

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT*, 1995

- and -

IN THE MATTER OF AN ARBITRATION

BETWEEN

PELEE DAYS INN

- the Employer

and

SERVICE EMPLOYEES' UNION, LOCAL 210

- the Union

AND IN THE MATTER of a policy grievance and an individual grievance of Pat Martin regarding intimidation and physical abuse

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

| | |
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| Mark T. Binder | - Counsel |
| Steve Tarnovietchi | - President |
| Eugene Tarnovietchi | - Manager |

On behalf of the Union:

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|--------------|-----------------------------|
| E. R. Durham | - Union Representative |
| Roger Renaud | - Union Representative |
| Pat Martin | - Chief Steward and grievor |

Hearings held in Windsor, Ontario on September 16 and 20, 1996.

AWARD

I. INTRODUCTION

This award deals with two related grievances. Both grievances involved the Employer's treatment of Pat Martin, the Union's Chief Steward, on March 29, 1996. In her individual grievance Pat Martin, the grievor, alleged intimidation and abuse on the part of the Employer. In a policy grievance, the Union raised similar concerns about the same Employer conduct.

II. THE EVIDENCE

Much of the evidence was not disputed. There were minor differences in the testimony of the witnesses regarding some details. In my view nothing turns on those differences of detail, and I note that many were not raised during the grievor's cross examination. There were, however, major differences in one area. The witnesses differed as to whether the grievor was physically assaulted during the evening of March 29. I first outline the basic events regarding the evening of March 29 and I then address the evidence on the disputed issue.

March 29 was a Friday. As Chief Steward, the grievor had attended an arbitration between the parties that morning at which time she had learned of the termination of the employment of a fellow employee. That evening the grievor attended a union training program in Windsor and, on her way home, she stopped at the Employer's premises to deliver a grievance regarding the termination. The parties' brief collective bargaining relationship had been strained; there had been many grievances; and the grievor had been active in the processing of grievances in her role as Chief Steward.

The grievor arrived at the Pelee Days Inn around 10:20 or 10:30 pm and asked at the front

desk for the owner, Steve Tarnovietchi, and the manager, Eugene Tarnovietchi. Eugene Tarnovietchi is Steve Tarnovietchi's son. (For ease of reference I will refer to them as Steve and Eugene.) The grievor was advised that Steve and Eugene were both in the kitchen preparing the Saturday breakfast. Their presence in the Inn late in the evening was not unusual as Eugene lived on the premises and Steve routinely worked very long hours.

The grievor entered the kitchen. Steve was working about ten (10) feet from the door. The grievor approached him. By the time she reached Steve, Eugene was located immediately behind Steve and about a foot away from him. Eugene remained in that location throughout the following discussion or argument. Although it was common for the grievor to deal with Eugene on Union matters, the grievor delivered the grievance to Steve, and indicated to him that it was another grievance.

A discussion about the grievance followed and lasted several minutes. The discussion turned into an argument. Steve became angry. Steve was angry that the Union was contesting the dismissal of an employee whom Steve believed had no interest in working. He was also angry that the grievor did not greet him with a "hello" or other pleasantries.

At the hearing Steve expressed the view that the grievor was costing him thousands of dollars, that she was trying to run his business for him, and that she was generally harassing him. I believe he held similar views on March 29. From his testimony, it appeared that Steve was discontent with the Union, but that he had largely personalised and focused his discontent on the grievor, who was the Chief Steward and thus the principal Union official in day-to-day dealings with the Employer.

Steve eventually told the grievor to get out of his hotel. The grievor soon left, escorted by Eugene.

The grievor testified that when Steve told her to leave, Steve grabbed and pushed her. She also testified that as she left, she was pushed from behind. The Employer witnesses denied these events took place. I return to these disputed allegations later.

Eugene advised the grievor that she was not to enter the workplace again unless scheduled to work. The grievor was thus told not to enter the premises if the reason for entering was solely to perform her duties as Chief Steward, as had been her reason for entering that evening. The grievor testified Eugene advised her that he would "get nasty" if she returned without being scheduled to work.

