

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

and

COL. W.R.C. LITTLE, VICE ADMIRAL D.E. MURRAY

Respondent

RE: Complaint under section 23 of the
Public Service Staff Relations Act

Before: P. Chodos, Deputy Chairperson

For the Complainant: Alain Piché, Public Service Alliance of Canada

For the Respondents: Ronald Snyder, Counsel

Heard at Edmonton, Alberta.,
September 25 to 27, 1996.

DECISION

The Public Service Alliance of Canada (hereinafter referred to as the PSAC) has filed a complaint under section 23 of the Act alleging that the respondents have breached the prohibitions set out in section 8, specifically subsection 8(1) and subparagraph 8(2)(c)(i). These provisions read as follows:

(8). (1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.

(2) Subject to subsection (3), no person shall

(a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;

(b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or

ii) to refrain from exercising any other right under this Act.

(3) No person shall be deemed to have contravened subsection (2) by reason of any act or thing done or omitted in relation to a person who occupies, or is proposed to occupy, a managerial or confidential position.

This complaint arose in the context of an organizing campaign on the part of the PSAC which is seeking to represent Non-Public Funds employees employed at Canadian Forces Base (CFB) Cold Lake. This organizing drive began in earnest in early

1996; however, some of the facts which are relevant to the complaint originated approximately two years before. From 1991 until the spring of 1994 cleaning services at the Base were provided by a private sector company known as Bee Kleen Contractors. In the fall of 1993, Major Marion, the Base Personnel Services Officer since August 1990, initiated a plan which would involve replacing the contractor with cleaners employed by the Non-Public Funds (NPF) operation at Cold Lake. It was determined that the NPF cleaners could provide cleaning services to the Base at a much cheaper cost (that is, for \$700,000. per year less) than the private sector contractor. It should be noted that prior to 1991 cleaning duties at the Base were performed by department employees. With the gradual downsizing of departmental staff through attrition, it became necessary to bring in an outside contractor to perform the work.

Major Marion consulted with a number of persons at the Base, including Mr. Al Groome who was responsible for Personnel Administration at the Non-Public Funds operation at Cold Lake. At that time a handful of persons were employed by NPF to perform cleaning services at NPF facilities. As a result of this decision approximately 35 cleaners were hired by Non-Public Funds as of April, 1994. On April 4th of that year an orientation session was organized by Major Marion and Mr. Groome for the new NPF cleaners. According to Major Marion and Mr. Groome the purpose of the orientation session was to welcome the new staff, to brief them on their terms and conditions of employment, and to explain to them their responsibilities and their reporting relationships. According to one cleaning staff employee, Ms. Corrine Swan, Major Marion stated at this meeting that 4 Wing (i.e. Cold Lake) was the only Non-Public Funds facility which was not unionized, that management did not want to have a union, and if there was talk of a union the cleaners would lose their jobs. It was Ms. Swan's view that she would only have a job as a permanent employee as long as the staff did not become unionized.

Major Marion had a quite different recollection of this meeting. He acknowledged that he had mentioned that Cold Lake was one of the only NPF operations that had not been unionized and that he viewed that as an indication that they were a good employer who cared about their staff. Major Marion denied that he made any reference to the cleaning staff losing their jobs if they were to become unionized. He testified that he is well aware of the prohibitions against interfering

with employees' wishes concerning unionization; he made no threats concerning the consequences of unionization, and realizes that had he done so he would "get into deep trouble". Mr. Groome testified that he was present throughout the orientation meeting in April; he stated that Major Marion made no reference to unions or unionization in the course of that meeting. He testified as well that he had worked closely with Major Marion since his arrival at the Base in 1990, and until he left in 1996 (Major Marion was absent from the Base for a period of one year in 1994). Mr. Groome noted that during this time he had never heard Major Marion express any views concerning unions or unionization.

