

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL NO. 832

Applicant

and

STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES

Employer

RE: Application for Certification -
Canadian Forces Base -
17th Wing Westwin, Winnipeg, Manitoba

Before: [Muriel Korngold Wexler, Deputy Chairperson](#)

For the Applicant: [David Lewis, Counsel](#)

For the Employer: [Jerry Green](#)

Heard at Winnipeg, Manitoba,
June 27 and 28, 1996.

DECISION

On March 7, 1996, the United Food and Commercial Workers Union, Local No. 832 (the applicant) filed an application for certification for "all employees of CANEX in the operational category employed at the Canadian Forces Base (17th Wing Westwin) Winnipeg, Manitoba, save and except Managers".

The Board takes notice that on May 14, 1981, this Board certified the applicant as bargaining agent for all employees of the Staff of the Non-Public Funds, Canadian Forces, in the operational category employed at the Canadian Forces Base, Shilo, Manitoba (Board file 146-18-187). The Board finds that the applicant is an "employee organization" as defined in section 2 of the Public Service Staff Relations Act. Furthermore, the Board finds that Mr. Colin Trigwell, union representative, has been duly authorized to make this application.

The terminal date fixed by the Secretary of the Board pursuant to the P.S.S.R.B Regulations and Rules of Procedure was April 11, 1996. Moreover, an appropriate number of the "Notice to Employees of Application for Certification" (Form 4) were duly posted in conspicuous places where they were most likely to come to the attention of all employees who may be affected by this application.

On April 12, 1996, the employer replied to the application for certification and indicated that the proposed bargaining unit should include "all employees operational and administrative support employed at 17 Wing Winnipeg, Westwin Manitoba". In this regard, the employer identified 40 persons. However, according to the applicant, the bargaining unit it proposes would include some 30 persons.

Furthermore, the parties agreed that all persons occupying a "Manager" position should be excluded from the bargaining unit as these "Manager" positions fall under the definition of "managerial or confidential position" contained in the Public Service Staff Relations Act. The parties identified Ross Forbes, Club Manager; Frank Gallagher, Bowling Manager; and Betty Sanborn, the Combination Store Supervisor, as occupying managerial and confidential positions.

Pursuant to the P.S.S.R.B. Regulations and Rules of Procedure, the notice stated, among other things, that any employee or group of employees affected by the application and intending to make representations in opposition to the application was required to file in writing, with the Board, a concise statement of opposition

signed by the employee or each member of a group of employees. Twelve such statements signed by 42 persons were received by the Board.

Lt. Navy Kevin Power is the Base Personnel Services Officer at the Canadian Forces Base, Winnipeg. He identified the Staff of Non-Public Funds entities. There are six messes, a Golf Club, Curling Club, CANEX, a number of recreation clubs, community councils and a library. Lt. Navy Power is responsible for all staff of Non-Public Funds entities. He makes sure that they run efficiently and within the guidelines. He is also the Staff of Non-Public Funds Personnel Officer and all employees paid out of the "Base Fund" fall under his jurisdiction. The Staff of Non-Public Funds has a "Personnel Policy and Procedures for Non-Public Fund Employees" (Exhibit 1). The purpose of this document is to set forth the employer's personnel policies and procedures applicable to all Non-Public Funds (NPF) employees. It covers collective bargaining, employee status, hiring, terms and conditions of employment (wages, hours of work, meal and coffee breaks, shifts, call back and call in, overtime pay, acting pay, vacation, designated holidays, sick leave, maternity and parental leave, leave without pay, bereavement leave, Court leave with pay, jury duty, work performance reviews and CANEX performance appraisals, etc.), Group Benefit Program, Employee-Management Relations Committees, discipline, termination of employment, grievances, conflict of interest, occupational health and safety, employee assistance program, harassment, etc. The guidelines or policy apply to all employees of the employer employed at 17th Wing, Westwin, Winnipeg.

