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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

TERRANCE JAMES BARR AND SHERRY ELIZABETH FLANNERY

Grievors

and

**TREASURY BOARD
(Department of National Defence)**

Employer

Before: Guy Giguère, Deputy Chairperson

For the Grievors: Andrew Raven and Carolyn LeCheminant-Chandy, Counsel

For the Employer: John Jaworski and Karl Chemsy, Counsel



Heard at Ottawa, Ontario,
April 19 and 20, 2004.

DECISION

[1] This matter relates to two references to adjudication filed respectively by Terrence James Barr and Sherry Elizabeth Flannery. The grievors are employed as firefighters with the Department of National Defence at the Canadian Forces Bases in Halifax and Borden respectively.

[2] In similarly worded grievances, the grievors allege a violation of Articles 6 ("No Discrimination") and 19 ("Managerial Responsibilities") of their collective agreement (between the PSAC and Treasury Board - Operational Services Group), resulting from "the employer's requirement that I complete the Fitness Test component of the employer's Fire Fighters Physical Fitness Maintenance Program within eight minutes, as a condition of continuing employment".

[3] On March 2, 2004, the employer, through counsel, raised an objection to the jurisdiction of the adjudicator to hear and determine these grievances, on the basis that they were "prospective in nature and thus premature since at the time they were presented, the grievors had not yet taken part in the evaluation" and consequently were not personally aggrieved within the meaning of section 91 of the *Public Service Staff Relations Act (PSSRA)*.

[4] I heard the parties on this preliminary matter on April 19 and 20, 2004. As I explained at the conclusion of the hearing on April 20, 2004, I would issue a decision on these preliminary matters shortly thereafter with reasons to be included in the decision on the merits of the grievances, given the preparation needed by the parties for the next hearing date scheduled for the week of May 12, 2004.

[5] Therefore, having considered all the evidence before me and the arguments of both parties on the objection of the employer to the jurisdiction of the Board, as it submitted that the grievances were premature, I find that:

- 1) the grievances before me are not premature; and
- 2) an adjudicator appointed under Section 93 of the *PSSRA* does have jurisdiction to entertain these grievances.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, April 23, 2004.