

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

DONNA WILLAN

Complainant

and

**JAN POTTS, STEVEN RANKIN
AND TREASURY BOARD**

Respondents

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

Before: Rosemary Vondette Simpson, Board Member

For the Complainant: Barry Done, Public Service Alliance of Canada

For the Respondents: Judith K. Begley, Counsel

Heard at Windsor, Ontario,
April 30, 1997.

DECISION

The complainant, Donna Willan, a CR-5, Service Delivery Agent, with the Department of Human Resources Development Canada, filed a complaint under section 23 of the *Public Service Staff Relations Act (PSSRA)* on April 7, 1997 naming as respondents the employer, Jan Potts, Acting Area Director, and Steven Rankin, (former) District Manager, Chatham Client Services, Human Resources Development Canada, Chatham, Ontario. The complaint alleges that the respondents had failed to:

Observe the prohibitions in sections 8(1) and 8(2)(c) generally to cease interfering with the complainant, a duly elected union official, in her representation of PSAC membership as is her right under Section 6 of the Act.

Paragraph 23(1)(a), subsection 8(1), paragraph 8(2)(c) and section 6 of the PSSRA read as follows:

23(1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed

(a) to observe any prohibition contained in section 8, 9 or 10;

...

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.

8(2) Subject to subsection (3), no person shall

...

(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.

6. *Every employee may be a member of an employee organization and may participate in the lawful activities of the employee organization of which the employee is a member.*

Attached to the complaint was the following statement:

4. *A concise statement of each act or omission complained of:*

I *On or about December 16, 1994, the Acting Area Manager Jan Potts interfered with the complainant's representation of her local membership. The purpose of the complainant's general enquiries were misrepresented to Karen Keith causing Ms. Keith to ask the complainant to stop her enquiry.*

II *As a direct result of the above, the complainant, following the requirements of the Harassment Policy, advised her Acting Area Manager Jan Potts how she (complainant) perceives Ms. Potts behaviour and its impact on her union role (December 28, 1994). This reaction must be assessed given the backdrop of uncertainty caused by staff reductions and the two complaints to the P.S.C. and the C.H.R.C. re: alleged violations of staffing, pay entitlements, equal pay for work of equal value, etc.*

III *On January 9, 1995, when the complainant, in her union capacity as Acting Local President, NHWU Local 00037 and Vice-Chairperson of the Political Action Committee, brought serious concerns arising from a member's complaint to the Acting Area Manager, she refused to either take the complaint seriously or to investigate. Ms. Potts only response was to mock the complainant and to intimidate her by shouting at her.*

IV *On both January 15 and 16, 1995, the Acting Area Manager gave wide distribution to negative comments made by several potentially affected employees against their union. These comments came with input Ms. Potts had solicited concerning the performance of three Human Resource Officers at WFA information sessions. Once again, the unions involvement was misrepresented to those who attended.*

V *On October 10, 1995, District Manager Steven Rankin wrote an unnecessary misleading letter to the complainant chastising her for her lack of loyalty, fidelity and impartiality. This relates to a staff meeting on September 25, 1995 when management approved the attendance of Liberal MP's or their assistants at the*

re-convening of the meeting. The letter seeks to restrict the complainant in her role as Political Action Committee Vice-chair from fully representing the membership concerning job loss, office/program closures, etc. in the face of MP's promises to the contrary.

In her complaint, the complainant requests that the Board issue the following order:

That the respondent has violated the Act, that she cease this type of activity, that the employer ensure that PSAC representatives be allowed to fulfill their responsibilities without interference and any other order the Board deems necessary to make the complainant whole.

Donna Willan gave evidence on her own behalf. At the time of the first two incidents complained of, she was replacing Jan Potts as president of the local and she had a number of positions in the bargaining agent. She was Co-chair of the bargaining agent's Political Action Committee and also of the Regional Women's Committee in Windsor. In her union capacity, she made a complaint to the Public Service Commission (PSC) in the spring of 1994 about the way positions were being staffed. After investigation, the complaint was upheld by the PSC in July 1994. Ms. Willan felt that the violations were continuing in a redesign project in Toronto which was part of the Income Securities Branch. In September or October, she phoned the Redesign Office in Toronto and spoke to Karen Keith. Ms. Keith was part of a developmental program. She was a CR-5 and was being paid at this level while doing the same work as others classified at the PM-3 and PM-4 levels. Ms. Willan was concerned that people were not receiving acting pay. She put her concerns in writing (E-Mail) to Betty Crossey who was heading the redesign project in Toronto. She then received a telephone call from Ms. Keith who asked if Ms. Willan would like her to reply to her E-Mail enquiry. Ms. Willan replied that she would prefer Ms. Crossey, who was at the time away from her office, to reply.

