

IN THE MATTER OF A GRIEVANCE ARBITRATION

BETWEEN:

GOVERNMENT OF ALBERTA (JUSTICE)  
(REFERRED TO AS THE "EMPLOYER")

AND:

ALBERTA UNION OF PROVINCIAL EMPLOYEES  
(REFERRED TO AS THE "UNION" OR "AUPE")

GRIEVANCE OF MICHAEL RENNICH

Suspension for Media Interview

ARBITRATION BOARD: Allen Ponak (Chair)  
Vern Bartee, Union Nominee  
Neil Tidsbury, Employer Nominee

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AWARD OF THE ARBITRATION BOARD

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For the Employer: C. J. Martin

For the Union: Sheila Temple

Hearing at Edmonton, Alberta  
May 9, 10, 30, 31 and July 5, 2005

**ISSUE**

Mr. Michael Rennich (the “Grievor”) is a correctional officer at the Edmonton Remand Centre (ERC) and Chair of AUPE, Local 3. Following certain events at the ERC, the Grievor gave two interviews that were broadcast on CBC radio. As a result of these interviews, he was suspended without pay for two days for allegedly contravening the government’s code of conduct and his oath of confidentiality and providing inaccurate information to the public. He also initially denied giving the interviews. The Employer took the position that the Grievor’s union position did not shield him from discipline given the nature and content of his media statements. The Union argued that union officials are entitled to speak out on issues that affect union members and that discipline cannot be justified unless the impugned public statements are knowingly or recklessly false. Since, in the Union’s submission, the Grievor’s statements were factually correct, the discipline was without just cause.

## **EVIDENCE**

The Employer accepted the onus and called the following witnesses: Ms. June Smith, Deputy Director of Operations, ERC; Ms. Evelyn Owre-Grenier, formerly Shift Manager, ERC (currently working at another institution); Mr. Bob Reder, Shift Manager, ERC; Mr. Wes Manchester, Acting Admissions and Discharge Manager, ERC; Mr. Terry Kosack, Deputy Director of Operations, ERC; and Mr. Terry Garnett, Director, ERC. The Union called two witnesses: Mr. Erez Raz, Correctional Officer 2 (CO2), ERC; and the Grievor, a CO2 and local union chair.

The following exhibits were presented at the outset and during the course of the arbitration:

1. Master and subsidiary collective agreements, November 27, 2001.
2. Shift change-over certificates, April 18 - 25, 2003.

3. Incident report of E. Owre-Hatfield (Grenier), April 19, 2003.
4. Staff reports, April 22 & 23, 2003.
5. Hunger strike procedures, March 1, 1997.
6. Refusal to Eat policy, January 26, 2004.
7. Offender Hunger Strike procedures, January 26, 2004.
8. Employee work refusal, Section 35, Occupational Safety and Health Act policy, January 26, 2004.
9. Alberta Regulations, correctional institutions.
10. Logbook notes of F. Quinn, April 19, 2003.
11. Edmonton Sun article, April 22, 2003.
12. Edmonton Sun article, April 23, 2003.
13. Edmonton Sun article, March 17, 2003.
14. Letter of reprimand for M. Rennich, April 1, 2003.
15. Code of Conduct, Alberta Solicitor General Department, February 1, 2003.
16. Alberta Public Service Act, January 1, 2002.
17. Oath signed by M. Rennich, December 10, 1984.
18. Correctional Services policy # 2.20.02, January 1, 1997.
19. Letter of suspension for M. Rennich, May 8, 2003.
20. Transcript of CBC radio interview, April 22, 2003.
21. Transcript of CBC radio interview, April 23, 2003.
22. Search record, Unit 4B, April 20, 2003.
23. Edmonton journal article, April 23, 2003.
24. Letter of inmate "A".
25. Grievance of M. Rennich, May 8, 2003.

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## TRANSCRIPTS OF CBC INTERVIEWS

Full transcripts of the interviews provided by the Grievor to CBC radio on April 22 and 23, 2003 are set out below:

### April 22, 2003 Interview (Exhibit 20)

#### ***Transcript from April 22, 2003 – CBC – 4:07 pm – 7 minutes***

*The Edmonton Remand Centre continues to deal with fallout from threats made by gang members on the weekend. Members of a gang called Redd Alert have been removed from a prison unit after apparently forcing others to go on a hunger strike. Mike Rennich is the Chair of the AUPE local that represents the corrections officers.*

Q1 Mr. Rennich, good afternoon.

A1 How you doing?

Q2 Good, I am fine. What's the latest from the remand?

A2 They are still on a hunger strike. We, er, they are on a separate unit by themselves, or mostly by themselves, and we are looking after them.

Q3 What is the hunger strike about?

A3 About two weeks ago, there was a fight between two inmates. I don't know if it was gang related, but there was a fight. And because of that fight, we had to restrict a lot of movement that was on that unit. And basically what we did, what the management did here was put them on a six cell rotation, which means there is 24 cells on that unit, so six at a time would be let out for half hours of exercise, to get coffee, shower, that kind of stuff. They would lock up, then we would go the next six cells.

Q4 So is this protest, the hunger strike is in protest of the restriction of movement?

A4 It is a restriction, yeah, because of the restriction of movement, the cell rotation itself, they are also protesting the meals and that type of thing.

Q5 So over the weekend, what kind of threats were being made to force people not to eat?

A5 Basically what you had is, you had 12, 15 of the Redd Alert basically, because they outnumbered everybody else on that unit, the basic threat is don't eat or else we will get you.

Q6 And did other prisoners comply?

A6 The whole unit complied with it. There was approximately 40 inmates on the unit and they all complied, even though we talked to some that didn't want to comply, but again, you are talking a gang that has no problem ganging up on three, four, five, six people on one. So it is probably

preferential to miss a few meals than lose your teeth.

Q7 So the prisoners obviously take this Redd Alert group fairly serious?

A7 Oh yeah. The gangs that we have going in the institution now or across the province are taken very seriously by the other inmates.

Q8 How big a threat was this to remand officials and corrections officers?

A8 We deemed it on Saturday afternoon, we deemed it as a big threat for the simple fact that they were making what they call match bombs, which are, are, takes a match head and stuff them into something that is very confining and it goes off like a firecracker, so if they were making that kind of stuff, they had something that they could cut that kind of stuff up with, basically we are talking about weapons. And we all agree when we take this job that it is dangerous, but when it gets to that level where they are making weapons and have weapons and were banging and kicking the doors as much as they were, then yeah, you know, and it is time to take a second look.

Q9 How does it get to that level though?

A9 Oh, you know what? They just, I am assuming, and this is just my opinion, is that because this fight happened two weeks ago, they planned this. They decided that we are going to do something about this and they have been planning it. I mean, they are not starving. I would hope that nobody thinks that the inmates here are starving. They are allowed to buy eighty dollars worth of canteen per week, which is chopped, er, which is chips and pop and chocolate bars and that kind of stuff. So if they have planned it for two weeks, they have got...most of them will have \$150-\$200 worth of canteen sitting there. So they are eating chocolate bars and pop. They are just not accepting our meals. That is all.

