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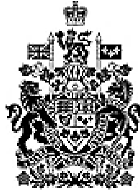
Public Service Labour Relations and Employment Board Act and *Public Service Labour Relations Act*



Before a panel of the Public Service Labour Relations and Employment Board

BETWEEN

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 401

Complainant

and

STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES

Respondent

Indexed as
United Food and Commercial Workers Union, Local 401 v. Staff of the Non-Public Funds, Canadian Forces

In the matter of a complaint made under section 190 of the *Public Service Labour Relations Act*

Before: John G. Jaworski, a panel of the Public Service Labour Relations and Employment Board

For the Complainant: Kelly Nychka, counsel

For the Respondent: François Paltrinieri, senior labour relations officer

Heard at Edmonton, Alberta,
May 25 to 27, 2016.

I. Complaint before the Board

[1] The complainant, United Food and Commercial Workers Union, Local No. 401 (“the UFCW 401”), is the certified bargaining agent for the employees of the operational category employed by the Staff of the Non-Public Funds, Canadian Forces (“the employer”), at Canadian Forces Base (CFB) Edmonton in Edmonton, Alberta.

[2] On November 18, 2015, the UFCW 401 filed an unfair labour practice complaint under s. 190(1)(b) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *Act*”) with the Public Service Labour Relations and Employment Board (“the Board”), alleging that the employer failed to comply with s. 106 of the *Act*, which is the duty to bargain in good faith. The details of the complaint are as follows:

> a. *The Complainant and the Respondent were parties to a Collective agreement with a term of December 20, 2012 to June 30, 2015.*
>
> b. *Notice to Commence Collective Bargaining was sent by the Complainant to the Respondent on March 4, 2015.*
>
> c. *The chief negotiator for the Complainant is Lee Clarke and for the Respondent Erin Stephens.*
>
> d. *The parties exchanged proposals and commenced bargaining. Bargaining took place on September 16, 17, 18, 2015.*
>
> e. *On September 18, 2015 the Respondent proposed that bargaining continue on November 24, 25, 2015. The Complainant agreed and those dates were formally scheduled.*
>
> f. *To date the parties have completed bargaining non-monetary items and the Complainant has tabled a monetary offer.*
>
> g. *On October 19, 2015 an Application for Revocation of Certification was filed in regards to this bargaining unit.*
>
> h. *A telephone conversation took place involving Lee Clarke and Vinko Zigart representing the Complainant and Erin Stevens as well as Adrian Scales representing the Respondent. This occurred on November 13, 2015 at about 11 a.m. The Respondent proposed that bargaining be postponed pending the conclusion of the Revocation Application that has been filed. They were not interested in continuing with bargaining until the conclusion of any Board hearings and/or votes. The Complainant made it*

> *clear that the Respondent had a duty to bargain in good faith and that included attending for the scheduled dates on November 24-25, 2015. The Respondent made it clear that they would not attend on those dates. The Complainant reiterated its objection and demanded that they put the decision in writing.*
>
> i. *Erin Stevens sent an e-mail to Lee Clarke on November 13, 2015 canceling all bargaining dates and Lee Clarke responded with the Complainants objections.*
>
> [*Sic* throughout]

[3] As relief, the UFCW 401 requested from the Board an order that the employer recommence collective bargaining and that it continue to bargain in good faith until a new collective agreement is reached.

[4] On December 14, 2015, the employer filed its response to the complaint, denying that it was in breach of the duty to bargain in good faith and requesting that the complaint be dismissed.

[5] On January 11, 2016, the UFCW 401 filed its reply to the employer's response.

II. Summary of the evidence

[6] On September 26, 1985, the UFCW 401 was certified as the exclusive bargaining agent for those employees in the bargaining unit identified as the operational category employed at CFB Edmonton ("the bargaining unit"). The bargaining unit is composed of approximately 70 to 72 employees, some of whom are seasonal workers, who work at the parts of CFB Edmonton that provide the following services:

a. staff at the three messes;

b. bartenders and service staff at the curling and golf clubs;

c. fitness instructors at the fitness and support facilities;

d. rink attendants at the Twin Rinks arena;

e. staff at the CANEX (a department store);

f. staff at the Express Mart and gas station;

g. staff at the liquor store;

h. staff at the golf club; and

i. staff at the curling club.

[7] On December 20, 2012, the parties entered into their most recent collective agreement, which expired on June 15, 2015 ("the collective agreement").

[8] At clause 2.01 of the collective agreement, the employer recognizes the UFCW 401 as the exclusive bargaining agent for the employees in the bargaining unit.

[9] Lee Clarke is the chief negotiator for the UFCW 401. He has been with the UFCW 401 for 21 years. He described the relationship with the employer as being "quite good" until November 2015.

[10] Erin Stevens is a senior labour relations officer ("LRO") with the employer who as of the time of the hearing had held that position for just under five years. Ms. Stevens has a law degree, was called to the bar in Ontario in 2011, and is a non-practicing member in good standing of the Law Society of Upper Canada. Before being called to that bar and joining the employer, she articled with a law firm in Ottawa, Ontario, which specializes in labour law. At all material times, she reported to Adrian Scales, the director of labour relations ("LR") and compensation for the employer. He did not testify.

[11] Ms. Stevens described her duties as a senior LRO as requiring her to carry out an array of activities, including acting as quasi-legal counsel, providing advice on grievances, and as of 2015, being the chief negotiator. When asked about the state of the relationship between the parties, Ms. Stevens testified that she could speak only to her tenure. She described it as generally but not always good.

[12] On March 4, 2015, in a letter, the UFCW 401 gave notice to the employer that it wished to begin collective bargaining negotiations. The letter identified the chief negotiator for the UFCW 401 as Mr. Clarke and provided his contact information.

[13] On March 6, 2015, the employer acknowledged its receipt of the UFCW 401's March 4, 2015, letter, advised the UFCW 401 that Ms. Stevens would represent it as its chief negotiator, and provided the UFCW 401 with her contact information.

[14] Ms. Stevens testified that although she was the chief negotiator for bargaining in 2015, she had assisted Mr. Scales in the bargaining that led to the collective agreement in 2012.

[15] The parties agreed to meet and bargain and did so on September 16, 17, and 18, 2015. The evidence disclosed that during this session, they agreed on all non-monetary issues. The evidence also disclosed that on September 18, 2015, the UFCW 401 provided the employer with its written proposal with respect to monetary items to be negotiated and that the parties agreed to meet again on November 24 and 25, 2015.

[16] Mr. Clarke testified that the scheduled dates of November 24 and 25, 2015, were firm and that he arranged for hotel meeting rooms to be booked for those dates a week or two after September 18, 2015. Ms. Stevens confirmed in her evidence that the parties had agreed to meet again for the next round of bargaining on November 24 and 25, 2015.

[17] Mr. Clarke confirmed in his evidence that the way the bargaining progressed in the fall of 2015, with split sessions, was its normal way of progressing in bargaining with the employer. Agreements were never reached in the first session. They generally would meet and deal with non-monetary issues first and then break and return at a later date to deal with monetary matters. Mr. Clarke confirmed in his evidence that after collective bargaining is completed and a tentative agreement is reached, the UFCW 401 holds a ratification vote for the bargaining unit members.

[18] On October 26, 2015, the Board received an application under s. 36 of the *Act* from an individual, Ajay Lala, for the revocation of certification of the UFCW 401 as the bargaining agent for the bargaining unit ("the Lala application"). Mr. Lala was identified as being a member of the bargaining unit but not of the UFCW 401. The Lala application is PSLREB File No. 550-18-10.

[19] At paragraph 8 of the Lala application, Mr. Lala states that he is invoking s. 94 of the *Act* in support of his application. He alleges that the UFCW 401 no longer represents a majority of the employees in the bargaining unit. Section 94 of the *Act* states as follows:

> ***94 (1)*** *Any person claiming to represent at least 40% of the employees in the bargaining unit bound by a collective agreement or an arbitral award may apply to the Board for*

> *a declaration that the employee organization that is certified as the bargaining agent for the bargaining unit no longer represents a majority of the employees in the bargaining unit.*
>
> ***(2)*** *The application may be made only during the period in which an application for certification of an employee organization may be made under section 55 in respect of employees in the bargaining unit.*

[20] Mr. Lala did not testify.

[21] On November 2, 2015, the Board, with respect to file 550-18-10, wrote to Mr. Lala, the employer, and the UFCW 401 and stated as follows:

> *I acknowledge receipt, on October 26, 2015, of the above noted application copies of which are attached for the employer and the bargaining agent.*
>
> *In accordance with section 37 of the Public Service Labour Relations Board Regulations (the Regulations), the closing dated is fixed at: December 2, 2015.*
>
> *In accordance with subsection 38 (1) of the Regulation [sic], enclosed for the employer is a copy of the "NOTICE TO EMPLOYEES OF APPLICATION FOR REVOCATION OF CERTIFICATION".*
>
> *In accordance with subsection 38 (2) of the Regulations, the employer is directed to post a copy of the attached Notice in a conspicuous place in the workplace where it is most likely to come to the attention of employees affected by the application.*

[22] The evidence disclosed that in that correspondence, the Board did enclose a copy of the "Notice to Employees of Application for Revocation of Certification" ("the Notice poster"); however, it did not enclose the Lala application, which was brought to its attention. It then provided the application to the employer and UFCW 401.

