Date: 20100520

File: 566-02-559

Citation: 2010 PSLRB 68

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

CLAUDE LACOSTE

Grievor

and

DEPUTY HEAD
(Correctional Service of Canada)

Respondent

Indexed as
Lacoste v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Roger Beaulieu, adjudicator

For the Grievor: John Mancini, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Respondent: Nadia Hudon, counsel

Heard at Montreal, Quebec,
February 26 to 29 and December 1 and 2, 2008 and May 12 to 15, July 27 and 28, and August 4 and 5, 2009.
Written submissions filed March 19 and 26 and April 9, 2008.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] At the start of the hearing on February 26, 2008, counsel for the deputy head (Correctional Service of Canada or "the respondent") reiterated the preliminary objection previously sent to the Public Service Labour Relations Board ("the Board") and to the union representative of Claude Lacoste ("the grievor") in correspondence dated January 14, 2008 about the adjudicator's jurisdiction to hear this case.

[2] In that letter, dated January 14, 2008, the respondent objects to the adjudicator's jurisdiction as follows:

> [Translation]
>
> . . .
>
> *This is to inform you of the employer's objection with respect to the jurisdiction of the Public Service Labour Relations Board ("the Board") adjudicator to hear the above-mentioned references.*
>
> *The first grievance (66-02-559), dated September 05, 2005, reads as follows:*
>
> > *"The employer refuses to allow me to return to work even though 3 physicians found me fit to return to regular work as of January 2005. The employer requested a fitness-to-work paper but is not respecting it."*
>
> *In his grievance, Mr. Lacoste seeks the following corrective action:*
>
> > *" - That the employer respect my return to regular work, without restrictions or conditions;*
> >
> > *- That the employer pay me my full salary as of January 2005, with interest;*
> >
> > *- That the employer pay my pension contributions, both the employer's and the employee's share;*
> >
> > *- That the employer pay the costs of medical insurance, dental insurance and death benefit insurance."*
>
> . . .
>
> *Mr. Lacoste's grievances were referred to adjudication under paragraph 2009(1)(b)* [*sic*] *of the* Public Service Labour Relations Act *("the* Act*") (Annexes C and D). That provision*

> *refers to a disciplinary action resulting in termination, demotion, suspension or financial penalty.*
>
> *Mr. Lacoste was in fact off work for an extended period of time. However, that situation was not because of a measure covered by paragraph 209(1)(b). Rather, he was off work because of incomplete information with respect to Mr. Lacoste's ability to perform the duties of a correctional officer I. In particular, there were serious concerns about a limitation of his access to firearms. Because of incomplete and sometimes contradictory medical information and the delays incurred before satisfactory information could be obtained, Mr. Lacoste was unable to return to his duties before April 30, 2007.*
>
> *Furthermore, the first grievance (566-02-559) makes no mention of a disciplinary measure, suspension, financial penalty or dismissal. . . .*
>
> *There was no disciplinary breach or misconduct on Mr. Lacoste's part. The employer's decision not to have him return to work cannot be considered a response to culpable behaviour. Therefore, it cannot be characterized as a disciplinary measure and certainly not as constructive dismissal, as alleged.*
>
> *The employer submits that the above-mentioned grievances are not about an interpretation or application of a provision of the collective agreement or an arbitral award with respect to Mr. Lacoste. The employer further submits that the grievances are not about a disciplinary measure resulting in suspension for disciplinary reasons, a financial penalty, or a termination of employment or demotion as referred to in paragraphs 12(1)(c), (d) or (e) of the* Financial Administration Act.
>
> . . .

The respondent refers to two grievances in the letter. The parties resolved the second grievance before this hearing.

[3] After hearing the arguments of counsel for the respondent and the grievor's representative, the adjudicator decided to take the preliminary objection under reserve and to proceed on the merits of the grievance and informed the parties that a ruling on this preliminary objection would be included in his final decision. In addition to proceeding on the merits of the grievance, the adjudicator asked the parties to submit to him in writing their respective arguments on the issue of his jurisdiction.

[4] The evidence shows that, on the night of June 12 to 13, 2004, the grievor's

former spouse called the Sûreté du Québec ("the SQ") to his home to intervene in an incident that seemed related to an argument and a suicide threat by the grievor. The SQ seized five personal firearms and ammunition.