On December 23, 1994, Ms. Willan received an E-Mail message from Ms. Keith who stated that she understood that Ms. Willan was questioning her classification and she asked her to drop it. Ms. Willan stated that she had never identified Ms. Keith by name. Ms. Willan stated that it was obvious that someone in management had gone to Ms. Keith and misinformed her. Ms. Willan felt that management was interfering in her right to represent the members in the bargaining unit. She then forwarded

Ms. Keith's message to the three managers in Ms. Keith's area, Betty Crossey, Jan Potts, who was the Acting Area Manager and the latter's supervisory officer, and Mary Ann Piitz, and asked for the manager who had spoken to Ms. Keith and told her Ms. Willan had questioned her classification. Ms. Potts, an excluded manager, responded and informed her that Ms. Keith had stated that Ms. Willan's constant questioning of her made her feel uncomfortable and harassed. Ms. Willan was stunned and told Ms. Potts that she had had only one or two friendly conversations with Ms. Keith. She felt that Ms. Potts' motive in telling her this must have been to induce her to back off from her complaint to the PSC about developmental assignments. She felt that Ms. Potts was trying to coerce and intimidate her.

Jan Potts, Acting Area Manager at the time in question, testified that she first learned of the incident involving Karen Keith when Donna Willan copied an E-Mail message to her, Betty Crossey and Mary Ann Piitz, making an accusation of interference by a manager and specifically asking which manager had been talking to Ms. Keith. Mary Ann Piitz, Ms. Potts' boss, asked her to reply. Ms. Potts stated in her evidence that it was her perception at the time that strong accusations were being made by Ms. Willan and inaccurate conclusions being drawn. There was no attempt to get Ms. Willan to drop her PSC complaint. At the time, Ms. Potts was not even aware of this complaint. The purpose of her communication with Ms. Willan was simply to reply to the specific questions she had raised in her E-Mail message and to convey what Ms. Keith had conveyed to management. As a manager, she had an obligation to take action when one of the employees informed her that she was feeling harassed by another employee.

Karen Keith herself gave evidence. She received a telephone call in October 1994 from Donna Willan. They discussed her classification and the fact that she had obtained her position through secondment. She confirmed to Ms. Willan that she was there at the CR-5 level. Ms. Willan then asked her if the CR-5's and the PM-2's and PM-3's were all doing the same job. Ms. Keith felt that the conversation was leading to an area she did not want to discuss. She was emphatic that she never said that she was unhappy or demoralized. In fact, she stated in her evidence that she had volunteered for the secondment and she pointed out that she commuted daily from Hamilton in order to be part of the project.

There was a second telephone conversation with Ms. Willan which took place while Ms. Keith's manager, Betty Crossey, was away. Ms. Keith was acting on behalf of Ms. Crossey and she called Ms. Willan to ask if she wanted her to answer her E-Mail enquiry or if she would prefer to wait for Ms. Crossey. Again, Ms. Willan made a number of enquiries regarding classification to the point where Ms. Keith felt uncomfortable. When she posed questions to Ms. Willan, the latter stated that she had to go.

After Ms. Crossey's return to the office, Ms. Crossey called Ms. Keith and asked her if everything was OK with her job. Ms. Keith confirmed to Ms. Crossey that everything was fine. Ms. Crossey said nothing more to her, nor did Jan Potts with whom she was not in communication at the time. Ms. Keith stated that, based on all Ms. Willan's queries of her, she felt that Ms. Willan must have raised the issue of her own case with management and management was concerned enough to check if she was happy. Later, at a management-staff luncheon where the managers were serving the staff, she met Ms. Potts and told her that she was feeling harassed by one of Ms. Potts' employees. Ms. Keith stated that she felt she had to tell her.

The second incident arose from local counselling sessions for employees who might be affected by workforce adjustment, partially as a result of the Child Tax Benefit (CTB) program being transferred to Revenue Canada. Two counsellors, Micheline Thompson and Chris Carella, agreed to assist by coming down from Toronto to give special information sessions at Chatham.