[23] The Notice poster provided a closing date of December 2, 2015, as set out by s. 37 of the *Public Service Labour Relations Regulations* (SOR/2005-79; "the *PSLRB Regulations*"), which states as follows:

> ***37*** *On receipt of the application for revocation of certification, the Board must*
>
> > ***(a)*** *fix a closing dated that is a date that will allow sufficient time for the employees to be notified and for*

> *them to respond, considering the number of employees who are affected by the application for revocation of certification and the locations at which they are employed, and that is no less than 15 days and no more than 40 days after the day on which the application for revocation of certification is filed; and*
>
> ***(b)*** *notify the bargaining agent and, if the applicant is a person other than the employer, the employer of the closing date.*

[24] Section 42 of the *PSLRB Regulations* states as follows:

> ***42 (1)*** *An application for revocation of certification shall be accompanied by the documentary evidence on which the applicant intends to rely to satisfy the Board that the bargaining agent no longer represents a majority of the employees in the bargaining unit.*
>
> ***(2)*** *Any supplementary documentary evidence shall be filed on or before the closing date for the application.*

[25] Ms. Stevens testified that although the employer was provided with the Lala application, which is a three-page standard form, she did not receive any documents that might have been attached or provided to the Board as part of the application. She stated that she reviewed the *Act* and that her understanding was that an applicant in a revocation application is required to have the support of 40% of the bargaining unit members. She said that the Notice poster provided for a closing date and that she and Mr. Scales believed that a revocation vote would be held by December 2015.

[26] On November 4, 2015, at 10:37 a.m., Ms. Stevens, with respect to file 550-18-10, emailed the Board and stated as follows:

> *Based on the contents of this application, the applicant claims that the 'employee organization no longer represents a majority of employees within the bargaining unit', however, there is no specific information as to the actual number of employees who support the application. As per our conversation yesterday, I just want to confirm that the applicant has provided additional documentation to that effect, but such information is confidential and not discussed to the employer nor the bargaining agent?*

[27] At 11:16 a.m., the Board replied as follows:

> *Yes, it's section 20 of the Regulations that prohibits of [sic] from sharing that portion of the documentation received:*

> ***20.*** *Despite section 4, the Board shall not disclose to anyone evidence that could reveal membership in an employee organization, opposition to the certification or revocation of certification of an employee organization, or the wish of any employee to be represented, or not to be represented, by an employee organization, unless the disclosure would be in furtherance of the objectives of the Act.*

[28] That same day, Mr. Scales signed a letter addressed to the Board, with respect to file 550-18-10 and that Ms. Stevens testified that she authored, which was copied to the UFCW 401 and Mr. Lala. The letter stated in part as follows:

. . .

> *I acknowledge on behalf of the Employer, the Staff of Non Public Funds, Canadian Forces, receipt of your letter dated 2 November 2015 pertaining to the Application for Revocation of Certification of the bargaining unit of Operational Category employees represented by UFCW Local 401 at CFB Edmonton, filed by Mr. Ajay Lala on the 19th of October, 2015.*
>
> *Following a review of the above-noted correspondence, the Employer would like to advise the PSLREB that the Employer and the Bargaining Agent are* ***tentatively*** *scheduled to meet on the 24th and 25th of November 2015 to continue negotiations of the potential renewal of the collective agreement between the parties. As the collective agreement has been expired since 30 June 2015, and the Employer received the Notice to Bargain on the 4th of March, 2015, the parties have commenced bargaining, and have previously met to discuss proposals pertaining to non-monetary and monetary issues on the 16th, 17th, and 18th of September 2015.*
>
> *Upon reviewing the contents of the Application for Revocation of Certification, the Employer is requesting that the Chairperson of the Board provide direction as to whether the parties should temporarily suspend negotiations, and cancel all tentative meeting dates, until the resolution of the application at issue. We ask that direction be provided to the parties no later than the 16th of November 2015, given the impending dates noted above.*

. . .

> [Emphasis added]

[29] In her testimony, Ms. Stevens stated that while the word “tentative” was used in that letter, she did not consider the November 24 and 25, 2015, dates tentative but

fixed. She described her understanding of "tentative" as in her words, being "until I am off the plane." She stated that she considered the bargaining session dates tentative as "they could be cancelled." She also stated that she did not use the term "tentative" when referring to the scheduled negotiation dates when discussing this very issue on the telephone with the representative of the Board's registry. In her evidence, Ms. Stevens admitted that she had no information as to whether a distinction was made between fixed and tentative dates when the November 4, 2015, letter was given to the Chairperson of the Board for consideration. Ms. Stevens confirmed that at no time did she speak with the Board's chairperson.

[30] On November 10, 2015, at 2:42 p.m. (EST), with respect to file 550-18-10, the Board wrote via email, registered mail, and fax to the UFCW 401, the employer, and Mr. Lala, stating the following:

> *This is further to the employer's letter of November 4, 2015, requesting direction from the Board regarding the collective bargaining negotiations currently ongoing between the employer and the UFCW, Local 401.*
>
> *The Chairperson of the Board has directed that I advise that it is up to the employer and the bargaining agent to determine whether or not to suspend or to continue their negotiations in light of the application for revocation of the bargaining agent's certification for this group.*

[31] That same day at 9:14 p.m. (EST), Mr. Lala emailed representatives of the UFCW 401, Ms. Stevens, Mr. Scales, and the Board, stating as follows:

. . .

> *Upon discussions with the employee's [sic] of the NPF (CFB Edmonton), we have elected to advise all respected representatives to cease all CBA negotiations until the Application for Revocation of Certification is resolved.*
>
> *It is to our understanding and belief that it undermines the severity of the application process in the first place.*

. . .

[32] Still on that day, at 9:19 p.m. (EST), Mr. Scales emailed the UFCW 401's representatives, Mr. Lala, and the Board and acknowledged receiving Mr. Lala's email of that day.

[33] On November 11, 2015, at 5:41 p.m., Mr. Clarke emailed Ms. Stevens, copying Mr. Scales, and stated the following:

. . .

> *Despite recent events and further to the PSLRB [sic] letter dated November 4, 2015 and in accordance with the relevant articles of the PSLRA governing the obligation to bargain in good faith, the union's preference is to continue negotiations with the Employer on November 24/25 and until the parties reach a settlement.*

. . .

[34] Subsequent to that email, a conference call was arranged for Friday, November 13, 2015 ("the November 13 call"), between Mr. Clarke, Ms. Stevens, Mr. Scales, and Vinko Zigart (also referred to in documents as "Zig"), also an employee of the UFCW 401, to discuss the continuation of bargaining scheduled for November 24 and 25, 2015. I heard evidence with respect to that conference call from Messrs. Clarke and Zigart and Ms. Stevens.

[35] Mr. Clarke stated that during the course of the November 13 call, the Board's November 10 letter was discussed, and the employer's representatives stated that they had never seen something like that left to the parties and that the employer felt that it had the right to not to come to the scheduled bargaining session. Mr. Clarke stated that he told Ms. Stevens and Mr. Scales that the UFCW 401 believed that the employer was required to attend the scheduled bargaining session and asked them to set out their position in writing. Mr. Zigart testified that from the November 13 call, he took it that the employer had decided to not continue with the scheduled bargaining due to the Lala application.

[36] Ms. Stevens testified that the situation that the employer found itself in was unprecedented and that after considering its options, it decided to temporarily suspend bargaining. She confirmed that the UFCW 401 vehemently opposed that position and that Mr. Clarke asked the employer to put its position in writing, which she said it did by a letter dated November 13, 2015, which she drafted and Mr. Scales signed and sent to the UFCW 401 by both email and facsimile. The letter stated as follows:

> *As you are aware, the Public Service Labour Relations and Employment Board has notified the Employer and the Bargaining Agent of the Application for Revocation of Certification, dated 19 October 2015. Further to this application, the Employer sought the Board's direction as to whether the parties should proceed with the scheduled dates for bargaining. The Board, as per the letter from Ms. Lisa Woodstock of 10 November 2015, has advised the parties that it is up to the Employer and the Bargaining Agent to determine whether to suspend or continue negotiations. Following the Board's direction, the applicant, Mr. Ajay Lala, requested the parties cease negotiations until the application is resolved.*
>
> *As per your email of 11 November 2015, requesting the Employer indicate its agreement or opposition to maintaining the scheduled dates for bargaining (24-25 November), the Employer wishes to postpone the scheduled negotiation dates until the resolution of the application. Taking into consideration the Board's correspondence, the request of the applicant, as well as the preference of the Bargaining Agent, we believe that it would be inappropriate to continue negotiations while the application is outstanding. Immediately following resolution of the application, we will reschedule dates for negotiations as required.*

. . .

[37] That letter was attached to an email timestamped November 13, 2015, at 2:37 p.m. that Ms. Stevens wrote and sent to Mr. Clarke and copied to Mr. Scales, which stated as follows:

> *Following your email of 11 November, and our conversation this afternoon, please find attached the Employer's response.*
>
> *The scheduled dates of 24/25 November will be cancelled, to be rescheduled as required upon resolution of the application.*

[38] Mr. Clarke stated that his impression of the November 13, 2015, correspondence from the employer was that it was putting a lot more weight on the Lala application and Mr. Lala's position than it was on the UFCW 401's position, which represents the employees in the bargaining unit.

[39] On Sunday, November 15, 2015, at 8:11 p.m., Mr. Clarke emailed Ms. Stevens and copied Mr. Scales and Mr. Zigart, stating as follows:

. . .

> *Please be advised that the Union is not in agreement with postponing/cancelling bargaining as outlined in your letter and as we affirmed to you clearly in our phone conversation of November 13th. The duty to bargain in good faith extends to the parties and is the default when the parties cannot come to an agreement such as in this case, not whatever the Company decides.*
>
> *To be clear, the Union is the exclusive legal bargaining agent for the employees at CFB Edmonton Garrison. The Employer's refusal to bargain with the Union is an unfair labour practice complaint and that complaint will be filed as soon as Monday.*
>
> *We find the Employer's actions in this case to be very telling indeed.*

. . .