CANEX is managed by a civilian manager who is solely responsible for CANEX. CANEX is comprised of the Club 90 Bar, two cafeterias and a retail store. Moreover, each of the other entities, such as the six messes, has a manager who is a member of the Canadian Forces. There is a CANEX operation in each of the Canadian Forces Bases and they are administered by a CANEX Regional Manager. The one in Shilo and in Winnipeg fall under the Regional Manager for the Prairie Region. There are five CANEX Regional Managers (West, East, Prairie, Ontario and Quebec).

Moreover, the whole operation is overseen from Ottawa. CANEX is a national entity and each Canadian Forces Base has one. The money is generated in each Base of which part is used on the Base and part of the fund goes back to Ottawa.

The CANEX operation is independent from the other Non-Public Funds entities. There are no transfers of employees between CANEX and the other entities. There is also a different reporting relationship. Throughout the policy (Exhibit 1), there are clear differences made between CANEX and the other entities (units). These differences were created by the employer. Each entity operates its own business. Moreover, even though there are identical positions at 17th Wing, Westwin, Winnipeg, such as, for example, dishwashers, full supervisors or bartenders at CANEX and the messes, they are not paid the same wages. CANEX employees are paid less. This is because, even though the minimum hourly rate is the same, the employer has instituted an "incentive" program. Incentives are increments and are not granted automatically. Incentives are based on performance and it is up to the supervisor to decide whether or not to recommend that an employee be considered for an incentive. As a result, CANEX employees make considerably less than employees of the other Non-Public Funds entities.

The evidence disclosed that all Non-Public Funds entities give a portion of their funds to the Base Fund. All the wages are paid out of the same pot of money. However, this is solely for bookkeeping purposes. Each entity owns a share of the total Base Fund.

In general, CANEX is administered by a President. In addition, CANEX has a Chairman of the Board and a Board of Directors (Exhibit 1, Section 3, pages 5, 6 and 7 of 9). The policy (Exhibit 1) distinguishes between CANEX Category II employees and other Non-Public Funds Manager positions.

In addition, Section 4, page 4/13, of the policy provides that:

The hiring of CANEX Category II employees shall be controlled by CANEX HQ. The engagement and appointment of Category III employees shall be under the direct control of the Managing Director of the Canadian Forces Central Fund or in the case of CANEX employees the Chairman of the CANEX Board of Directors.

Section 5 of Exhibit 1 provides that each unit (entity) should establish a Wage Review Board to determine wage scales for all Non-Public Funds employees at that unit. The Board should be composed of members of the Base Fund Committee and Management representatives of CANEX. This section 5 states that:

MULTIPLE NPF EMPLOYMENT

86. *Multiple employment is when an employee works for more than one NPF operation (including CANEX) at the same base.*

87. *Multiple employment between operations should not normally be authorized and its use is to be discouraged except on rare occasions such as special events, sale, etc. Such employment shall not be ongoing.*

The reason for this policy is that in a case where an employee works overtime by first working for CANEX and then the remaining hours are done at one of the messes, a serious problem arises as to which is responsible for the overtime pay. The overtime has to be charged to CANEX or one of the entities' profits. They each run their affairs separately. They are two separate businesses for all intent and purposes. The common pot cannot be used to cover each other's salaries. Each entity has its own budget. However, within CANEX, employees can work multiple jobs and the same applies in other Non-Public Fund entities where employees can work within their own entity.

Section 6 provides for Employee-Management Relations Committees. It stipulates that the committees shall be composed of representatives of employees and management. The management members are:

- (1) *Base Commander or his delegate;*
- (2) *CANEX Regional Manager or CANEX Services Manager;*
- (3) *NPF Personnel Manager or the individual with the responsibilities of this position (should not be the Secretary); and*
- (4) *management representatives of the major NPF organizations.*

The parties agreed that the evidence described in paragraphs 18 to 29 inclusive of the Retail Clerks Union, Local 1973, of the United Food and Commercial Workers International Union, AFL-CIO, CLC and Staff of the Non-Public Funds, Canadian Forces (Cornwallis - Operational Category) decision (Board file 146-18-176) be incorporated into this decision with such alterations as the parties identified and submitted as Exhibit 6. The changes are found in square brackets.

