

LABOUR BOARD
Nova Scotia

BETWEEN

Brent Bowden

- Complainant

- and -

Atlantic Police Association of Nova Scotia

- Respondent

NATURE OF MATTER

Duty of Fair Representation complaint under Section 54A of the *Trade Union Act*

DATE OF FILING

December 4, 2024

BEFORE

Jasmine Walsh, Chair

REPRESENTATIVES

Brent Bowden, the Complainant
David W. Fisher, for the Respondent

ORDER

The Board is persuaded that Bowden's complaint is within the scope of DFR complaints as set out in Section 54A(3) of the *Trade Union Act* and it satisfies the statutory prerequisites in Sections 55(2) and 55(3) of the *Trade Union Act*. The DFR will next be considered on its merits, first by referral to a Review Officer pursuant to Section 56A of the *Trade Union Act*.

REASONS FOR DECISION

Background

- [1] This matter concerns a duty of fair representation ('DFR') complaint filed by Brent Bowden ('Bowden') on December 4, 2024 under Section 54A(3) of the *Trade Union Act* R.S.N.S. 1989, c. 475. Bowden is a police officer who works for the Town of Truro. He belongs to a bargaining unit represented by the Atlantic Police Association of Nova Scotia ('APA') and the DFR was filed against APA who is represented by David Fisher ('Fisher'). Bowden alleges that their representation was arbitrary, discriminatory and in bad faith.
- [2] The underlying event occurred on Monday June 24, 2024 at Bowden's workplace. He was alerted by a coworker that a banana peel had been placed on the windshield of his parked car. It was explained to Bowden that the banana prank had been played because of some connection with a health and safety issue at the workplace. Bowden is African Nova

Scotian, however, and his experience of having a banana peel left on his car windshield carried significant racist overtones.

[3] Bowden described certain interventions that he navigated himself with his employer. The matter was not resolved to his satisfaction.

[4] In his initial complaint form he mentioned his union only once, stating “I contacted my union multiple times and was refused service as they cannot help me due to my complaint made against other union members.”

[5] The Board wrote to Bowden stating that his DFR appeared to have been filed late but giving him an opportunity to produce more information to consider. Bowden wrote to the Board and stated:

Incident happened June 24, however, email below shows that Nov 4 was when I started to get denied support and representation.

[6] Bowden provided the Board with email correspondence that he sent to Fisher on October 4, 2024, in which he asked for support from the union and a November 4, 2024 reply from Fisher which stated:

Hi Brent,

The Union attempts to provide advice and assistance to members that have allegations/ complaints lodged against them.

In this case you are lodging the allegations against other Union Members. We represent the Union Members and cannot assist in the prosecution of an allegation against a Union Member.

Should you decide at some point you would like to try and resolve the matter- we may be able to assist in finding someone neutral to help resolve it.

I understand Deputy Chief Simmonds has been appointed to investigate the matter. He would also be an excellent person to discuss a resolution if you wished to try and resolve the matter.

David

[7] In his reply on November 27, 2024, Bowden asked Fisher:

As a union member myself, am I not owed representation? If not directly by yourself, due to the conflict, then another representative? I need a representative as this matter evolves.

[8] Fisher replied to say that APA will not help Bowden with his claim against the other officers, but that they will work with him to help resolve the issue so he can return to work.

- [9] APA's submission to the Board reiterated that the union will not help Bowden prosecute the other union members who he alleges have treated him in a discriminatory way based on his race.
- [10] The Board inquired of the parties and the APA advised that it does not have an internal appeal process for members to access when they wish to dispute APA's representational decisions.
- [11] Before considering DFR complaints on their merits, the Board first reviews them to determine whether they satisfy certain statutory prerequisites.
- [12] For these reasons, the Board is persuaded that the statutory prerequisites are satisfied and Bowden's DFR will be referred to a Review Officer for further consideration pursuant to Section 56A of the *Trade Union Act*.

The Issue

- [13] The Board accepts the APA's statement that there is no internal appeal process available for Bowden to have the union review its representation decision.
- [14] APA argues that Bowden's concern does not arise from his rights under a collective agreement and that it is beyond the scope of the Board's consideration. They further argue that Bowden's DFR is premature because he never attempted to file a grievance.

Analysis and Decision

- [15] Section 54A(3) establishes a prohibition on unfair representation of union members, meaning arbitrary, discriminatory or in bad faith:

No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee's rights under a collective agreement.