Q10 So as you see things escalating like that, are your hands tied as correction officers?

A10 Our hands are tied as correctional officers. The managers in the system are the ones that make the decision on what to do. The only thing we can go through is, like when we see something that escalates where we figure that our safety is at risk more than normal, is to go through Occupational Health and Safety and there is Acts in the Occupational Health and Safety Act itself that, you know, states that I can't be ordered to do something that is openly more dangerous than, than normal.

Q11 As you might expect, there are people asking who is running the asylum?

A11 Well, you know what? We are sitting here running, asking the same thing with what has transpired in the last little while. But rest assured, we still believe that we maintain most of the control right now. The bad thing about it is, we don't, gangs are new to the Alberta correctional system. We don't know how to deal with them. We're, we're...it's a trial and error process right now and we are doing the best that we can. We try something and it either works or it doesn't work. If it doesn't work, we try something new. So it is a learning process and we are learning quickly, but we are just, you know, when you know, we get a large group of inmates that belong to one particular gang, then they become unruly.

Q12 How new is this? How new is the gang problem in prison?

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- A12 To the degree that we have got it now where we have got several, we probably got six or seven different gangs in our system right now. We just saw gangs, probably in the last three to four years. And to the numbers that we are seeing. Before it was one particular gang. Now we have got, like, I said, five, six, seven different gangs in the institution right now, so it is a new baby. It is only three or four years old.
- Q13 So what happens next?
- A13 Hopefully, they decide to eat and then we can get back to normal routine where we can start, they start taking their exercise, we can start getting back to running things.
- Q14 If they don't?
- A14 If they don't again, again, the canteen, I would imagine is going to start running out here before the end of the week. Then we're going to have to look at what happens when, if they are still refusing to eat. Now they have to look at medical treatment and that kind of stuff and medical intervention. Again, something new, in my 20 years as being a CO, I have never seen that happen. It was, again, it is going to be something new.
- Q15 Mike, thanks for talking with us.
- A15 Not a problem, Rod.
- Q16 Mike Rennich is the Chair of the AUPE local that represents prison guards at the Edmonton Remand Centre.

April 23, 2003 Interview (Exhibit 21)

**Transcript from April 23, 2003 – CBC – 5:13 pm – 6 minutes**

*The Union that represents corrections officers at the Edmonton Remand Centre is crying foul over the way the Director is dealing with an apparent hunger strike by some inmates. A group of gang members had been refusing to eat their meals since last week. At one point, they were apparently coercing other inmates to refuse to eat, as well. On Saturday, the Union says the Remand Centre Director met directly with some of the gang members. Mike Rennich is the chair of the AUPE local that represents the guards and he works as a guard himself.*

- Q1 Mike, hello.
- A1 Good Afternoon.
- Q2 What do you think the Director did wrong?
- A2 He directly went to meet with these guys, instead of following an established procedure, or an unwritten rule, if you would. He directly got involved and met and talked with these gang members.
- Q3 So that is just not done, even though it is not a written policy?
- A3 It is just not done. The Director is supposed to be an impartial, last resort, if you would, where if I as a correctional officer can't get something solved and my supervisor can't get it solved, and

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then the shift manager can't get it solved, that is when the Director steps in. But what he did is he took direct action and got involved in it right away.

Q4 So while this doesn't contravene corrections policy, why do you see it as such a problem?

A4 What happens then is, we lose any credibility with the inmate, or the inmates. What they will do is just say, I want to speak to the Director. They won't speak with us. It is important that we have lines of communication open between inmates and correctional officers. The big, and, it is for safety reasons, not only for the inmates but for ourselves. We have a lot of people that like to come forward and tell us that there is weapons, there is drugs, that this person is going to be assaulted if he doesn't get off the unit. If the Director becomes directly involved, like he has, what happens is we lose that. We don't have them lines of communications between the front line worker and the inmate.

Q5 Could the inmate also start assuming that since he had contact with the Director once, he can have that again?

A5 Oh yeah, exactly. Especially if you are in the position as one of the gang leaders or controlling the gangs in the institution. What happens then is just like you said. They will say, I want to talk to the Director. I am not talking to you. You are just a flunkie here. And to, you know what, to a degree, that is what we are. We are just, that's, but we don't need, we need them lines of communication open so that we can protect the inmates.

Q6 What impact could this have on corrections officers?

A6 You know what, what is going to happen if it continues like it is, is CO's are going to, to hesitate, if someone is going to, if someone is being assaulted, we have got to wait and we got to figure out, okay, are they trying to set us up? It is gonna create doubt in the minds of correctional officers as to the degree that they do their duty, or do their job. Do I rush in there and help this guy or do I wait? Are they trying to set me up? It just, what it does, it kills what little morals we have in the institutions right now and it is a total lack of respect on a Director's part for doing this.

Q7 Does it make things more dangerous?

A7 Big time. Me as a correctional officer, I understand when I took this job that there is a degree of danger involved in it. What the Director has done has increased that degree, I believe, tenfold. If they are not going to talk to me, how do I do my job? If they are not going to listen to me and they are only going to listen to the Director, how do I do my job? I have to be able to tell these guys and they have to be able to know that I mean what I am saying and what the Director is doing is taking that away from me.

Q8 What has the Director said about your complaint?

A8 We are waiting to hear from the Director himself, and we are waiting to, on Saturday night when we addressed it, he didn't see it as a concern. We are waiting to hear from the Executive Director of Adult Corrections here in Alberta to deal with this and as of right now, we are still waiting for that call or that meeting to happen.

Q9 Has anything like this ever happened before?

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- A9 Not to this degree. I have never seen it in my 20 years experience where the Director of an institution was so blatantly disrespectful to the staff.
- Q10 Some people might be skeptical of your complaint that you're, they think maybe you're trying to use the media in a fight against remand centre management. What would you say to those people?
- A10 You know what? It has nothing to do with that, whatsoever. I am here to do a job. I know my role as a correctional officer in this institution. The Director has a right to do what he wants, but I have to be safe, and people have to understand that not only correctional officers have to be safe, but so do the inmates. If you take away that process, both our lives are in jeopardy.
- Q11 So what are will you do now?
- A11 I am waiting until I hear from the Executive Director, to see if we can rectify this problem. If not, then I am not sure what our next step is. It is going to have to, it's going to have to, we're going to have to do something to grab their attention and say, you know what, we are serious.
- Q12 Mike, thanks for talking with us.
- A12 Thank you.
- Q Mike Rennich is the Chair of the AUPE local that represents prison guards. No one from the Provincial Solicitor General's Department was available to do an interview on Radio Active Today, however Lynn Hutchings-Mah of the Department, says the situation is being dealt with appropriately within policy guidelines.

#### LETTER OF DISCIPLINE (EXHIBIT 19)

The letter of discipline, issued on May 8, 2003 and signed by Mr. Garnett, ERC Director, is set out below:

Mr. Rennich:

#### **RE: LETTER OF SUSPENSION**

On April 22 and April 23, 2003, you were allegedly interviewed on two CBC Radio programs with respect to the recent inmate hunger protest. In your meeting with Gordon Barinecutt on May 1, 2003, you denied any involvement with these radio interviews.