When the grievor left the Inn she went to the local police station and complained of assault. The police returned to the Inn that night to investigate. The police eventually decided not to proceed with charges against either Steve or Eugene.

The grievor nevertheless pursued criminal assault charges against both Steve and Eugene. Those charges were heard prior to the hearing of this grievance, and the charges against both were dismissed.

During the period from March 29 through the hearing on September 16, the grievor, although the senior member of the Employer's restaurant serving staff, was not scheduled to work. In addition, on June 10, 1996 a memo from Eugene was circulated to front desk staff advising that:

1. the grievor was not allowed on the premises,
2. if the grievor were to enter, the police should be called, and
3. the front desk staff would be held answerable if they did not comply.

The front desk staff were required to read and sign the memo.

I now return to the evidence on the disputed allegations of grabbing and pushing, on which there were irreconcilable differences in the testimony.

The grievor testified that during the argument Steve became enraged, jumped up and down, and yelled at her to get out of his hotel. At this point she said Steve grabbed her on both upper arms, gave her a shake and a shove backwards, and caused her to take a couple steps backward. She testified that she responded to Steve by telling him to get his hands off and not to touch her again. At that point she testified that Eugene came around Steve and moved toward her. She says Eugene told her "Hit it; get out." The grievor said she turned to leave, saying "I'm leaving, I don't need this." At that point the grievor stated someone (and she assumed it was Eugene as he was closer to her) pushed her from behind on the shoulder in the direction of the door. She acknowledged that neither action was particularly forceful and that neither caused pain.

Steve agreed that he was arguing with the grievor, and indicated he had never been so frustrated or felt so harassed. Steve testified that the grievor had been harassing him "fantastically," that she threw the grievance at him "like he was a dog," that she did not make eye contact, that she was a fantastic actor and a very clever girl, that she was impertinent, and that for those reasons he asked the grievor to leave, which she did. He denied grabbing the grievor by the arms or pushing her. When asked why she would make up the story, Steve said it was done for money. Steve also said he watched the grievor leave with Eugene and that neither he nor Eugene pushed the grievor as she left.

Fred Dinyarian is a cook at the Inn. He was in the kitchen during the grievor's visit on March 29. When the grievor arrived Mr. Dinyarian was cleaning in the dishwasher area and he testified that he stayed in that location - about six or seven feet away from the grievor and Steve - during the grievor's time in the kitchen. From this location Mr. Dinyarian watched

the events which he thought lasted 10 to 12 minutes. He testified that Eugene did not push the grievor and that he did not see Steve grab or push the grievor.

Mr. Dinyarian acknowledged that he was not a Union supporter, and that he had been humiliated when he had been asked to leave a Union meeting because he was not a member. He acknowledged that he had been disciplined by the Employer in response to a sexual harassment complaint. As Chief Steward, the grievor had pursued the complaint with the Employer. Mr. Dinyarian felt he had not deserved to be disciplined for sexual harassment. When it was suggested that he did not like the Union, Mr. Dinyarian replied that he liked to see everyone working and not go on welfare. It was then suggested that animosity toward the Union was his motivation for testifying and Mr. Dinyarian replied "absolutely not," he just did not like people to go on welfare. Asked if the Union was responsible for people going on welfare, he responded that employees had to keep their jobs, had to go to seminars to learn how to keep their jobs. Asked if he had attended such a seminar, he indicated he had not, but that he had watched some on television. Asked if he thought employees kept their jobs by being cooperative with the employer, he expressed his opinion that employees should be cooperative and reasonable in order to keep their jobs in this economy.