Ms. Marlene Conway was a Public Service employee at CFB Cold Lake until her retirement in January, 1996. Ms. Conway was active in the PSAC and held several union offices including as the President of the Local for 14 years. Ms. Conway had been employed in the Food Services area. Prior to 1993 Food Services was under the responsibility of Major Marion; in the fall of 1993 Food Services came under the direction of Captain Gord Wetzel, and Major Marion no longer had responsibility for this area. Ms. Conway recalled a labour-management committee meeting in January 1994 with Major Marion; subsequent to the meeting Major Marion asked to meet with her; she met with him in the presence of Mr. Ruben Whitford, a Local Vice-President of the Union. According to Ms. Conway, Major Marion advised them that he would be terminating the Bee Kleen contract and that NPF would be taking over the cleaning responsibilities for the Base. He stated that, as the cleaners were the first persons at NPF in this classification who would be working full time, he thought it would be likely that they would be targeted for organization by the PSAC. Ms. Conway recalled Major Marion telling her: "Don't bother organizing them, Marlene, or I'll let them go". Ms. Conway stated that she was disturbed and infuriated by Major Marion's remarks; while she reported his comments at a union Local meeting, she took no further action. Ms. Conway said that she was intimidated by Major Marion both because he was her superior and because of his overbearing manner; as an example of the latter she noted that he often referred to her as "girl".

Major Marion again had a different recollection of these events. He recalls having a consultation meeting with Ms. Conway to advise her of the impending change concerning the cancellation of the contract with Bee Kleen; he explained to her at that time that the PSAC would not lose any positions; he denied making any

comments concerning the possibility of the NPF cleaners being organized. He testified that the meeting was a brief information session, that Ms. Conway's reaction was very positive and she indicated she was pleased that she had been consulted. He stated as well that he had met with Ms. Conway many times and had never expressed any opinion about the PSAC or unionization to her.

In September, 1994 a series of events occurred at National Defence Headquarters which ultimately had an impact on the PSAC organizing drive at Cold Lake. The Director of NPF Personnel, LCol Brabant, sought a legal opinion as to *"a. whether or not the awarding of DND contracts by individual base/station commanders to NPF would place NPF or DND in a position of conflict of interest, and b. if the hiring of NPF personnel to compete for service contracts in support of DND activities is appropriate and legal "* (Exhibit 13). In response Major D. Fullerton of the Office of the Judge Advocate General prepared a memorandum (Exhibit 12) in which he concluded that TB Directive 689194 which establishes guidelines respecting the operations of Non-Public Funds organizations, as well as chapter three of a supplementary document governing the operation of Personnel Support Programs of the Canadian Forces (Exhibit 15) *"... do not appear to have contemplated Non-Public Funds bidding on public contracts as a means of cost reduction."* (underlined words added). In effect Major Fullerton concluded that having NPF employees perform job functions on behalf of the Canadian Forces is outside the mandate of the NPF as set out in the above-noted documents. Major Fullerton testified that when he submitted this opinion he had no knowledge of any union activity.

Col Gerald Mark, formerly Special Assistant to the Vice-Chief of Defence Staff, testified that Base Commanders had been directed to find cheaper means of fulfilling their responsibilities; while the employment of NPF staff at CFB Cold Lake was consistent with this objective, the Treasury Board Directive was considered an impediment. From September, 1994 until January, 1996 this problem was put aside in the hope that there would be negotiations with Treasury Board which would resolve this problem. According to Col Mark, by January, 1996 he became aware that this issue had been raised by Mr. Paul Millette the President of the Union of National Defence Employees (UNDE, a component of the PSAC); in addition, he was advised that Canadian Forces Base Trenton was planning to introduce a similar activity involving NPF. He was further advised that when Mr. Millette had raised this issue at a Labour

Management Relations Committee (LMRC) meeting in December, 1995, General Boyle, then Assistant Deputy Minister/Personnel, responded that this was beyond the NPF mandate and the Canadian Forces would not allow Non-Public Funds employees to perform work that could be performed by DND employees. Col Mark stated that this matter did not have a high priority and accordingly it was not until April, 1996 that he prepared a message for Admiral Murray the then Vice-Chief of Defence Staff, prohibiting Base Commanders from seeking bids from local NPF entities (Exhibit 2). Col Mark stated that neither he nor Admiral Murray had any knowledge of the organizing drive that was ongoing in Cold Lake at the time. Mr. Mark also stated that the policy respecting NPF contracts would have to apply across the military.