Donna Willan stated that while she was acting president of the local in January 1995, she received a call from a worker in the CTB program, Paula Glassford, on January 9, 1995, who had attended one of the counselling sessions. She was upset that the counsellors had speculated that there might be changes in the Workforce Adjustment Directive regarding an extension of the definition of "headquarters area" beyond a ten-mile limit and also that there might be changes affecting the rules regarding salary protection. Ms. Glassford was fearful and felt pressured.

Ms. Willan spoke to Ms. Potts by telephone and related the complaint to her. She did not give Ms. Potts the name of the person who complained. She stated that she was left with the impression that Ms. Potts endorsed that kind of speculative

counselling and would take no action. Ms. Potts called it “reality counselling” when Ms. Willan spoke to her. Ms. Willan stated that she told Ms. Potts that she would be taking the complaint “over her head”, probably to Mr. Paul Martin, the Minister of Finance. Ms. Potts replied that Ms. Willan was always threatening her and shouted: “Now you listen to me”. At that point, Ms. Willan hung up. Ms. Willan then went home and wrote a letter to the Deputy Minister of their Department, Mr. Jean-Jacques Noreau, asking him, among other things, whether or not there had been a budget leak because the counsellors were speculating on budget changes. The next day, January 10, she received an E-Mail message from Ms. Potts which had been sent at 5:08 p.m. the previous day, one hour after the telephone conversation between them. Ms. Potts offered to have new special counselling sessions for any employee who was unhappy and was prepared to identify himself or herself. Ms. Willan, however, felt that employees who were unhappy should not be identified and that Ms. Potts should have taken her word as an official of the bargaining agent. Ms. Willan stated that she felt concerned. She stated: “I felt she was effectively stating, don’t take your problems to the union or you won’t get a resolution”.

Ms. Potts’ evidence was that, having heard something of the problem from her assistant, she tried to arrange to have one of the counsellors join in the call from Ms. Willan. The call lasted 15 to 20 minutes with Chris Carella present, except for the last two to five minutes of the call. She asked Ms. Willan who was unhappy with the counselling session so she could have the counsellors address the person’s concerns. She did not pursue the matter when Ms. Willan would not identify the person. She stated that the telephone call was mainly a tirade by Ms. Willan, much like a “machine of words”. Ms. Potts stated that she had a hard time getting a chance to speak at all. Towards the end of the call, Ms. Willan stated: “There is no sense in talking to you. I’m going to talk to Paul Martin” (the Minister of Finance). At that point, Ms. Potts raised her voice and said: “Listen, I will speak ...”. She was cut off by Ms. Willan who stated, “I don’t have to listen to you”, and hung up.

Ms. Potts spoke to the counsellors to make them aware of Ms. Willan’s concerns and to make them sensitive and alert to any possible negative reaction to their message. Then she sent an E-Mail message to Ms. Willan later on the same afternoon.

During the following three days, January 10, 11 and 12, she attended meetings in Toronto. She wanted to address the concerns of the person who had spoken to Ms. Willan to ensure that the person felt management was addressing the issue. She dictated a very general E-Mail message for her assistant to send out to the employees who had been interviewed by the counsellors the day before. At no point did she ever reveal to employees the contents of the call or even that she had received a phone call from Ms. Willan.

Chris Carella, Senior Human Resources Planner, was one of the counsellors who participated in the Workforce Adjustment presentations in Chatham. She was in Ms. Potts' office and witnessed one side of the telephone call between Ms. Potts and Ms. Willan. She noted that Ms. Potts was having a difficult time getting a word in. She also noted that Ms. Potts' demeanor was very quiet. She was calm and professional. Ms. Potts seemed to be listening for long periods of time. Ms. Carella was not there for the whole conversation. She left after the conversation didn't seem to be coming to an end in a timely fashion.

In cross-examination, she stated that she was impressed by how calm Ms. Potts remained despite her obvious difficulties in getting a word in over a long period of time.

