File: 161-2-792

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

ROBERT M. PAVLIK

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

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

Before: Rosemary Vondette Simpson, Board Member

For the Complainant: Macey Schwartz, Counsel

For the Respondent: Sean McGee, Counsel

Heard at Ottawa, Ontario,
May 29 to 31 and September 17 and 18, 1996.

This is a complaint filed pursuant to section 23 of the *Public Service Staff Relations Act (PSSRA).* The complainant, Robert M. Pavlik, complains that an employee organization, the Professional Institute of the Public Service of Canada, and a person acting on behalf of an employee organization failed to "represent the complainant in the handling of his adjudication before the Board, file 166-2-26187 and 26188, in a manner that was not arbitrary, discriminatory or in bad faith contrary to section 23(1)(a) of the Act and more specifically section 10(2)".

The relevant provisions 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;*
>
> *...*
>
> *10(2) No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.*

The complainant seeks the following remedial action:

> *(a) The withdrawal of the complainant's grievances be declared null and void; the complainant's discharge be referred to adjudication forthwith; applicable time limits be waived and the complainant be represented by counsel chosen by him and paid for by the union.*
>
> *(b) In the alternative, the withdrawal of the complainant's grievance be declared null and void; the complainant's discharge be referred to adjudication forthwith, applicable time limits be waived, and any compensation awarded by the adjudicator in favour of the complainant be paid by the union rather than the employer.*
>
> *(c) Such further or other order as this Board may deem just.*

Appendix "B" to the complaint sets out a statement of the alleged facts upon which the complainant relies:

> *(1) The complainant was appointed to a full-time position in the public service on September 3, 1981.*
>
> *(2) From that date, the complainant worked as an Engineering Procurement Officer for the Department of Supply and Services Canada (Public Works and Government Services).*
>
> *(3) At the time his employment was terminated, the complainant was a PG4 in the Aerospace, Marine and Electronic Systems Sector of the department in a group represented by the Professional Institute of the Public Service of Canada.*
>
> *(4) On June 13, 1994, the complainant was suspended indefinitely without pay or benefits pending "the outcome of a full investigation into allegations received from a supplier concerning serious impropriety".*
>
> *(5) On June 27, 1994, the complainant submitted a written grievance of his suspension with the approval of PIPS and assistance of its representative, Mr. Andy Zajchowski.*
>
> *(6) Despite the fact that the investigation had not been fully completed by the employer and a report thereof arising therefrom made available, PIPS through its representative Andy Zajchowski prematurely scheduled a Grievance Hearing for July 7, 1994 where Mr. Zajchowski went through the formalities of presenting the complainant's grievance (which was subsequently denied by the employer on September 12, 1994).*
>
> *(7) On September 16, 1994, PIPS through Andy Zajchowski presented a pro forma written grievance at the final level to the employer.*
>
> *(8) **At that crucial time**, Mr. Zajchowski of PIPS made no effort to obtain an unexpurgated copy of the government's investigation report.*
>
> *(9) In a letter dated September 29, 1994, the complainant was informed that he was being discharged effective the date the letter was received (October 6, 1994) on two grounds:*

> *(a) "In your dealings with R.P. Grant of Multiuse Targets Inc., you have blended your public duties with your private business in a manner which is in violation of the Conflict of Interest and Post-Employment Code for the Public Service", and*
> *(b) "In addition, you have made frequent use of government long distance services for your personal purposes."*

(10) On November 22, 1994, PIPS referred the complainant's discharge to adjudication.

(11) PIPS assigned one of its "negotiators" to handle the complainant's case who it knew or ought to have known:

> *(i) lacked sufficient experience as an advocate in adjudication cases;*
> *(ii) lacked any experience as an advocate in discharge cases;*
> *(iii) lacked demonstrable skill and competency as an advocate; and*
> *(iv) lacked background and training as an advocate in adjudication cases.*

(12) PIPS assigned the complainant's discharge case to an inexperienced employee without providing him with the guidance and supervision reasonably required to conduct such a case.

(13) The adjudication hearing of the complainant's two grievances Board file numbers 166-2-26187 and 166-2-26188 were heard February 27, 28, March 1, April 24, 25 and 26, 1995.