18. *Non-Public Funds (hereinafter referred to as NPF) is not an entity or organization with the capacity to perform functions or undertake responsibilities. Rather, NPF merely indicates the primary source of resources for an activity. The employees of the Employer are not solely employed by CANEX. Indeed, CANEX only employs a portion of them. The largest employer of NPF personnel are messes and physical education and recreation centres. All of the foregoing, including CANEX, fall under what are called "personnel support programs"; that is, activities of the Department (hereinafter referred to as DND) which are designed to contribute to the morale and efficiency of Canadian Forces personnel.*

19. *All of the personnel support programs are designed to provide a reasonable level of goods, services and recreational facilities to Canadian Forces personnel in their areas of service. According to a Treasury Board Directive No. 689194 - "where those levels are inadequate, the Department's responsibility as an employer to ensure their availability where practical and desirable may be discharged through a system of non-public fund organizations". All of the programs involve both public and non-public responsibility and are supported in varying degrees from both public and non-public resources. The non-public resources include funds generated by CANEX, revenue from admission to recreation facilities or events and the rental of NPF-constructed recreation facilities. However, such functions as military physical fitness programs and the provision of food services for living-in personnel are supported almost entirely by public funds and resources. Similarly the provision of basic goods, services, recreation facilities and other amenities at isolated operational locations are provided primarily from public resources. Conversely, at urban locations, goods, services and recreational facilities are usually supported almost entirely from non-public resources with public support in such cases limited to the use of land or surplus facilities at no cost.*

20. *All NPF organizations and activities are operated under authority derived from section 38 of the National Defence Act. Subsection 38(10) of the National Defence Act exempts non-public property from the provisions of the Financial Administration Act. This means that NPF organizations are not subject to general government financial controls and do not have to purchase goods through the Department of Supply and Services.*

21. *The Chief of Defence Staff is responsible for the administration and control of NPF property and associated NPF activities. He exercises this authority subject to any*

direction given to him by the Minister. A Canadian Forces Non-Public Fund Board of Directors was established to set policy for Canadian Forces NPF activities. The Board acts, as well, as an agency through which the Chief of Defence Staff exercises his authority and responsibility to provide amenities and facilities for the welfare of Canadian Forces personnel. The Board of Directors is composed of the Chief of Defence Staff as Chairman, the Vice Chief of the Defence Staff as Co-Chairman, and six Commanders and two Assistant Deputy Ministers. The Director General Personnel Services is not a member of the Board but attends all meetings to provide specialist advice. He is the managing director for all NPF activities and, in turn, is advised by the CANEX Advisory Committee and the Central Fund Advisory Committee. He is also the administrator of non-public funds for the Canadian Forces. He is assisted in these tasks by the [President] of CANEX, the Director of Physical Education, Recreation and Amenities, and the Director of Non-Public Funds Services, [and Director Non-Public Funds Personnel].

22. The [President] of CANEX, [...], is responsible for administering the operations of the Canadian Forces Exchange System, for establishing resale objectives and guidelines, and evaluating resale performance. The Director of Physical Education, Recreation and Amenities is responsible for the development and implementation of policies concerning physical education and recreation. The Director of Non-Public Fund Services is responsible for advising on non-public fund financial operations and fiscal programs within the Department. He is responsible for recommending non-public fund accounting and financial procedures and systems, administering non-public funds for the Canadian Forces Central Fund and the Exchange System Central Operating Fund. The purpose of the Canadian Forces Central Fund is to provide financial assistance to bases in establishing and improving messes, merchandising, recreational and social facilities for the morale and well-being of the officers and men of the Canadian Forces and their dependents.

