Board to draw an inference of "surface bargaining". This inference can only be drawn from the totality of the evidence including, but not restricted to, the adoption of an inflexible position on issues central to the negotiations. It is only when the conduct of the parties on the whole demonstrates that one side has no intention of concluding a collective agreement, notwithstanding its preservation of the outward manifestations of bargaining, that a finding of "surface" bargaining can be made.*
>
> …
>
> *The Board emphasizes what it said earlier at the close of the above excerpt. A determination of whether a party is conducting surface bargaining or hard bargaining cannot be made on the basis of one or two incidents alone. It can only be appreciated on an understanding of the full facts, testimonies and submissions of the parties as put to the Board.*

[66] At paragraph 11 of *Public Service Alliance of Canada v. Canada (Treasury Board)*, the Board's predecessor, the Public Service Staff Relations Board, summed up what it interpreted were the "guidelines" for bargaining in good faith, as set out by the Ontario Labour Relations Board, stating the following:

> …
>
> *a) The employer has the duty to recognize the union as the bargaining agent for its employees.*
>
> *b) Both the employer and the bargaining agent have the duty to share the intent of entering into a collective agreement, even though the objectives of the parties as to the content of the collective agreement might be different.*
>
> *c) The employer has the obligation to provide sufficient information in order to ensure "rational informed discussion". The reason underlying this obligation has been stated as follows:*
>
> > *As a general matter of policy, if parties are to engage in economic conflict their differences ought to be real and well-defined. (parag. 16)*
>
> *d) The negotiation process should be looked upon as a whole.*

[67] At paragraph 85 of *Professional Institute of the Public Service of Canada v. Treasury Board*, 2009 PSLRB 102, the PSLRB stated as follows:

> *[85] As noted by the Supreme Court in* CUPE*, a party rarely proclaims its intention to avoid reaching an agreement. If often requires a labour board to ascertain whether a party has engaged in "hard bargaining" or "surface bargaining." A finding of "surface bargaining" will usually result in a finding of bad faith. A finding of "hard bargaining" will not. Hard bargaining is "… the adoption of a tough position in the hope and expectation of being able to force the other side to agree to one's terms" (*CUPE*). Surface bargaining occurs when "… one pretends to want to reach agreement, but in reality has no intention of signing a collective agreement and hopes to destroy the collective bargaining relationship" (*CUPE*). The important distinction is in the underlying intention or objective of the bargaining. In* Royal Oak Mines Inc.*, the Supreme Court quoted with approval the finding in* Iberia Airlines of Spain *that the employer's bargaining position was "… inflexible and intransigent to the point of endangering the very existence of collective bargaining" and therefore a breach of the duty to bargain in good faith. As noted by the Supreme Court in CUPE, "[t]he dividing line between hard bargaining and surface bargaining can be a fine one." The question to answer is the following: Did the employer demonstrate through its proposals and actions an intention not to enter into a collective agreement?*

[68] I agree with the submission of the employer that in the context of the complaint, the Board can and should look at the whole of the bargaining process, to determine if the facts giving rise to the complaint have been made out. However, the actual act being complained of still must meet the timeliness provision as set out in s. 190(2) of the *Act*.

[69] Section 106 of the *Act* sets out two criteria with respect to the duty to bargain in good faith. The first is for the parties to meet and commence or cause authorized representatives on their behalf to meet and to bargain collectively in good faith, and the second is to make every reasonable effort to enter into a collective agreement.

[70] The Guild submitted that, and I agree that the evidence disclosed, the parties did meet and commenced to bargain in good faith. Therefore, the only possible suggestion by the employer is that the Guild was not making every reasonable effort to enter into a collective agreement.

[71] While the jurisprudence cited is helpful, we cannot lose sight of the fact that collective bargaining in the federal public sector (where the federal government through the TB is the employer) is a somewhat peculiar animal and that it has a

number of aspects that make it unique and different from labour relations and collective bargaining as it is known in the private sector. It has many different bargaining units across a wide range of departments representing over 200 000 employees. Most of the bargaining agents that represent these employees, with few exceptions, have long-standing relationships with the same employer; many are several decades long. Many of the collective agreements have clauses in which the wording is not only similar but also identical.

[72] It is in this vein that we must view the relationship that these two parties have and the process that they are engaged in. They are not strangers. While the full bargaining history between the parties was not put into evidence in front of me, I did hear brief references to an earlier history about bargaining. And referred to me in argument were also the arbitral awards made in 2012 and 2018 that determined issues between them for the collective agreements entered into between them during the previous two rounds of collective bargaining.

[73] The round of collective bargaining in which these parties are engaged that led to this complaint (the 2018 round) commenced well after almost all the other bargaining units in the federal public sector had not only already completed bargaining and had entered into collective agreements but also had given notice to bargain and had commenced bargaining for the next (the 2022) round.

[74] There is no minimum or maximum amount of time that parties have to spend at the bargaining table. The fact that the bargaining between the Guild and employer started so late, relative to almost all the other bargaining agents and bargaining units, would have given the Guild a good idea of what happened with almost all the employer's other bargaining units. Indeed, at the outset of the process, even before the parties had exchanged their initial briefs, the employer approached the Guild and floated the idea of pattern bargaining. In essence, it was a suggestion by the employer to the Guild that perhaps it take what was taken, more or less, by all the other groups. As this occurred even before the bargaining sessions took place, it suggests that the employer envisaged a collective agreement that would somewhat mirror those achieved in the earlier, completed bargaining.