(14) As the hearing did not appear to Mr. Zajchowski to be going well, Mr. Zajchowski persuaded the complainant to withdraw his grievances and sign a Memorandum of Agreement dated April 26, 1995 which provided inter alia that the complainant:

> *(a) resign; and*
> *(b) waive any further claim for pay against the government.*

(15) Based on Mr. Zajchowski's perceived knowledge, experience and expertise in such matters, the complainant relied on Mr. Zajchowski and accepted his recommendation to withdraw his grievances and sign the memorandum of understanding on April 26, 1995.

> *(16) The complainant did not submit his resignation to the government.*
>
> *(17) In a letter dated July 13, 1995 from the Department of Justice, the complainant was informed that the employer was no longer bound by the memorandum of agreement dated April 26, 1995.*
>
> *(18) The complainant has been unemployed since October 6, 1994 and continues to be unemployed despite his efforts to obtain reasonable alternative employment.*
>
> *(19) PIPSC in assigning one of its employees to represent the complainant at the adjudication hearing did so in such a perfunctory manner that in representing the grievor in his discharge case, it acted in a manner that was arbitrary, discriminatory and in bad faith, the particulars of which are as follows. PIPSC failed to consider fairly, without discrimination and in good faith:*
>
> > *(a) The seriousness of the consequences to the grievor if the discharge was upheld;*
> > *(b) the lack of experience of the advocate chosen by PIPSC to present adjudication cases generally and discharge cases specifically;*
> > *(c) the lack of a demonstrable level of success and skill of the advocate chosen by it;*
> > *(d) the complexity and nature of the discharge case to be met;*
> > *(e) what financial and other resources of the union were appropriate for this particular case taking into consideration:*
> > > *(i) the resources available;*
> > > *(ii) the consequences to their member if the discharge was upheld.*

Although the employer, Treasury Board, was notified of the complaint and the original hearing dates, it chose not to participate in the proceedings.

The complainant, Robert M. Pavlik, joined the Public Service in 1981 as an Engineering Procurement Officer for the Department of Supply and Services Canada. At the time of his termination, his job classification was that of PG-04 in the Aerospace, Marine and Electronic Systems Sector of the Department. Mr. Pavlik was suspended indefinitely without pay pending investigation of allegations of impropriety from a supplier. The complainant, whose bargaining agent is the

Professional Institute of the Public Service of Canada (PIPSC), grieved his suspension on June 27, 1994. He was assisted by his representative, Mr. Andy Zajchowski.

By letter dated September 29, 1994, Mr. Pavlik was informed that he was discharged from employment on two grounds:

(a) that in his dealings with R.P. Grant of Multiuse Targets Inc. he had blended public duties with private business in a manner which violated the Conflict of Interest and Post-Employment Code for the Public Service;

(b) that he had made frequent use of government long-distance services for personal purposes.

On November 22, 1994, the complainant's discharge grievance was referred to adjudication.

The adjudication hearing of Mr. Pavlik's two grievances against the indefinite suspension and discharge was held on February 27, 28 and March 1, 1995. The hearing was continued on April 24, 25 and 26, 1995.

During the course of the hearing on April 26, 1995 and during the cross-examination of Mr. Pavlik by counsel for the employer, a recess was requested and granted. During this recess Mr. Pavlik was advised by his representative, Mr. Andy Zajchowski, and the latter's assistant, Mr. Choquette, an experienced research officer and his shop steward, to sign a Memorandum of Agreement with his employer whereby he would be allowed to resign and thereby have a clear record and the grievances would be withdrawn.

This agreement was drawn up and signed by Mr. Pavlik on that day, April 26, 1995. Mr. Pavlik did not submit a letter of resignation to his employer in accordance with that agreement. As a result, Mr. Pavlik was informed by letter dated July 13, 1995 from the Department of Justice that the employer was no longer bound by the Memorandum of Agreement dated April 26, 1995.

Mr. Pavlik has been unemployed since his date of discharge. Mr. Pavlik testified that he was investigated by internal affairs which resulted in an investigation report from investigators Janet Labelle and B. Gagnon.

Although he asked for a lawyer to represent him, he ended up by accepting the representation of Messrs. Zajchowski and Choquette. In preparation for the adjudication, there were meetings with the representatives and their line of questioning was discussed. The complainant prepared a list of procurement questions at Mr. Zajchowski's request. These were used by Mr. Zajchowski at the hearing almost verbatim with very little change to the form of the questions except to make them non-leading. Mr. Pavlik stated that he had his own lawyer, Mr. Leonard Max, meet with Mr. Zajchowski to approve the strategy to be used; Mr. Max did not object to the strategy. Mr. Pavlik never asked for another PIPSC representative. His direct testimony took up two full days, April 24 and 25, and continued on April 26 in the morning.