Eugene Tarnovietchi also testified about these issues. Eugene said he was near Steve and the grievor and had observed the events from the point at which the grievor handed Steve the grievance through to the point at which the grievor left. While it was unusual for Steve to be angry or yell at the employees, Eugene agreed that Steve was angry and yelling that evening. He agreed that after Steve asked the grievor to leave he (Eugene) also told the grievor that she had to leave. Eugene said Steve did not push the grievor, did not grab her, and that the grievor did not say anything which would have indicated that she had been assaulted. Eugene also said he did not push the grievor nor did he put his hands on her. Eugene acknowledged that he told the grievor not to enter the premises unless scheduled to

work and that the grievor had not been scheduled for work at any time after March 29. He agreed that the June 10 memo, which indicated that the grievor was not allowed on the premises unless she was scheduled to work, had been prepared at his request. Eugene testified that, in view of the "unfounded" criminal trial, he felt it was better if the grievor did not work.

When asked how the grievor could be expected to perform her duties as Chief Steward, Eugene said she could do the job by fax, as she had since March 29. When asked if he felt his treatment of the grievor was fair and reasonable treatment, Eugene said he thought it was. Eugene noted that he had not put anything else on paper as every time he put discipline or a warning on paper he simply received another grievance.

I also heard evidence as to the way grievances were normally delivered, to whom grievances were normally delivered, about alternative days or times that the grievor might have delivered this grievance, and as to whether the grievor could have left immediately after delivering the grievance without engaging in a discussion of the grievance, but in my view this evidence does not influence the outcome and I have not reproduced it here.

III. PROVISIONS OF THE AGREEMENT AND THE ACT

The relevant provisions of the agreement are as follows:

PURPOSE 1.01

The purpose of this agreement is to . . . provide the machinery for the prompt and equitable disposition of grievances . . .

REPRESENTATION

ARTICLE 5.0

The Employer acknowledges and recognizes the right of the Union to . . . a committee of not more than 2 persons . . . one of whose members shall be the Chief Steward, who are authorised to represent

the employees in discussions and dealings with the Employer . . .

ARTICLE 13

In exercising the management functions and in administering this agreement, the Employer shall act reasonably, fairly, in good faith, and in a manner consistent with the agreement as a whole.

ARTICLE 18.01

There shall be no discrimination against or intimidation of any employees for reasons of Union membership or for Union activity or for exercising of rights found in the labour laws of Ontario.

ARTICLE 37.02

. . . The parties agree that individuals in the work place should be treated with respect. Supervisors shall not exercise the rights of management in a discriminatory manner. . . .

The Union also drew attention to Sections 5, 70, 72, 76, and 87(1) of the *Labour Relations Act, 1995*. Section 5 reads as follows:

5. Every person is free to join a trade union of the person's own choice and to participate in its lawful activities.

Sections 70, 72, 76, and 87 are unfair practice provisions and I have not reproduced them here.

IV. POSITION OF THE UNION

The Union submitted that all of the events on March 29 occurred while the grievor performed her duties as Chief Steward and that the Employer actions were directed toward her because of her Union role. Steve and Eugene engaged in improper conduct by preventing the grievor from fulfilling her duties, by intimidating or attempting to intimidate her, by assaulting her, and by coercing her, all of this being contrary to the Collective Agreement, and contrary to the provisions of the *Labour Relations Act, 1995* which are incorporated in Article 18.

As remedy, the Union sought both declarations of breach of the collective agreement and an award of damages to the grievor.

The Union relied on the following cases: *Keith MacLeod Sutherland* [1983] OLRB Rep. July 1219 and *K-Mart Canada Limited (Peterborough)* [1981] OLRB Rep. Jan. 60.

V. POSITION OF THE EMPLOYER

The Employer denied there had been an assault. The allegation of assault was unfounded, frivolous and vexatious. The Employer noted the strong denials from Steve and Eugene, the testimony of Mr. Dinyarian, the police decision not to pursue charges, and the dismissal of the criminal charges. The Employer urged me to reach the same conclusion the police and the judge in the criminal case had reached.

The Employer also submitted that, in her role of Chief Steward, the grievor had only to deliver the grievance. The events which took place after the delivery was completed cannot be said to relate to her work as Chief Steward.

The Employer submitted that the June 10 memo was unrelated to the March events and was prompted by the criminal charges.

Finally, the Employer submitted that, were I to find a violation, an award of damages was not justified.