A third area of complaint, number four in the statement of complaint, was referred to in the evidence of Donna Willan. The fourth allegation concerns the wide distribution of negative comments about the bargaining agent. After the counsellors had finished their sessions and had returned to Toronto, an E-Mail message was sent from Jan Potts to the counsellors, Micheline Thompson, Chris Carella and Pat Russell, Human Resources, Human Resources Development, Ontario Region. The E-Mail message of January 15, 1995 reads as follows (Exhibit C-1):

SUBJECT: WFA - CTB Sessions

I want to extend a special thank you for coming to Chatham and spending a couple of days with our CTB staff and our Chatham Management Team.

Feedback was very positive. Staff felt you were all very approachable, concerned about their situation, very easy to talk to and very realistic in explaining options available to them. Having WFA counsellors and Pay and Benefits advisor

at the same time, was a real asset for staff and I want to thank Micheline for suggesting this. I was very impressed with the speed with which you met our needs for these sessions and making yourselves available on such short notice. Your agreement to meet with our Management Team at a lunch question and answer session was much appreciated.

I have enclosed copies of E-mails staff sent that they wanted forwarded to you expressing their personal thanks. I think these testimonials speak for all of us.

Thanks again. It is sure nice having such a supportive group as yourselves in such times as these.

It was distributed to 18 staff members and copied to Geraldine Sperling, Mary Ann Piitz, Supervisors and Managers Chatham, CTB staff, Jan Liberty, Union President Local 00037 NHWU and Pnina Resenblat-Ptasznik, Staff Relations. The copies of the E-Mail messages which the staff sent were attached as part of Exhibit C-1.

There was a second E-Mail message dated January 16, 1995 adding additional comments from staff with the same distribution (Exhibit C-2) and one dated January 18, 1995 (Exhibit C-3).

The bargaining agent received copies of the correspondence and Ms. Willan stated that she was demoralized by the anti-union sentiment expressed in the comments by her co-workers. She even received a couple of phone calls from the staff stating that they would never refer any union matter to Ms. Willan again. In one of the comments received, the writer expressed the desire to have management look into the bargaining agent purporting to speak for members without their permission. She felt that someone had misrepresented to staff what she had done and that person would have to be Ms. Potts.

In cross-examination, she identified a letter which she sent to Mr. Jean-Jacques Noreau, the Deputy Minister, dated January 9, 1995 (Exhibit E-3). It reads as follows:

Please accept this as an official complaint.

I am the acting president of National Health and Welfare Union Local 00037. (My usual position with the Local is Director CSC Windsor, Chatham and Toll Free Chatham (Ontario).

It came to my attention today (by way of member complaint) that during “one on one” Work Force Adjustment sessions in Judy LaMarshe Building the WFA officers (Ms. Thompson and Ms. Carella) are informing affected workers that after February 1995 they (the workers) will probably lose salary protection and will very likely be a widened scope of geographical acceptability in the reasonable job offer clause. Since the workforce adjustment policy is negotiated through National Joint Council and is binding on the signatories and since the Union would never agree to the above changes it would take an act of Parliament to make the suggested changes to WFA. Has The Honourable Mr. Martin’s budget been leaked? If it has not been leaked why would HRDC departmental officers be making this kind of open and pointed speculation? Needless to say this has added undue stress to already demoralized workers in Chatham, Ont. These workers (CR4 CTB analysts) are also being told by WFA officers that they cannot be considered for any available CR5 analysts positions in the area even though the union has been informed many times (and in writing) that “entry level” for these positions is CR4 and indeed to-day workers are being paid CR4 pay in the area (thus a precedence has been set).

When I called Jan Potts, Area Manager about what her employees were being counselled on, she stated that she would rather the “officers” be honest with the workers, which certainly implied that there is more than some substance to the rumour. She made no offer to investigate the complaint and more or less inferred that since I was not willing to name the person(s) making the complaint that it must have little substance. This sort of response from her was not surprising to me as I feel it has almost become “the norm” for her to be condescending and obstructionist (at least where union officials are concerned).

Please investigate this matter so that “affected” personnel in your branch can make intelligent decisions regarding their future livelihood. Please clarify what information the branch actually has with regard to known future changes to WFA policy to these affected workers and provide me with copies of same.

Ms. Willan testified that she had received complaints from her members about the way the bargaining agent had handled the incident concerning the counsellors. Because of this, the E-Mail messages and the anger expressed, it was decided to meet with everyone. She decided, as president, to clear up the misconceptions and rumours. The bargaining agent's position was that they were pleased with the counsellors as well as with much of the information received. The bargaining agent was not, however, pleased with the speculation about the Workforce Adjustment Directive.

