



The Professional Institute
of the Public Service
of Canada

L'Institut professionnel
de la fonction publique
du Canada

May 20, 2015

John Taggart
Senior Industrial Relations Officer
Canada Industrial Relations Board, Centennial House
Suite 700 – 310 Broadway,
Winnipeg, Manitoba R3C 0S6

Via Fax (204-983-3170)

Dear Mr. Taggart

Re: Professional Institute of the Public Service of Canada, CRPEG and Canadian Nuclear Laboratories - Application under s. 97(1) and s. 94(1)(a) of the *Canada Labour Code*

On behalf of our members, the Professional Institute of the Public Service of Canada (PIPSC) wishes to commence an unfair labour practice complaint against Canadian Nuclear Laboratories. The complaint relates to the CRPEG bargaining unit.

We've set out in the attached complaint a statement of facts and particulars giving rise to the complaint, together with the remedies we seek. The Complaint is made pursuant to s. 97(1) of the Canada Labour Code (the *Code*) and in particular s. 94(1)(a) of the *Code*.

The Respondent's contact information is as follows:

Susan Haywood - Director of Employee Relations & HR Services
Canadian Nuclear Laboratories
20 Forest Avenue, Deep River, ON K0J 1P0
613-584-3311
susan.haywood@cnl.ca

If you have any questions, please do not hesitate to contact me.

Yours truly,

Patrizia Campanella
Legal Counsel

Encl.

Cc: Isabelle Roy, PIPSC General Counsel

COMPLAINT

1. Canadian Nuclear Laboratories (CNL) previously operated as Atomic Energy of Canada Limited (AECL), an agency of the government responsible for developing nuclear science and technology. It operates a number of laboratories in Canada including the Chalk River Laboratory, located in Chalk River, Ontario.
2. On March 10, 2014, the Professional Institute of the Public Service of Canada (PIPSC) and CNL entered into collective bargaining negotiations regarding the renewal for the collective agreement of the Chalk River Professional Employees Group (CRPEG). (Notice to bargain included as Exhibit 1)
3. The parties exchanged proposals and met on the following dates in an effort to negotiate a renewal agreement: The parties met in collective bargaining on April 9 and 10, 2014; May 27 and 28, 2014; June 23 and 24, 2014; September 10, 11, 24 and 25, 2014; February 23 and 24, 2015; and May 01, 2015.
4. To date the parties have not entered into a collective agreement and collective bargaining continues.
5. On May 12, 2015, CNL communicated, directly with employees and members of the bargaining unit in a manner that substantially interfered with ongoing collective bargaining by publicly announcing a final offer. The company issued a bulletin to PIPSC/CRPEG members via email dated May 12, 2015. This communication was sent by Lynne P. Campbell Vice-President of Human Resources with CNL (Exhibit 2).
6. The communication referred above included a very detailed description of the current bargaining process as well as settlement proposals which were presented to members in a manner intended to undermine the CRPEG. For example, the details in question were introduced as follows:

[...] Based on the questions and comments we have received from CNL employees, we know you are concerned about the status of your agreement and the progress of negotiations, and we feel that it is important at this time to provide you with CNL's view **on the full picture** of what has transpired. [Our emphasis added]

7. It is submitted that the implication highlighted in the sentence above is that the union has been withholding information from its membership. Whether intended or not, the employer's communication undermines the role of the union vis-à-vis its members at a pivotal point of the bargaining process.

8. The employer's communication then included 4 pages of details with respect to the current round of bargaining as well as an attachment of the company's and the union's complete list of proposals.
9. The communication was sent the day before a CRPEG special general meeting, scheduled to inform members of developments and advancement in the ongoing bargaining process and where a potential vote on the employer's last offer could be held (Exhibit 3).
10. It is important to note that the employer knew or out to have known that the special general meeting in question was scheduled for the very next day from when it sent the communication to employees questioned in the present application.
11. At the end of this communication, the following statements were included:

As of May 1, PIPSC/CRPEG has verbally declined CNL's last best and final settlement offer and continues to seek further concessions. This offer will not be enhanced. The company believes that negotiations have reached the end point and it is time to sign the agreement. We understand that this perspective may differ from that of PIPSC/ CRPEG.

