

Files: 166-2-26820
166-2-26913
166-2-26929
166-2-27458 to 166-2-27462

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

JEAN-ERIC NOËL

Grievor

and

TREASURY BOARD
(Human Resources Development Canada)

Employer

Before: Yvon Tarte, Chairperson

For the Grievor: Alfred LaBissonnière, Public Service Alliance of Canada

For the Employer: André Garneau, Counsel

on June 11, 12, 13, 14, 18, 19 and 20, 1996; January 27, 28, 29, 30 and 31 and May 13
and 14, 1997. Heard at Montréal,

DECISION

On January 27, 1997, at the start of the hearing, Mr. LaBissonnière informed me that Mr. Noël wished to withdraw from adjudication the grievances under files 166-2-27458 to 166-2-27462. I agreed at that time to withdraw the said grievances and accordingly, Board files 166-2-27458 to 166-2-27462 are closed.

Grievances still at issue

The three grievances that are the subject of this reference relate to a suspension without pay imposed on July 10, 1995 for the purpose of holding an administrative investigation, and the termination of employment that followed on October 11 of the same year.

The letter of dismissal (Exhibit E-2), signed by André Gladu, Assistant Deputy Minister, Quebec Region and dated October 11, 1995, cited the reasons given to the grievor in a letter dated September 15, 1995 (Exhibit E-1). It is useful to reproduce *verbatim* the misconduct of which Mr. Noël was accused as set forth in Exhibit E-1:

[TRANSLATION]

Over the past few years, Jean-Eric Noel has created an unhealthy, fearful and anxious working atmosphere through various acts of intimidation, disrespect and harassment of his fellow workers and members of management. The evidence gathered shows that he:

- carried a tape recorder with him with which to intimidate colleagues and managers who spoke with him, in spite of the numerous warnings to the contrary and reminders he was given by several members of management over the years.*

The most recent events relating to the above situation occurred during a meeting with Guy Bélanger, a LAN analyst, on February 24, 1995, as well as during a meeting with two managers on the same day. The evidence is to the effect that when questioned by the Director of the CEC, Marlynn Brisebois, about carrying the tape recorder on February 24, 1995, he completely denied it. However, he admitted the opposite to members of the formal investigation committee;

- carried out other acts of intimidation toward colleagues and managers on various occasions:*

- ◆ *standing in front of a colleague's or manager's office without saying a word, sometimes with his arms crossed and refusing to move;*
- ◆ *often going to the garage to smoke and closely monitoring what other employees did and said, parking on the street and watching the people who entered the garage;*
- ◆ *standing in front of the door to the CEC and observing the employees going in;*
- ◆ *often rubbing his hands together and simulating punching his hand while saying such things to colleagues as "we are going to have some fun" or "we are going to get them, friends ", referring to the managers;*
- ◆ *asking an employee (Danielle Bélanger [sic]) on several occasions where she lived, going back to see her to tell her that he had found out where it was, warning her that within three months something might happen to her new car, following her on the street when she was driving in her car immediately after work;*
- ◆ *telling the same person (Danielle Bélanger), that he owned a number of aggressive dogs. He added that he sometimes did not feed them so that they would stay that way.*
- ◆ *in spring 1994, during a practice of the CEC softball team, hitting a ball with such force at an employee (Louise Janelle) that she was hurt; several other employees intervened because they felt he had done it intentionally;*
- ◆ *during a ball game, saying to an employee (Johanne Devost) while pointing his finger at her in a threatening way, "do not speak to me like that, shut up". This incidence frightened the employee and a witness;*
- ◆ *telling a colleague (Alain Doucet), who came to congratulate him on his appointment as president of the union local, that he had sullied his name for three days in order to win;*
- ◆ *telling an employee (Sylvie Mathieu) that he wanted to call a tow truck to have a manager's car towed (Carol Ann Georges);*