I have reviewed all available information and determined that you disclosed internal security related information and inaccurate statements to the media in these interviews. As a result of your conduct, you increased tension within the inmate population that impacted the worksite's operations. Management had to maintain the enhanced security measures, and closely monitor and coordinate inmate housing to ensure that the situation did not escalate. You have been advised that public statements regarding department policy and practices are to be provided to the media by designated government spokespersons and as you are not a designated spokesperson, you are not authorized to provide public statements regarding department policy and practices.

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Your conduct has contravened:

- The Code of Conduct and Ethics for the Public Service and Solicitor General's Policy/Directive HRS 27.2.
- The Oath of Confidentiality that you took upon commencement and Correctional Services Policy 2.20.02, Standard 1(m) – An employee shall not communicate with, express opinions to or otherwise convey or pass information directly or indirectly to agents of the news media in respect to any policy, incident, condition or circumstances which relate to functions performed by Correctional Services Division. It is immaterial whether the information was previously communicated by others or whether it was passed on the sincere understanding that it was in the best interests of the Service. The prohibition is unequivocal and without qualification.

Your conduct in this situation is unacceptable and in consideration of your conduct and the written reprimand that you received on April 3, 2003 for a similar matter, you are being suspended without pay for two (2) days. You will serve your suspension without pay on May 10<sup>th</sup> and 11<sup>th</sup>. Any further incidents of this nature may result in further disciplinary action, up to and including dismissal.

#### BACKGROUND AND CONTEXT

Little of the material evidence with respect to the events before and after the Grievor's CBC interviews is disputed. Until 2005, the Grievor was a CO2 in the Edmonton Remand Centre. During his 20 years of service he worked in almost all parts of the facility and was also a shift leader of the ERC's tactical team which handles emergencies and other potentially dangerous situations (e.g. riots, hostage taking, cell extractions). As a public employee he had signed an official oath upon employment which states that "I will not, without due authorization, disclose or make known any matter or thing which comes to my knowledge by reason of my employment in the public service" (Exhibit 17). As well, the Grievor was subject to Solicitor General Department's Code of Ethics and Conduct which reads in part: "Only the Minister or Deputy Solicitor general, or their designates, are expected to make public statements regarding a policy or practice of the Ministry" (Exhibit 15, page 3).

The Grievor has been active in his union for many years in a variety of roles including collective bargaining, grievance handling, and health and safety. From 2000 to 2005, he was

the elected chair of AUPE Local 3, which represents correctional officers throughout Alberta. In 2005, he resigned as local chair and from the ERC to become a full time AUPE union representative. The events that gave rise to the discipline that is the subject of this arbitration award took place while the Grievor was Local 3 chair.

All witnesses agreed that there is a certain amount of danger inherent in the job of a correctional officer and that the atmosphere within a prison can change in an instant. The ERC houses individuals awaiting trial or sentencing on a variety of criminal charges, including murder. Prisoners may gain access to drugs and weapons, either home made or smuggled in. As well, gang activity in the prison system has increased in recent years and has been a source of concern for management and staff. Gangs actively recruit other inmates and there are rivalries among the various gangs. One of the gangs active in the ERC is the "Redd Alert" which mainly comprises members of the native community.

The events directly preceding the CBC interviews occurred in mid April 2003 and originated on Unit 4B. Mr. Raz described Unit 4B as housing prisoners facing Level 1 charges and who have a high violence potential. It contains Redd Alert and other gang members. There are 24 cells on Unit 4B with two inmates per cell. Unit 4A is adjacent to 4B, with a shared office and monitoring station located between the two units. The locking and unlocking of cells is controlled electronically from the unit monitoring station. Several witnesses agreed that until recent repair work, it was possible for some prisoners to get out of a locked cell by forcefully kicking their cell door.

During the morning and evening shifts there are three staff members plus a floor supervisor on duty for the two units; on the night shift, when prisoners are locked in their cells and sleeping, there is one fewer staff member on duty. The correctional officers are expected to

do periodic rounds of the unit to ensure that conditions are stable. Supervisory responsibility for the staff and prisoners within the ERC lies with shift managers, who report to the ERC director. One shift manager is on duty during each shift and circulates throughout the facility as needed.

During the day, prisoners are provided time outside their cells for recreation, to enable them to circulate within the unit, and to eat their meals. In normal circumstances all 24 cells are unlocked at the same time. On April 18<sup>th</sup>, however, Unit 4B had been placed on a 6 cell rotation, which meant that only 6 cells were open at any one time and that the other 18 cells remained locked up. The 6 cell rotation was introduced as a result of behavioural problems on the unit and was a way for the staff to exert and maintain control. The effect of this measure was to greatly reduce the amount of time prisoners had outside their cells.

The evidence showed that Unit 4B prisoners protested the introduction of the 6 cell rotation. Redd Alert gang members led and enforced the protest within the unit. The protest, which appears to have begun on April 18<sup>th</sup>, was described in the testimony of correctional officers, shift managers, and senior management and was also part of the ERC's written records (Exhibits 2 & 3). According to Ms. Smith, who was shift manager from 1445 to 2300 on April 18<sup>th</sup>, prisoners refused (or were afraid) to leave their cells even when able to do so, they refused to eat meals, there was banging on cell doors and walls, and match bombs were thrown. She said that the refusal to eat or leave cells was the key part of the protest. She described the banging and yelling by prisoners as routine. Ms. Smith reported the matter to Mr. Garnett, the ERC's Director, and was told to monitor the situation (Exhibit 2, page 3). In her view, the prisoners' protest did not fall "beyond the normal danger" for the job.

The next shift manager for Unit 4B, Mr. Manchester, was on duty from 2245 to 0700. During his shift, a fire alarm was set off by a small fire that was deliberately started in a cell,

prisoners were verbally abusive to staff, and there was a lot of kicking and banging on cell doors (Exhibit 2, page 4). He testified that the protest did not give rise to abnormal danger as there were no rioting, hostage taking, or assaults.

Mr. Reeder was on duty as shift manager from 0645 to 1500 on April 19<sup>th</sup>. The protest continued, led by Red Alert gang members on the unit. Mr. Reeder noted that inmates refused their meals or to leave their cells and there were some plugged toilets (Exhibit 2, page 5). He testified that staff were in control of the situation, prisoners were not running amuck, and that normal communication between the correctional officers and the inmates continued. He characterized the situation as one in which “inmates politely refused to eat”.

Ms. Owre-Grenier was shift manager from 1445 to 2300 on April 19<sup>th</sup>. Staff on duty were Mr. Raz in Unit 4B, Mr. McCloskey in Unit 4A, and Mr. Frank Quinn, CO3, who was the floor supervisor. Mr. Raz testified about the events on the unit. He has been at the ERC for six years, is a member of the ERC Tactical Team, has previous military experience that included active service in a war zone, and was described by witnesses as level headed, conscientious, and serious. Ms. Owre-Grenier agreed that he was not known for raising frivolous concerns.