In her evidence, Ms. Potts stated that she did not solicit anything from the employees. The main point of the letters was to respond to certain criticism allegedly directed at the counsellors and to thank the counsellors and express appreciation for the help the counsellors had given them. The distribution list was to the affected employees and the copies were the usual ones sent in the normal course of business. There was no attempt to discredit the bargaining agent.

The fifth element of the complaint concerned the delivery to Ms. Willan of a memorandum dated October 10, 1995 by Steve Rankin on October 13 (Exhibit C-5). The memorandum arose out of a staff meeting held on September 25, 1995 when Ms. Willan invited a number of Liberal MP's or their assistants to an afternoon session of the staff meeting. Ms. Willan's concern was that Mr. Rankin's memorandum sought to restrict her union role as a political action vice-chair and from fully representing the membership concerning job loss and office and program closures.

Ms. Willan's evidence was that the purpose of the staff meeting on September 25 was to deliver "affected notices" to five full-time staff and one seconded person informing them that their employment would be terminated. In the morning, these notices were given on a one-on-one basis. Even so, there was a feeling of upset and there were a number of unpleasant surprises. Ms. Willan testified that she asked Ms. Potts and Mr. Rankin if they would reconvene the meeting in the afternoon if she could get the local MP's or their assistants to attend. Approval was given and Ms. Willan contacted the offices of the four local Members of Parliament. All four sent their representatives to the meeting which reconvened in the afternoon.

On October 13, 1995 she was asked to meet with Steve Rankin, who at that time was the District Manager of Chatham, Toll Free and Client Services. He gave her the following memorandum (Exhibit C-5):

Based on the dialogue we have exchanged and some of your recent activities and actions, I am concerned that you may not fully appreciate management's position and expectation with respect to employee's expression of criticism of the Employer and use or access to government premises. The following information is provided to ensure that you clearly understand the standard of conduct expected of all employees by Management and employee obligations in this regard.

PUBLIC CRITICISM

As a member of a free and democratic society, each of us has all of the rights inherent in it, including the freedom of expression. This right, however, as most others, is not free and unfettered. The duty of fidelity or loyalty exists in every employer-employee relationship. The Government, as our Employer, has a need and a right to have a loyal and impartial public service if it is to achieve its objectives as the recognized representative of the Canadian public. In the public service, our Oath of Office and the Conflict of Interest & Post Employment Code stipulates our obligations in that regard. Employees holding positions in a union are governed by the same principles, with one exception; they have the right to debate publicly the collective bargaining process, negotiations, terms and conditions of employment and the positions taken by the employer's negotiators. They cannot go beyond the ambit of the respective legislation, i.e. the Public Service Staff Relations Act.

This issue is frequently debated in different forums and admittedly with varying opinions when assessing the balance between free speech as a citizen and activities which interfere with the legitimate interests of the Employer. Nevertheless, each and all of us must exercise reasonable restraint when voicing opinions on government actions and carefully avoid participating in public controversy. In each case a determination must be made whether the employee is reasonably exercising his or her rights as a member of a free society or is the employee exceeding the legitimate limits of free speech and acting in contravention of a legitimate employer interest.

I am hopeful that my sharing of this information will assist you in understanding your obligations as an employee and encourage you to contact me if you require clarification.

USE OF GOVERNMENT TIME/PREMISES

On 25 September 1995, you invited representatives of local MP's to attend a meeting on ISP premises. While the Director chose, on this specific occasion, to authorize this meeting, you are reminded that such invitations should be extended ONLY on management's behalf and authority. When proposing such an initiative, you should provide a written submission as to the purpose and context of the meeting in order that management can consider the appropriateness, time frames required to prepare a professional presentation and availability of required attendees as well as appropriate authorization for the meeting, as required.

While I recognize that your invitation to the MP's offices resulted from your desire to have your issues addressed at another level, I am confident that our internal forums of discussion (WFA, RUMCC and normal management communication channels) where the delegation of authority resides and consultation occurs, are a more appropriate means of dealing with departmental issues.

On a related matter, the appropriate use of employee time and government premises is a determination which rests with Management and one for which Management is accountable within the parameters of legislation, collective agreements and TB policy. For your information, members of the joint RUMCC are presently reviewing those situations where employees should be granted the use of Employer facilities and equipment to conduct work outside of their regularly assigned duties. It is my understanding that a communiqué in this regard will be released in the near future to ensure that the application of the existing legislation, policies, etc. is consistent within the Region.