[75] While there is certainly nothing wrong with that, I have no doubt that this suggestion to the Guild's team, coupled with knowing what happened with the majority of the other bargaining units, gave them guidance in their decision-making process. In short, they would have had a pretty accurate inkling of where they might or

might not make gains in the process, and this in turn undoubtedly was a factor in their decision-making process. It is likely that they evaluated their position and circumstances for what it was and that they made decisions based on their realistic understanding of what the situation was, knowing that it was highly unlikely that they would make inroads where all the other bargaining agents before them had not.

[76] Despite knowing what they knew, the Guild team did meet and bargain. The parties met in July and October of 2021. The evidence of Mr. Spindler was that the Guild team determined that the chances of success at the table were not good, and they made no secret of it. The evidence of Mr. Spindler, which was also documented by the employer in its internal documents filed at the hearing, was that the Guild team felt that the parties were at an impasse, and the Guild team wanted the intervention of the Board. It is hard to disagree with the Guild in reaching this conclusion as the employer, because of the caretaker convention, was not actually in a position to come to an agreement. Despite the impasse in October of 2021, the Guild team did agree to mediation, which was scheduled for March 1 to 3, 2022, and which they did attend. At this mediation, they felt that after the employer provided to them what it identified as a comprehensive offer, they were not getting anywhere, and they ended their participation.

[77] It is difficult to fault the Guild's team for wanting to, in essence, "get on with it", given that the employees that they represent were already later in the process than were most other employees. Rather than going through motions that they felt were unlikely to be successful, given the knowledge and information that they had, they pressed forward to achieve what they wanted for their members, which was a collective agreement. One of the hallmarks of bad-faith bargaining is that a party does not wish to enter into a collective agreement. It is difficult to find bad faith in the Guild's actions.

[78] One of the other hallmarks of bad-faith bargaining is the concept of surface bargaining. The fundamental nature of surface bargaining is that it is a feign on the other party. It occurs when one party is not interested in entering into a collective agreement and is just pretending to go through the process. As set out in the jurisprudence, surface bargaining has been used, historically, by one party to undermine the other party. There does not appear to be any rhyme, reason, or benefit for the Guild to engage in surface bargaining.

[79] There was some suggestion in both the evidence of Mr. Leindecker and the argument of the employer that if the Guild was serious about moving forward with arbitration, it would have done so much quicker than it actually did, both in terms of filing for mediation in the fall of 2021 after the October bargaining session ended, in the scheduling of the mediation itself, and, after the mediation in early March of 2022 ended. I accept that this is how the employer viewed the situation.

[80] The October bargaining session was scheduled for October 4 to 6. It ended on the second day of bargaining. As mentioned earlier, on November 23, 2021, the Guild wrote to the Chairperson of the Board, seeking the assistance of a mediator. That is not conduct suggesting that the Guild had given up on bargaining collectively a new agreement for the bargaining unit. The evidence disclosed that the Board's MDRS contacted the parties in early December of 2021 and that dates for the mediation were set for March 1 to 3, 2022.

[81] Mr. Spindler testified that he was the secretary treasurer of the Eastern Branch of the Guild, which geographically represents everywhere in Canada from Manitoba to the east. It includes 58 bargaining units, of which 1 is the SO group. He stated that he had responsibility for 4 district offices and the day-to-day activities of 7 labour relations officers and 3 administrative staff. The details of Mr. Talbot and Ms. Thompson's responsibilities were not provided to me, and neither of them testified. In addition, the evidence disclosed that the other 7 members of the Guild bargaining team were TB employees who were not employed by the Guild.

[82] The suggestion alluded to by the employer was that the timelines between the end of bargaining in early October 2021 and the request for mediation assistance in November of 2021, the time between the contact by the Board's MDRS and the actual mediation (early December 2021 until March 1, 2022), and finally the time between the end of the mediation and the filing for arbitration (March 3, 2022, and May 3, 2022), suggest that the Guild is not serious about bargaining and entering into a collective agreement, is nothing but speculation.

[83] The limited evidence before me suggested that the Guild had limited resources and that it represented a significant group of employees across a large geographic region with a large number of employers. I heard no evidence about the workload and priorities of the Guild over these periods. Given the resources it had and its responsibilities it is not impossible or even improbable that the Guild had other priorities and business that required attention. The employer's position in this respect

was pure speculation and did not amount to clear, convincing and cogent evidence of bad faith, on a balance of probabilities. I am not satisfied that, as stated in *Professional Institute of the Public Service of Canada v. Treasury Board*, 2009 PSLRB 102, the Guild had no real intention of concluding a collective agreement or hoped to destroy its collective bargaining relationship with the Treasury Board.

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

*(The Order appears on the next page)*

## V. Order

[85] The complaint is dismissed.

January 19, 2023

**John G. Jaworski,**
**a panel of the Federal Public Sector**
**Labour Relations and Employment Board**