Mr. Raz had been off work for three days on a normal shift rotation and April 19<sup>th</sup> was his first shift back. He testified, as did the Grievor, that the general staff briefing at the start of their shift (called “muster”) made no mention of any special problems on Unit 4B. Mr. Raz stated that, when doing his first round at the beginning of his shift (which involves going into each cell), the unit appeared unusually dirty and he was the target of widespread verbal abuse. Upon checking the unit logbook, and reading about the prisoners’ refusal to eat and the use of match bombs, Mr. Raz went to see Mr. Quinn to express concern. Mr. Raz testified that shortly thereafter six cells were unlocked. He said the prisoners displayed open defiance by engaging in a number of

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prohibited activities such as smoking, visiting other cells, leaving cell doors open, and wearing their prison coveralls around their waist. They also looked at him in a challenging way. Mr. Raz stated he feared for his safety and did not want to go back into the unit unless steps were taken to address the situation.

At this point, Mr. Raz contacted the Grievor, on duty elsewhere in ERC, to seek advice on what to do. The Grievor came to Unit 4B. He also observed Redd Alert members with overalls around their waste, smoking on the unit, and inmates challenging staff in a defiant way. The Grievor agreed with Mr. Raz's safety concerns, especially given the hunger strike. In 20 years as a correctional officer, he said he had never seen a match bomb. He held a discussion with Messrs. Raz, McCloskey, and Quinn during which the subject of an "imminent danger" claim under Occupational Health and Safety law was raised. Such a claim would mean that employees would refuse to perform their duties in the unit on the grounds that it was unsafe. According to Mr. Raz, it was decided that such a claim would be made only if management failed to address their safety concerns. They contacted Ms. Owre-Grenier and she came to the unit.

Mr. Raz testified that he explained the situation to Ms. Owre-Grenier and recommended that Unit 4B prisoners not be allowed out of their cells at all that night, that the Tactical Team be placed on standby, and that extra staff be assigned to assist with the supper meal. He said that Ms. Owre-Grenier responded by arranging to have the meals served one cell at a time and brought in an additional staff member to assist with the meal (which the prisoners refused to eat). The Grievor characterized this approach to meal time as "an acceptable compromise".

In her incident report, Ms. Owre-Grenier indicated that the Grievor "alleged an imminent danger claim" when she attended Unit 4B (Exhibit 3). She contacted the ERC Director, Mr.

Garnett, at home (it was Saturday) and he agreed to come to the unit. She advised him that an imminent danger claim had been made. Both Mr. Raz and the Grievor stated that they had only raised the possibility of an imminent danger claim with Ms. Owre-Grenier, but that they had never actually made a formal claim. In any event, it is clear that Ms. Owre-Grenier believed that an imminent danger claim had in fact been made and that is what she told the Director. She testified, however, that in her own opinion, the situation on Unit 4B was not particularly dangerous. She characterized the hunger strike as “a passive protest”.

Mr. Garnett and Mr. Kosack, the ERC Security Manager, arrived on Unit 4B soon thereafter and proceeded to personally interview a number of the inmates. Mr. Garnett conducted the interviews in the unit offices; inmates were brought to him by Mr. McCloskey. Mr. Kosack, accompanied by Mr. Quinn, conducted interviews in the cells. Mr. Raz remained in the unit office, at an observation station, so that he could visually monitor the safety of the staff on the unit. By this time, the Grievor had left the unit and had returned to his regular duties.

Mr. Raz said that he was annoyed that neither Messrs. Garnett nor Quinn spoke to him before beginning the interviews: “I was the one who said I had an issue with going on the unit but no one spoke to me”. He became even more annoyed after the interviews were completed. He testified that Mr. Garnett left the unit without speaking to him. Mr. Raz recalled that the Director had stood in the doorway to the observation station and had made some comments, but because he had to monitor the unit, his back was turned and he never heard Mr. Garnett. For his part, Mr. Garnett was certain that he had in fact summarized the results with staff, and that Mr. Raz had heard him. Following the intervention of the Director, the inmates were kept locked in their cells for the remainder of the night and Mr. Raz felt safe enough to do his rounds. The Tactical Team was not put on standby.

It was clear from the evidence that Mr. Raz was very frustrated when the Director left the unit without, in his mind, having spoken to him at all. When the Grievor called to find out what had transpired, Mr. Raz explained that the Director had left without speaking to him. The Grievor then went to Ms. Owre-Grenier's office where he met with her and the Director. He advised them that no imminent danger claim had been made. A short time later, the Grievor returned to Ms. Owre-Grenier's office with Mr. Raz. All witnesses agreed that Mr. Raz became angry when, after telling the Director that he had been disrespectful to staff by talking only to the inmates, the Director had responded that he had in fact talked to staff. After some further discussion, the Grievor took the visibly agitated Mr. Raz out of the meeting.

The Grievor testified that he shared Mr. Raz's concern about how the Director had handled the situation. The Grievor believed that the Director had "just left us out of the whole process". In his opinion, the Director had been disrespectful by talking to the inmates and not to the staff, especially in a matter involving safety. Further, when he left Ms. Owre-Grenier's office at 2100, according to the Grievor, he still had no information about how management intended to deal with the Unit 4B situation. The Grievor explained that communication in the ERC was crucial to the safety of staff and inmates. He described the ERC as housing a large and volatile population. It was crucial in his view that staff be well informed and that inmates feel comfortable confiding in staff. In his opinion, inmates should first talk to the correctional officers about any problems and only if an issue could not be resolved at the unit level should more senior staff become involved. The Grievor felt that the direct involvement by the Director, and what he saw as the bypassing of staff, had undermined the authority of the unit correctional officers. While he agreed that the Director had the authority to speak directly to inmates if he so chose, the Grievor felt it was the wrong decision.

Mr. Garnett provided his perspective on the events of April 19<sup>th</sup>. He said his special visit to the ERC on a day off reflected the concern being expressed by staff and Ms. Owre-Grenier. He believed that Ms. Owre-Grenier was already taking appropriate steps to deal with staff concerns, such as through special meal time arrangements, and he wanted to talk to the inmates to see if he could help resolve the hunger strike. He testified that he spoke to staff when he arrived and when he left the unit, but the discussions were limited because he believed he was facing an imminent danger claim. In Mr. Garnett's opinion, the hunger strike, while not normal, did not necessarily create a dangerous situation. In his view, the only potentially dangerous aspect of the Unit 4B situation was the use of match bombs; he characterized the banging, yelling, and abusive language as daily occurrences.

After the Director's departure from the ERC, the shift ended without further incident. The prisoners remained locked up for the remainder of the night. The next shift manager was Mr. Manchester, on duty from 2245 to 0645. He testified that he was not advised by Ms. Owre-Grenier about the events on the previous shift or that staff had raised safety concerns. Inmate unrest on Unit 4B continued during his shift. A fire was set that triggered an alarm, there was an unusual amount of kicking and banging, and prisoners were verbally abusive to staff.