[40] Mr. Clarke testified that he made the comment: "We find the Employer's actions in this case to be very telling indeed", in that email because in the UFCW 401's opinion, the employer did what it did to breathe life into the Lala application. Its siding with Mr. Lala made the UFCW 401 look weak, undermined it in the eyes of the bargaining unit members, and could have influenced them on how to vote in a revocation application.

[41] Ms. Stevens testified that the employer's decision to cancel the November 24 and 25, 2015, bargaining session with the UFCW 401 was based on many factors, which she outlined as follows:

- the November 10, 2015, email from Mr. Lala requesting that the parties stop bargaining pending the Lala application;
- the UFCW 401's position that the bargaining sessions of November 24 and 25, 2015, should proceed as scheduled;
- the Lala application being resolved quickly;
- the Board's November 10, 2015, letter.

[42] In her evidence-in-chief, Ms. Stevens also stated that on the decision to not proceed with bargaining, the employer put the bulk of the weight on the Lala application being resolved quickly. She then stated that the two biggest factors for the

employer were the Board's November 10, 2015, letter and the employer's belief that the Lala revocation application would be resolved quickly. However, in cross-examination, she then stated that the fact that the employer thought that the Lala application would be resolved quickly was not one of the factors it considered when deciding whether to attend the November 24 and 25, 2015, bargaining session.

[43] Ms. Stevens admitted in cross-examination that the Board never told the parties to wait out the Lala application process before continuing bargaining; nor did it ever, at any point, state that the employer was relieved of its statutory obligations under the *Act*. She confirmed that she and Mr. Scales made the decision not to attend the November 24 and 25, 2015, bargaining session.

[44] Ms. Stevens also testified in chief that the employer was not aware of any issues on the base (CFB Edmonton). However, in cross-examination, when asked about the factors involved in the employer's decision to not proceed with bargaining, she stated that the fact that the employer was unaware of any issues at CFB Edmonton was not a factor but was its initial reaction to the Lala application. She conceded that the employer was aware of discussions in the workplace about the potential for the revocation application as either Mr. Clarke or Mr. Zigart had advised the employer about it. However, she stated that she did not see it as a movement or something formal. She was brought to and identified an email exchange on this issue that she had with Mr. Clarke on September 8 and 9, 2015, which was as follows:

> [Mr. Clarke's September 8, 2015, email to Ms. Stevens]
>
> *The Union representative here in Edmonton has brought forward some very serious concerns from the base regarding an ongoing decertification campaign that has been orchestrated by one of the Kitchen Supervisors, Ajay Lala. Zig has mentioned this to Sandra on two separate occasions I understand, to inform her that this campaign is happening on company time and that Employees are feeling bullied and intimidated as a result. I'm also told that Employees are fearful of coming forward because of this individual's personality and rank. To date we understand that the Employer, refuses to get involved.*
>
> *Below are Zig's notes to me in red on the issue.*
>
> *As we are heading to the bargaining table next week in an effort to achieve a renewal to the Collective Agreement, I thought that it would be practical to let you know that this*

activity is currently occurring at the Base in Edmonton, and with the Employer's knowledge.

Lee:

Below is a summary of the issues with Ajay Lala from CFB Edmonton

- *I spoke to Sandra about Ajay Lala, Kitchen Supervisor, from the Curling Club talking to members about a decertification during working hours.*

- *I spoke to Sandra about this on at least two separate occasions and I pointed out that Ajay was doing this on company time so I felt management was aware of the decertification and supported it.*

- *Both times Sandra said there was nothing she could do since he was a Union member.*

- *I let her know that some members felt they were being pressured by Ajay and did not wish to come forward for fear of further harassment.*

- *Ajay called me today and told me he had 58 names on a decertification petition that he prepared while he was on duty.*

- *He (Ajay) openly admitted he did this while he was on duty.*

- *If he did this while on duty his manager would have been fully aware of his activities.*

- *He said he was going to bring the petition to the officer.*

- *Ajay was hired May 2014 and is not a member. The base is under the Rand Formula*

- *I gave him an app. During the proposal meeting but, he didn't fill it out.*

[Ms. Stevens' September 9, 2015, reply]

Thank you for your note. Although I can understand the union's frustration with this issue, I would like to point out that I have heard nothing to the effect that the Employer is fully aware of, nor supportive of these alleged de-certification efforts. I think it is somewhat unfair, and prejudicial to our mutual intentions to achieve a renewal of the agreement, to assume this is true. Also, I am aware that Sandra has reiterated to Zig back in June that the Employer

> *would not tolerate harassment and intimidation, and was not encouraging de-certification.*
>
> *That said, I would like to review this matter further with Sandra and management to see what might be done to address this.*
>
> [*Sic* throughout]

[45] The "Sandra" person referred to in the emails is Sandra Dauphinee, an employer representative at CFB Edmonton. She did not testify.

[46] The UFCW 401 filed its complaint with the Board on November 18, 2015. Mr. Clarke said that to his knowledge, this is the first unfair labour practice complaint the UFCW 401 has filed against the employer.

[47] On November 25, 2015, at 11:17 a.m., Mr. Zigart received an email from a bargaining unit member forwarding an undated letter or poster that had been posted on several bulletin boards in the workplace, including those of the UFCW 401, and that was addressed to all employees of "CFMWS/NPF" associated with the UFCW 401. It appears to have been signed by Mr. Lala ("the Lala letter/poster"). I was not provided with the meaning of the acronyms "CFMWS" and "NPF".

[48] Thirteen numbered points are set out in the Lala letter/poster; however, only one, the eleventh, is relevant to this proceeding. It states as follows:

> ***11)*** *The Negotiations between the Union and our employer, which the union claims was nixed by our employer is untrue.* ***In fact, after reviewing with members, I Ajay Lala had submitted a letter to the Public Service Labour Relations Board in Ottawa to cease all Negotiations which were stated*** *[sic]* ***to resume November 24th to 25th. With this, the filling of the Application for Revocation of Certification by the NPF employees of CFB Edmonton needs to be resolved by December 3rd before future negotiations can resume.***
>
> [Emphasis in the original]

[49] On January 13, 2016, the Board's registry, with respect to file 550-18-10, wrote to Mr. Lala, the UFCW 401, and the employer and stated the following:

. . .

> *I acknowledge receipt on January 7, 2016 of Mr. Adrian Scales' letter, providing a list of all employees in the bargaining unit as of October 26, 2015, their home addresses and specimen signatures.*
>
> *The documents were submitted to the panel of the Board and I have been directed to advise the parties as follows:*
>
> *Upon further review of the original application it has come to the Board's attention that the initiating documents, specifically the evidence that at least 40% of the employees in the bargaining unit are in support of this application is insufficient.*
>
> . . .

[50] Mr. Clarke testified that on January 19, 2016, at 11:45 a.m., after receiving that letter, he emailed Ms. Stevens and copied Messrs. Scales and Zigart and stated as follows:

> *As you are aware, the Union opposed and continues to oppose the Employer's refusal to return to the bargaining table. We consider the Employer's actions to constitute an unfair labour practice complaint.*
>
> *We have previously requested in writing that the employer respect its obligations under the code, and return to the bargaining table to negotiate a renewal to the collective agreement.*
>
> *We do not agree that the Employer may cancel negotiations to let a revocation application play out. In any event the PSLREB confirmed recently that the evidence in support of the pending revocation application was "insufficient", yet the Employer continues to fail to meet its obligation and return to the bargaining table.*
>
> *Again, the Union formally requests that the Employer meet its obligations and return to the bargaining table. Please forward your available dates to meet for negotiations, at your earliest convenience.*

[51] Ms. Stevens testified that she emailed a reply to Mr. Clarke's email that same day, which was also copied to Messrs. Scales and Zigart, stating as follows:

> . . .
>
> *Upon review of the latest correspondence from the PSLREB, nothing in this correspondence indicates the process has*

> *been resolved, nor has the application been dismissed. In absence [sic] of unequivocal confirmation from the Board that the application has been resolved, the Employer maintains its original position. The negotiations will be postponed until the matter is resolved, at which time we can resume bargaining.*

. . .

[52] Ms. Stevens testified that when she received the Board's January 13, 2016, letter with respect to file 550-18-10, she assumed the Board had erred, that it had no evidence (with respect to the revocation application), and that it had lied. She went on to state that as of the date of the hearing, she had no idea how many people supported the revocation application.

[53] Ms. Stevens confirmed in cross-examination that after receiving the Board's letter of January 13, 2016, the employer could have changed its decision and returned to bargaining.

[54] Ms. Stevens was asked in cross-examination whether she wrote to the Board after receiving its January 13, 2016, letter. She stated that she did not because the employer was not a party to the Lala application and the letter was not directed to it. She conceded that she could have written to the Board but did not.

[55] However, in this vein, she did state that the employer participated in a conference call with respect to file 550-18-10 and the Lala application, at which Mr. Lala and representatives from the UFCW 401 were present. Ms. Stevens testified that the employer wanted to know what the process was with respect to revocation applications and stated that it had made this request of the Board. She stated that the Board member assigned to the Lala application had asked the employer to participate in the call. I was not provided with the date of the call and was informed only that it was held sometime after the Board's January 13, 2016, letter.