Donna, I am open to discussing these or other matters if you wish clarification on my expectations. I am confident that you will consider this communication in the professional and positive manner in which it is intended. I am also confident that your respect for your obligations as an employee will negate any further discussions of these matters.

Ms. Potts, in her evidence, stated that she was reluctant to give permission for Ms. Willan to have MP's or their representatives attend and stated that she expressed to Ms. Willan that it might not be a good idea if she did give permission. She felt that if she protested too much, it might be perceived that management had something to hide. She was very nervous when the representatives of the MP's arrived. She did not want there to be any airing of dirty laundry between the bargaining agent and management. She took the initiative and gave a review of the sequence of events leading up to the September 25 meeting. Her remarks had to be "off the cuff".

At the meeting, Ms. Willan did a handout to the representatives which had not been authorized or cleared. Among the items in the handout was Ms. Willan's letter to Deputy Minister Noreau. Some of the material contained criticisms of members of management. After the meeting, there were some discussions with other members of management, including her boss, Mary-Ann Piitz, about the appropriateness of inviting MP's to a staff meeting. Out of these discussions came the idea of giving Ms. Willan a letter setting out guidelines for future actions. Ms. Potts stated that she did not draft the letter; she had no direct involvement with the letter.

Steve Rankin gave evidence that he was present at the meeting of September 25. He was surprised when the MP's representatives arrived in the afternoon. Maybe he was not paying full attention, but he had not heard Ms. Potts give Ms. Willan permission to bring them in. He had heard Ms. Willan say: "I'm going to call the MP's and get them in here this afternoon". He thought she was being flippant. At that point, he heard Ms. Potts respond that she did not think it would be a good idea.

At the afternoon meeting, Ms. Willan provided some handouts to the MP's representatives, each containing departmental correspondence. As an excluded manager and as then Acting Manager of the Windsor area, Mr. Rankin was involved in drafting the October 10 memorandum to Ms. Willan and was the one who delivered it to her on October 13. The purpose of the memorandum was to set out and clarify standards for similar situations in the future. It was not entirely certain, at that time, that guidelines were clear to everyone.

Jacqueline Warren, a CR-3 acting as a CR-5 client services clerk, testified as a reply witness that she heard Ms. Willan address Ms. Potts and ask to be allowed to call in MP's to a reconvened meeting in the afternoon to make them aware of the downsizing. She did not hear Ms. Potts express an opinion on the matter. "Jan Potts more or less said OK, we'll get back together after lunch".

Arguments

For the Complainant

The bargaining agent accepted that the complainant had the burden of proof to establish her case on the balance of probabilities.

In the Karen Keith case, Ms. Potts had placed herself between a union official and her membership. There was no need to give such wide distribution to the employees' E-Mail messages regarding the counsellors since many contained comments critical of the bargaining agent. This was an attempt to interfere with the bargaining agent in the representation of employees in the bargaining unit.

The October 10 memorandum (Exhibit C-5) to Ms. Willan was disciplinary in nature.

For the Respondents

Because of the very serious nature of these complaints, there is a standard of clear and cogent evidence required to support them. There must be a factual underpinning established and there must have been some intent to interfere with rights.

Counsel pointed out that the facts alleged were not established in any of the five heads of the complaint. The allegations were based on sheer speculation.

Reasons for Decision

The first two allegations complained of are related, the second adding information to the first. I do not find that the Acting Area Manager, Jan Potts, in any way interfered with Ms. Willan's representation of her local membership, nor did she misrepresent Ms. Willan's position to Karen Keith. This was mere speculation on the

part of Ms. Willan. There was simply no evidence presented to show that anything of this nature took place. I accept the evidence of Ms. Keith who indicated that she was the one who approached Ms. Potts with her complaint that one of Ms. Potts' employees (Ms. Willan) was placing her in a position where she felt harassed. Ms. Potts simply reported this to Ms. Willan. The fact that Ms. Willan made inquiries of Ms. Keith was a legitimate part of her union duties. Similarly, it was a legitimate part of Ms. Potts' duties as a manager to inform Ms. Willan of Ms. Keith's complaint to her.