Mr. Terry Murphy is currently the National Vice-President of UNDE and is responsible for all NPF employees across Canada. In that capacity he participated in a number of discussions within the PSAC concerning the role of NPF employees vis-à-vis Canadian Forces operations; in addition, he attended the LMRC meeting on December 5, 1995 which was co-chaired by Mr. Millette and General Boyle, the minutes of which were issued on January 12, 1996 (Exhibit 1). Mr. Murphy explained that the PSAC had ongoing concerns about the possibility of NPF employees replacing public servants; this concern was in the context of the government's alternative service delivery program as a result of which the PSAC lost a large number of members. There had been no discussion at all about Cold Lake Non-Public Funds employees; the PSAC had no concern about loss of jobs to these employees since this work had not been performed by public servants, but rather by a private contractor. Mr. Murphy maintained that there was no discussion at the LMRC meeting of the Cold Lake situation. He noted paragraph 6 of the minutes of the LMRC meeting, which is found under the heading of "Alternate Service Delivery" (ASD) and which states the following:

6. A further question was raised by Mr. Millette with respect to NPF employees being eligible to compete under ASD. LGen Boyle answered that under no circumstance would Non Public Fund (NPF) organizations be in competition for government work.

Mr. Murphy stated that in his view the LMRC meeting was not addressing the Cold Lake situation, since NPF employees were not bidding for Public Service work. In a letter to LGen DeQuetteville dated May 17, 1996 Mr. Millette noted that *"an issue was*

discussed at the last National Labour/Management Committee attended by ADM(Per) and Command representatives concerning the contracting out of Public Service functions to Non-Public Funds personnel. This union did not at that time suggest that any punitive action be undertaken against any Non-Public Funds personnel engaged under that process, rather that in the future such situations be prohibited from developing.” This was followed by another letter from Mr. Millette to LGen DeQuetteville, dated May 23, 1996 in which Mr. Millette stated that: “... we did not request that retroactive or termination of employment action be taken at locations where NPF units had contracted for work formerly performed by private sector contractors.” Mr. Millette also expressed concern in this letter that the PSAC was being improperly blamed for the situation and that such actions might constitute interference in the PSAC’s organization efforts of NPF personnel at Cold Lake. In a letter dated May 31, 1996, L/Gen DeQuetteville replied that “... it would be incorrect and regrettable to assert or leave the impression that the current effort to regularize this contract situation is solely the result of your having raised this issue at the last National Labour Management Relations Committee. ...”. L/Gen DeQuetteville added that the direction of the Vice-Chief of Defence Staff was “necessary to ensure there was no further proliferation of this manner of use of the Non-Public Funds (NPF) organization. ... While I appreciate that such misperceptions could result from the coincidental timing of these independent initiatives, the suggestion or belief that local management has acted to interfere in organizational efforts for NPF personnel is unwarranted.” (Exhibit 5).

In the winter and early spring of 1996 the PSAC was actively engaged in attempting to organize NPF employees. Ms. Joanna Miazga, the Regional Representative of the PSAC for Northern Alberta began meeting with employees from NPF in January, 1996. She also enlisted the services of Ms. Conway who had retired from the Department of National Defence at that time. Ms. Miazga visited Cold Lake approximately a dozen times in the next four months, on which occasions she met with a considerable number of NPF employees from various parts of the NPF operations. Ms. Miazga testified that it was her impression that these employees were very concerned about being seen to be interested in unionization and they appeared to be in fear of losing their jobs. It was decided that the best way to counter these fears was to conduct a very public organizing campaign. It was also concluded that this was the most effective way of reaching these employees. Accordingly union flyers

were distributed through the mail and meetings sponsored by the PSAC were advertised on the local radio.