[56] Ms. Stevens stated that the gist of the call was with respect to that application and that it did not involve returning to bargaining or the unfair labour complaint that is the subject of this hearing.

[57] Two bargaining unit members testified who worked at CFB Edmonton, Serena Van Hees and George Rattai.

[58] At the time of the hearing, Ms. Van Hees had been employed at CFB Edmonton for just over a year and had worked as a lounge bartender at the golf and curling clubs. She is a member of the UFCW 401 and is training to be a shop steward.

[59] At the time of the hearing, Mr. Rattai had been employed at CFB Edmonton for a little over 18 years. In November 2015, he began working at the arena; before that, his entire tenure with the employer had been as a physical fitness instructor with "Fitness and Support" at the base gymnasium. Mr. Rattai is both a member of the UFCW 401 and a shop steward.

[60] Both Ms. Van Hees and Mr. Rattai stated that in their opinions, the UFCW 401 has lost power and looks weak because of its failure to get the employer back to the bargaining table and continue bargaining. Both stated that this is not just their opinion; other bargaining unit members with whom they have spoken have shared it. Both stated that the bargaining unit members they spoke to are frustrated and do not understand why the UFCW 401 cannot force the employer to the bargaining table.

[61] Mr. Rattai also stated that it is frustrating for members of the UFCW 401 as they pay dues for services, and when they are without a renewed collective agreement, it makes the membership question what is going on. Both stated that they have heard about concerns from members with respect to pay increases.

[62] Ms. Van Hees was shown the Lala letter/poster. She confirmed that she saw it and that it was either emailed to her or posted in her workplace on the union bulletin board, or both. She said that she recalled seeing it at the time that Mr. Lala was talking about stopping the bargaining and stopping the employees from having a union. She was brought to point 11 of the Lala letter/poster and was asked how she interpreted the statement it contained. She stated that she understood it to mean that Mr. Lala was the "leader of the pack, doesn't want the union, and has said that he has stopped the negotiations."

[63] Ms. Van Hees identified Mr. Lala as her manager. She stated that she reports directly to a supervisor but that the supervisor reports to Mr. Lala, who is the food and beverage manager. She stated that she has had discussions directly with Mr. Lala about this issue at the workplace and that he has stated to her that he, in her words, "has stopped the bargaining and he wants to get rid of the union."

[64] Mr. Clarke and Ms. Stevens confirmed that some delay occurred when the parties were bargaining the collective agreement in 2012. However, that delay was portrayed to me as consensual and not something the UFCW 401 suggested was improper or in bad faith.

[65] Ms. Stevens confirmed in her evidence that despite the Board's correspondence of January 13, 2016, the employer was not prepared to alter its position and return to bargaining with the UFCW 401. She confirmed that the considerations that the employer applied when making its decision in November 2015 still applied in January 2016. She also admitted that it could have changed its position in January 2016 but that it did not.

[66] The parties have not bargained since September 18, 2015.

[67] The evidence of Messrs. Clarke and Zigart was that they felt that had bargaining proceeded on November 24 and 25, 2015, it was highly likely that a new collective agreement would have been reached in short order. Ms. Stevens did not share their view, stating that the bargaining landscape with respect to monetary issues was different in 2015 than it was in 2012 and that the employer had expected difficulties.

III. Summary of the arguments

A. For the complainant

[68] It is a long-standing and well-known principle in labour law that employers and bargaining agents have a statutory duty to bargain in good faith. That duty is continuous and exists from the time notice to bargain is given until a collective agreement is reached. It is in place to force the parties to meet, identify issues, present proposals, and make every reasonable effort to reach common ground, to enter into a collective agreement.

[69] The leading case is *Royal Oak Mines Inc. v. Canada (Labour Relations Board)* [1996] 1 S.C.R. 369 ("*Royal Oak Mines*"). At paragraphs 41 and 42, the Supreme Court stated that every federal and provincial labour relations code contains a section comparable to s. 50 of the *Canada Labour Code* (R.S.C., 1985, c. L-2), which requires the parties to meet and bargain in good faith. For collective bargaining to be a fair and effective process, it is essential that both the employer and the bargaining agent negotiate within a framework of the rules established by the relevant statutory labour

code. The duty contains two facets, to bargain in good faith and to make every reasonable effort to enter into a collective agreement.

[70] In *Royal Oak Mines*, the Supreme Court went on to state that the duty to enter into bargaining in good faith must be measured on a subjective standard, while making a reasonable effort to bargain to reach a collective agreement should be measured on an objective standard.

[71] The subjective standard looks at the parties' intents and motives and examines the extent to which they are committed to the process of collective bargaining and towards making every reasonable effort to enter into a collective agreement. The subjective element encompasses the aspects of good faith and measures them against a subjective standard.

[72] The objective standard is to be ascertained by looking to comparable standards and practices within the particular industry. That latter part of the duty prevents a party from hiding behind an assertion that it is sincerely trying to reach an agreement when, viewed objectively, it can be seen that its proposals are so far from the accepted norms of the industry that they must be unreasonable.

1. <u>The employer's failure to meet the subjective standard</u>

[73] The UFCW 401 submits that the employer failed to meet its duty to bargain in good faith when it cancelled the bargaining dates in November 2015 and that it continues to fail to meet that duty by maintaining that position despite the UFCW 401's requests for it to return to the bargaining table.

[74] The UFCW 401's position is that the employer's refusal to resume bargaining meets the defined elements, as described in *Royal Oak Mines*, to not bargain and enter into a collective agreement with the UFCW 401. The evidence is that of Ms. Stevens, when she stated why the employer made its decision, which was that it considered the following:

- the letter from the Board (with respect to file 550-18-10) dated November 10, 2015;
- the request of Mr. Lala, the applicant in the Lala application;

- the preferences of the UFCW 401; and
- the belief that the Lala application would be resolved quickly.

[75] *National Association of Broadcast Employees and Technicians v. CKLW Radio Broadcasting Limited*, (1977) 77 CLLC 16,110 ("CKLW"), stands for the proposition that the duty to bargain in good faith is continuous.

[76] While initially there might have been merit to the employer's belief that the Lala application could have been resolved quickly, it was clearly not the case by January 13, 2016, when as part of file 550-18-10, the Board wrote to Mr. Lala, the UFCW 401, and the employer. At that time, the employer stated that it unequivocally maintained its position to not return to the bargaining table. As such, its refusal on January 19, 2016, was a further breach of the duty to bargain in good faith, which is a continuing duty.

[77] The employer admitted through the evidence of Ms. Stevens that it always had the option to reverse its position and return to bargaining. Ms. Stevens testified that in January 2016, the employer took into account the same considerations when it decided to continue to not bargain as it had accounted for in November 2015, despite the revocation application taking longer than it had anticipated. The UFCW 401's position is that at that time, the employer should have reconsidered its position, given the facts, and returned to the bargaining table.

[78] The UFCW 401 states that the subjective element of the duty to bargain in good faith also involves considering the motives or intents of the parties. The UFCW 401 submits that the employer placed undue consideration and preference on Mr. Lala and his request to cease bargaining in the face of the Board's direction (which was neutral). By taking the position it did, the employer undermined the UFCW 401's status, which is a breach of the duty to bargain in good faith.

[79] The UFCW 401 submits that if the motive is avoiding a collective bargaining relationship, one of the consequences is that the UFCW 401's status is weakened. The delay in bargaining has caused the UFCW 401 to appear weak. While that might not have actually been the employer's intent, it is the consequence of its refusal to meet and bargain. It ought to have known that it would or could have happened. Ms. Stevens was aware of issues involving Mr. Lala and his actions with respect to a revocation

application, which is evidenced by the email exchange between Mr. Clarke and Ms. Stevens in early September 2015. Ms. Stevens is an experienced lawyer and a senior LR officer and should have known that the refusal to bargain would potentially lead to the result that it did.

2. <u>The employer's failure to meet the objective standard</u>

[80] With respect to the objective element set out in *Royal Oak Mines*, the UFCW 401 submits that the employer has also failed to meet this duty. It has not made reasonable efforts to bargain in accordance with industry standards and the past practice of the parties established over 30 years. Mr. Clarke stated that the refusal to bargain was unprecedented in his experience in this bargaining relationship and that he has never been aware of the employer ever refusing to bargain over the course of the relationship.

[81] While in the past, bargaining delays have arisen, they were consensual and occurred in distinct and different circumstances. The parties agreed to delay bargaining in 2012. In the present circumstances, the delay is wholly attributable to the employer's unilateral decision to cancel the agreed-to bargaining dates and to refuse to continue to bargain until the revocation application is resolved.

[82] The consequence of the employer's statutory breach is the perception that the UFCW 401 is weak and powerless. The evidence for that came from Ms. Van Hees and Messrs. Rattai and Zigart.

[83] In addition, the UFCW 401 states that Mr. Lala's request that the employer not bargain and the Lala letter/poster suggest to the bargaining unit members that the employer may support the revocation application. The employer's action of not bargaining could give life to the revocation application.

[84] Both Ms. Van Hees and Mr. Rattai expressed concerns about salary increases, which have not materialized due to the collective agreement not being renewed. They also commented on the fact that members pay dues and question the purpose and value of doing so if the UFCW 401 is not able to force the employer back to the bargaining table.