VI. CONCLUSIONS

For ease of reference, I have grouped my conclusions on these two grievances into three areas.

1. I first draw conclusions of fact from the evidence.
2. I then consider whether those facts support a conclusion that the Employer violated

the Collective Agreement.

3. Finally, I address the issue of the appropriate remedy.

I thus first turn to the facts and the alleged assault.

1. Conclusions of fact

Was the grievor assaulted?

While Mr. Dinyarian said only that he did not see Steve grab or push the grievor, which is consistent with the assault having occurred, both Steve and Eugene deny that Steve grabbed or pushed the grievor. All three deny that either Eugene or Steve pushed the grievor as she was leaving. Since the grievor testified that she was grabbed and pushed, the evidence of the four witnesses on these two events cannot be reconciled.

I do not think any of the witnesses can be described as disinterested. The interests of the grievor, Steve and Eugene are clear. As for Mr. Dinyarian, I think his past involvement with the other three witnesses has caused him to align himself with his Employer. I note his dislike of the Union, his views on how employees should behave in order to keep their jobs, and also that he had been disciplined for sexual harassment in a complaint that had been pursued for the Union by the grievor. Steve was a very active owner and Steve was thus Mr. Dinyarian's very involved boss. In addition, Steve's son Eugene was also Mr. Dinyarian's boss. I find that all four witnesses have an interest in the outcome of these grievances.

My approach to resolving the conflicts in the testimony is the approach set out by the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354. That approach is frequently adopted by arbitrators. Using this approach, the testimony of each of the interested witnesses must be assessed not simply on the basis of the demeanour of the

witness but also by subjecting each story to an examination of its consistency with the surrounding situation.

There was no dispute that there was an argument. Steve was very angry. He was frustrated. His actions and words showed that anger and frustration. He had personalised his frustrations and directed them toward the grievor - that is, he blamed her personally for the problems which he felt had arisen during the short period of the parties' collective bargaining relationship. He admitted that he had lost his temper. He agreed he was yelling and that he told the grievor to leave. He acknowledged that the police came later that night to investigate the grievor's complaints.

If Steve were to have grabbed and pushed the grievor as she testified, it would thus have been consistent with the surrounding circumstances. Given the anger and frustration which Steve had personalised toward the grievor, if he had grabbed the grievor it would not have been surprising. It would also be consistent with the grievor's actions in immediately going to the police station to report what had happened to her.

The evidence as a whole, evaluated on the basis of what is most in harmony with all the surrounding circumstances, leads me to the conclusion that it is more likely than not that Steve did grab the grievor on the arms and push her away during the time when he was telling her to leave his hotel.

I realize that the criminal charges were dismissed. I do not know what evidence was led in that proceeding. It is clear, however, that the onus of proof was different in that proceeding. The standard of proof in the criminal matter was proof beyond a reasonable doubt. The civil standard which I am to apply in these grievances is proof on the balance of probabilities which is a lower standard of proof. If the Union were required to persuade me using the

criminal standard of proof beyond a reasonable doubt, rather than the civil standard of a balance of probabilities, I would reach the same conclusion which I understand was reached in the criminal cases. In other words, I have a doubt as to the events on March 29. However, I am to apply the civil standard of balance of probabilities, and applying that civil standard I have concluded that Steve grabbed and pushed the grievor, as the grievor testified.

I note that the grab and push did not, on the grievor's own evidence, cause her any pain, nor did it cause her to fall. She suffered no physical effects and no lasting injury.

As for the later alleged "push" after the grievor turned to leave, the evidence of the four witnesses likewise cannot be reconciled. I have applied the same approach.

Eugene felt he should intervene. His father was angry, in a way that he had seldom seen. Eugene wanted the grievor out of the kitchen and off the premises, and had told her to leave. He acknowledged escorting the grievor out of the kitchen and to the main door.

As part of his "escorting" of the grievor out of the kitchen and toward the main door, Eugene might have placed his hand on her shoulder as a means of non-verbally communicating that it was time to leave the kitchen. In so doing he might well have intended to guide the grievor out of the kitchen and out of the building. That would be consistent with all the surrounding circumstances and consistent with the evidence of the grievor, who labelled it a push but described a situation consistent with the above.