23. The basic objective of the Canadian Forces Exchange System is to provide to all approved users a system of merchandising service comparable to that available in any sizable community in Canada and to provide the funds required for recreational and other community facilities conducive to the welfare of Canadian Forces personnel from the profits of this merchandising service. As a result of new policies and procedures implemented in 1967 governing the administration of non-public fund property and related activities, CANEX now functions under central policy direction and technical control with decentralized operations. The

central authority is the Director General Personnel Services who acts on behalf of the Chief of the Defence Staff. Operations at base level are under the control of the [CANEX Manager, through the Regional Manager]. Control of a unit's non-public property is vested in the [CANEX Manager] for the benefit of the officers and men or for any other purpose approved by the Chief of the Defence Staff in the manner and to the extent authorized by him. Commanders of commands, however, are responsible for the formulation of CANEX policies as members of the Canadian Forces NPF Board of Directors and for implementation of CANEX policies within their respective commands. The Commander of a command evaluates the NPF programs to determine if these are suitable and meet the needs of Canadian Forces personnel within the command, controls base fund capital expenditures as well as operating budgets, including those for base exchanges, and monitors policy implementation and operating results within his command. [President of CANEX is] responsible for the implementation of CANEX policies throughout their base exchanges. They develop and conduct NPF programs within approved policy and, through budgetary control over base funds, messes, and base exchange activities, they ensure that their respective NPF programs remain financially viable. [...] There are unprofitable NPF activities at some bases but they are maintained because their primary purpose is to provide a service rather than to make a profit. Such operations are subsidized by more profitable operations elsewhere.

24. The [President] of CANEX is responsible to the Director General Personnel Services for the development of CANEX policies, for the financial control of CANEX operations, for the development of resale objectives and guidelines, for the provision of specialized retailing advice and technical direction to operating managers and for the direction of the National Defence Headquarters CANEX. The CANEX military and civilian NPF staff officers at Headquarters are responsible for all aspects of CANEX operations. [The Director Non-Public Funds Personnel is responsible for] the development of personnel policies and procedures applicable to all NPF personnel. There are, as well, five CANEX regions organized in such a way as to meet regional merchandising and marketing trends. They are the Atlantic, Quebec, Ontario, Prairie and Pacific Regions. On each base there is a [CANEX Manager] who co-ordinates all base exchange resale activities and acts as the base commander's principal staff officer on all CANEX matters. An outlet manager is responsible to the [CANEX Manager] for the operational control of the outlet.

25. [...] Retail outlets on bases are required to stock a variety of goods. Headquarters decides what items are available for sale and publishes a list of such items, the source of supply and the recommended selling price. This list, however, is not all inclusive and the prices are only suggested ones. The stores are only available to members of the Armed Forces and their dependents. Prices are fixed on each base so as to be competitive with outside commercial retail outlets selling the same product. [...]

26. The amenity programs are designed to alleviate conditions of life faced by Canadian Servicemen at isolated locations and may include the provision of films, radio and video tape programming, etc. In general, the cost of making arrangements for provision of amenities is a public responsibility. However, local costs for showing films and production of entertainment are borne from NPF funds.

27. The Director General Personnel Services, under the broad policy direction of the Board of Directors, is responsible for personnel within the NPF system. Because of the diversification of types of employment and the number of different field locations in the Non-Public Fund System, salaries and hours of work of outlet operation are flexible to be competitive locally and meet the requirements of individual units. Central policy defines categories and classification of employees, develops and administers benefit programs, controls staffing for management and executive categories of employees and assists field units as required in the administration of personnel policies. There are four classifications of NPF employees. They are permanent employees, probationary employees, part-time employees and temporary employees. Employees are ranked in four categories. They include the executive and managerial categories which are under the central control of the Director General Personnel Services. The other two categories, i.e., [category IA and category IB] are under base control.

[...]

29. The NPF employee benefit program is a two-level system. [...] Regulations concerning general holidays, overtime, annual vacation, minimum wage, maternity leave, etc., ensure a basic minimum level of benefit entitlement to all employees. There is an additional benefit package only applicable to [full-time] employees. This includes pension plan, group life insurance, health supplement, income protection insurance and sick leave. The wage policy within the NPF system is to ensure that employees receive at least the federal minimum wage. Pay rates above the minimum wage are the responsibility of the bases depending on the

viability of their operations and local pay ranges. [...] There is a three-level grievance procedure available to all NPF employees. [...]