[5] At the time of the SQ's intervention, the grievor's former spouse stated that she was afraid for the grievor's health because he had recently lost a lot of weight, was no longer taking his antidepressants and other medication, was threatening to commit suicide, was expressing aggressive intentions, and was depressed.

[6] Less than two days later, the grievor was taken to a hospital for a court-ordered psychiatric assessment. He was hospitalized for 10 days, from June 14 to 24, 2004. Psychiatrist Dr. Pierre Bleau analyzed the hospital's file and determined that the grievor was suffering from serious depression and that he required ongoing medical and psychological follow-ups, failing which he would be unfit to return to his regular duties as a correctional officer without endangering his own life and the lives of his co-workers, with whom he worked as a team. He also required pharmacological treatment. Teamwork among correctional officers in a penitentiary is not only essential but also critical to maximizing safety at every penitentiary in Canada.

[7] The psychiatrist stated that a patient is not kept in hospital for 10 days for no reason.

[8] On Sunday, June 13, 2004, the SQ notified the Assistant Warden of Cowansville Institution that personal firearms had been seized at the home of one of the institution's correctional officers.

[9] The Assistant Warden immediately arranged a meeting with the grievor for the following Monday morning to inquire about the problem. Unfortunately, the grievor did not show up for the meeting scheduled for June 14, 2004 at 08:00.

[10] The Assistant Warden was worried about the grievor after the initial call from the SQ. Because he did not show up for the meeting, she called the SQ and learned that they had reason to believe that the grievor was suicidal and that he was a potential danger to himself. That same day, the SQ Representative confirmed that the SQ had obtained a court order to take the grievor to a hospital. However, he did not know the grievor's location and asked the Assistant Warden to communicate with him if the grievor reported for work.

[11] On her arrival at work on June 15, the Assistant Warden learned that the grievor was in a hospital.

[12] In the meantime, on June 14, the grievor's former spouse called the penitentiary and told the Assistant Warden that the grievor was suicidal and that he was no longer taking his antidepressants or other medication. After the call, the Assistant Warden provided contact information for the Employee Assistance Program to the grievor's former spouse for her and her children.

[13] The Assistant Warden immediately checked the grievor's sick leave balance and realized that his sick leave credits had almost run out. She asked for and obtained approval to advance 30 days of sick leave, if necessary, in addition to the sick leave credits that he had already accumulated.

[14] The grievor's behaviour then changed. He isolated himself from everyone. He did not want to provide a telephone number or address where he could be reached other than his mother's address (from which he picked up his messages every two to three weeks). In addition, he withdrew to a hunting camp with no address for several months, completely out of communication.

[15] When the grievor found out that the respondent had advanced some additional sick leave days, he rejected any other help from it. When someone asked him how he was making out, he would become extremely angry and would say that it was none of their business and that his problems had nothing to do with his work.

[16] The grievor changed doctors when they asked pointed medical questions. Changing from one general practitioner to another made regular follow up difficult. The evidence showed that the grievor lacked openness and candour with a number of the doctors that he consulted, and most found him largely uncooperative.

[17] The grievor believed that he was fit to work and repeated that assertion each time he came back from a meeting with a physician despite the specific instructions he had been given when hospitalized in June 2004.

[18] Once he complied with the required medical instructions, he was immediately reinstated in his position in March 2007.

II. Summary of the arguments

A. For the respondent

[19] The reply at the first level of the grievance process was issued on November 30, 2005 and the second-level reply on February 6, 2006. It should be noted that the grievor did not submit any arguments or request a grievance hearing at either level. On the contrary, throughout the grievance process, the grievor's union representative specifically informed the respondent that the grievor did not wish to appear at a hearing and that a hearing was not necessary.

[20] After receiving a negative reply at the second level of the grievance process, the grievor referred his grievance to adjudication before the Board, using Form 21. In support of his reference to adjudication, the grievor invoked paragraph 209(1)(*b*) of the *Public Service Labour Relations Act* ("the *Act*"), which refers to a disciplinary action resulting in termination, demotion, suspension or financial penalty. It was the first time that the grievor raised the notion of a disciplinary measure in his grievance.