Several witnesses for the complainant elaborated on the conduct of some of the cleaning supervisors vis-à-vis the PSAC's organizing efforts. Ms. Bernadette Zimmer, who has been an NPF cleaner at Cold Lake since 1994, testified that Liz Evans, one of her supervisors, asked her if anyone had approached her to sign a union card; when she said: "No", Ms. Evans told her that if anyone approached her she should not sign because she could lose her job. On another occasion Ms. Evans brought her attention to a petition that had been posted in opposition to the PSAC. She directed Ms. Zimmer to read it and sign it. The next day, according to Ms. Zimmer, Ms. Evans again pointed out the blue sheet and suggested she sign it because, if she and her colleagues did not, they would probably lose their jobs. Mr. Murphy and Ms. Conway also observed that at a meeting called by the PSAC on May 1st Ms. Evans and another cleaning supervisor, Ms. Knudsen, showed up; they were refused entrance to the meeting hall as they were not employees of NPF. Ms. Evans and Ms. Knudsen were seen sitting beside the window in a coffee shop which gave them an unobstructed view of persons coming into the meeting hall. It was Ms. Conway's impression that the conspicuous presence of the two supervisors had an intimidating effect on the NPF cleaners who attended the meeting. She also noted that an NPF employee who is known to be Mr. Groome's wife was seen taking notes. It was acknowledged that no members of management, including military personnel, were known to have condoned or participated in any of the actions of the supervisors.

On April 30th Mr. Murphy and Ms. Miazga met with the Base Administration Officer, LCol Davis and Mr. Groome to formally advise them of the PSAC's organizing campaign. At this meeting they also raised concerns about supervisors harassing employees who were considering union membership. According to LCol Davis she requested the names of those supervisors; Mr. Murphy and Ms. Miazga were reluctant to provide the specific names (the supervisors in question were members of the PSAC GL&T bargaining unit). LCol Davis accepted their suggestion that a memorandum be issued to staff advising them of the employees' right to choose a union; LCol Davis immediately directed Mr. Groome to issue an appropriate memo directing that there be no interference in the PSAC campaign. LCol Davis also undertook to raise this issue at the regular monthly staff meeting and in fact did so.

On May 16th, following receipt of the message from the Vice-Chief of Defence Staff, Lieutenant Commander Armstrong and LCol Davis called a meeting of the cleaning staff to advise them that they would no longer perform cleaning services on DND property at Cold Lake. LCol Davis stated that this was an order from headquarters and therefore she had no choice but to follow it; she also indicated that this decision arose out of a union-management meeting in January where the PSAC had complained about NPF employees doing departmental work. She further advised that the cleaners would be laid off within four to six months and that the cleaning responsibilities would once again be contracted out to a private sector company. Ms. Swan testified that at the meeting LCom Armstrong was asked whether the termination of employment had anything to do with the PSAC to which the LCom replied: "No". Both LCol Davis and LCom Armstrong stated at the meeting that their termination was no reflection on the quality of their work, and in fact their work was found to be entirely satisfactory. LCol Davis testified that the PSAC drive had nothing to do with the decision to terminate the cleaners; prior to receiving a directive from the Vice-Chief of Defence Staff she had no knowledge of any prohibition concerning the employment of NPF cleaners by the Department. LCol Davis also stated that the supervisors were not considered members of management, that neither she nor her colleagues condoned in any way interference in employees' decision to join a union. She stated as well that it had not occurred to her that the question of termination might have an impact on the PSAC drive. It was the testimony of Ms. Conway and Ms. Miazga that following the May 16th announcement, a number of NPF employees perceived that the PSAC was at least in part responsible for the loss of their jobs and expressed their anger with the PSAC. Ms. Swan testified that several employees indicated that they no longer saw any point in joining the PSAC. According to these witnesses this announcement had a devastating effect on the PSAC's effort to sign up employees.