(Exhibit 6)

Mr. Ron Fotti has been a union representative with the applicant since June, 1977. His principal function is that of a negotiator. Mr. Fotti is very familiar with labour relations concerning the bargaining unit for which the applicant is certified at Canadian Forces Base (C.F.B.), Shilo. Mr. Fotti testified with respect to the last three collective agreements concerning that bargaining unit.

The collective agreement signed on January 25, 1990 provided in paragraph 13.01(c) that:

(c) The Bargaining Unit shall be divided into the following operations called outlets:

*CANEX Cleaning Services
CANEX Department Store
CANEX Grocery Store
CANEX Expressmart
CANEX Service Station
CANEX Food Services - Plainsman Restaurant
CANEX Warehouse
Shilo Golf and Country Club
NPF Recreation/Theatre/Pool
RCA Museum Kit Shop
Officers' Mess
WO and Sgts' Mess
Junior Ranks' Club*

(Exhibit 7)

This bargaining unit comprises all non-managerial employees of the Staff of Non-Public Funds in the operational category employed at the Canadian Forces Base (C.F.B.), Shilo.

It makes no distinction between CANEX employees and those employed at other outlets. They all fall in the same bargaining unit. However, the following year, the employer proposed an amendment to the language of clause 13.01. The employer requested that a distinction be created in the bargaining unit between CANEX and Base Fund employees. As a result, the collective agreement signed on September 1, 1992 provided that:

13.01 (c) *The Bargaining Unit shall be divided into the following operations:*

- (i) CANEX
- (ii) BASE FUND

(d) *CANEX and BASE FUND operations shall be divided into outlets as follows:*

CANEX

BASE FUND

Cleaning Services

Shilo Golf and Country Club

Retail Store

NPF Recreation/Theatre/Pool

Supermarket

RCA Museum Kit Shop

Expressmart

Officer's Mess

Service Station

WO and Sgts' Mess

Food Services -

Junior Ranks' Club

Plainsman Restaurant

Warehouse

Retail Postal Outlet

(Exhibit 8)

Hence, this collective agreement covering the period September 8, 1992 to November 30, 1993 (Exhibit 8), makes a clear distinction between these two operations: CANEX and the Base Fund. The same provisions are found in the current collective agreement signed on December 19, 1994 and covering the period November 30, 1993 to November 30, 1995 (Exhibit 9).

In addition, these two last collective agreements (Exhibits 8 and 9) stipulate that:

13.05 Vacancies within the bargaining unit created by the departure of an employee, reclassification of a position or the creation of a new position will be posted for five (5) working days on the notice boards and interested employees will apply in writing to the responsible officer named in the poster. Employees within the operation concerned shall be given first opportunity to fill such vacancies provided they have the experience, ability, skill and fitness to do the job required. Applicants from the bargaining unit as a whole shall then be considered, provided they have the experience, ability, skill and fitness to do the job required. Where there is more than one (1) employee in the bargaining unit with equal qualifications to fill the vacancy, the more senior employee will be given preference.

Therefore, the parties recognize that priority and first consideration shall be given to employees of CANEX for CANEX vacancies provided they have the qualifications to do the job required.

Mr. Fotti explained that, at the negotiating table, the employer has representatives from CANEX Western Region and the Manager of Base Fund in addition to Mr. Jerry Green, Manager of Employee Relations. At C.F.B. Shilo, the employees do not transfer to or from CANEX to the Base Fund. CANEX and the Base Fund are administered by separate management groups.

Mr. Fotti testified that there were no difficulties and problems encountered in negotiating the collective agreements covering all employees of the Staff of Non-Public Funds at C.F.B. Shilo.

Arguments

Mr. David Lewis, counsel for the applicant, argued that we must consider the facts of this particular case. No violence would result to the process where the Board decides to certify a bargaining unit comprised solely of CANEX employees.

There is a real distinction between CANEX and the Base Fund operations and a significant distinction in the organization of these two. The employer recognizes the distinction because it has sought and bargained to make distinctions in the terms and conditions of employment between CANEX and Base Fund employees at C.F.B. Shilo. CANEX does have more operational autonomy than the Base Fund at C.F.B. Shilo. Moreover, each has a different manager.