[21] Subsection 209(1) of the *Act* reads as follows:

> *Reference to adjudication*
>
> ***209.*** *(1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to:*
>
> (a) *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*
>
> (b) *a disciplinary action resulting in termination, demotion, suspension or financial penalty;*
>
> . . .
>
> [Emphasis added]

[22] Under subsection 209(1) of the *Act,* the grievance can only refer to the provisions of paragraph (*a*) or (*b*). The interpretation or application of a collective agreement has no bearing on this grievance. The grievor did not refer to any provisions of a collective agreement in his grievance or at either level of the grievance process. Furthermore, the reference to adjudication was not done under paragraph 209(1)(*a*).

The grievor cannot now invoke that provision to support referring his grievance to adjudication.

[23] Moreover, the replies at each level of the grievance process indicated that the grievor was in fact off work for a time. However, that situation was in no way the result of a measure referred to in paragraph 209(1)(*b*) of the *Act*. Rather, the grievor's absence may be explained by the time needed to obtain complete medical information from him and to then enable the respondent, through Health Canada, to ensure that he was fit to work.

[24] Additionally, that explanation entirely legitimizes the respondent's inquiry into the grievor's fitness to work, meaning that it was not a disciplinary measure. No disciplinary measures were imposed on the grievor, and none can be inferred from his grievance. That proof is that the grievor did not identify or designate any in his grievance, which involves only a medical disagreement between the grievor and his employer about his fitness to work.

[25] The grievor has not been accused of any disciplinary breaches or misconduct. The grievor not working during the period in question cannot be attributed to an attempt by the respondent, which apparently wanted to punish or penalize him. Furthermore, no such assertion is made in the grievance. The grievor cannot, in the context of his reference and in an effort to assert its validity, claim to have been subject to a disciplinary measure when no such assertion was made previously.

[26] In *Shneidman v. Canada (Attorney General),* 2007 FCA 192, the Federal Court of Appeal held as follows at paragraph 26: "To refer a complaint to adjudication, the grievor must have given her employer notice of the specific nature of her complaints throughout the internal grievance process . . . ." In this case, the grievor never complained, at any level, of any disciplinary measures taken against him.

[27] If the grievor did not from the outset report the situation that he wished to complain about, he cannot, once the reference to adjudication has been made, correct his mistake of not properly identifying the object of his grievance.

[28] In *Burchill v. Attorney General,* [1981] 1 F.C. 109 (C.A.), the Federal Court of Appeal clearly stated that a grievance cannot be referred to adjudication unless it has been presented and dealt with in accordance with the grievance process. At paragraph

5, the Court stated as follows:

> *. . . In our view the applicant having failed to set out in his grievance the complaint upon which he sought to rely before the Adjudicator, namely, that his being laid off was really a camouflaged disciplinary action, the foundation for clothing the Adjudicator with jurisdiction under subsection 91(1) was not laid. Consequently, he had no such jurisdiction.*

[29] In *Lee v. Deputy Head (Canadian Food Inspection Agency),* 2008 PSLRB 5, the adjudicator extensively analyzed the impact of *Burchill*, in particular in light of the new *Act*. At paragraph 18, the adjudicator held that *Burchill* ". . . continues to figure prominently in the case law that guides Board adjudicators." He wrote the following at paragraph 20:

> *. . . In my opinion, however,* Burchill *continues to apply equally under the current* Act. *Its force flows from the stipulation under subsection 209(1) that an employee may only refer to adjudication an individual grievance ". . . that has been presented up to and including the final level in the grievance process . . ." When a grievor fails to raise an issue until after the conclusion of the grievance process, the Burchill interpretation holds that the grievor has not in fact presented a grievance regarding the newly raised issue ". . . up to and including the final level in the grievance process . . ." That failure constitutes a bar to adjudication under any paragraph of subsection 209(1), as it did under the comparable provisions of the former* Act.

[30] With respect to the latitude of an adjudicator in analyzing the wording of a grievance to determine whether he or she has jurisdiction to decide a case, the adjudicator in *Lee* held that that latitude is limited by the *Act*. Paragraph 33 of that decision reads in part as follows:

> *. . . Certainly, where the wording of the original grievance and the evidence about how the grievor argued the case during the grievance procedure leaves little doubt that a claim subsequently made in a reference to adjudication was never raised earlier, the discretion disappears. The adjudicator's duty is to apply section 209 of the* Act *faithfully and in keeping with the direction given by the courts in* Burchill.