The E-Mail message which Ms. Potts sent to Ms. Willan (Exhibit E-1) sets out the circumstances of Ms. Potts' involvement in this matter and all of this is corroborated in the evidence of Ms. Keith.

With regard to the third allegation, I find that Ms. Potts did not mock the complainant. She raised her voice towards the end of the conversation when Ms. Willan said she was going to contact the Minister of Finance, Mr. Paul Martin. In fact, the only witness to a part of the telephone conversation testified that Ms. Potts was quiet and professional in her telephone manner and had difficulty getting a word in. The witness was not there for the whole conversation but I accept the evidence of Ms. Potts that she was hearing a tirade from Ms. Willan and about her difficulties in getting a word in in a lengthy conversation which ended when Ms. Willan hung up.

Regarding the fourth allegation in the complaint, there was no evidence that Ms. Potts misrepresented the bargaining agent's involvement. No misrepresentation was shown and there were others besides Ms. Potts who were in a position to recount what happened. Perhaps Ms. Potts did not give a great deal of thought to the possibility of limiting the wide distribution of the employees' letters because they contained negative comments about the bargaining agent. It was, however, a normal distribution and the fact that it did not occur to her to limit the distribution does not amount to a breach of the *PSSRA*.

However, while the third and fourth allegations against Ms. Potts cannot be upheld, the complainant's concerns about the speculative remarks of the counsellors are quite legitimate. I think that Ms. Potts did not understand the implication of the counsellors' remarks vis-à-vis the position of the bargaining agent in the workplace. The counsellors' speculations regarding unilateral changes by the Government to the

Workforce Adjustment Directive would, if proved correct, mean the Government was planning to legislate itself out of its contractual obligations to the bargaining agent. There is no doubt that this was a matter of some concern to Ms. Willan as a representative of the bargaining agent. The fact that the counsellors spoke of this directly to the employees without involving the bargaining agent or giving it a chance to respond in some way or have some input demonstrates remarkable insensitivity to the concerns of the bargaining agent. I find it surprising that Ms. Potts did not recognize this fact and respond to the complainant's expressed concerns more appropriately. It was certainly not necessary for her to know the name of the employee who brought this matter to the complainant's attention to enable her to do so. Soliciting the opinion of other employees regarding the quality of the advice offered to them by the counsellors did not address the complainant's concerns either.

The fifth aspect of the complaint, the memorandum Ms. Willan was given by Mr. Rankin, on the other hand, does constitute an interference with bargaining agent rights. Although management did not forbid either act, a spur of the moment invitation by the complainant to local MP's or their representatives to attend a staff meeting and handing out literature to them which was critical of management led management to believe that it might be a good idea to make sure Ms. Willan was aware of certain guidelines that should be followed in future if similar situations should arise. Mr. Rankin's October 10, 1995 memorandum to the complainant clearly goes too far, however, in the light of the decision of the Federal Court of Appeal in *Linetsky and Resanovic et al* (Court File No.: A-1482-84). Mr. Rankin advised the complainant that as a representative of the bargaining agent she is limited in her public criticism of the employer to matters contained in the *PSSRA*. The *Linetsky* case held as follows:

We are all of the view that the Public Service Staff Relations Board erred in concluding that the rights and prohibitions prescribed by Sections 6 and 8 of the Public Service Staff Relations Act are limited to activities relating to collective bargaining in the Public Service and other activities specifically permitted by the Act.

Relying on the decision of the Federal Court of Appeal in *Linetsky*, I am satisfied that in attempting to restrict the complainant in her representation of the interests of the employees in the bargaining unit to the provisions of the *PSSRA*, Mr. Rankin is interfering with the complainant's right to represent employees and

participate in the lawful activities of the bargaining agent contrary to sections 6 and 8 of the *PSSRA*.

Accordingly, while the first four grounds of the complaint must be dismissed, the fifth against Mr. Rankin is upheld. Mr. Rankin is directed to abide by the provisions of the *PSSRA* in future.

Furthermore, this decision should be posted in prominent locations in the Chatham offices of Human Resources Development Canada where it will come to the attention of the employees represented by the Public Service Alliance of Canada who work there. In addition, pursuant to subparagraph 23(3)(a)(ii) of the *PSSRA*, I direct this order as well to the Secretary of the Treasury Board.

**Rosemary Vondette Simpson,
Board Member**

OTTAWA, November 4, 1997.