In the case of 17th Wing, Westwin, Winnipeg, there are even distinctions in the rates of pay between these two groups of employees (Exhibit E-2). The wage increases are at the discretion of the supervisor. The wages of CANEX employees are considerably lower than those of the Base Fund (Exhibits 2 and 4). Moreover, employees do not transfer from one to the other and they cannot work both at once. This is the same distinction that the employer sought and obtained at C.F.B. Shilo.

Mr. Lewis distinguished the Cornwallis decision (supra) where the employer sought a nation wide bargaining unit and the union wanted it confined to the Base. Mr. Lewis referred to the decision in United Steel Workers of America v. USARCO

Limited v. Group of Employees, (1967) O.L.R.B. Rep. 526. The bargaining unit as described by the applicant can stand alone.

Mr. Green argued that a single unit is appropriate. The employer has a single plan with respect to the pay hierarchy. Even though there is no formal classification plan, there is a community of interest. In addition, there is a policy (Exhibit 1) that applies to all employees. This policy centralizes the managerial authority and CANEX is part of a cooperative to serve its customers. Moreover, the Cornwallis decision (supra) illustrates the history of certification and negotiations concerning the Staff of Non-Public Funds employees. There is no evidence that one single bargaining unit as described by the employer cannot satisfactorily represent all of the employees. In this regard, Mr. Green referred to the decision of the Board in Public Service Alliance of Canada, Professional Institute of the Public Service of Canada, Association of National Energy Board Employees and National Energy Board (Board files 142-26-297 to 301); Council of Graphic Arts Unions of the Public Service of Canada, Association of Public Service Financial Administrators, Public Service Alliance of Canada, Professional Institute of the Public Service of Canada and Canada Communication Group (Board files 142-28-302 to 310 and 161-28-702 and 705); The Public Service Alliance of Canada, The Professional Institute of the Public Service of Canada and National Capital Commission (Board files 142-29-312 and 313); and Le Syndicat des travailleuses et travailleurs des FNP de la Base Valcartier - CSN and Staff of the Non-Public Funds, Canadian Forces and Public Service Alliance of Canada (Board file 142-18-314).

Determination

The applicant has proposed a bargaining unit comprised of all employees of CANEX, whereas the employer has proposed a single bargaining unit comprised of all employees of the Staff of Non-Public Funds, 17th Wing, Westwin, Winnipeg.

Section 33 of the Public Service Staff Relations Act provides:

33. (1) Where an employee organization has made application to the Board for certification as described in section 28, the Board shall determine the relevant group of employees that constitutes a unit appropriate for collective bargaining.

(2) In determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board shall have regard to the plan of classification, including occupational groups or subgroups, established by the employer for positions in the Public Service and shall establish bargaining units coextensive with the classes, groups or subgroups established by the plan, unless any such bargaining unit would not permit satisfactory representation of the employees to be included in it and, for that reason, would not constitute a unit appropriate for collective bargaining.

There is extensive jurisprudence concerning the appropriateness of a bargaining unit which establishes that the obligation imposed on the Board under section 33 of the Act is to determine "a unit appropriate for collective bargaining". It is not necessary that the Board determine the most appropriate unit. An employee organization may be certified for any appropriate unit. The Board has the authority under this section to describe the bargaining unit taking into consideration the labour relations realities of the particular case. The key element in determining appropriateness is that the bargaining agent be able to conduct a viable and meaningful labour relationship with the employer in relation to the employees in the bargaining unit.

In this regard, I refer to the comments of Mr. Justice Adams in Canadian Labour Law, Second Edition, where he states at page 7-8:

(ii) "An" Appropriate Unit vs. "The" Appropriate Unit

The overwhelming majority view in Canada is that a labour relations board may certify an appropriate unit which need not be the most appropriate unit. This view has been endorsed by the Supreme Court of Canada dealing with then s. 126 [now s. 28] of the Canada Labour Code and holding that "the statute makes clear that what is an appropriate bargaining unit is for the board to determine". It should be further noted that this result is clarified in many provinces by the use of the indefinite article "a" rather than the definite article "the", thus avoiding some of the confusion existing in other jurisdictions.