[31] In this case, as in *Garcia Marin v. Canada (Treasury Board),* 2007 FC 1250, it was not until adjudication that the grievor first raised the notion of a disciplinary measure in an attempt to provide the adjudicator with jurisdiction to hear his

grievance.

[32] In *Garcia Marin*, the grievor characterized his employer's conduct as disguised discipline. In this case, the grievor simply checked paragraph 209(1)(*b*) of the *Act* on the reference-to-adjudication form and provided no further information or details.

[33] The respondent argued that, as in *Garcia Marin*, in which the Court dismissed the argument that disciplinary measures were intrinsic to the grievance, this adjudicator should decline jurisdiction. The grievance that was referred to adjudication is not about and does not invoke a disciplinary measure, either real or camouflaged. In this case, there is absolutely no evidence that the grievor was subject to any kind of discipline that would bring the case under the ambit of paragraph 209(1)(*b*) of the *Act.* Therefore, the Board does not have jurisdiction to hear this grievance.

[34] Accordingly, the respondent submitted that the grievance could not have been referred to adjudication under paragraph 209(1)(*b*) of the *Act* and that it should be dismissed for lack of jurisdiction.

B. <u>For the grievor</u>

[35] The Board has full jurisdiction *ratione materiae* over the grievance as worded and has full jurisdiction to grant corrective measures. The grievor was deprived of his employment because of the capricious and irresponsible attitude of the respondent, which acted based on the erroneous belief of the grievor's former spouse. The vengeful attitude of his former spouse of insisting that the grievor presented a danger was definitively and clearly discounted by a fully independent psychiatrist who also had the responsibility of making a determination on the issue of danger. Despite all the medical opinions provided by the grievor, the Assistant Warden of the institution persisted in refusing to allow him to return to work, supposedly because the grievor presented some kind of danger that had to be verified and reverified, and certified and recertified.

[36] The grievor's representative stressed the importance of the excessive persistence on the respondent's part with respect to the objection before the adjudicator.

[37] The grievor's representative stated that, in the respondent's view, the grievance

did not entail a disciplinary measure or a violation of a collective agreement, and therefore, the grievor did not have any recourse with the Board. Thus, the respondent was confusing a simple question of procedure with one of jurisdiction.

[38] If the Board finds that the grievance is disciplinary in nature or that it raises a violation of a collective agreement, or both, it is undeniable that the Board has jurisdiction to hear the grievance.

[39] The grievor's representative added that the grievor's choice of one form rather than another for his reference to adjudication did not change the nature of the grievance. The wording of the grievance is the sole determining factor, according to the case law that the respondent submitted.

[40] The grievor complained about the same problem at the three levels of the grievance process and asked for the same corrective measures at all three levels. Accordingly, any reference by the respondent to jurisdiction that is based on a change to the initial wording of a grievance does not support the respondent's position. According to the grievor's representative, the respondent's position in that respect appears completely frivolous.

[41] The grievor's representative further stated that the respondent's preliminary objection was made before the start of the hearing and that it pertained to two of the grievor's grievances before the Board.

[42] The adjudicator noted that the parties had resolved the other grievance, without prejudice, and it is no longer before the Board. In his arguments, the grievor's representative indicated that this is the only grievance before the Board.

[43] Before concluding, the grievor's representative stated that an employee's choice before the Board of using Form 20 or 21 is merely a question of procedure. An employee might err in filing his or her reference and may ask the Board to rectify the mistake. The only thing that could affect the Board's jurisdiction is the wording of a grievance, which must be disciplinary in nature or refer to the application of a collective agreement.

[44] Finally, the grievor's representative asked for the opportunity to supplement his evidence on the merits to establish the respondent's excessive persistence, showing that in fact the respondent wanted to punish the grievor for failing to provide medical

certificates each time he was asked. In the end, the grievor's representative submitted that a situation that would normally be considered an issue involving the application or interpretation of a collective agreement had developed in such a way that the punitive nature of the respondent's conduct had become the fundamental characteristic of its behaviour. The Board should consider the respondent's objection in light of this evidence on the merits.

C. Respondent's reply

[45] With respect to the respondent's preliminary objection about the adjudicator's jurisdiction, the adjudicator decided to take the objection under reserve and to hear all the evidence before ruling on the objection.