Argument

The representative for the PSAC submitted that the employer had committed several unfair labour practices by, among other things, firing workers at a critical time during the organizing drive. Mr. Piché maintained that the timing of the directive from DND Headquarters, and the manner in which it was communicated to employees, constituted interference in the PSAC's efforts to organize employees and

the employees' right to freely choose to join a union. Mr. Piché pointed out that, although a decision had been taken in January to prohibit employment of NPF staff by the Department of National Defence, this directive was not sent until the end of April when the organizing drive was in full swing. LCol Davis immediately advised employees of the directive and stated that the PSAC was responsible for the impending lay-offs. LCol Davis knew or ought to have known that these actions would have a significant chilling effect on the organizing drive and that the PSAC was not responsible for this directive. In the circumstances, it was incumbent on local management to raise with their superiors the consequences of this announcement in light of the organizing drive. Mr. Piché also submitted that the employer had an obligation under the Act to create an atmosphere that would allow a free choice; that is, the employer should have been more proactive in ensuring that there would be no violation of the Act and that the PSAC drive could proceed untainted by anti-union animus. Even if the lay-offs were unintended interference it nevertheless still constitutes interference; Mr. Piché noted that the jurisprudence under the Canada Labour Code holds that the presence of other reasons for termination does not remove the taint of interference, and that an anti-union motive need only be a proximate cause in order to constitute a violation of the Act. In this context Mr. Piché cited the Canada Labour Relations Board decisions in Air Atlantic Limited (1986), 68 d.i. 30, American Airlines Incorporated (1981), 43 d.i. 114, and VOCM Radio Newfoundland Limited (1995), 98 d.i. 18.

Mr. Piché also submitted that Major Marion's comments at the orientation meeting in 1994 had a significant negative effect on the minds of employees who were contemplating joining the PSAC, particularly in light of the announced lay-offs. He noted in particular the evidence of Ms. Swan, who was unequivocal in her description of Major Marion's comments; Ms. Swan had a lot to lose by coming forward to testify in this matter and had no reason to misrepresent Major Marion's comments. Furthermore, this evidence is supported by Marlene Conway's testimony concerning her meeting with Major Marion on the same subject. On the other hand, Major Marion's testimony is not entirely consistent with that of Mr. Groome, who stated that Major Marion had made no comments about the PSAC, contrary to Major Marion's own testimony. In addition, there is the uncontradicted evidence respecting the attempts by the employer's supervisors to persuade NPF employees to

sign anti-union petitions and not to join the PSAC under threat of loss of their employment. This is clearly a violation of subparagraph 8(2)(c)(i). The comments of Major Marion and the supervisors clearly constitute a violation of the Act, as noted in the decisions in Canada Warehousing Services (1995), 96 d.i. 143 and Canada Post Corporation (1985), 63 d.i. 136.

By way of remedy Mr. Piché proposed that the Board issue a declaration that the employer had violated the Act, and this be communicated to the employees concerned; the employer should also be directed to rescind the notices of termination and the employees concerned should retain their employment or be offered alternate positions within Non-Public Funds. Finally, the Board should issue a certificate to the PSAC or alternatively order a representation vote. In support of these remedies Mr. Piché cited the Board decision in the National Capital Commission case (Board file: 161-29-742) and the VOCM Radio case (supra).

Counsel for the employer replied that allegations concerning violations of section 8 seriously reflect on the reputation of certain individuals as well as the department; accordingly, the PSAC must demonstrate clear and cogent evidence in support of its claim. Counsel noted that there is very limited jurisprudence on this matter emanating from the Public Service Staff Relations Board; however, the Canada Labour Relations Board has dealt with this issue on a number of occasions; Mr. Snyder submitted that the CLRB decisions are consistent in finding that it is not the Board's role pursuant to a complaint of this nature to review the merits of the employer's decision to terminate employees, but rather whether the employer was motivated by improper considerations. Mr. Snyder argued that under the Canada Labour Code equivalent of subparagraph 8(2)(c), i.e. subparagraph 94(3)(a)(i) it has been held that the employer's intention is a critical factor in determining whether there has been a violation of this provision; that is, it has to be demonstrated that there is an anti-union animus. In the absence of any anti-union animus, the mere fact that the terminations coincide with a union organizing campaign is not sufficient to constitute a finding that there has been a breach of the unfair labour practice provisions. In support of this contention counsel cited Bunge of Canada Ltd. (1994), 94 d.i. 39, Seaforth Fednav Inc. (1983), 54 d.i. 100 and Yellowknife Housing Authority (1987), 72 d.i. 1.

Mr. Snyder maintained that the decision to cease using NPF staff to clean DND Bases had nothing to do with the PSAC's organizing drive; under the circumstances LCol Davis had no choice but to implement the directive and as a consequence announce the lay-off of the cleaners.