From Eugene's demeanour as a witness and all the evidence, I conclude that he did not intend to push, and in fact did not push, the grievor. Eugene was not angry in the way that Steve was. Eugene told the grievor to leave. I believe that Eugene then placed his hand on the grievor as she was leaving and that he did so in an effort to guide her out of the kitchen. His

motivation was, I believe, his desire to separate his father and the grievor. However I do not think that a "push" is an appropriate label for what happened. To call it a push, as I commonly interpret that word, carries too aggressive a meaning to fairly describe what took place.

Thus I find that Steve did grab and push the grievor, and that Eugene placed his hand on her shoulder as he was attempting to get the grievor to leave the premises.

Did the grievor provoke Steve and Eugene?

I accept the Employer suggestions that the events on March 29 were unusual, and that Eugene normally dealt with Union matters. The Employer suggested the grievor could have delivered the grievance at another time. I agree that she could have done so.

Relying in part on the two points above, the Employer then suggested that the grievor was trying to provoke a conflict.

While the grievor could have delivered the grievance at another time, I can find nothing improper in her delivering the grievance when she did. Both Steve and Eugene were known to work late. The grievor was passing near the Inn on her way home. She also felt a sense of urgency to deliver the grievance within the time limits.

There is frequently a natural conflict between a union and an employer in a dismissal grievance of the sort which the grievor delivered that evening and, to the extent that the grievor wished to engage in a discussion of those conflicting interests, I find nothing improper in her actions. I think it was also quite normal and proper for her to have discussed the grievance with Steve when Steve indicated he wished to do so. In my experience many

grievances are resolved by discussion between the parties. Thus, while I accept that the collective bargaining relationship had been strained, I do not think the evidence can support a conclusion that the grievor wished to provoke a conflict.

Were the Employer actions a response to the grievor's Union activity?

What prompted the Employer actions? Why did Steve and Eugene order the grievor to leave, why did they tell her to enter the work place only when scheduled for work, and why did Steve grab and push the grievor? The Union said the actions were caused by the grievor's Union activity.

The grievor had not been working as an employee that evening. It was clear that during all of the events at the Inn on the evening of March 29 the grievor was acting in her capacity as Chief Steward. All of the conversation was about Union matters. The Employer's actions were not prompted by or caused by the grievor's work as an employee. Instead all the Employer actions were prompted by the grievor's position as Chief Steward. Thus I conclude that the actions were in response to, or in retaliation for, the manner in which the grievor fulfilled her role as Chief Steward.

Did Eugene attempt to restrict the grievor's Union activities when he advised the grievor to enter the premises only when scheduled for work?

I turn now to Eugene's intentions when Eugene told the grievor not to return to the Inn unless she was scheduled to work. What did he mean by that direction? Was it an effort to interfere in her duties as Chief Steward?

Although there was little evidence on this, I believe that Eugene anticipated scheduling the

grievor much less often. I do not know whether he had it in his mind at that point to schedule the grievor for no work at all throughout the spring and summer, but I do think he wanted and expected to see less of the grievor, and that he intended to achieve that goal through his control of the work scheduling. As a result, I believe Eugene was attempting to restrict the grievor's Union activity through the combination of limiting the grievor's work hours while advising her to enter the work place only when she was scheduled to work.

2. Were the Employer actions in violation of the Collective Agreement?

I concluded above that the Employer's actions on March 29 were taken against the grievor because of and in retaliation for the manner in which she exercised her duties as Chief Steward. She was grabbed and pushed because of her Union role. She was banished from the hotel and was told not to return unless scheduled to work (and I have found that Eugene did not intend to schedule her as often) all because of her work as Chief Steward. While I think most people would find the Employer's actions unusual and improper, the question here is as follows:

Did the Employer's actions violate the provisions of the collective agreement?