- [16] Section 55 establishes certain statutory limitations on a union member's right to complain under Section 54A(3). The relevant portions read:

(2) Subject to this Section, a complaint shall be made to the Board pursuant to subsection (1) not later than ninety days from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

(3) Subject to subsection (4), no complaint shall be made to the Board under subsection (1) or under subsection (3) of Section 54A on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with clause (f) or (g) of Section 54 or subsection (3) of Section 54A unless

(a) the complainant has presented a grievance or appeal in accordance with any procedure

- (i) that has been established by the trade union, and
 - (ii) to which the complainant has been given ready access;
- (b) the trade union
 - (i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to him, or
 - (ii) has not, within six months from the date on which the complainant first presented his grievance or appeal pursuant to clause (a), dealt with his grievance or appeal; and
- (c) the complaint is made to the Board not later than ninety days from the first day on which the complainant could, in accordance with clauses (a) and (b), make the complaint.

Scope

- [17] APA argued that Bowden had not linked his complaint to his rights under a collective agreement, and that his complaint should be statute barred by Section 54A(3) of the *Trade Union Act* which requires complaints to be “with respect to the employee’s rights under a collective agreement.” The Board does not agree.
- [18] An employee’s right to work in an environment that is free from racial discrimination is a cornerstone of Nova Scotia law, enshrined in the Nova Scotia *Human Rights Act* R.S.N.S., c. 214. The *Human Rights Act* establishes minimum standards beneath which employers and unions do not have the option to contract. Irrespective of whether there is an explicit clause in the collective bargaining agreement between the APA and the Town of Truro that addresses workplace discrimination, a unionized employee has an implied right to work free from discrimination and to have this right addressed through grievance, arbitration and other workplace justice mechanisms.
- [19] In *Nova Scotia Human Rights Commission v. Nova Scotia (Attorney General)*, 2023 NSCA 66 (CanLII) the Nova Scotia Court of Appeal determined that the *Human Rights Act* in this province distributes concurrent jurisdiction to labour arbitrators and Human Rights decision makers. Justice Bourgeois for the majority confirmed that, “labour arbitrators are tasked with applying human rights legislation and further, labour arbitration is the forum for the enforcement of human rights in unionized workplaces” (at paragraph 58).
- [20] Bowden’s human rights concern arose at his workplace following certain actions by his colleagues. He was not satisfied with the response from his employer. His terms and conditions of employment include the right to work free from discrimination. APA may choose to argue, once the complaint is being considered on its merits, that their representational choices were fair ones, but they cannot avoid consideration of Bowden’s DFR complaint based on scope. The Board is satisfied that Bowden’s complaint falls within the scope of DFR complaints covered by Section 54A(3) of the *Trade Union Act*.

Timeliness/ Prematurity

- [21] In respect of timeliness, Bowden's complaint was filed with the Board on December 4, 2024. APA's representation after September 5, 2024, was subject to complaint.
- [22] The email transcripts that Bowden shared persuade the Board that it was in November 2024 when the APA advised Bowden that they would not represent him in his prosecution of his colleagues because they, too, are union members.
- [23] In their submissions to the Board, APA argued that Bowden cannot file a DFR because he did not first file a grievance. APA referred the Board to its decision in *Hawley v. CUPE Local 3968 et al.* 2024 NSLB 21(CanLII) in support of this argument.
- [24] However, the facts in *Hawley, supra*, are distinguishable. There, the complainant had not raised her concerns with the union prior to filing her complaint. The allegations were also several years old.
- [25] Bowden brought his issue to APA for representation in October 2024 and their response to him was a clear "no" based on the email correspondence tendered. Fisher said, "we cannot help one member of our union prosecute another member of our union." While they were willing to help him to mediate a resolution and they were willing to assist with his accommodation process with the employer, it was clear that they were not willing to assist him in advancing his discrimination claim against the other officers.
- [26] This satisfies the Board that Bowden brought his interest in pursuing the discrimination allegations to the APA and that the APA declined to represent him in the way that he wanted. This occurred within the 90 days before Bowden filed his complaint. His DFR is timely, and it is not premature.

Order

- [27] The Board is persuaded that Bowden's complaint is within the scope of DFR complaints as set out in Section 54A(3) of the *Trade Union Act* and it satisfies the statutory prerequisites in Sections 55(2) and 55(3) of the *Trade Union Act*. The DFR will next be considered on its merits, first by referral to a Review Officer pursuant to Section 56A of the *Trade Union Act*.

MADE BY THE LABOUR BOARD AT HALIFAX, NOVA SCOTIA ON THE SIXTEENTH (16TH) DAY OF JUNE, 2025 AND SIGNED ON ITS BEHALF BY THE CHAIR



JASMINE WALSH
CHAIR