[85] The UFCW 401's position is that the Board's correspondence of November 10, 2015, did not absolve the employer of its statutory duty to bargain in

good faith, which includes the duty to meet. The UFCW 401 states that the employer's position with respect to the Board's November 10, 2015, letter is a red herring and is not determinative of whether the employer has continued to bargain in good faith. The letter stated the following:

> . . .
>
> *The Chairperson of the Board has directed that I advise that it is up to the employer and the bargaining agent to determine whether or not to suspend or to continue their negotiations in light of the application for revocation of the bargaining agent's certification for this group.*

[86] That letter simply does not state what to do when the UFCW 401 wants to meet and the employer does not. In addition, it is based on inaccurate facts. The employer's November 4, 2015, letter that was sent to the Board seeking direction refers to the parties having tentative bargaining dates set. This suggests that the bargaining dates were not final, which is not so. By calling the November dates tentative, the employer misled the Board. While Ms. Stevens did not refer to the dates as "tentative" but as "scheduled" in a telephone call with a member of the Board's registry, there is no evidence that that distinction was ever pointed out to the Chairperson. No clarification was ever provided to the Board with respect to the upcoming bargaining dates. The Board's registry did not make the decision with respect to the direction in the November 10, 2015, letter; its chairperson did.

[87] At paragraph 34 of *Communications, Energy and Paperworkers Union of Canada v. Shaw Communications Inc.*, 2011 CIRB 577 ("*Shaw*"), the Canada Industrial Relations Board (CIRB) held that a party to collective bargaining cannot refuse to negotiate a collective agreement on the basis of a similar situation being before a labour board as a complaint. It stated that the obligation to bargain continues even during strikes or lockouts and in other situations.

[88] In *Maritime Employers' Association v. International Longshoremen's Association, Local 1739*, (1986), 68 di 48, the facts set out that the bargaining agent in that case had decided that it would wait for other actions that were underway before it would enter into a collective agreement, going so far as to state that "… even if the employer made an 'irresistible offer,' no collective agreement would be signed." The CIRB found that that constituted a breach of the duty to bargain in good faith and stated that that duty and the duty to make every reasonable effort to enter into a collective are not

suspended or terminated during the final step in the collective bargaining process; namely, a strike or a lockout.

[89] *Communications Workers of Canada, C.L.C. v. Northern Telecom Canada Limited* (1980), 42 di 178 ("*Northern Telecom*"), was a case in which the employer and bargaining agent in that case were engaged in what the Canada Labour Relations Board (CLRB) described as a "litigious road through collective bargaining". During the course of bargaining, the parties agreed to suspend bargaining while their litigation proceeded before the Federal Court of Appeal. However, after that Court had rendered a decision, and while the matter was before the Supreme Court of Canada, the bargaining agent wanted bargaining to recommence. The employer refused. Bargaining was delayed for two years, and the bargaining agent filed a complaint. The CLRB held that the employer's failure to meet and bargain after the Federal Court of Appeal had rendered its decision was a breach of the duty to bargain in good faith, which is not set aside due to judicial review.

[90] *Translink Security Management Ltd. v. Canadian Office and Professional Employees Union, Local 378*, (2014), 239 C.L.R.B.R. (2d) 245 ("*Translink*"), involved a situation in which after the certified bargaining agent for a group of employees gave notice to bargain, another group of employees sought certification for the same group. Given the application by a rival group to become the certified bargaining agent, the employer wrote to the certified bargaining agent and took the position that it was not appropriate to continue bargaining until the British Columbia Labour Relations Board (BCLRB) determined the bargaining agent that would be the certified bargaining agent for the bargaining unit on a going-forward basis, and it cancelled the pending bargaining session. The BCLRB held that, relying on *Royal Oak Mines* and *Maritime Employers Association*, the employer's action breached the duty to bargain in good faith.

[91] The UFCW 401 submits that the circumstances before me are similar to those in *Translink* and points me specifically to paragraph 41, in which the BCLRB stated as follows:

> . . . *I specifically find the Employer's November 9, 2013 correspondence to COPE to constitute a refusal to bargain in that it unilaterally cancelled scheduled bargaining dates on the basis of the pending TPPA Application, notwithstanding COPE's exclusive bargaining authority. The Employer's*

> *suggestion in that same correspondence "[proposing] a conference call with the Labour Board to seek direction" does not disturb this finding. The Employer did not offer any explanation of how the Board would have jurisdiction to entertain a conference call and provide "direction" without a live application before it. The Employer did not apply to the Board for a declaratory opinion before cancelling the bargaining dates.*

[92] The UFCW 401 also referred me to *Chapman v. International Association of Machinists and Aerospace Workers, Beothuck Lodge 1763* (2001), 77 C.L.R.B.R. (2d) 92. That case involved a revocation application and the refusal by the employer in that case to bargain until that application was decided. At paragraph 15, the Nova Scotia Labour Relations Board (NSLRB) held that the revocation application did not suspend the duty to bargain in good faith pursuant to the governing legislation.

[93] The UFCW 401 submits that this case is the same as *Chapman* and refers me to the portion of paragraph 29 of that case that refers to the employer dragging its feet, knowing that support was weak for the bargaining agent and trying to improve prospects for a potential decertification.

[94] The UFCW 401 referenced *Canadian Union of Public Employees, Local 2108 v. Scotia Nursing Homes Ltd.*, [1979] NSLRB No. 2491 ("*Scotia Nursing Homes*"), in which the NSLRB held that an employer must make every reasonable effort to conclude and sign a collective agreement until the certification of the incumbent trade union is revoked.

[95] As relief, the UFCW 401 seeks the following:

a. a declaration that the employer has breached s. 106 of the *Act*, which specifies the duty to bargain in good faith;

b. an order directing the employer to commence collective bargaining and the parties to promptly schedule dates and meet to bargain on those dates;

c. an order that the decision in this matter be distributed to all members of the bargaining unit and posted in the workplace; and

d. an award of damages.

[96] In support of the request to order the decision distributed to the bargaining unit members, the UFCW 401 referred me to both *Northern Telecom* and *Translink*.

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

[97] The employer submits that the scope of the hearing is determining whether it breached its statutory duty to bargain in good faith under s. 106 of the *Act*.

[98] The employer agrees that the law in this area is as set out in *Royal Oak Mines*. It also submits that the question of whether the duty to bargain in good faith was breached must be considered in the overall context of the negotiations. It submits that when one examines the overall context of the negotiations in this case, the conclusion is that did not breach that duty.

[99] In support of its position that the duty of good faith in bargaining must be viewed contextually, the employer referred me to *Public Service Alliance of Canada v. Senate of Canada*, 2008 PSLRB 100 ("*PSAC*"). Specifically, at paragraph 37, the Public Service Labour Relations Board (PSLRB) states that it must be circumspect in assessing a bad-faith bargaining complaint. The PSLRB stated the following: "To make a determination of the parties' behaviour, the Board must consider the bargaining relationship between the parties and the context of the negotiations."

[100] The employer also referred to paragraph 40 of *PSAC*, in which the PSLRB stated as follows:

> *The duty to bargain in good faith must be viewed within the reality of collective bargaining, which does not take place in a static context. The context evolves over time and can be affected by external and internal factors. The duty to bargain in good faith does not require that the parties be confined to frozen positions. The parties must have the latitude to adjust their behaviour with respect to the evolution of time and context….*

[101] The employer states that the context of the bargaining shifted when the revocation application was filed. In its view, it made sense to postpone bargaining until the bargaining landscape was settled.

[102] In *International Association of Machinists and Aerospace Workers, Lodge 2309 v. Nordair Ltd.*, (1985), 60 di 55 ("*Nordair*"), the CLRB dealt with an allegation of breaching the duty to bargain in good faith when in the midst of bargaining, the

employer in that case suspended bargaining, claiming that the parties had reached an impasse. In addition, a rival bargaining agent moved to decertify the bargaining agent in that case and become the new bargaining agent for the bargaining unit at issue. The CLRB held a hearing into the bargaining agent's complaint that the employer had breached its duty to bargain in good faith.

[103] In *Nordair*, while the rival group trying to achieve decertification was unsuccessful, the CLRB did not chastise the employer in that case for its behaviour in the circumstances; nor did it retroactively declare that the employer had breached its statutory duty to bargain in good faith when it suspended bargaining in the face of a possible decertification application.

[104] The CLRB inferred in its reasons that the decertification matter had created a bargaining impediment, and only after the decertification matter had been resolved did it encourage the parties to immediately resume bargaining. The employer submits that this case is similar to the facts as set out in *Nordair*.

[105] The employer submits that on a review of the aspects of the duty to bargain in good faith as set out in *Chapman*, it has in fact met or done what is required of it to satisfy those aspects. It states that it has done the following:

- recognized the UFCW 401 as the exclusive bargaining agent for the bargaining unit;
- met with the UFCW 401;
- bargained with the UFCW 401;
- acted with the intent of concluding, revising, or renewing a collective agreement with the UFCW 401;
- made every reasonable effort to enter into a collective agreement with the UFCW 401;
- engaged in full, rational, and informed bargaining with the UFCW 401;
- provided the UFCW 401 with information as requested;
- not been deceptive with the UFCW 401; and

- not engaged in surface bargaining with the UFCW 401.

[106] The employer states that it turned to the Board for direction, which directed that the parties deal with the matter themselves. The Board was exercising deference by not interfering with the parties. By asking the Board for direction, the employer operated in good faith. The employer asked for and followed that direction. The Board could not have meant by its direction that one of the parties would find itself in breach of its obligations. The employer submits that a misinterpretation of the Board's direction would be contrary to the Board's intention and contrary to its role as the supervisory authority over the parties' negotiations.

[107] The employer states that during the conference call on November 13, 2015, it and the employer could not agree as to whether it was appropriate to suspend or to continue negotiations in the face of the revocation application. The result was the complaint was filed. The employer is of the view that the action of filing the complaint, given the Board's role as set out in *PSAC*, appears to be an attempt by the UFCW 401 to use the Board to modulate the balance of power between the parties to pressure the employer into continuing to bargain, despite the Board having given the employer the freedom to continue to negotiate or not, given the circumstances.