Discrimination

The principal provision in the Agreement is Article 18. It deals with both discrimination and intimidation. I propose to first consider the matter of discrimination. The Article prohibits Employer discrimination "for reasons of Union membership or for Union activity or exercising of rights found in the labour laws of Ontario." As for rights found in the labour laws, I have quoted Section 5 of the *Labour Relations Act, 1995*, above. It is similar to Article 18 and speaks of employees being free to join a trade union and participate in lawful union activities.

The Union has been recognised as bargaining agent for employees of the Employer and had responsibilities both under the collective agreement and under the duty of fair representation (*Labour Relations Act, 1995*, s. 74) to the employees of the Employer whom it represented. As Chief Steward the grievor had certain duties. The position of Chief Steward is expressly provided in the collective agreement. The grievor's activities on March 29 as Chief Steward amount to "Union activity" under Article 18, or "lawful activities" under Section 5 of the *Act*.

The Union also referred me to various unfair practice sections in the *Act*. I have not reproduced them in this award. In my view the unfair practice sections are not in the nature of rights. Instead they specify actions which are in violation of Section 5 of the *Act* and allow the Labour Relations Board to remedy those violations. In each instance, however, the unfair practice section is an elaboration of one or more ways in which the fundamental rights in Section 5 can be violated. To the extent that the unfair practice sections specify ways that an Employer can violate an employee's right to belong to and participate in the activities of a Union, they are of considerable assistance, but they are not separate rights.

The unfair practice sections of the *Act* indicate that an Employer is not to interfere in the administration of a union (Section 70), nor discriminate because of Union activity (Section 72(a)), nor use threats or any other means to compel employees to cease to be a representative of a union or cease exercising rights under the *Act* (Section 72(c)), nor seek by intimidation to compel an employee to cease to be a member of a union or exercise rights under the *Act* (Section 76), nor threaten an employee, nor discriminate against an employee, nor intimidate an employee because an employee has filed a complaint under the *Act*, or has participated in or is about to participate in a proceeding under the *Act* (Section 87). (With respect to Section 87, the parties agreed that grievances and arbitration were proceedings under the *Act*.)

What is discrimination? At a simple level it involves unfavourable treatment, in comparison with other employees, because of an improper motive. Improper motive in this case could be union activity. The grievor was treated differently from other employees. She was disadvantaged in her employment in comparison with others. I found earlier that this was done because of her exercise of her duties as Chief Steward. I concluded earlier that the Employer acted as it did in an effort to address what it perceived to be a Union problem, and in particular it did so by reducing the grievor's scheduled hours of work and by advising her not to visit the work place except at times when she was scheduled to work. I found that the Employer's motivation for doing as it did was its desire to respond to the grievor's exercise of her rights under the Act, and its desire to respond to her Union activity, in particular the manner in which the grievor exercised her role as Chief Steward. In view of the unfavourable treatment of the grievor and the reasons for that treatment, it follows that I conclude the Employer discriminated against the grievor contrary to Article 18.

Intimidation

Article 18 also prohibits intimidation. In some contexts, intimidation requires a coercive threat directed towards a person, coupled with a demand, and it also requires that the person must comply with that demand. I will not review the concept of intimidation in other legal contexts in detail. The matter is addressed at length in the *Keith MacLeod Sutherland* case, *supra*. However, as one example, the tort of intimidation requires that the person who is threatened must comply with the threat. It appears that the grievor was not in fact persuaded by the Employer to change her approach, that she did not respond to threats or comply with any implicit demands.

I do not think that Article 18 only prohibits actions when the Employer has been successful in its intimidation. For example, clearly Article 18 would apply if the Employer threatened

to fire an employee unless he or she resigned as Union steward and, as a consequence of the threat, the employee resigned the Union job. Article 18 was intended to prevent such successful Employer attempts at using its authority to pressure or intimidate an employee. However, I believe the parties wished to prevent *all* such pressuring of employees on the basis of Union activity, not simply *successful* Employer efforts. Returning to the example above, I think an Employer threat to fire an employee unless he or she resigned as a Union steward would be intimidation under Article 18 even if the employee did not actually resign as steward.