In the decision of United Steel Workers of America v. USARCO Limited v. Group of Employees (supra), the Ontario Labour Relations Board found four principal factors which a labour relations board should take into consideration in determining the appropriateness of bargaining units. These four factors are:

- 1) Community of interest; this factor may be determined by considering the following criteria: nature of the work performed, conditions of employment, skills of employees, administration, geographic circumstances and functional coherence and interdependence;
- 2) Centralization of managerial authority;
- 3) Economic factors; and
- 4) Source of work.

Since the rendering of that decision in 1967, there have been further developments in the jurisprudence expanding the criteria to be considered. The Canada Labour Relations Board in the Canadian Museum of Civilization and the Public Service Alliance of Canada, Professional Institute of the Public Service of Canada and other unions (dated April 30, 1992; Board File 590-7) added a further criterion, namely, the history of certifications and negotiations.

In the instant case, I must also consider the history and the development of the labour relations realities as indicated in the decision of the Board on the application for certification in the C.F.B. Cornwallis (supra) and C.F.B. Shilo (Board file 146-18-187) cases.

In the C.F.B. Cornwallis and C.F.B. Shilo cases, the Board decided that the application for certification should cover all employees of the employer (Staff of Non-Public Funds) at those two bases. In the Cornwallis decision, the Board found " ...no reason to separate the employees of the Employer engaged in the CANEX operation at Cornwallis from those other employees of the Employer engaged in the remaining personnel support programs on the base" (paragraph 60 at page 37). The Board decided in that case that the employees of CANEX, by themselves, did not constitute an appropriate unit for collective bargaining. In the case of C.F.B. Shilo, the applicant was certified for all the employees of the employer in the operational category.

It is worthy of note that it is the practice of this Board to avoid the proliferation, multiplicity and fragmentation of bargaining units, [Healing, Power and Stationary Plant Operation Case No. 2 (1970) P.S.S.R.B. Reports K 607 (Board files 146-2-138 and 140 to 142)]. However, the evidence in the instant case has demonstrated that even the employer recognizes a split in the bargaining unit in light of the negotiating history at C.F.B. Shilo.

The employer has proposed a larger unit on the basis of the Cornwallis (supra) decision. However, the evidence is to the effect that the situation as described in the Cornwallis decision has evolved and changed. The employer did not argue that the unit proposed by the applicant was inappropriate and no evidence was adduced to that effect. However, the employer did argue that its proposed unit is more appropriate based on the Cornwallis decision. I do not need to find the most appropriate unit. All I have to determine is whether the unit proposed by the applicant is an appropriate unit. In the circumstances of this case, I am satisfied that the unit proposed by the applicant constitutes an appropriate unit for collective bargaining. However, I also note that the Public Service Staff Relations Act was amended in 1993 and the categories have been eliminated. Thus, the bargaining unit is defined as all employees of CANEX employed at C.F.B. 17th Wing, Westwin, Winnipeg, Manitoba.

Based on the list of employees filed by the employer (Exhibit 4), there are 14 employees (CANEX) in the above described unit. I have excluded Ms. Betty Sanborn and all casual employees on the list provided by the employer (Exhibit 4). Section 2 of the Public Service Staff Relations Act provides that "'employee' means a person employed in the Public Service other than ... (g) a person employed on a casual basis". Hence, persons employed on a casual basis are not included in the unit.

None of the employees who signed statements in opposition to the application, have signed application for membership cards and they are not employees of CANEX. Based on the list of 14 employees of CANEX in the unit, the applicant submitted 11 signed application for membership cards. (I have subtracted all membership cards signed by casual employees.) Thus, the applicant has unqualified evidence of membership for over 78% of the employees in the bargaining unit as of the date of the application.

In the circumstances, the Board is satisfied that a majority of the employees in the bargaining unit wish the applicant to represent them as their bargaining agent.

For these reasons, the Board hereby certifies the applicant and a certificate will issue.

**Muriel Korngold Wexler,
Deputy Chairperson**

OTTAWA, July 25, 1996.