[108] It is not the parties' role to use the Board for an illegal purpose, and it is not the Board's role to lead the parties on.

[109] The employer submits that the UFCW 401 is arguing that by postponing bargaining, the employer has allowed the employees in the bargaining unit to determine whether bargaining should continue, contrary to the Board's letter of November 10, 2015, which specifically left that determination to the employer and the UFCW 401. The only evidence with respect to the suggestion to postpone the bargaining dates is found in the conference call of November 13, 2015.

[110] With respect to *Hotels, Clubs, Restaurants & Tavern Employees' Union Local 261 v. Boretos & Tsotsos,* carrying on business as *Nicholson's Restaurants, Steak House & Tavern*, [1980] OLRB Rep. March 343, ("*Nicholson's*"), the employer submits that the UFCW 401 has tried to distinguish that decision from this case as the facts are easily distinguishable. However, the employer states that while the facts may differ, the conclusions to be gleaned are analogous.

[111] The employer states that mediation and collective bargaining negotiations are both voluntary processes and that the parties are free to schedule, attend, or postpone them as they see fit. In *Nicholson's*, the employer in that case failed to attend mediation, and in this case, the employer suggested that the November bargaining dates be postponed. The Ontario Labour Relations Board held that the employer's single refusal to meet for voluntary mediation was not sufficient to constitute a breach of the duty to bargain in good faith. The employer's position is that the decision to postpone the freely scheduled negotiation dates of November 24 and 25, 2015, does not warrant concluding that the duty to bargain in good faith was breached.

[112] The employer submits that it was reasonable for it to conclude that the revocation application could have had the support of the majority of the bargaining unit and thus that it could have changed the effect of the UFCW 401's representational character vis-a-vis the bargaining unit. For the employer, that changed the bargaining landscape, which caused it to seek direction from the Board.

[113] The UFCW 401 suggests that the employer's decision to suspend bargaining inflicted harm upon it and the employees and that such harm indicates that the employer's action amounts to a breach of its duty to bargain in good faith. That suggestion is false as it assumes that the parties would have reached a tentative agreement and would have concluded their bargaining during the scheduled November 2015 session. The evidence was from the bargaining unit employees, who on account of the time that has elapsed, view the UFCW 401 as weak, and those same employees are frustrated by the lack of wage increases, which they might have been entitled to had negotiations concluded. Such conclusions do not establish a violation of the duty to bargain in good faith.

[114] Whether or not the parties met in November of 2015, it is impossible to know if they would or would not have reached an agreement, and if they had, if the bargaining unit members would have ratified it. Had they bargained and not reached an agreement, the membership would still be without wage increases. The alleged harm in the evidence of the UFCW 401's witnesses is not evidence that the employer breached its duty to bargain in good faith; it is merely evidence that two members wish that the negotiations would have been settled so that they could receive wage increases and retroactive payments.

[115] The harms that the UFCW 401 alleges it suffered all arose from the delay resolving the application for revocation and not from the initial decision to suspend bargaining. To date, the revocation application remains unresolved in that neither has a secret ballot been conducted to assess the will of the membership nor has the Board dismissed it. The employer has no control over the revocation application, which remains outstanding, and it is not a party to the process. Holding the delay against the employer in the context of this complaint would be improper.

[116] With respect to the UFCW 401's allegation that the use of the word "tentative" in the employer's correspondence with the Board about the bargaining dates in November 2015 misled the Board as to the character of the bargaining dates, the employer submits that the UFCW 401 adduced no evidence of this, and Ms. Stevens confirmed that the employer's intention was to not mislead the Board.

[117] The UFCW 401 suggested that the employer, when determining whether to cancel the bargaining scheduled for November 2015, gave more weight to the single letter from Mr. Lala than it did to all the other considerations as adduced at the hearing. The employer submits that Ms. Stevens testified that Mr. Lala's letter was but one consideration of many and that the UFCW 401 did not adduce any evidence in support of its assertion other than the speculative evidence adduced by Messrs. Zigart and Rattai and Ms. Van Hees.

[118] *Northern Telecom*, *Maritime Employer's Association*, and *Shaw Communications Inc.* are all distinguishable. In all those decisions, one party staunchly refused to meet with the other pending the resolution of a related legal proceeding, to which the refusing entity was an interested party. The employer in this case is not a party to the revocation proceedings and has no direct interest or direct gain.

[119] With respect to *Chapman*, the bargaining relationship in that case was relatively young, and the delays put the bargaining agent in a particularly vulnerable position with respect to an application for decertification. In this case, the parties have a mature bargaining relationship and have renewed several collective agreements over a period of 30 years. Contrary to the facts in *Chapman*, delays have not put the UFCW 401 into a more vulnerable position with respect to decertification.

[120] In addition, in *Chapman*, the employer in that case ignored the labour board's order to continue to bargain in the face of a decertification application. Clearly, that

differs from this case, in which the Board has left it to the parties to determine if they should suspend or continue bargaining and has not made any order.

[121] In *Translink*, the employer in that case decided to suspend bargaining in the face of a different bargaining agent's attempt to suspend bargaining. It relied on s. 32 of the *British Columbia Labour Code* ([RSBC 1996], chapter 244; "the *BC Code*"), arguing that that statute permitted it to refuse to bargain.

[122] Unlike in this case, in *Translink*, the employer did not seek the relevant labour board's direction before acting. The employer referred me to paragraph 41 of *Translink*, which states that while the employer in that case sought a conference call with the labour board, it did not seek a declaratory opinion from that board as to its interpretation of s. 32 of the *BC Code*. In this case, the employer sought direction from the Board, and at no time did the Board advise or direct it that its obligations under s. 106 of the *Act* would require it to continue to collectively bargain in the face of the revocation application.

[123] The employer submits that if a decision to suspend or postpone negotiations patently violates the duty to bargain in good faith, as set out in s. 106 of the *Act*, the Board's correspondence should have set out as much in a direction. It did not.

[124] The employer is not refusing to acknowledge or bargain with the UFCW 401; nor is it refusing to negotiate or enter into a renewed collective agreement. The parties have met and have engaged in formal negotiations that have proven successful. Since 2002, the parties have always been able to conclude a renewed agreement by a mutually agreeable settlement. The employer intends to renew bargaining once the bargaining landscape has been clarified.

[125] The employer states that it did not intend or believe that its decision to suspend negotiations would be perceived as an action to undermine the UFCW 401 or breach the employer's duty to bargain in good faith.

[126] The employer's behaviour is unlike that of the employers set out in the cases cited by the UFCW 401. Most importantly, when the employer received the revocation application, it did not unilaterally decide to suspend its participation in bargaining; it appealed in good faith to the Board as to how to proceed. The Board suggested that the parties resolve the issue rather than it intervening. In none of the cases submitted by

the UFCW 401 did the employers appeal to their respective labour boards for direction; nor were they encouraged by those boards to determine for themselves whether it was appropriate to suspend or to continue bargaining while awaiting the resolution of related proceedings.

[127] The employer requests that the complaint be dismissed.

[128] The employer submits that in the event that the complaint is allowed, the request to distribute copies of the decision be denied as it is excessive in the circumstances.

[129] The employer states that the UFCW 401 has not satisfied the requirements that would allow for awarding damages and submits that the request for damages, if the complaint is allowed, be denied.

C. The complainant's reply

[130] The employer's reasons, suggesting that it has met the requirements of the duty to bargain in good faith, were set out before the change in circumstances that took place in November 2015. The UFCW 401 is not suggesting that the employer was not in compliance with the duty at all times but suggests that when the circumstances changed, the employer's actions changed, while the duty to bargain in good faith remained.

[131] The Board could not have intended that either party be placed in an illegal position.

[132] With respect to *Nordair*, the circumstances of that decision are much different.

[133] In *Nicholson's*, the situation is again different, in that that case was about hard bargaining.

[134] In *CKLW*, the bargaining agent in that case made no efforts to resume bargaining.

IV. Reasons

[135] The sole issue before me is whether the employer breached its duty to bargain in good faith under s. 106 of the *Act*.

[136] The parties had a long and apparently generally good relationship until the fall of 2015. The collective agreement governing their relationship expired in June 2015, and the UFCW 401 gave notice to bargain on March 4, 2015. The parties scheduled bargaining sessions in September 2015, met on the scheduled dates, and appeared to successfully reach agreement on all non-monetary issues. On September 18, 2015, the last day of bargaining during the September sessions, the UFCW 401 delivered to the employer its written proposal on monetary issues, the parties agreed to meet again, and they scheduled the next bargaining session for November 24 and 25, 2015, in Edmonton. Hotel meeting rooms were booked for it within a few weeks of the last day of the September bargaining session.

[137] On October 26, 2015, the Lala application was received by the Board, requesting decertification of the UFCW 401 (file 550-18-10).

[138] On November 4, 2015, after receiving the application, the employer wrote to the Board, advised it that the parties had scheduled "tentative" bargaining dates, and sought direction from the Chairperson of the Board as to whether the parties should temporarily suspend negotiations and cancel all "tentative" meeting dates until the application was resolved. The employer's letter of November 4, 2015, was sent to the UFCW 401 and to Mr. Lala.

[139] On November 10, 2015, the Board wrote to the parties and Mr. Lala and stated that the Chairperson had directed that it was up to the parties to determine whether to suspend or continue their negotiations in light of the application for revocation of the UFCW 401's certification. A few hours later on that same day, after receiving the Board's letter, Mr. Lala wrote to the employer, the Board, and the UFCW 401 and stated that it was his preference that all collective bargaining negotiations cease.