[46] When the adjudicator asked the parties to submit their arguments on the matter of his jurisdiction, only the grievor's evidence was filed and completed.

[47] In fact, the respondent did not begin giving evidence until May 12, 2009, while the written arguments on the issue of the adjudicator's jurisdiction were finalized on April 9, 2008.

[48] The respondent further asserted that the grievor's success in establishing certain facts before the adjudicator did not validate his reference to adjudication. Again, his initial grievance, which the grievor had filed with the respondent, as worded had to be referred to adjudication and had to provide an adjudicator with jurisdiction to determine the issue.

[49] It must be determined whether this grievance could have been referred to adjudication under subsection 209(1) of the *Act* and not whether the adjudicator can decide the situation that the grievor might succeed in establishing before him.

[50] In fact, based on his arguments and the evidence that he tried to adduce before the adjudicator, the grievor is attempting to change and enhance his grievance by adding information that it did not contain and that he never alleged. The arguments and the grievor's attempts to present them are merely a sham with one purpose: to try to make a grievance adjudicable that is not fundamentally adjudicable as worded. In his arguments of March 26, 2008, the grievor alleged for the first time that the respondent tried to punish him for failing to satisfy its requests for medical certificates. That allegation is new and is not what the grievor stated in his grievance.

Moreover, the grievor never raised that issue at the different levels of the applicable grievance process when he had the opportunity. That issue, raised only recently, does not allow the adjudicator to hear the grievor's grievance.

[51] The grievor's allegations about his other grievance are unacceptable and irrelevant. The grievor filed two grievances containing different wording and involving specific situations and periods. The respondent's position in the second case, presented without prejudice, cannot constitute any kind of argument that would make the grievance adjudicable because, in its essence, it is not.

[52] An adjudicator's jurisdiction to hear a grievance is a fundamental issue that must be determined solely based on the applicable legislative provisions and not mere acquiescence by one of the parties.

[53] In conclusion, the respondent asked that the grievance be dismissed for lack of jurisdiction.

III. Reasons

[54] After hearing the evidence on the merits and hearing and considering both parties' arguments on the matter of my jurisdiction, I find that there is no disguised dismissal in this case.

[55] In its preliminary objection, the respondent argued that this grievance does not meet the reference criteria set out in paragraphs 209(1)(*a*) and (*b*), and I agree.

[56] During the hearing, the respondent also referred to *Burchill*. In my view, that decision is difficult to apply to a case in which there was no grievance hearing and in which the wording of the grievance does not on its face point to a matter of discipline or interpretation. The grievor did not adopt any position during the grievance process. I have difficulty imagining that he can now be accused of changing his position at adjudication to the extent that *Burchill* would apply.

[57] That said, after hearing the evidence on the merits, I am of the opinion that the respondent's objection based on section 209 must be allowed.

[58] I am of the opinion that the grievor was not the victim of any disciplinary act by the employer. The respondent's actions were driven by legitimate concerns about the grievor's health and the impact that it might have had on the security of the

institution. The events giving rise to the grievor's hospitalization in June 2004 and his subsequent time off work were not associated with disciplinary measures on the respondent's part.

[59] An analysis of the evidence reveals that, at the first opportunity, the respondent asked the grievor to undergo regular medical follow-ups to establish his medical fitness before he could be reinstated in his position as a correctional officer at the institution in Cowansville, Quebec. The respondent's request for regular medical follow-ups was not a whim or some kind of punishment imposed on the grievor. Rather, the respondent was exercising a right and an obligation toward the grievor and the entire staff at Cowansville Institution to ensure health and safety for all. In a place where firearms are a daily presence, the respondent needs employees who are medically and psychologically fit, and it has an obligation to ensure that that is the case.

[60] It is important to identify the circumstances and the context that gave rise to the respondent's request that the grievor have regular medical follow-ups. The respondent was not asking for any kind of medical follow-ups but for medical follow-ups validated by a Health Canada physician.

[61] The key relevant facts arising from the evidence with respect to the context mentioned earlier in this decision are set out briefly as follows.

[62] Following a family dispute involving the grievor, his former spouse asked the SQ to intervene, resulting in the seizure of a number of firearms owned by the grievor at his home. During that intervention in early June 2004, the grievor's former spouse informed the SQ that she was worried about his health because he had recently lost a lot of weight, had stopped taking his antidepressants and had expressed suicidal intentions.