With respect to the actions of the supervisors, counsel for the employer submitted that there was no evidence that they acted on behalf of the employer or were in any way directed by the employer. While the specific individuals may have engaged in anti-union acts these cannot be attributed to or found to be on behalf of the employer, as required by section 23.

With respect to the allegations concerning Major Marion, Mr. Snyder argued that there was no corroborating evidence as to his alleged anti-union remarks at the orientation meeting. Mr. Snyder observed that it is of some significance that no complaints were ever made concerning Mr. Marion's conduct at the time that he allegedly made his observations, neither to more senior officers, nor to the Board. Mr. Snyder also maintained that it is unfair, some two and a half years after the alleged comments, to allow the PSAC to raise these concerns. He noted that subsection 97(2) of the Canada Labour Code requires that complaints be made within ninety days. Mr. Snyder maintained that the common law doctrine of laches should apply and consequently these allegations should be given very little weight. In the alternative, his statement did not reflect the views of the employer and should not be attributed to it. In support of this submission Mr. Snyder referred to the CLRB decision in Radio Atlantic case (1993), CLRB Board file: 745-4163. With respect to the proposed remedy counsel noted that no employees have been terminated; he submitted that the Board cannot address this remedy in the absence of action taken by the employer.

In rebuttal the PSAC representative submitted that complaints pursuant to subsection 8(1), which is the equivalent of subsection 94(3) of the Canada Labour Code, do not require the demonstration of anti-union animus. Mr. Piché also argued that it was neither practical nor desirable to launch a grievance against Major Marion; a complaint at the commencement of the PSAC drive would have been counterproductive in terms of building confidence between the employees of NPF and the PSAC.

Reasons for Decision

There are three factual issues that need to be addressed in determining whether the respondents have violated section 8 of the Act: (1) the decision by the employer to terminate the employment of the Non-Public Funds cleaners; (2) the comments allegedly made by Major Marion to the effect that the cleaners' employment would be terminated if they joined a union; (3) the statements from the cleaning supervisors urging the NPF employees not to join the PSAC.

The first issue concerns the communication from the Vice-Chief of Defence Staff to CFB Cold Lake directing that Non-Public Funds employees not be utilized to perform work on behalf of the Department, and the consequent decision by local management at the Base to terminate the employment of the Non-Public Funds cleaners. In my view, the evidence is clear that the employer's actions, both at the headquarters level, and by management at CFB Cold Lake, were not motivated in any way by a desire to thwart the PSAC organizing drive. That is, the actions taken by the employer were not tainted by any anti-union animus, but rather, were initiated as a result of concerns about the proper role of NPF employees vis-à-vis the mandate of the Department of National Defence, and in particular the interpretation and application of Treasury Board Directive 689194. The evidence is uncontradicted that the persons at headquarters who were seized with this issue, that is Major Fullerton, and ultimately the Vice-Chief of Defence Staff, Adm. Murray and his Aide, Col Mark, had no knowledge of the organizing drive at CFB Cold Lake. Furthermore, while the directive to Canadian Forces Base to cease and desist the utilization of Non-Public Funds employees was coincident with the organizing campaign, I am satisfied that it had nothing to do with it; I am also satisfied that the delay in communicating the directive was completely unrelated to the organizing drive. While inevitably the communication of the decision to terminate the employees would likely have a chilling effect on the PSAC's organizing drive, local management at CFB Cold Lake, in the person of Lt Com. Armstrong and Lt Col. Davis had no choice but to act on the directive from headquarters, which in effect required them to terminate the employment relationship with the cleaners.

It was submitted on behalf of the PSAC that local management had damaged the reputation of the PSAC by suggesting UNDE was responsible for the directive from

headquarters; however, there is no evidence to suggest that this comment was other than a *bona fide* observation as to the circumstances surrounding the decision following the LMRC meeting. Indeed, local union officials, including Ms. Miazga, came to a similar conclusion, as evidenced by Exhibit 8. Accordingly, I cannot conclude that the respondents breached section 8 of the Act by deciding to terminate the NPF cleaners and by communicating that decision to them.