The following day, April 20<sup>th</sup>, steps were taken to reduce the tensions on Unit 4B. Members of Redd Alert were moved, in shackles, to other units, in particular Unit 6D, and a thorough cell by cell search of the unit for weapons and contraband was conducted. One match bomb and contraband, such as excess blankets, were found. It was noted that the "the unit was in an extreme state of disarray" and a clean up was ordered (Exhibit 22 and Exhibit 2, page 8). When Mr. Raz arrived for his shift he found "a brand new population" of inmates. With these steps, Unit 4B returned to a more normal situation and a 12 cell prisoner rotation was instituted

on April 23<sup>rd</sup>. However, the evidence showed that the Red Alert members continued their refusal to eat on their new units, there were incidents like deliberately plugged toilets (Exhibit 2, page 18), and there was a report about a hostage taking threat (Exhibit 2, page 15). In response, inmates on Unit 6D were placed on a 3 cell rotation on April 23<sup>rd</sup> and some were moved again to other units (Exhibit 2, page 17). The unrest and hunger strike persisted until April 25<sup>th</sup>, after which the ERC returned to normal.

The Grievor was interviewed by the media with respect to events at the ERC. He was quoted in two articles in the Edmonton Sun newspaper on April 22<sup>nd</sup> and April 23<sup>rd</sup> (Exhibit 11). The April 22<sup>nd</sup> article focussed on the hunger strike and Redd Alert's role as well as gang problems in the ERC. The April 23<sup>rd</sup> article covered these subjects plus comments by the Grievor concerning staff safety concerns. The Edmonton Sun articles were not cited in the discipline imposed on the Grievor.

The Grievor testified that he was contacted by CBC radio on the morning of April 22<sup>nd</sup> and asked if he would give an interview later that day about "what's going on" at the remand centre. The Grievor, who had given numerous CBC interviews in the past, agreed. According to the Grievor, he gave the interview, and the one the next day, as a union representative and ensured that he was introduced as such. In the April 22<sup>nd</sup> interview he described the hunger strike on Unit 4B, the six cell rotation that had precipitated the hunger strike, the role of the Redd Alert gang, the rise of gangs within the prison system, staff safety concerns, and danger claims under the Occupational Health and Safety Act (Exhibit 20). In the second interview, the Grievor criticized the way in which the Director (who was not referred to by name) had handled the events of April 19<sup>th</sup>, particularly his decision to meet directly with Unit 4B inmates. He accused the Director of making things more dangerous for staff through his actions and of

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showing blatant disrespect for staff (Exhibit 21). In cross-examination, the Grievor stood by the statements he had made during the interviews. He reiterated that he considered it wrong that the Director talked first to inmates before staff and added that staff believed the Director's frequent meetings with inmates undermined their authority. He believed that the Director had made an already dangerous job more dangerous, although he agreed that prisoner assaults on staff were rare and had not increased since the April 2003 events.

Mr. Garnett, in his evidence, disagreed with the Grievor's interview assertion that the situation in Unit 4B had been more dangerous than normal. He said that on April 19<sup>th</sup> inmates had been in their cells, no assaults had taken place, and a subsequent search found no weapons except for one match bomb. Mr. Garnett disagreed with the Grievor's claim that he had erred by interviewing inmates; in his view, he had a right and expectation as Director to interview inmates if he deemed it appropriate. Contrary to the Grievor's interview statements, there had been no decline in communication between staff and prisoners or an increase in danger following his intervention. Mr. Garnett also rejected the Grievor's claim that he had shown disrespect to staff, testifying that he had spoken to staff upon arrival and before departing Unit 4B.

Mr. Garnett initiated the discipline process against the Grievor with input from the Personnel Administration Office and his own superiors. He stated that the Grievor's CBC interviews contained inaccuracies, upset inmates, increased tensions in the ERC, and prolonged the hunger strike. The interviews, in his opinion, went beyond concern for staff and had gone too far in their open criticism of the Director. For those reasons, discipline was appropriate. Moreover, when first confronted about the CBC interviews, the Grievor denied giving them.

The Grievor has given frequent media interviews over the years on topics such as staffing requirements, staff exposure to second-hand smoke, drugs, gangs, and prison overcrowding. Until 2003, he had never been disciplined as a result of these interviews. On April 1, 2003 the Grievor received a letter of reprimand (Exhibit 14) for an interview he gave to the Edmonton Sun about the protective custody arrangements of an inmate accused of a high profile child murder (Exhibit 13). The discipline letter alleged that the Grievor's statements had violated his Code of Conduct and Ethics, his Oath of Confidentiality, and it had endangered the prisoner. The letter of reprimand was unsuccessfully grieved. Under the collective agreement, letters of reprimand are not subject to outside arbitration and his grievance was denied by a member of senior management. According to the Grievor, the reprimand focussed on the release of security information. He did not see it as challenging his right to speak to the media on issues affecting the union. He stated that he had initially denied giving the interviews because "he didn't know he had to be honest with management" when the matter was first raised. He said he took the attitude of "so prove I made these statements".

### **EMPLOYER ARGUMENT**

The Employer recognized that, as a union representative, the Grievor had the right to make statements to the media and enjoyed a certain degree of immunity from discipline stemming from such media comments. It was argued, however, that any immunity accorded union representatives was not unqualified. Union officials could be disciplined if their media statements "intentionally misrepresented the truth or carelessly or recklessly disregarded the truth" (*Corporation of City of Brampton and Amalgamated Transit Union, Local 1573* (1989) 7 LAC (4<sup>th</sup>) 294 (H. Brown), page 8, Quicklaw version). It was noted that these tests had been adopted and applied in numerous awards (Brown & Beatty, *Canadian Labour Arbitration* (3<sup>rd</sup>),

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paragraph 9:1530) and that “each case of this nature turns on its own facts” (*Brampton*, page 20, Quicklaw version).

In the current case, the Employer submitted that the Grievor had made statements that he knew or should have known were untruthful. These statements included allegations that the ERC Director had a total lack of respect for his staff, had increased staff danger ten-fold, and, by his actions, had placed inmates and staff in danger. The Employer argued that the evidence showed that none of these statements were true. Furthermore, in the Employer’s view, the Grievor had, in effect, accused the Director of not being impartial when he had stated that prison directors were supposed to be impartial. Adding to the impropriety of the Grievor’s remarks, the Employer contended, was that by the time the Grievor gave the interviews on April 22<sup>nd</sup> and 23<sup>rd</sup>, whatever alleged danger might have existed on Unit 4B on April 19<sup>th</sup>, had been dealt with. Inmates had been kept in their cells after staff expressed concern, the unit had been searched, and the instigators of the hunger strike moved to other units. Thus, even if the Grievor had justifiable concerns at the time, he should have been aware when he gave the interviews that the issues had been adequately addressed.

