



File No. 95-059

Decision No.

IN THE MATTER OF THE UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1174,
SUMMERSIDE POLICE AND FIRE SERVICES OF
PRINCE EDWARD ISLAND** **APPLICANT**

AND:

THE CITY OF SUMMERSIDE **RESPONDENT**

**Counsel for the Applicant:
Counsel for the Respondent:**

**Jim Stanley
Ben Taylor**

DECISION

BACKGROUND

The Labour Relations Board of Prince Edward Island received a complaint of unfair labour practice on October 10, 1995, pursuant to subsection 1C of Section 10 in the Labour Act, that Mr. Terry Murphy, being an agent of the employer, the City of Summerside, intimidated and used undue influence against Constable Kerwin, as a result of Constable Kerwin's lawful union activity. The Complainant seeks an order from the Board ordering Mr. Murphy to cease and desist from such acts of intimidation and undue influence in future relations.

Pursuant to Section 11 of the Labour Relations Act, the Chief Executive Officer inquired into the complaint and endeavoured to affect a settlement of the matter complained of. He was unable to affect a settlement, therefore, the matter was set for hearing by the Board, which took place on Thursday, the 30th day of November, A.D. 1995. The Notice of Hearing was forwarded to the parties on the 9th day of November 1995.

The facts are uncomplicated and appear to not to be in dispute. At all material times there existed a collective agreement between the complainant and the respondent, which contained a grievance procedure to settle disputes between the parties. Constable Kerwin filed a grievance and at the first level the grievance was denied by the Police Chief. Pursuant to the collective agreement the grievance then moved to a second level - the City Manager. A meeting took place between the shop steward, the Union President, and the Respondent on the subject of Constable Kerwin's grievance and three other grievances on July 21, 1995. The Respondent requested an extension of time to make his decisions and the request was agreed to by the union.

Pursuant to Mr. Murphy's evidence, because Constable Kerwin was not present at the meeting that he held with the Union President and the Shop Steward, on July 21, 1995, he felt it was necessary to have a meeting with Constable Kerwin. On August 31, 1995, on a day when Constable Kerwin was on duty, Mr. Murphy asked Constable Kerwin to come to his office to discuss the grievance. According to Mr. Murphy's evidence the meeting took place over a period of ten to fifteen minutes and the meeting took place between him and Constable Kerwin,

alone. Mr. Murphy could not recall the exact details of the discussions that took place at that meeting and he indicated that he didn't take notes. Mr. Murphy admitted he may have said "This is what we get for giving you a job - you file a grievance." However, he said the comments were made in a joking manner. Mr. Murphy provided his answer to the grievance at the second level by letter dated September 15, 1995.

If as stated by Mr. Murphy that the purpose of the meeting was to inquire into the nature of the grievance, the Board finds it difficult to understand why no notes were kept of the subject matters discussed at the meeting. Mr. Murphy's recollection of the meeting, even though it only took place three months prior to this hearing, was extremely vague. However, Mr. Murphy made it clear in his evidence that he did not ask Constable Kerwin to withdraw the grievance nor did he threaten him in any way or attempt to influence him in any way. However, note is taken that Mr. Murphy did not invite Constable Kerwin to be accompanied by a representative of the Union nor did he draw to Constable Kerwin's attention that he could have had a representative of the union present at the meeting.

Mr. Murphy also indicated in his evidence that it was not normal for him to meet with a grievor of CUPE Local 1174 alone.

Constable Kerwin testified that he was aware of the nature of the meeting when he was requested by Mr. Murphy to attend at his office. Constable Kerwin testified that when the meeting began, Mr. Murphy said to him "Is this what we get for giving you a job? You file a grievance." Constable Kerwin stated Mr. Murphy produced the contract and asked him how he interpreted the words in dispute. At the end of the meeting Constable Kerwin asked if he would receive twelve hours pay. Mr. Murphy stated he would research Brown and Beatty law and make a decision. Constable Kerwin gave evidence that it was only after the meeting was concluded that he felt what transpired was not right and he then spoke to the Union President several days later. In answer to the question of how he felt about the meeting, he responded, in reflection, that he felt intimidated and threatened to a certain extent when called to the boss's office, but at the time of the meeting, he responded that he was uncomfortable.

Constable Bill MacKinnon, President of Local 1174 testified that the Local did not encourage or allow employees to meet on a one-on-one basis with the employer's representative to discuss a grievance, particularly after a step 2 meeting had been held.