[140] Upon receipt of the Board's November 10, 2015, letter, the employer and UFCW 401 exchanged emails in which the UFCW 401 stated that its view was that collective bargaining should proceed as scheduled on November 24 and 25, 2015, and it referred the employer to relevant provisions of the *Act*. After exchanging correspondence, the employer and UFCW 401 held the November 13 conference call to discuss the issue, during which the UFCW 401 reiterated its position.

[141] The employer decided that it would not participate in the previously agreed to and scheduled bargaining set for November 24 and 25, 2015, and put its position in

writing in an email sent on November 13, 2015. In the email, which enclosed the letter of that same day, Ms. Stevens, who also drafted the letter, stated the following: “The scheduled dates of 24/25 November will be cancelled, to be rescheduled as required upon resolution of the application.” The letter stated as follows:

. . .

> *The Board . . . has advised the parties that it is up to the Employer and the Bargaining Agent to determine whether to suspend or continue negotiations. Following the Board’s direction, the applicant, Mr. Ajay Lala, requested the parties cease negotiations until the application is resolved.*
>
> *As per your email of 11 November 2015, requesting the Employer indicate its agreement or opposition to maintaining the scheduled dates for bargaining (24-25 November), the Employer wishes to postpone the scheduled negotiation dates until the resolution of the application. Taking into consideration the Board’s correspondence, the request of the applicant, as well as the preference of the Bargaining Agent, we believe that it would be inappropriate to continue negotiations while the application is outstanding. Immediately following resolution of the application, we will reschedule dates for negotiations as required.*

. . .

[142] No bargaining took place on November 24 and 25, 2015, and as of the date of the hearing, the employer has maintained its position of not returning to the bargaining table.

[143] Section 106 of the *Act* states as follows:

. . .

> ***106*** *After the notice to bargain collectively is given, the bargaining agent and the employer must, without delay, and in any case within 20 days after the notice is given unless the parties otherwise agree,*
>
> > ***(a)*** *meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and*
> >
> > ***(b)*** *make every reasonable effort to enter into a collective agreement.*

. . .

[144] The employer referred me to *PSAC*, which stands for the proposition that the parties' behaviour must be considered when taking into account the bargaining relationship and the context of the negotiations. The context of this case is not complex. There is a long-standing (30-plus-year) relationship that the employer has ignored; and, it has outright refused to bargain. This is not a case in which a number of difficult issues are at the bargaining table, with a lot of give and take or information exchange. There is no evidence and the employer did not argue that there was an impasse at bargaining or anything that resembled that sort of a situation. Indeed the opposite was true; that the parties bargained all the non-monetary issues apparently quickly and efficiently. There is quite simply a refusal to bargain on the basis that a revocation application was brought and remains unresolved.

[145] The employer submitted that *Nicholson's* stands for the proposition that collective bargaining is like mediation, in that it is a voluntary process in which the parties are free to schedule, attend, or postpone sessions as they see fit. I disagree. The *Act* does not make collective bargaining a voluntary process in the context that was submitted by the employer; the wording of the *Act* is mandatory. Section 106 states that the employer and bargaining agent must without delay meet and bargain in good faith. While there is a voluntary nature to the bargaining, it exists when the parties are in agreement.

[146] The jurisprudence is also clear that the duty to bargain in good faith requires the employer and the bargaining agent, once the notice to bargain is given, to meet and bargain collectively in good faith and to make every reasonable effort to enter into a collective agreement. The duty is not abrogated by actions such as strikes or lockouts or even by an application to revoke the bargaining agent's certification. (See *Shaw, Maritime, Northern Telecom, Translink, Chapman,* and *Scotia Nursing Homes*).

[147] The employer submitted that the duty to bargain in good faith can be suspended pending a revocation application, per *Nordair*. The employer argued that the CLRB inferred that the revocation application created a bargaining impediment. I do not agree that *Nordair* stands for that proposition. In *Nordair*, the bargaining agent alleged that the employer breached the duty to bargain in good faith by refusing to meet. The CLRB dismissed the complaint because the facts established that the

employer refused to meet only when the parties had reached an impasse in their bargaining. The evidence established that the bargaining agent had made it perfectly clear that the employer's offer was not acceptable and that it had led its members out to strike. Given those circumstances, the CLRB held that it was not unreasonable for the employer to conclude that an impasse existed that made concluding a collective agreement impossible (see *Nordair*, at 7). It was not because of the revocation application. The CLRB stated as follows:

. . .

> *Common to the position of both parties was that the requirement to bargain in good faith subsists throughout a strike or lockout. This point has been maintained in decisions of this Board (CKLW Radio Broadcasting Limited* . . . *General Aviation Services Limited* . . .).
>
> *Equally common between the parties was that the nature of the bargaining procedure changes dramatically once one party resorts to economic sanctions against the other. The general duty to bargain remains; but the state between parties is now best characterized as a state of war. . . .*

. . .

> *Generally, past cases before the Board dealing with the issue of good-faith bargaining have dealt with the question of surface as opposed to hard bargaining* . . . *or a refusal to meet . . . .*
>
> *The instant case falls into the latter category. Nordair does not disguise its refusal to meet; it claims that refusal is justified for the reasons stated earlier.*
>
> *The issue of a refusal to meet because of an impasse in bargaining has been canvassed before.*
>
> *In CKLW Radio Broadcasting Limited, supra, the Board said:*
>
> *". . . in the absence of any union offer reflecting a change in position there was no requirement on the employer to meet. The economic pressure was applied and both sides were suffering its economic consequences. In the absence of any indication of a change in positions a refusal to meet was not contrary to the Code."*

. . .

> *". . . While economic pressure is being applied there is no requirement to continue dialogue if there is no intention or*

> *indication it will produce some movement from the latest positions of the parties."*
>
> . . .
>
> *This Board is of the view that what was said in the two CKLW decisions is, as a statement of principle, still valid today. The obligation to bargain in good faith is not a hollow one. Its purpose is to conclude a collective agreement. In the absence of any reasonable indication that discussions are likely to bear fruit, there is no obligation to meet or to commence a dialogue.*
>
> . . .

[148] The employer submitted that it has fulfilled all the aspects of the duty to bargain in good faith as set out in *Chapman*. I disagree. The duty to bargain in good faith is a continuing duty, and while the employer might have fulfilled those aspects of the duty from the time the notice to bargain was given until it decided to suspend bargaining, its decision to unilaterally suspend or cancel bargaining is not spared by its prior adherence to those aspects that define the duty to bargain in good faith. As of November 14, 2015, it cannot be said that the employer did the following:

- continued to recognize the UFCW 401 as the exclusive bargaining agent for the bargaining unit because it specifically stated that it is waiting for the Lala application to be completed to see if the UFCW 401 is still the recognized bargaining agent;

- met and bargained with the recognized bargaining agent (the UFCW 401) as it unilaterally refused to meet on the scheduled November 2015 bargaining days and has continued to refuse to meet and bargain with the recognized bargaining agent;

- acted with the intent to conclude revising or renewing a collective agreement as it stated that it will meet only if and when the Lala application is resolved and if the UFCW 401 remains the bargaining agent;

- made every reasonable effort to enter into a collective agreement as it stated that it will not return to bargaining until the Lala revocation application is settled and then only if the Lala application is

unsuccessful will it meet with the UFCW 401 and make an effort to enter into a collective agreement; and

- engaged in full, rational, and informed bargaining with the UFCW 401 as it has refused to bargain.

[149] Ms. Stevens said that the employer took into account many factors when deciding whether it should proceed with bargaining on the scheduled November 2015 dates. However, in her evidence-in-chief, she outlined only the following four:

- the November 10, 2015, email from Mr. Lala requesting that the parties stop bargaining pending the Lala application;
- the UFCW 401's position that the bargaining sessions of November 24 and 25, 2015, should proceed as scheduled;
- the Lala application being resolved quickly; and
- the Board's November 10, 2015, letter.

[150] However, Ms. Stevens went further in her evidence-in-chief, stating that the factor that the employer placed the "bulk of its weight" upon in deciding whether to proceed with bargaining was the Lala application being resolved quickly. But she then stated that the two biggest factors in that decision were the Board's November 10, 2015, letter and the employer's belief that the Lala application would be resolved quickly. Then, in cross-examination, she changed her testimony; she stated that the fact that the employer thought that the Lala application would be resolved quickly was not one of the factors it considered when deciding whether to attend the scheduled bargaining session.

[151] Ms. Stevens stated that the Board's November 10, 2015, letter was a factor in the employer's decision to suspend collective bargaining. I agree with the UFCW 401's submission that the Board's letter is nothing more than a red herring. Ms. Stevens admitted in cross-examination that it did not tell the parties to wait out the Lala application process before continuing bargaining; nor did it state that the employer was relieved of its statutory obligations under the *Act*. Ms. Stevens conceded that at no point did the Board give any indication whatsoever that the employer was relieved of

its duty to bargain in good faith. In short, the Board's letter did nothing to alter the bargaining landscape after November 10, 2015, from what it was before that date.

[152] So while Ms. Stevens stated that the employer considered many factors, by the time her testimony was complete, the evidence before me disclosed only two: Mr. Lala's request to cease bargaining, and the UFCW 401's request to maintain the scheduled bargaining sessions.

[153] Mr. Lala claimed in the Lala letter/poster that he was the source of the stoppage of bargaining and not the employer, and coincidentally, the employer in its argument submitted that the Lala application caused the bargaining delay.