As a result, it was the Employer’s position that management had met the tests for imposing discipline on a union official for making public statements to the media. Given that the Grievor had already received a letter of warning for past improper media statements, a two day suspension was reasonable in the circumstances. In support of its position, the Employer provided a number of authorities including: *Alberta Union of Provincial Employees v. Alberta* 2002 ABCA 202; *Canadian Union of Public Employees and Wardair Canada Inc.* (1988) 89 CLLC 16,009; *Amoco Fabrics Ltd. and Amalgamated Clothing and Textile Workers Union, Local 1606* (1984) 17 LAC (3<sup>rd</sup>) 425 (O’Shea); *Municipality of Metropolitan Toronto and Canadian*

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*Union of Public Employees, Local 79* (1998) 70 LAC (4<sup>th</sup>) 110 (Burkett); *National Steel Car Ltd. and United Steelworkers of America, Local 7135* (2001) 101 LAC (4<sup>th</sup>) 316 (Shime); *Ministry of Attorney-General, Corrections Branch and British Columbia Government Employees Union* (1981) 3 LAC (3<sup>rd</sup>) 140 (J. Weiler); and, *Government of Alberta and Alberta Union of Provincial Employees [Guy Smith]* (1996) Unreported (Moreau); upheld at QB.

### **UNION ARGUMENT**

The Union agreed that the tests cited by the Employer were applicable in the current case and that each case turned on its own set of facts. Unless the Grievor had made statements that were “knowingly or recklessly false” (*Burns Meats Ltd. and Canadian Food & Allied Workers, Local P139* (1980) 26 LAC (2<sup>nd</sup>) 379 (M. Picher), the Union submitted, the grievance must succeed. In the Union’s view, the Employer bore the onus to establish that the Grievor’s statements fell into this category (*National Steel Car*) and the Union did not have to prove the truth of every statement made by the Grievor (*City of Nanaimo and International Association of Firefighters, Local 905* (2002) 109 LAC (4<sup>th</sup>) 408 (Hope). Indeed, in the Union’s submission, the Grievor had a right to be wrong, as long as his views were honestly held.

With respect to the current case, it was the Union’s position that the Employer had not shown that the Grievor’s statements in his CBC radio interviews were knowingly or recklessly false. Referring to the letter of discipline and the grounds set out by management, the Union argued that the Employer had not established that: 1) the Grievor had disclosed internal security information; 2) his statements were inaccurate; 3) tension among inmates increased due to his statements and enhanced security was required; or 4) he had been advised that he could not make public statements to the media. The Union submitted that based on what the Grievor observed on the evening of April 19<sup>th</sup>, he genuinely believed that staff had been at risk.

Considering all the facts, this belief was reasonable, not reckless.

The Union conceded that the Grievor may have used some hyperbole in his interviews, for instance when he said that danger had increased ten-fold. Hyperbole was not proper grounds for discipline, according to the Union. Furthermore, similar statements made to newspapers by the Grievor had not attracted a disciplinary response. Overall, it was the position of the Union that the Employer had failed to establish it had any grounds for discipline. The Union asked that the two day suspension be rescinded and the Grievor compensated.

## **DECISION**

The parties were in agreement as to the tests to be applied in cases of discipline imposed on a union official. The tests are whether the impugned statements, in this case the two interviews given on CBC radio by the Grievor, were “malicious in that they are knowingly or recklessly false” (*Burns Meats*, page 6, Quicklaw version). That a union official has a right and perhaps a duty to speak out is not at issue. The question, in the case of a union official who is also an employee, is where the balance lies between fidelity obligations as an employee and obligations as a union official. The following two extracts from leading cases are representative of the arbitral approach.

In *City of Brampton* Arbitrator Brown elaborated on the concepts as follows (page 20, Quicklaw version):

The issue is not whether the corporation had the right to take this action because the grievor spoke out as union president on issues which were of concern to him and the union. The right of a union executive to speak on behalf of the membership of the local union in dealing collectively with management is clearly recognized and that freedom is not curtailed other than in circumstances where statements are made recklessly without a basis of facts and maliciously against management which then goes beyond the freedom of expression in collective bargaining and administration of collective agreements in the normal course of union-management relationships and becomes a cause outside those confines and deliberately detrimental to the viability and the continuing nature of such relationships. The question is in all of these cases whether the language used and the intent of the individual was such as to establish misconduct for

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which cause disciplinary action can be taken and upheld pursuant to the provisions of the collective agreement. .... each case of this nature turns on its own facts.

Similar comments were offered by Arbitrator Burkett in *City of Toronto* (page 9, Quicklaw

version):

Elected or appointed local union officers and officials have a duty

to rank-and-file members to represent their interests in all facets of the collective bargaining relationship. In this regard they are required to be vigilant and to speak out on a range of issues that affect employee well-being. It is trite to observe that the interests of management may be divergent, in principle or in degree, from those of rank and file employees, so that the position taken by local union spokespersons will often be at odds with the position adopted by management. Not surprisingly therefore, labour boards and arbitrators under collective agreements have provided union stewards and other union officials with a significant degree of protection in respect of their freedom to speak out on collective bargaining and related issues. In doing so, it has been found that the

integrity of the collective bargaining  
process demands that employee  
representatives be free to speak without  
fear of reprisal.

We have reviewed the authorities referred to us... [Another arbitrator] concluded that [the grievor] could not make statements that were "harassing, insulting or recklessly false". In our view, it is open to a steward or other union official to be repetitious in pursuing an issue, to the point that management might feel itself harassed, so long as the comment is based on fact, or to call attention to some management initiative in a direct and unflattering manner that may be perceived by management as insulting, so long as there is a factual basis to the comment. Such comment is not beyond the scope of protected speech if based on facts that are true or reasonably believed to be true. However, if based on falsehoods that are known or ought reasonably to be known, such comment is not protected. The bright line test therefore, consistent with the role of a steward, is that malicious or deliberately false statements are not protected and if made by a steward or other union official may attract a disciplinary response.

Keeping these tests in mind, the Board draws the following conclusions about the fact situation surrounding the Grievor's CBC radio interviews:

1. The situation on Unit 4B on the evening of April 19<sup>th</sup> was more dangerous than usual. We accept the evidence in this regard of Mr. Raz, an experienced correctional officer who worked on the unit. He was described by all witnesses as someone unlikely to raise frivolous concerns. Based on what he had personally observed and from his review of recent log book incidences (e.g. match bombs), Mr. Raz's concerns for his safety were legitimate.
2. Management responded in a reasonable and timely way to address the Unit 4B safety concerns raised by Mr. Raz and other staff. Meal service was re-arranged on the evening shift to minimize inmate interaction with staff, prisoners were kept in their cells for the remainder of the evening shift and the full night shift, leaders of the hunger strike

were transferred out of Unit 4B the next day, and cells were thoroughly searched. These actions reduced the danger on Unit 4B to normal levels. The concerns on Unit 4B had ended by the time the Grievor gave his CBC interviews.