The comments alleged to have been made by Major Marion, both at the orientation meeting in April, 1994 and to Marlene Conway in her capacity as Local President are both serious and disturbing. There is no doubt that such comments are entirely inappropriate and, as Major Marion himself acknowledged, may well constitute a violation of the Act. To put it simply, what I have to determine is whether it has been proven that these comments were made by Major Marion, given the contradictory evidence that has been put before me. With respect to the orientation meeting, on the one hand there is the testimony of Corrine Swan to the effect that Major Marion stated that the cleaners would lose their jobs if they became unionized; on the other hand, one must consider Major Marion's unequivocal and categorical denial that he ever made such a statement. Major Marion's testimony is corroborated by Mr. Groome who stated that he was present throughout the meeting in question and he did not hear Major Marion make the remarks that were attributed to him by Ms. Swan. While Mr. Groome did not make any reference to Major Marion's statement at the meeting that NPF at Cold Lake was one of the few NPF operations which was not unionized, I do not believe that difference in their testimonies is sufficient to allow me to ignore or set aside the corroborative nature of Mr. Groome's evidence.

The only witness presented by the complainant in respect of that meeting is Ms. Swan, notwithstanding that there were somewhere between 30 and 40 employees attending that meeting. If in fact Major Marion had made these comments, it is not unreasonable to expect that other witnesses would corroborate the allegations made against Major Marion. I appreciate that it is difficult for employees to come forward in these circumstances; nevertheless this does not alleviate the burden of proof that rests with the PSAC when making serious allegations of this nature.

I would note here the obvious, namely that the burden of proof in respect of allegations under section 8 of the Act rests with the complainant; on the balance of probabilities, I must conclude that the PSAC has not discharged that burden in respect of the allegations concerning Major Marion's statements at the April meeting.

With respect to the alleged comments made to Marlene Conway, I would again observe that Major Marion has unequivocally denied having made these comments. The evidence of Ms. Conway was that she attended the meeting together with a local vice-president, Mr. Whitford. Yet, Mr. Whitford did not testify in these proceedings. Furthermore, these events allegedly occurred in January, 1994 more than two and a half years ago. However, no action was taken at the time by the PSAC or its officers or officials which might serve to corroborate this allegation. In these circumstances, having regard to the burden of proof and the seriousness of the allegations, I conclude that the preponderance of evidence does not support the allegations against Major Marion.

The final matter to be addressed is the conduct of the cleaning supervisors vis-à-vis the NPF employees. There is undisputed evidence that Ms. Liz Evans attempted to actively discourage NPF cleaning staff from joining the PSAC. In general, persons in a supervisory role are expected to refrain from exercising their influence in respect of an employee's decision to join or not to join an employee organization; it is particularly inappropriate and *prima facie* a violation of the Act, when such involvement is accompanied with express or implied threats of dismissal (see for example the Air Atlantic and the VOCM Radio Newfoundland Ltd. decisions (supra)). However, in this instance the individual in question, that is Ms. Evans, was not named as a respondent; nor is Ms. Evans a person "who occupies a managerial or confidential position", the opening words to subsection 8(1). Indeed, the evidence is that Ms. Evans is a member of a bargaining unit represented by the PSAC. It is also clear from the evidence that none of the respondents, or indeed anyone occupying a managerial or confidential position, supported, adopted or condoned the actions of Ms. Evans. LCol Davis, upon being advised about such actions, immediately took steps to put a halt to them. Indeed, LCol Davis sought information from the PSAC representatives as to the identity of these persons in order to deal with them directly about such inappropriate behaviour; however, the representatives chose not to identify these persons, perhaps because they were in fact PSAC members. In light of

these circumstances it would be unfair and unreasonable to place the sins of a unionized supervisor upon the heads of local management who, it would appear, made every reasonable effort to ensure that no one, including the cleaning supervisors, would interfere in the decision of employees to join the PSAC.

Accordingly for all the reasons noted above, this complaint is dismissed.

**P. Chodos,
Deputy Chairperson.**

OTTAWA, October 18, 1996.