There were questions from the adjudicator about where the questioning was going. The internal affairs investigative report was put into evidence without objection from Mr. Zajchowski and the author of the report, Janet Labelle, was called as a witness to introduce it. Mr. Grant himself was not called by either party.

After a couple of hours of cross-examination by counsel for the employer, Mr. Pavlik's representatives advised him to settle. Mr. Pavlik felt under stress but he acquiesced (Exhibit C-19). In explanation of the reasons why he asked Mr. Pavlik to resign, Mr. Zajchowski drafted the document "Technical Reasons" (Exhibit C-20).

Mr. Andy Zajchowski testified that he had worked as a compensation research officer with the Pay Research Bureau, an examiner with the Public Service Staff Relations Board, and a mediation officer with the Public Service Staff Relations Board for nine years. He joined PIPSC as a negotiator in 1987. Since that time, he has only received one appraisal and it rated him as fully satisfactory. In February 1993, he was assigned duties as an Employment Relations Officer (ERO). As part of those duties, he was made responsible for the representation of a number of departments, including Supply and Services Canada. Prior to starting Mr. Pavlik's representation, he had only represented one other employee on the reference of a grievance to adjudication. However, before the start of the adjudication hearing into Mr. Pavlik's grievances, he had represented a grievor in a second adjudication case. He did not receive any unfavourable comments from his superiors about either of these cases. In fact, with

regard to the first one, which he lost, the attitude of Mr. McIntosh and Mr. Leclerc was: "You gave it a good try but the evidence was not there to support his case".

Mr. Zajchowski first received an edited version of the investigative report into Mr. Pavlik's activities (Exhibit C-5). Pursuant to his requests for an unedited version, he was given the unexpurgated version of the report (Exhibit C-12) just prior to the adjudication hearing. The report contained references to the complaint of Mr. Grant which started the investigative process. Mr. Grant stated that Mr. Pavlik had done a good job for him but that he "wanted [his] contracts to be clean". There was a question that Mr. Pavlik wanted Mr. Grant to assist him with the sale of his land in Quebec and this was connected to the contract. There was some kind of perceived threat to Mr. Grant in the procurement process. Mr. Grant felt that the whole matter should be investigated even though he admitted that his perception of the matter might be wrong.

Mr. Zajchowski proceeded quickly to deal with Mr. Pavlik's grievance against his suspension without pay in order to try to restore Mr. Pavlik's loss of income which was an immediate problem. Mr. Zajchowski did not contact Mr. Grant because he did not wish to alert him beforehand to his strategy at the hearing. Mr. Grant had suffered a stroke and his memory of the events might not have been very good. When he learned that the employer was not going to call Mr. Grant as a witness, Mr. Zajchowski considered calling Mr. Grant but decided that Mr. Grant would not benefit Mr. Pavlik's case. Mr. Pavlik agreed. The question of the unauthorized telephone calls was another serious matter which he tried to help Mr. Pavlik resolve.

Mr. Zajchowski stated that he had a number of meetings with Mr. Pavlik to prepare the case. He even met and discussed the strategy of the case with Mr. Pavlik's own lawyer, Mr. Max.

Mr. Zajchowski agreed that PIPSC was the second largest Public Service union with a membership of 27,000 and revenues and expenditures of 13 million dollars (Exhibit C-36).

Mr. Zajchowski explained that he thought his line of questioning of Mr. Pavlik on the procurement process in direct examination was relevant to explain how Mr. Pavlik had scrupulously observed the high level of conduct proper to a

procurement officer. His theory was that, if it was shown that Mr. Pavlik understood the procedures and carefully followed them, it would be demonstrated that Mr. Pavlik's actions did not constitute a breach of the Conflict of Interest guidelines.