3. Communication between management and staff with respect to the situation on Unit 4B and the steps being taken to deal with the situation was limited. The increased acuity on Unit 4B was not mentioned to staff at muster at the beginning of the April 19<sup>th</sup> afternoon shift, the outgoing afternoon shift manager (Owre-Grenier) did not advise the incoming night shift manager (Manchester) about Unit 4B developments that had occurred during her shift, and Unit 4B staff were not told what steps, if any, management was planning to take the next day to reduce Unit 4B danger levels.
4. On the evening of April 19<sup>th</sup>, the Director briefly spoke to staff after his Unit 4B visit, but this briefing was not heard by Mr. Raz who was occupied monitoring the unit. The Director never spoke directly to Mr. Raz, the person who had initiated the staff safety concerns, in any detail. The Director interviewed a number of inmates but did not interview any of the Unit 4B staff.
5. The Director has the authority to interview inmates at his discretion.
6. After the transfer of prisoners from Unit 4B, the hunger strike and unrest continued elsewhere in the ERC until April 25<sup>th</sup>.

Based on these facts we now turn to the CBC interviews to determine if it can be said that the Grievor made statements that were false or that he should have known were false.

April 22<sup>nd</sup> Interview (Exhibit 20)

Questions Q2 - Q7 & Q12 and the answers to them deal with the hunger strike, Redd

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Alert, and prison gangs. The Board finds nothing inaccurate in Answers A2 - A7 and A12. The hunger strike continued at the ERC at the time of interview (though it had moved from Unit 4B to other units), it was sparked by the six cell rotation on Unit 4B, it was led and enforced by a gang called Redd Alert, and gangs are a concern to inmates, staff, and management in the ERC and the Alberta prison system. The Board notes that the Grievor's revelation that gangs exist in the Alberta penal system can hardly be construed as a breach of confidentiality.

Question Q8 asks the Grievor if there was a threat to staff. He answers (A8) that there was "a big threat" on Saturday (April 19<sup>th</sup>) because the inmates were making match bombs, which he characterized as a weapon, banging and kicking the doors, and "making weapons". The Board agrees that to the extent the danger level for staff on Unit 4B was heightened on April 19<sup>th</sup>, the Grievor was correct to indicate that there was a threat to staff, although calling it a "big" threat may have been an exaggeration. It is also true that inmates had been making match bombs and banging and kicking on doors, both of which contributed to staff safety concerns. Beyond the match bombs, no other weapons were discovered on Unit 4B either on April 19<sup>th</sup> or the next days when cells were searched. The Grievor's mention of the inmates having and making weapons, after having described the match bombs, might have been interpreted by some listeners as a suggestion that there were weapons in addition to the match bombs, which was not true. On the other hand, the Grievor's reference to weapons may have simply been a reference to the match bombs. The Board is not prepared to find the Grievor's mention of weapons in A8 to be inaccurate or misleading.

Question Q9 asks how matters had reached a threatening levels. In response (A9), the Grievor offers his opinion, which he identifies as an assumption on his part, that the prisoners

had planned the hunger strike for two weeks by hoarding canteen purchases, like chocolate bars, to enable them to refuse meals. It is true that inmates have canteen privileges, but the Grievor's comments that the hunger strike was planned by hoarding canteen was neither proven nor unproven in the evidence. The Board views his comments in A9 as speculative but not necessarily inaccurate.

Question Q10 asks the Grievor whether the hands of correctional officers are tied in escalating situations. The Grievor answers (A10) yes to this question, stating that managers decide what to do. He goes on to say that if staff feels that their safety is at risk, their recourse lies with the Occupational Health and Safety Act. In the Board's view these comments are accurate; managers make the decisions in dealing with difficult or unusual situations and staff do have recourse to Occupational Health and Safety Act should they feel their safety is threatened beyond the accepted norms for their jobs.

The Grievor is then told by the interviewer "there are people asking who is running the asylum" (Q11). He responds (A11) that, given "what has happened in the last little while", "we are asking the same thing". The Grievor then expresses the view that "we", meaning presumably the staff, are still in control and explains that dealing with gangs is relatively new to the Alberta correctional system, necessitating a learning process. There is nothing inaccurate about the Grievor's statements in A11. While the Board views as offensive the use of the term "asylum" to describe the ERC, it is the interviewer, not the Grievor, who utters that term.

Questions Q14 & Q15 ask for the Grievor's assessment of what will happen next. In A14, he responds that he hopes inmates will start eating again soon. In A15, he says that if they do not start eating their canteen supplies will soon run out, possibly leading to medical problems. He describes the hunger strike as unique in his 20 years as a correctional officer. The

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Board finds nothing that could be described as inaccurate in these statements. The hunger strike had not ended at the time of the interview and if it continued for a long period of time medical problems would be inevitable.

Overall, even accepting that the Grievor exaggerated of the degree of safety threat in Answer # 8, the Board concludes that there is nothing in the April 22<sup>nd</sup> interview than can be characterized as recklessly or knowingly false.

#### April 23<sup>rd</sup> Interview (Exhibit 21)

The majority of the April 23<sup>rd</sup> interview deals with the way that the ERC Director handled the April 19<sup>th</sup> events on Unit 4B. In the interview, the Grievor is very critical of the Director's approach.

Questions Q2 - Q5 address the Director's decision to meet directly with the inmates. Question Q2 asks the Grievor "what do you think the Director did wrong". The Grievor in his answer states that the Director met directly with the gang member inmates "instead of following an established procedure" (A2). The Grievor's answer to this question clearly conveys the impression that the Director handled the situation wrongly by meeting with the prisoners. In the next three questions, the Grievor is asked to elaborate on what policy or procedure the Director allegedly contravened. In Answer A3, the Grievor states the Director "is supposed to be an impartial, last resort", an answer that would likely convey to listeners that the Director was not impartial in his handling of the situation. The Grievor then indicates that the Director should have let the situation be handled in hierarchical fashion: first by unit correctional officers, then by their supervisor, next by the shift manager, and only if "the shift manager can't get it solved, that is when the Director steps in" (A3).

In Question Q4, the interviewer suggests that this approach "doesn't contravene

corrections policy". In answering, the Grievor does not contradict the interviewer (A4), in effect conceding that the Director did not contravene policy. The Grievor suggests, however, that as a result of the Director's approach correctional officers will lose credibility with inmates, that inmates will always want to speak to the Director, and that lines of communication "between the front line and the inmate" will be jeopardized (A4). The Grievor emphasizes the importance of such communication for the safety of inmates and staff. In A5, the Grievor repeats the importance of communication between unit staff and inmates and his concern that the Director's action will encourage inmates to bypass correctional officers, undermining communication.

In examining the questions and answers in this part of the interview, the Board finds that the Grievor is expressing his opinion on the way he believes the Director should have handled the Unit 4B confrontation. The Grievor is critical of the Director's decision to directly speak to the inmates, rather than letting the matter rise through the chain of command, even though the Grievor recognizes the Director's right to intercede directly. The Board understands why the Grievor's public criticisms of the Director would have been unwelcome to the Employer, but concludes that the Grievor did not misrepresent the facts as to what occurred. The Director did in fact decide to speak directly to the inmates. The Grievor agreed that the Director has the discretion to speak directly to inmates. The Grievor, as a senior union representative, has the right to take issue with management's approach and express the view that such an approach may prove harmful to his members. This would be so even if the Grievor was misguided in his criticism of the Director's approach. It would be no different, for example, than if a senior union representative in the auto industry publicly criticized a car company that employs his members on the grounds that the company is making too many hybrid vehicles and this strategy is likely to cost jobs. One might disagree with such an opinion, and feel it ill-advised, but not the right of

the union representative to make it.