Did the Employer attempt to pressure or intimidate the grievor? In this case, the Employer wanted the Union and the grievor to adopt an approach which was, in the Employer's view, more reasonable. The Employer actions in banishing the grievor and telling her not to return unless scheduled to work when the Employer did not intend to schedule her as often, combined with Steve's grab and push, amount to intimidation of the grievor, an attempt to pressure her to take a different approach on collective bargaining matters. Thus the Employer engaged in intimidation of the grievor contrary to Article 18.

Exercise of the rights of management in a discriminatory manner

Article 37 prohibits supervisors from exercising the rights of management in a "discriminatory manner." Both Steve and Eugene exercised managerial or supervisory functions and I find both of them to have been supervisors in the terms of this Article. As I have found the Employer actions to be discriminatory, it follows that I conclude the actions of the Employer were thus also in violation of Article 37.

Fair and reasonable

Article 13 requires the Employer to act "reasonably, fairly, in good faith, and in a manner consistent with the agreement as a whole" in its exercise of management functions. These Employer actions of banishing the grievor, telling her to enter the premises only when scheduled at a time when the Employer planned to schedule her less often and the grab and push, were done in the exercise of its management role. Given the conclusions I have already reached about these actions, the actions cannot be said to be fair or reasonable, and as such the Employer was also in violation of Article 13.

3. What is the appropriate remedy?

It is important to recall the Employer actions which were grieved in these grievances. Both grievances relate to and complain about the Employer actions over a few minutes on March 29, 1996. It appears that the Union is pursuing other grievances against the Employer, and it may be that either the grievor or the Union is pursuing a claim for lost income as the grievor was not scheduled for work following this incident. That is not, however, the issue raised in the grievances before me.

The Union sought declarations of violations of the agreement.

For the reasons given more fully above, I declare that the actions of the Employer directed toward the Union's Chief Steward, Pat Martin, on March 29, 1996 were in violation of the collective agreement between the parties. In particular:

1. The Employer violated Article 18 by discriminating against the grievor on the basis of her Union activity;
2. The Employer violated Article 37 by discriminating against the grievor on the basis

of her Union activity;

3. The Employer violated Article 18 by its intimidation of her;
4. In administering the agreement and exercising its management functions, the Employer did not act reasonably or fairly, and the Employer thus also violated Article 13.

The Union also sought monetary relief.

Under the Agreement an arbitrator can "dispose of a grievance by any arrangement which it deems just and equitable." (Article 21.05 C) The Union suggested that I award the grievor a sum of money for the wrongs done to her. The Union noted the *K-Mart Canada* case, *supra*, in which a sum of money was awarded to two individuals for what the Ontario Labour Relations Board referred to as the "extraordinary harassment and indignity to which they were subjected" (p. 89). I will not review that case in detail, except to note that the employees in that case were subjected to a "ruthless campaign of surveillance that endured for some three weeks" (p. 63); in particular, the employees were watched constantly while at work, were escorted to and from the washroom, and were no longer allowed to take telephone calls. The treatment there was much more prolonged and intrusive than that before me.

Unlike the *K-Mart* case, the entire events dealt with in these grievances lasted only a few minutes. Later events help to clarify what took place on March 29, but the grievances do not themselves take issue with those later events. Thus, while the June 10 memo helps to clarify or explain the Employer intent on March 29, and while the failure to schedule the grievor also helps clarify the Employer's actions on March 29, those were not the events which were grieved.

A monetary award is normally intended to compensate the grievor for lost income or for other matters which can be quantified in money terms. In the *K-Mart Canada* case, *supra*, the Board awarded compensation although the value to be placed on the loss of privacy, the harassment and the indignity was not easily quantifiable.

In the circumstances of this case, noting the short period of time over which the events occurred on March 29 and the usual purpose of monetary awards, I do not think it would be just and equitable to make a monetary award, and I decline to make one.

I remain seised to deal with any difficulties which may arise in the implementation of this award.

Dated in London, Ontario, this _____ day of October, 1996.

Howard Snow, Arbitrator