It was in cross-examination that Mr. Pavlik had some contradictions in his evidence and made admissions which would show that he crossed the line of professionalism and became an "ally" of Mr. Grant. In cross-examination, Mr. Pavlik admitted certain things that he (Mr. Zajchowski) did not think possible. At this point, Mr. Zajchowski became convinced that "a very apparent conflict of interest" had been shown. He created Exhibit C-20, "Technical Reasons", at Mr. Pavlik's request, 30 to 45 minutes after the signing of the Memorandum of Agreement, in order to show Mr. Pavlik why he had suddenly decided that Mr. Pavlik would be better off settling his case. He reluctantly allowed Mr. Lafrenière to speak to Mr. Pavlik mainly to explain to him the terms of the settlement which was being offered which involved Mr. Pavlik withdrawing his grievance from adjudication, submitting a letter of resignation, receiving certain severance payments, and the elimination from Mr. Pavlik's file of all references to the disciplinary matter giving rise to his discharge grievance. Mr. Zajchowski stated that he had considered the various facts of the case which might be considered mitigating factors and which might have been used to argue the case for a reduction in penalty. He had, for example, considered Mr. Pavlik's clean record, but in his opinion the mitigating factors did not weigh favourably against the gravity of Mr. Pavlik's conduct.

Mr. Roger Lafrenière, legal counsel at the Ontario Regional Office of the Department of Justice and counsel for Mr. Pavlik's employer at Mr. Pavlik's adjudication hearing, was called to testify by the respondent.

Mr. Lafrenière confirmed that he had spoken directly to Mr. Pavlik during settlement discussions. Mr. Lafrenière testified that the defense of Mr. Pavlik was conducted by Mr. Pavlik's representatives not exactly as he would have done it himself but in line with the representation provided by other representatives of bargaining agents. In his view, it may not have been brilliant but it was not inadequate. He was impressed by Mr. Choquette's cross-examination of Janet Labelle, the investigator, especially since it was his first. In the end, each witness of the employer was challenged on all the essential points.

The real issue was the extent of Mr. Pavlik's dealings with Mr. Grant outside the scope of his duties and it was not until his cross-examination of Mr. Pavlik that the improprieties in the relationship became apparent. This was established through the admissions of Mr. Pavlik and communications, such as a fax document from Mr. Pavlik to Mr. Grant sending him a copy of a map where his property was located. The improper use of the government telephone in the alleged amount of $231.50 was a secondary issue.

Asked to comment on the respondent's failure to object to the investigation report being entered into evidence, Mr. Lafrenière replied that this was on the understanding that each document would have to be properly identified and introduced. It was understood that the document being put into evidence showed that it was prepared and who prepared it. In addition, it was understood that "the employer had to independently put in the evidence" and could not rely on the findings of the investigator. When asked whether or not the investigator was allowed to give her conclusions, Mr. Lafrenière replied that he did not consider her conclusions to be relevant. It was clear that these were issues to be decided by the adjudicator based on evidence to be produced by Mr. Lafrenière.

He did not call Mr. Grant as a witness. He could have been dangerous for both parties. His evidence might not have been particularly credible.

Mr. Robert McIntosh, the Manager of Collective Bargaining with PIPSC since 1987, testified that the normal way of assigning cases at PIPSC is by departments for which the Employment Relations Officers (ERO's) have been given responsibility. That is how Mr. Zajchowski was assigned Mr. Pavlik's case. He keeps close contact with the ERO's and Mr. Zajchowski had extensive experience in labour relations. There was no reason to re-assign the case to anyone else. Although he did not get into the details of the case after it was assigned to Mr. Zajchowski, he was confident that Mr. Zajchowski had enough time to properly prepare the case and he was confident that he could handle it.

The ERO's represent members of the bargaining unit at adjudication hearings. Only rarely is outside legal counsel used. It might be used, for example, where there is an issue to be resolved which affects the entire membership. In this case there was

no request for it from Mr. Zajchowski or his client, Mr. Pavlik, nor was any requirement for it identified. The ongoing dialogue that the witness had with Mr. Zajchowski concerning his handling of this case and previous adjudication cases satisfied him about Mr. Zajchowski's abilities.

Mr. Claude Leclerc, Senior Executive and General Counsel to PIPSC, testified. At the time of Mr. Pavlik's adjudication, Mr. Zajchowski reported to Mr. McIntosh who in turn reported to Mr. Leclerc. Mr. Leclerc testified that he had two or three different discussions with Mr. Zajchowski prior to Mr. Pavlik's hearings. Some cases were discussed, including the decision of the Federal Court of Appeal in Canada (Treasury Board) v. Spinks and Threader (1987), 79 N.R. 375. Nothing gave him any concern about Mr. Zajchowski's ability to handle the case.