However, the Grievor also insinuates that the Director is not impartial (A3). This is a serious personal allegation that, in the Board's opinion, does not have a basis in fact. Just as the Grievor believed that the Director was wrong to meet directly with inmates on April 19<sup>th</sup>, the Director just as strongly defended the wisdom of his approach. A disagreement about tactics to handle a difficult situation does not lead to a conclusion of a lack of impartiality on the Director's part. It is an unjustifiable leap in logic. The Board finds the Grievor's accusation that the Director was not impartial was knowingly or recklessly false.

Questions Q6 and Q7 asks the Grievor for his opinion on the impact of the Director's approach on the correctional officers. In A6, the Grievor suggests that the Director's continues to take this direct approach, it will create doubt and hesitation on the part of the correctional officers. He characterizes it as "a total lack of respect on a Director's part". In A7, the Grievor states that the Director has increased the danger on the job "tenfold" because if the inmates "are not going to listen to me and they are only going to listen to the Director, how do I do my job".

In these questions and answers, it is clear that the Grievor is expressing his opinion on the potential consequences of the Director's approach. As the Board has already found, the Grievor has a right to express criticism of the Director's approach and how, if inmate-correctional officer communication is undermined, it might make the jobs of correctional officers less safe. There is no factual basis, however, for the assertion that the Director's approach increased danger "ten-fold". Even allowing some room for hyperbole, the Grievor is accusing the Director of creating an enormous increase in the danger level for staff and inmates. There was no evidence that the Director's intervention on April 19<sup>th</sup> led to more danger for staff or inmates;

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indeed, evidence suggested that the level of danger remained at worst unchanged and then subsequently diminished on Unit 4B. The Board concludes that the Grievor's comments about the increase in danger due to the Director's intervention were knowingly or recklessly false and a distortion of the true situation.

Question Q8 and Answer A8 address the Director's response to the Grievor's complaint. It is unclear from the question and answer whether the "complaint" refers to the staff concerns about the perceived dangers on Unit 4B or the Director's direct intervention. Either way, the response cannot be seen as inaccurate. The Director believed he was acting completely appropriately by meeting directly with prisoners and, in general, senior management, the Director included, believed that the staff had overstated the degree of unit danger. Question 11 and Answer A11 are similar and raise no issue.

In Question Q9 the Grievor is asked "if anything like this has ever happened before". He responds that in 20 years as a correctional officer, he has never seen a Director "so blatantly disrespectful to staff" (A9). The "disrespect" accusation had been made previously by the Grievor in A6. Clearly the Grievor is expressing an opinion about how he perceived the Director's behaviour toward staff. Is this opinion based on the facts? There is no evidence that the Director was motivated by anything else than a desire to resolve a difficult situation on Unit 4B. There is no doubt that he and the Grievor differed regarding the most effective tactics. Mr. Raz also was upset that the Director had interviewed only the inmates and accused the Director of showing disrespect towards the staff by not interviewing them too. There was no other evidence that other staff members shared the views of Mr. Raz and the Grievor. There was no evidence of practices regarding whether previous directors had spoken directly to inmates. The Director's right to speak to inmates was not disputed. Weighing these factors, and noting the

strong wording used by the Grievor in a public forum (“blatant” and “total” disrespect), the Board concludes that the facts do not justify the Grievor’s opinion about the degree of disrespect allegedly demonstrated by the Director. The Grievor’s statements in this regard were not only knowingly or recklessly false – they were personal and offensive.

To summarize, in most parts of both interviews the Grievor did not provide inaccurate statements or express opinions that were unrelated to the facts. It is true that many of the statements were undoubtedly unwelcome by the Employer, but the Grievor had a right as a union official to make the statements in as much as they related to the safety and security of employees he represented. It is widely recognized in arbitration, labour board, and court decisions that public statements made by an employee that might otherwise breach a duty of fidelity are given greater latitude when uttered by union official carrying out his or her representative role as long as the statements are not knowingly or recklessly false. Most of the statements made by the Grievor in his two CBC interviews fall into this category and are therefore not subject to discipline.

Some of the statements made by the Grievor in his April 23<sup>rd</sup> interview crossed the line, however. In particular, the Board has concluded that the Grievor’s insinuation that the Director was not impartial, that the Director’s actions resulted in a very significant increase in danger to staff, and that the Director demonstrated blatant and total disrespect toward staff cannot be supported by the facts. These allegations were knowingly or recklessly false. Notwithstanding the Grievor’s union representation role, these false public allegations provide just cause for discipline.

Is a two day suspension the proper amount of discipline in this situation? The Grievor

has a 20 year work record with only one previous discipline on his file. The previous discipline was a letter of reprimand imposed approximately three weeks prior to the CBC interviews over another media interview (Exhibit 14). The letter of reprimand was grieved, but under the collective agreement cannot be subject to arbitration (*Government of Alberta [Smith]*). The grievance was denied at Level 2 of the grievance procedure and remains on the record. Principles of progressive discipline, therefore, support the two day suspension.

Another factor supporting the discipline imposed is the Grievor's denial of having given the interview when first confronted by management. While the Grievor may simply have been facetious given the absolute absurdity of denying something so publicly manifest, the fact remains that he was dishonest with his Employer. It is a factor that weighs against the Board exercising its discretion to relieve against the penalty imposed.

On the other hand, the Employer has failed to discharge its onus to prove many of the grounds for discipline set out in its disciplinary letter. There are a number of acts of alleged misconduct mentioned in the letter of discipline (Exhibit 19): 1) making inaccurate statements to the media; 2) disclosure of internal security information; 3) violation of the code of conduct and ethics and code of confidentiality; and 4) contributing to an increase in tension within the ERC that necessitated enhanced security. Of these alleged transgressions, the Employer has only demonstrated that the Grievor made inaccurate statements. The evidence did not establish on balance that the Grievor disclosed internal security matters, that the interviews led to increased inmate tension that necessitated enhanced security arrangements, or that he violated codes of conduct or confidentiality given his union representation status. Furthermore, the great majority of statements made by the Grievor in his CBC interviews fell within his rights as a union representative and no discipline was imposed for similar media comments made by the Grievor

to the Edmonton Sun newspaper at the same time.

Weighing these factors, it is the Board's conclusion that the two day suspension was excessive in all the circumstances. In its place, the Board substitutes a letter of warning. The Grievor is entitled to compensation for the two days of lost wages.

### **AWARD**

The grievance is partially sustained. The Employer had just cause for discipline, but the amount of discipline imposed was excessive. A letter of warning is substituted. The Grievor is entitled to compensation for lost wages. The Board will retain jurisdiction should questions about compensation arise.

Mr. Bartee, nominee of the Union dissents from this award; he would not have imposed any discipline. Mr. Tidsbury, nominee of the Employer, dissents from this award; while he agrees that discipline was justified, he would not have reduced the two day suspension.

Dated October 20, 2005 in Calgary Alberta.

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Allen Ponak