We have chosen to respect the rights and entitlements of the collective agreement no longer legally in effect and remain hopeful that PIPSC/CRPEG will return to the table and accept our offer made on May 1. [Our emphasis added]

12. The above statements highlight the employer's attempt to influence CRPEG members to vote in favour of the offer on the table in advance of the union having had the opportunity to communicate its views and strategy with respect to the company's last offer.
13. Furthermore, the employer ends its communication by emphasising the fact that it will not move from its position just before reminding employees of the end of the statutory freeze period. This element was interpreted as a threat by CRPEG executive as well as some members and had consequences on the union's bargaining power.
14. The employer also published part of the information contained in the email bulletin on its website (Exhibit 4).
15. In response to the Employer's direct communication to its members, the CRPEG issued a communication bulletin to its members, reiterating their invitation to the Special General Meeting and indicating their disappointment with the Company's course of action (Exhibit 5).
16. CNL's action was not only contrary to practices that have been in place for years, and PIPSC's reasonable expectations, but also infringes on section 94(1)(a) of the *Canada Labour Code*, RSC, 1985, c L-2 (the *Code*). The employer was aware of the scheduled meeting and it

is submitted that the communication was sent to CRPEG members, not only to undermine the union, but to unduly influence them into accepting the employer's last offer as well as to discredit the union's recommendation with respect to the employer's offer in question.

17. It is submitted that the action of CNL does not fall within the exception prescribed in s. 94(2)(c) of the *Code*.
18. This communication has fundamentally altered the balance in the bargaining process in a way that undercuts the bargaining power of union members and the representation of employees by PIPSC in bargaining, negatively affecting a meaningful bargaining process.
19. The *Code* provides in s. 94(1) (a) the following:

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;

20. At the same time, the *Code* provides an exception to the above mentioned section in section 94 (2) (c):

(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.

21. It is also submitted that that by sending a lengthy communication which outlined the details of bargaining and by disclosing documents that contained the totality of the information related to particular proposals and offers being discussed at the bargaining table, CNL has effectively interfered with the rights of PIPSC to represent its members.
22. In *Saskatchewan Wheat Pool*, 1996 CLRBD 17, the Canada Labour Relations Board established the factors that must be analyzed when determining the appropriateness of the communications. As the Board expressed in paragraph 31:

However, what these decisions make clear as well is that the labour relations context within which such communications take place, the content of the communications themselves, and the consequences, intended or not, that they have on the authority of the bargaining agent are all critical factors in determining whether an employer has crossed the thin dividing line between what is proper direct communication under the Code and what is not. The communication process in a unionized work environment is


a dynamic one which has, through its various permutations and forms, the potential to influence not only the employer-employee rapport but that of the employee-bargaining agent as well.

23. In *Air Canada (Re)*, 2001 CIRB 131, this honourable Board established at paragraph 16 that the *Saskatchewan Wheat Pool* test is not a tiered test, but rather “the three elements are to be considered together to determine whether the impugned communication crosses the line from acceptable contact to interference”.
24. It is submitted that the three elements established in *Saskatchewan Wheat Pool* are present in this complaint and show that CNL has substantially interfered with PIPSC’s legitimate representation of its members, insofar as:
 - a. The communication by CNL to employees and members of the union was sent in a very sensitive context, just one day before a special general meeting in which CRPEG was to inform its members of developments in the ongoing bargaining process and where members may have to vote on the employers proposal;
 - b. The content of the communications sent by CNL was presented in a manner that undermined the union and with a view to unduly influencing CRPEG members to accept the employer’s last offer;
 - c. In the alternative, it is submitted that if CNL did not intend to undermine the authority of PISPC as the legitimate bargaining agent during ongoing collective bargaining with the communication in question, it has nevertheless effectively undermined the authority of PISPC as the legitimate bargaining agent.
25. Finally, it is submitted that the collective bargaining process will only be sound if it maintains a balanced relationship between the parties that allows workers to exert meaningful influence over working conditions through a process of collective bargaining conducted in accordance with the duty to bargain in good faith (*Mounted Police Assn of Ontario v Canada (Attorney General)*, 2015 SCC 1, at para 71-72, *Health Services & Support-Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at para 90, 97).
26. In the present case, the employer’s actions reduced employees’ negotiating power by effectively interfering with the representation entrusted in the bargaining agent as well as with the ability of workers, acting collectively through their union, to exert meaningful influence over their working conditions through a process of collective bargaining.

27. PIPSC requests the following remedies:

- i) A declaration that CNL has violated the *Code* by communicating to employers and members of the union the items under discussion in the ongoing collective bargaining negotiation rounds;
- ii) An order prohibiting CNL to communicate terms and proposals of the ongoing bargaining negotiations directly with employees and members of the union in a manner that is not consistent with the *Code*;
- iii) An order that CNL post the Board's decision and order in a conspicuous place and in such a manner that they will be viewed by the members of CRPEG; and
- iv) Such further remedies as counsel may suggest and this honourable Board may deem appropriate under the circumstances.

All of which is respectfully submitted this 20th day of May 2015.


Patrizia Campanella
Legal Counsel