Mr. Schwartz argued that PIPSC was a large employee organization with the financial resources to avail itself of appropriate counsel where necessary. PIPSC, in assigning Mr. Pavlik's case to Mr. Zajchowski, did not adequately consider the complexity of the case and Mr. Zajchowski's lack of experience at adjudication. Despite Mr. Leclerc's evidence that he had discussed the Spinks and Threader case with Mr. Zajchowski, he urged that I find that Mr. Zajchowski had actually missed the point in the Spinks and Threader case, the leading case on apparent conflict of interest.

He also argued that the failure of Mr. Zajchowski to contact Mr. Grant and call him as a witness, his failure to obtain an unexpurgated copy of the investigation report in a timely fashion, his reliance on questions prepared by Mr. Pavlik rather than presenting his own questions, and his failure to object to the introduction of the investigation report into evidence, amounted to gross negligence. The "Technical Reasons" for advising settlement (Exhibit C-20) are a jumble of information and facts which do not set out the jurisprudence which required Mr. Pavlik to admit the case was lost and that discharge was the appropriate penalty. This was a case of apparent, not real, conflict of interest. Mr. Zajchowski failed to recognize the effect of Mr. Pavlik's good record in mitigating the penalty of discharge. He also threw his client to the wolves when he allowed Mr. Lafrenière to speak directly to him.

Mr. McGee, on behalf of the respondent, denied that there was even simple negligence and certainly not gross negligence in Mr. Zajchowski's handling of the case. Mr. McGee pointed to Mr. Leclerc's evidence to show that Mr. Zajchowski was aware of the Spinks and Threader (supra) case prior to the adjudication hearing. Exhibit C-13 is a substantial list of cases that canvass all of the issues. Mr. Zajchowski was aware of the relevant cases and therefore had an adequate idea of the law to correctly advise Mr. Pavlik. Mr. Pavlik also hired an independent expert, a senior lawyer, Mr. Leonard Max, to examine the process, meet with Mr. Pavlik's representatives, and not a single protest was raised.

Mr. Pavlik, through his counsel, Mr. Schwartz, referred me to a number of cases, some of which were submitted also by counsel for PIPSC who submitted the following cases:

Canadian Merchant Service Guild v. Gagnon et al. [1984] 1 S.C.R. 509, 9 D.L.R. (4th) 641;

Canadian Union of Public Employees, Local 2345 v. Windsor Community Living Support Services [1994] O.L.R.D. No. 978;

Peter Elcombe and Canadian Union of Postal Workers and Canada Post Corporation (1992), 17 CLRBR (2d) 294;

Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057 [1990] 1 S.C.R. 1298;

Jacques (Board file 161-2-731);

Lanouette (Board file 166-2-2230);

James H. Rousseau and International Brotherhood of Locomotive Engineers et al. (1995), 28 C.L.R.B.R. (2d) 252;

Lucio Samperi and Canadian Pacific Air Lines Limited et al. [1982] 2 Can. LRBR 207;

Shore (Board file 161-2-732).

Also submitted by the complainant were the following cases: Carby-Samuels (Board file 161-2-708) and William Hill Jr., v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938 [1995] O.L.R.B. Rep., 1249.

Reasons for Decision

Recently the Canada Labour Relations Board considered its policy regarding the nature and extent of the Board's intervention when a dissatisfied grievor has alleged a failure of the duty of fair representation against the union which represented him at arbitration: International Brotherhood of Locomotive Engineers v. Rousseau 97 CLLC 220-007. The Canada Board stated the following at pages 143,107 and 143,108:

> *The Board's policy with respect to the nature and extent of its intervention, based on its assessment of the quality of a union's representation of an employee during arbitration proceedings, is one of circumspection. The Board has a very limited role to play with respect to the quality of representation at arbitration (and that is the question now before us), and will only examine the conduct of the union or of counsel in very unusual circumstances. It is sufficient here to refer to the case of Lucio Samperi (1982), 49 di 40; [1982] 2 Can LRBR 207; and 82 CLLC 16,172 (CLRB no. 376), where the Board's policy is clearly set out:*
>
> > *It would be a clear case of the tail wagging the dog if this Board were to effectively quash arbitration awards because we disapproved of the manner in which a union presented a grievance at arbitration. We do not consider it to be within the purview of our role or responsibility to evaluate the competence of union representatives or their counsel. Nor do we consider it to be compatible with the public policy purposes and objectives of party controlled compulsory grievance arbitration as a substitute for mid-agreement work stoppages in section 155 of the Code ... The duty of fair representation has a role under the Code but it must have its limits. That limit falls short of an avenue of appeal from arbitral decisions based upon a judgment by this Board's ... members about the competence and performance of union representatives and their counsel.*
> >
> > *Human behaviour is too diverse for the establishment of unequivocal rules. We cannot say that the duty of fair representation has absolutely no role during the arbitration process. There may be the extreme case where a union in bad faith merely puts on a charade with employer collusion or the union representative or counsel appears inebriated. Those like all cases in this area will turn on their facts. The message is, however, that this Board will not, through the duty of fair*