ISSUE

The issue in this instance is rather simple. Did Mr. Murphy commit an unfair labour practice under Section 10(1)(C) of the Labour Act. Did Mr. Murphy use coercion, intimidation, threats or undue influence on Constable Kerwin in exercising his right to grieve.

LAW

In the Labour Arbitration Case re Ernst Forest Products Ltd. and International Woodworkers of America Local 1-424 reported in 10 L.A.C. (2D) page 20, at page 24:

"Any bargaining, therefore, with the company from the unions side thereby must necessarily come from the proper bargaining representative on behalf of the employees which is, here, the union. If the bargaining agent is the union than the individual employee is not free to bargain in any way with the employer. If

the grievor submits his grievance to his shop steward, he is effectively placing it in the hands of the union and would have to deal with the union if he wishes to withdraw the grievance."

It is further stated on page 24:

"This privilege of bargaining by themselves would appear to be taken away by Article 1 (Collective Agreement) and the principle laid down in the Supreme Court of Canada Cases referred to above."

In *Calco Club vs. Calgary Co-Operative Association Ltd.* reported in Canadian Labour Law Reports 92 CLLC, page 14,299, at page 14,304, the Board adopted the following:

"Employees in Alberta have the statutory right to participate in the lawful activities of a trade union. One of those lawful activities is the representation of employees. The cases cited above also point out that unions also have a duty pursuant to provisions similar to Section 151 of the code to fairly represent employees with respect to their rights under a collective agreement. It may be difficult for the union to meet its obligations when it is denied access by the employer."

It is the opinion of the Board that the same proposition applies in this jurisdiction.

Pursuant to foregoing it would appear that it is well settled that an employee is entitled to and should be represented by the union in any matters that arise between the employee and the employer that are addressed in the collective agreement.

The question, however, arises does the failure to inform the employee of this right to representation amount to an unfair labour practice as set out in Section 10(1)(C) of the Labour Act.

It is stated in the Ontario Labour Relations Board *The Law and Practice Sack and Mitchell*, published by Butterworth, on page 440, that:

" Under Section 70, it is necessary to prove that a person was seeking by intimidation or coercion to compel any person and the purpose of the intimidation or coercion was to compel a person to become or refrain from becoming or to continue or cease to be a member of a union or employer organizations or to refrain from exercising any of the rights or performing any obligations under the Act; thus, there is a violation of the Section when the person seeks to compel another and it is unnecessary to prove that a person was in fact intimidated or coerced. In order for there to be intimidation or coercion, the Board has said that there must be a threat or other intimidating or coercive action coupled with an

express or an implied demand that a person do or refrain from doing any of the matters set out in this section."

From the evidence presented to the Board there doesn't appear to be any threat or other intimidating or coercive action coupled with an express or implied demand that Constable Kerwin drop his grievance.

The Board is of the opinion that the meeting of August 21, 1995 was extremely ill advised. It was inappropriate for Mr. Murphy to seek the grievor's opinion of the interpretation of the collective agreement. The second level grievance meeting had already been held and if there were further questions on interpretation, these questions should have been addressed to the Union representatives. If it was necessary to question the grievor on the circumstances of the events leading up to the grievance, Mr. Murphy should have advised Constable Kerwin that he was entitled to have a representative of the union present at the meeting as was the normal practice with Local 1174 members. The normal practice should be resumed in all future circumstances.

Since there is no evidence before the Board that there was any attempt by Mr. Murphy to seek, either by expressed or implied demand that Constable Kerwin should not pursue his grievance, the Board is of the opinion that Mr. Murphy's failure to inform Constable Kerwin his right to be represented does not amount to an unfair labour practice under the Act.

The Board therefore dismisses the complaint.



George Lyle
Chair

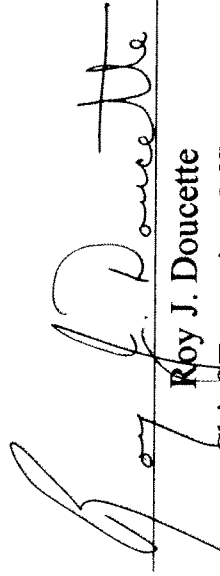


Judy Goodwin
Member



Roger Doiron, Member

THIS DECISION made by the Labour Relations Board on this 13th day of February, 1996 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer