



SEVENTH ITEM ON THE AGENDA

**337th Report of the Committee
on Freedom of Association**

Contents

Case No. 2349 (Canada): Definitive report

Complaint against the Government of Canada concerning the Province of Newfoundland and Labrador presented by the National Union of Public and General Employees (NUPGE) on behalf of the Newfoundland and Labrador Association of Public and Private Employees (NAPE/NUPGE), and supported by the Canadian Labour Congress (CLC) and Public Services International (PSI)

The Committee's conclusions 399-406

The Committee's recommendations 407

CASE NO. 2349

DEFINITIVE REPORT

Complaint against the Government of Canada concerning the Province of Newfoundland and Labrador presented by — the National Union of Public and General Employees (NUPGE) on behalf of — the Newfoundland and Labrador Association of Public and Private Employees (NAPE/NUPGE) and supported by — the Canadian Labour Congress (CLC) and — Public Services International (PSI)

Allegations: The complainant organization alleges that the Government did not bargain collectively in good faith with representative trade unions for the renewal of public service collective agreements, and did not rely on an independent arbitration system. Rather, the Government introduced back-to-work legislation (Bill No. 18) with harsh penalties to end a legal strike and impose by law a four-year collective contract containing wage freezes and contract concessions, including as regards some benefits previously negotiated for retired public servants

C. The Committee's conclusions

399. *The Committee notes that this case concerns back-to-work legislation (the Public Services Resumption and Continuation Act (PSRCA), see Annex 1, extracts) adopted by the government of Newfoundland and Labrador. The PSRCA, which contains harsh penalties, put an end to a legal strike in the public service and imposed a four-year collective contract; the complainant organization alleges that the Government did not bargain collectively in good faith with representative trade unions and did not rely on independent arbitration. The Government replies that the PSRCA was a last resort measure to put an end to a general strike of over 20,000 public employees which affected the provision of health-care and other basic public services, as well as a fair and fiscally responsible answer to the unions' demands, in view of the financial situation of the province. The Government and the complainant organization both rely on reports on the fiscal situation of the province, drafted by two different firms, which came to different conclusions.*

400. *The Committee points out that it is not mandated, nor equipped, to decide on the relative weight to be attached to the two diverging reports on the fiscal situation of the province, and on the justification of measures that might eventually flow from these reports. Likewise, the Committee is not called upon to decide whether or not the pay and other work conditions (e.g. concerning sick leave) imposed by the Government are "reasonable". Rather, the Committee's mandate is to assess whether, in adopting the PSRCA in the circumstances of the case, the Government complied with freedom of association principles.*

401. *The Committee notes at the outset that the strike in the present case was a lawful one, as the complainant organization had fulfilled all legal requirements prior to launching a strike to support its demands. While a significant number of issues were actually negotiated, both through direct bargaining and with the help of mediation and conciliation services, the fact is that, ultimately, the Government imposed through the PSRCA the terms of a four-year collective agreement as regards the remaining bargaining issues, including wages. Taking into account the long duration of this imposed contract, the Committee invites the Government to hold consultations with the unions concerned with a view to a possible re-examination of these imposed working conditions.*

402. *The Committee takes note of the severe penalties provided for in the PSRCA (see Annex 1) which rendered a continuation of the strike untenable, and that all workers had gone back to work (27 and 28 April 2004) at the time the PSRCA was proclaimed (4 May 2004).*

403. *The Committee further notes that, on 22 April 2004, the complainant organization wrote to the Premier in the following terms: "While it has been, and continues to be, our preference to negotiate a collective agreement, we believe it is unlikely that the parties will now be able to resolve this matter through negotiations. In a final attempt to resolve this dispute without the introduction of extraordinary legislation, and in an effort to resume the provision of public services, we are now proposing that the parties use the provisions of the Public Service (Collective Bargaining) Act to resolve this matter. NAPE and CUPE are prepared to instruct our members to return to work on Friday, 23 April 2004, and refer the remaining outstanding issues to binding adjudication pursuant to sections 32-37 of the Public Service (Collective Bargaining) Act. We believe that this will enable the parties to consider the greater interests of the province and resume the provision of public services immediately. The offer is made in good faith in an effort to resolve this dispute and we hope that you share our desire to find a fair and equitable settlement." [See Annex 2, extracts of the Public Service (Collective Bargaining) Act.]*

404. *The Committee wishes to emphasize that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 781]. The Committee also recalls that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association; collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining [see **Digest**, op. cit., paras. 844-845].*

405. *Noting nevertheless the complainant organizations' offer to the Government to use the existing legislative provisions on the settlement of disputes in the public service through adjudication, the Committee has difficulty appreciating the Government's argument that a referral of the outstanding issues to binding arbitration to be determined "by an unelected third party" would have been an irresponsible decision, particularly in view of the fact that the Government could have provided the arbitrator with full data on the province's fiscal situation, and the fact that these provisions are precisely meant to cover such situations and resolve bargaining deadlocks in the public service. Rather, the Government chose to adopt back-to-work legislation and unilaterally impose terms and*

conditions on outstanding issues, at a time when the workers were already back at work, and their union had offered to submit the dispute to binding arbitration, as provided for in the law.

406. *Recalling that in contexts of economic stabilization, priority should be given to collective bargaining as a means of determining employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector [see **Digest**, *ibid.*, para. 900], the Committee considers that in the circumstances, the Government should have given primacy to collective bargaining. In the event that it had become clear that the pending issues could not be resolved through collective bargaining, the Committee stresses the importance, in cases concerning the public service, of having recourse to mediation and arbitration proceedings that have the confidence of the parties concerned. Recourse to back-to-work legislation that unilaterally imposes the position of one of the bargaining partners, as opposed to having recourse to existing mechanisms that benefited from the confidence of the unions concerned (as shown by their own offer to refer the outstanding issues to binding arbitration) clearly cannot be considered to be conducive to stable and harmonious industrial relations in which the parties may be confident. The Committee strongly urges the Government to refrain in future from adopting such back-to-work legislation, and to use the adjudication process provided for in the legislation to resolve bargaining impasses such as the present one.*

The Committee's recommendations

407. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- *Noting that the Government violated freedom of association principles through the adoption of back-to-work legislation, the Committee strongly urges it to refrain from adopting such legislation in the future, and to use the adjudication process provided for in the legislation to resolve bargaining impasses.*
- *Taking into account the long duration of the imposed contract (four years), the Committee requests the Government to hold consultations with the unions concerned with a view to a possible re-examination of the imposed working conditions.*