> *representation, microscopically review union conduct during arbitration proceedings.*
>
> *(pages 50-51; 214-215; and 709-710)*

This appears to reflect the general state of the law on this issue in Canada: see Trade Union Law in Canada by Messrs. MacNeil, Lynk and Engelman at 7.620.

Furthermore, Messrs. MacNeil, Lynk and Engelman comment at 7.130, pages 7-6 and 7-7:

> *... In decisions pre-dating the Supreme Court cases on fair representation, labour boards generally held that mere negligence by a union did not constitute a violation of the duty of fair representation. In more recent decisions, boards have affirmed that only gross negligence, and not simple negligence, will make the union liable. In the words of an early Ontario Board decision, "flagrant errors in processing grievances - errors consistent with a 'not caring' attitude - must be inconsistent with the duty of fair representation".*

Accordingly, in considering Mr. Pavlik's complaint against the respondent I believe that it would be inappropriate for me to "microscopically review" the conduct of Mr. Zajchowski during the adjudication hearing. However, if Mr. Pavlik established in evidence that Mr. Zajchowski was guilty of gross negligence, then the complainant would be entitled to succeed on his complaint.

It has not been shown that Mr. Zajchowski was grossly negligent in the representation he provided for Mr. Pavlik. Nor has simple negligence been proven. With the facts that are in evidence it is most likely that Mr. Zajchowski provided a "workmanlike" representation, in keeping with the range of competence and efficiency provided by other representatives.

It has not been proven that the decision taken by Mr. Zajchowski to advise settlement was not a wise one in the circumstances. It is open to argue, as Mr. Schwartz did, that had the adjudication proceeded and mitigating circumstances been presented, the adjudicator might have seen fit to mitigate the penalty. However, this is speculation. It is clear from the evidence, however, that Mr. Pavlik's case suffered damage during his cross-examination.

It would not be unusual for a representative of a grievor in these circumstances to weigh in the balance the likelihood of Mr. Pavlik obtaining other employment should he be able to obtain for him an expunging of the record of discharge by way of settlement as opposed to the probable dire consequences to Mr. Pavlik's employment opportunities should the discharge be upheld and remain on his record.

Whether or not other representatives might have conducted themselves differently is not the issue. There is evidence to suggest that Mr. Zajchowski took the case very seriously, met with and prepared the complainant, worked with a research assistant, Mr. Choquette, and cases were researched and prepared.

Some significance should be attached to the fact that Mr. Pavlik had a senior lawyer of his own choosing, Mr. Leonard Max, meet with Mr. Pavlik's representative, Mr. Zajchowski, and Mr. Max was satisfied with the method of proceeding.

In these circumstances, it is difficult to see how PIPSC could be faulted in assigning the case to Mr. Zajchowski. PIPSC followed its usual procedure in assigning the case to him. Mr. Pavlik's grievances fell within Mr. Zajchowski's assigned area of responsibility. As Mr. Zajchowski was an experienced union officer, although new to the duties of an ERO, there would be no reason not to allow him to proceed with grievances that fell within his area of responsibility. As the case proceeded, no complaints were directed to Mr. Zajchowski's superiors at PIPSC, nor were there any requests for change of representatives. In addition, the jurisprudence establishes that the respondent was under no obligation to hire legal counsel to represent Mr. Pavlik at the adjudication hearing: Peter Elcombe and Canadian Union of Postal Workers and Canada Post Corporation (supra).

On the evidence, the complainant has failed to satisfy me that either PIPSC or Mr. Zajchowski acted in a manner that was arbitrary, discriminatory or in bad faith in representing Mr. Pavlik in relation to the grievances against his indefinite suspension and discharge from employment.

For all these reasons, the complaint must be denied.

Rosemary Vondette Simpson,
Board Member

OTTAWA, March 24, 1997.