[63] In the wake of that first intervention, the SQ immediately alerted the authorities at Cowansville Institution that firearms had been seized at the home of one of their correctional officers and that he might be suicidal.

[64] In the days that followed, the respondent learned that the grievor had been hospitalized against his will under a court order on June 14, 2004. During his hospitalization of more than 10 days, a number of diagnoses were made, including one

of depression, and he underwent a psychiatric assessment.

[65] Those events and their circumstances gave rise to concerns on the respondent's part about the health and safety of the grievor and of the entire staff of the institution. As a result of those concerns, the respondent required the grievor to undergo regular medical follow-ups and to obtain a certificate of medical fitness approved by a Health Canada medical specialist before being reinstated in his position. The evidence shows that the grievor was reinstated in his position once he met that requirement.

[66] The Assistant Warden also communicated with Human Resources, which advised her of the need to obtain a certificate attesting that the grievor was fit to work and to have the medical certificate validated by a Health Canada physician before allowing him to return to work. That message was passed on to the grievor as soon as he was released from hospital. The Assistant Warden also communicated with a correctional officer who was also a union steward to notify him of the situation.

[67] The factors that contributed to the delay between the SQ's notification in mid-June 2004 and the grievor's reinstatement in his correctional officer position on March 15, 2007 should be addressed. The evidence did not reveal any mention of discipline with respect to the grievance nor any mention of discipline at the different levels of the grievance procedure nor of the respondent's conduct towards the grievor. On the contrary, at no time did the respondent identify any failings on the grievor's part involving discipline or misconduct.

[68] First, the grievor was hospitalized, and he had family and personal problems as well as problems with the SQ. Those are just some of the factors that impeded his return to work at an earlier date.

[69] After his release from the hospital, the grievor's behaviour changed. He isolated himself from everyone. He refused to provide a telephone number or address at which he could be reached, other than his mother's address. He was not living with his mother, and he picked up his messages every two to three weeks. Furthermore, he withdrew to a hunting camp with no address for several months, completely out of communication.

[70] When the grievor learned that the respondent had advanced him additional days of sick leave, he refused any other help from the respondent. When someone asked

him how he was making out, he would become extremely angry and would say that it was none of their business and that his problems had nothing to do with his work.

[71] The grievor changed doctors when they asked pointed medical questions. Changing from one general practitioner to another made regular follow up difficult. The evidence showed that the grievor lacked openness and candour with a number of the doctors that he consulted, and most found him largely uncooperative.

[72] The grievor believed that he was fit to work and would repeat that assertion each time he returned from seeing a physician, despite the specific instructions that he had been given at the time of his hospitalization in June 2004.

[73] It is obvious that, for a number of months, the grievor went through a difficult period from a medical, psychological and financial point of view. However, none of those personal circumstances discharged the respondent from its obligation and responsibility to continue requiring regular medical follow-ups to allow the grievor to return to work. The facts and the evidence showed that, when the grievor finally submitted the required certificate of medical fitness, he was reinstated in his position.

[74] The delay between his hospitalization in June 2004 and his return to work several months later can be explained by the grievor's uncooperative behaviour in refusing to follow the instructions to have regular medical follow-ups, which were clearly explained to him on his release from hospital in mid-June 2004.

[75] The grievor's absence from work was due to his incomplete medical information with respect to his ability to perform the duties of a correctional officer and in particular the serious concerns of limiting the grievor's access to firearms. The medical instructions required by the respondent of the grievor were based on his health and safety and that of his co-workers.

[76] The grievor's cooperation during that long period was deficient, laborious and difficult, such that the grievor, through his actions, was largely responsible for the delay in his return to work and was the architect of his own misfortune.

[77] I have no evidence of bad faith on the respondent's part or of a disciplinary intention in its words or actions.

[78] Finally, there is no need for me to rule on the objections taken under reserve

during the hearing on the merits.

[79] For all the above reasons, I make the following order:

(The Order appears on the next page)

IV. Order

[80] I allow the respondent's preliminary objection, and I dismiss the grievance.

May 20, 2010.

PSLRB Translation

Roger Beaulieu,
adjudicator