[154] The employer submitted that the Lala application is something outside its control and to which it is not a party. That is supposed to be the case. Indeed it was Ms. Stevens's reply in cross-examination when asked why she did not write to the Board (after receiving its January 13, 2016, letter, which stated that the Lala application did not have the requisite evidence of the support of 40% of bargaining unit members). Yet, in the very same breath, Ms. Stevens admitted to participating in a pre-hearing conference call on that matter with the UFCW 401 and Mr. Lala in which they did not discuss collective bargaining at all but discussed the revocation application. I find this evidence and argument are both self-serving and without merit.

[155] It appears that when it was expedient, the employer was a stranger to the Lala application, yet at other times, its fingerprints can be found in deftly combining the issue of collective bargaining (a process particular to the employer and the UFCW 401) and the Lala application (a process particular to the UFCW 401 and the bargaining unit members).

[156] Mr. Lala is not a party to the collective bargaining, and the employer is not a party to the revocation application, yet the employer initiated the mingling of these mutually exclusive matters in its letter to the Board on November 4, 2015. That letter (although it relates exclusively to bargaining between the UFCW 401 and the employer), by virtue of being written to address the Lala application file, thereafter co-mingled before the Board what it had already co-mingled between it and the bargaining agent.

[157] The evidence before me disclosed that on November 10, 2015, only hours after the Board's letter was sent, Mr. Lala wrote to everyone and asked that bargaining stop.

Not only did the employer consider this request, it is also clear that that factor won the day when the employer considered its options when deciding whether to continue to bargain with the UFCW 401. Bargaining stopped because the employer decided not to attend and bargain on November 24 and 25, 2015. Ms. Stevens testified that she and Mr. Scales made the decision to cancel bargaining.

[158] Two members of the UFCW 401 testified that they believed that its members viewed it as weak due to the fact that bargaining had stopped. They also testified about the lack of pay increases (an issue that is generally considered important to employees). The employer submitted that this evidence was speculative. I disagree. Both Ms. Van Hees and Mr. Rattai testified as to what they personally believed, which certainly is not speculative. They also conveyed information that was spoken to them, and while that might not have been corroborated by the persons that allegedly said it, it is evidence nonetheless. However, in my view, actual evidence is not necessary, as direct evidence is not always necessary.

[159] *Fraser v. P.S.S.R.B.*, [1985] 2 S.C.R. 455, dealt with the issue of a public servant's public criticism of government policy and the perception of an impairment of that person's ability to discharge his duties as a public servant. The Supreme Court addressed the issue of evidence of impairment, describing it as rather elastic. At paragraph 48, it stated the following:

> *Turing to impairment in the wider sense, I am of the opinion that direct evidence is not necessarily required. The traditions and contemporary standards of public service can be matters of direct evidence. But they can also be matters of study, or written and oral argument, of general knowledge on the part of experienced public sector adjudicators, and ultimately, of reasonable inference by those adjudicators….*

[160] In *Tobin v. Canada (Attorney General)*, 2009 FCA 254, when addressing evidence of whether certain employee conduct brings the Correctional Service of Canada's reputation into discredit, the Federal Court of Appeal stated at paragraph 62 as follows: "The same is true of the question of whether certain conduct brings the CSC into discredit. The question is one which calls for the application of common sense and measured judgement."

[161] I am of the view that these principles, as set out in *Fraser* and *Tobin*, are equally applicable in a case such as this. The evidence of the effect of the employer's move to

cease bargaining can be addressed not only by the general knowledge of experienced public sector adjudicators and ultimately by their reasonable inference but also specifically by members of this expert Board, who are knowledgeable and practiced in Canadian labour law.

[162] It is well known in the field of labour law and labour relations that the purpose of bargaining agents is to represent groups of employees in matters against their employers. The pre-eminent area in the relationship in which a bargaining agent represents employees is in bargaining collective agreements, which define the very employment relationship. It is trite to state that if a bargaining agent is unable to bargain with an employer or appears as such, it will be viewed as weak and ineffectual; this is because the foundation of the labour movement (the establishment of bargaining agents and collective bargaining) is in the strength of bargaining as a group (of employees) as one as opposed to each individual employee bargaining on his or her own against an employer. The employer, through its representatives, Mr. Scales and Ms. Stevens, should have known this.

[163] At all material times, the UFCW 401 remained the exclusive bargaining agent for the bargaining unit. Mr. Lala has no standing with respect to bargaining, and the employer ought not to have considered his opinion. The employer has a long-standing relationship with the UFCW 401, dating to 1985. In the collective agreement, the employer recognizes that the UFCW 401 is the exclusive bargaining agent for the bargaining unit. More importantly, by virtue of s. 67(a) of the *Act*, the certification of the UFCW 401 as the bargaining agent for the bargaining unit statutorily granted it the exclusive authority to bargain collectively on behalf of the employees in the unit, which the employer, by virtue of s. 106 of the *Act*, has a duty to bargain with in good faith.

[164] Not only did the employer choose to accede to Mr. Lala's request to cease bargaining over the UFCW 401's request to proceed (in November 2015), when time passed and it was clear from the Board's January 13, 2016, correspondence that Mr. Lala had not provided the requisite evidence with the Lala application, which is required under the *Act*, the employer also continued to maintain its position to not bargain with the UFCW 401. Ms. Stevens testified that the factors the employer considered in November 2015 were the same factors considered in January 2016. However, that does not stand to scrutiny.

[165] Ms. Stevens testified that when the employer initially considered whether to proceed with bargaining, she reviewed the *Act*, and that according to the *Act*, she stated that an application such as the Lala application could be brought only when an applicant had 40% support. She assumed that Mr. Lala had that 40% support when he filed the application, and the employer expected a vote to occur in December. While the *Act* does state that an applicant must have 40% support, there was no way Ms. Stevens could have known if that was in fact the case, as the Board had made no determination on the application.

[166] While that assumption is somewhat naive, if I accept it as true, it would be equally true that without a doubt, as of January 13, 2016, the Board had assessed the Lala application and had written back to Mr. Lala (with copies to the UFCW 401 and the employer) and stated that the material provided with respect to the evidence of the 40% support was insufficient. Ms. Stevens admitted that the employer had no idea about the level of support for the revocation application, conceding it could have had little or none; she did not know. What is also clear, as of both November 13, 2015, and January 13, 2016, and is an indisputable fact, is that the Board's predecessor had certified the UFCW 401 as the exclusive bargaining agent for the bargaining unit.

[167] Given all my findings, I find that the employer is in breach of s. 106 of the *Act* and that it has breached its statutory duty to bargain in good faith.

A. <u>The misleading nature of the employer's November 4, 2015, letter</u>

[168] The UFCW 401 submitted that the employer's letter of November 4, 2015, was misleading, specifically with respect to the nature of the scheduled bargaining dates of November 24 and 25, 2015. The employer used the words "tentative" and "tentatively" to represent facts to the Board. The employer submits that the UFCW 401 adduced no evidence that they were misleading, and the evidence of Ms. Stevens was not to mislead the Board. I am at a loss to follow the employer's argument. The evidence clearly indicates that the November 24 and 25, 2015, bargaining session were certainly not tentative. Ms. Stevens testified that in her mind, the scheduled bargaining dates were fixed and were not tentative. However, she described her understanding of "tentative" as "until she is off the plane". She considered those dates tentative as they could have been cancelled.

[169] The Canadian Oxford Dictionary defines “tentative” as “done by way of trial, experimental, provisional, hesitant, not definite”. The November 4, 2015, letter is clearly misleading. While Ms. Stevens might not have referred to the November 2015 dates as tentative in her telephone discussions with the Board’s registry, she clearly did use the terms “tentative” and “tentatively” in the letter dated November 4, 2015, which she drafted for Mr. Scales’ signature, when soliciting direction from the Board.

[170] As I have found that the Board’s letter of November 10, 2015, was not determinative of the employer’s actions when it decided whether to continue to bargain, the fact that the November 4, 2015, letter was misleading is largely irrelevant. However, this fact, in addition to my finding on the employer’s violation of s. 106 of the *Act* when taken in context with all the other actions of the employer in dealing with the UFCW 401 with respect to bargaining, adds to the disconcerting nature of the employer’s overall conduct.

B. Claim for damages

[171] While the UFCW 401 has submitted that I have the discretion to award damages, the UFCW 401 has led no evidence of damages, and as such, in so much as I have the discretion to award damages, I decline to exercise that discretion.

[172] For all of the above reasons, the Board makes the following order:

(*The Order appears on the next page*)

V. <u>Order</u>

[173] I declare the complaint founded.

[174] I declare that the employer is in breach of s. 106 of the *Act*, namely, the duty to bargain in good faith.

[175] I order that the employer shall within two business days of the date of this decision contact the UFCW 401 and arrange dates for the continuation of collective bargaining.

[176] I order that the employer shall within two business days of the date of this decision post copies of this decision in a conspicuous location within all workplace locations at CFB Edmonton in which bargaining unit members work, including, but not limited to, the following:

- all messes;
- the Twin Rinks arena(s);
- the Golf Club and lounge;
- the Curling Club and lounge;
- the liquor store;
- the gas station;
- the Express Mart; and
- the CANEX.

[177] I order that the employer shall within seven business days of the date of this decision distribute copies of this decision to all members of the bargaining unit.

[178] I shall remain seized of this matter in the event that there are issues that arise out of the implementation of my order.

[179] I award no damages.

June 28, 2016.

John G. Jaworski,
a panel of the Public Service Labour
Relations and Employment Board