- ◆ *his unconscionable behaviour during an appeal hearing, again in order to intimidate the witnesses, departmental representatives and the appeal officer;*
- ◆ *constantly bringing up the fact, whenever he felt he was in trouble, that his father is a judge, that he had made decisions about this or that . . ., that he knows politicians, journalists, lawyers, etc. He makes these comments in an attempt to make himself look important and to intimidate his colleagues and managers, in order to discourage them from taking any action against him for his behaviour;*
- ◆ *the piercing and menacing stare sometimes used by the employee, his quick movement from place to place to check on everything when he was somewhere, his questions about other people's business, his constant searching for someone to blame rather than solving a problem, and his constant disruption of others about anything and everything, intimidate his colleagues and managers;*
- *made disrespectful comments about women:*
 - ◆ *profoundly hurting a colleague (Ginette Gohier), on two occasions, by laughing at her in her presence because of her weight, which constitutes sexual harassment. He compared her to pictures of beautiful women with large buttocks and breasts. The pictures were comic strips;*
 - ◆ *sometimes referring to women as "chicks", brood mares", etc.;*
- *on various occasions, made denigrating and disrespectful comments about colleagues or members of management, going so far in some cases as to undermine their reputations, in particular;*
 - ◆ *he implied that François Vigneault was incompetent in performing his duties; on February 10, 1995, he stated in front of colleagues that he had received a complaint from a client about him, which was not true;*
 - ◆ *in late April 1995, he said to an employee (F. Caya) that at last there was someone competent on the parking committee, thereby upsetting everyone by his comment;*
 - ◆ *he ridiculed a supervisor (Robert Alarie) about his expertise, his sexual orientation, his stuttering and his ability as a manager, that is, that he was no good and did not know how to run his ship;*

- ◆ *he also openly accused another manager (Jean-Marc Nolet) of assault in connection with an incident in the cafeteria on October 8, 1993 when this supervisor touched him on the arm;*
- ◆ *he treated Guy Bélanger, LAN officer, like a little dog, telling to “go over there”, in front of colleagues;*
- ◆ *speaking of the same person (Guy Bélanger), he said that he was unable to perform his duties properly;*
- ◆ *he said that Claude Tremblay, an ICO and union treasurer, was no good;*
- ◆ *he slandered Johanne Devost, saying that she was sleeping with the bosses;*
- ◆ *he treated Denise Hébert haughtily, in particular, by saying to her, "you will be quiet, you will speak only when I give you permission";*
- *overstepped his bounds in certain instances relating to parking, and disregarded agreements reached with management concerning the local parking committee. His insistence on personally overseeing each vehicle parked in the garage, giving orders to members of the committee and to management about certain situations, and trying to assume authority over others, contributed to creating an unhealthy climate;*
- *by his conduct toward a colleague (Denise Hébert), contributed to ruining her health, among other things by causing this employee to have an unhealthy fear of being with him, an inability to perform her duties in the same office with him and even anywhere in the entire Montréal Island network, for fear of meeting him. The events relate to this employee’s testimony during the hearing of an appeal filed by Jean-Eric Noël, during which he stared at her with "evil" eyes. This incident was followed by Jean-Eric Noël’s attempts to convince her to rearrange the furniture in her office; his frequent comings and goings outside this employee’s office; his comments which were perceived as threatening when, while pointing his finger at her, he ordered her to be quiet and to talk only when he gave her permission; his allusion to the fact that he had a large variety of guns at his home; his blocking her entrance into the garage for approximately 5 minutes until a member of management arrived; his allusions to the fact that someone other than she would be selected for a position in Lachute.*

Note : Several of the above-mentioned events may appear completely innocuous when considered in isolation.

However, we believe it is essential to make it understood that Mr. Noël's behaviour, taken as a whole, had a major negative impact on the quality of working life of his colleagues.

To this end, we will highlight some of the comments made during the investigation, which show the perception that employees at the St-Laurent CEC have of their colleague, Jean-Eric Noël.

First, many, if not a majority of the persons interviewed described Mr. Noël as an arrogant, unpredictable, irrational, unstable individual who has no self-control, who criticizes everyone, who sticks his nose into everything, who bothers everyone, who is against management and authority, who lacks respect, who speaks in riddles, who is inconsistent, whom one tries to avoid and who generates fear. Employees prefer not to complain about him for fear of reprisals.

Employees described his evil eyes and his threatening gestures, mentioning that he subjects people to verbal abuse and likes making people afraid. Several called him aggressive, expressing fear as to his state of mind. Other witnesses spoke of him being psychologically deranged, having behaviour problems and being a "time bomb". One person had nightmares about him. One person was so "hurt" and "disturbed" by Mr. Noël's behaviour that she could no longer work at the St-Laurent CEC or even in the Montréal Island network. She even considered resigning.

The members of the investigation committee added "that the consequence of Mr. Noël's behaviour is that the vast majority of CEC employees, including members of management, were intimidated by him and tried to avoid him as much as possible so as not to get involved in a confrontation which might, quite possibly, become dangerous".

On April 28, 1995, the employer decided to set up an investigation committee, chaired by Jean-Maurice Cantin, to look into certain complaints brought against Jean-Eric Noël, labour market analyst, St-Laurent CEC. The investigation committee reported to the employer on June 15, 1995 (Exhibit E-3).

In late September, early October 1995, Marlynn Brisebois, Director, St-Laurent CEC from September 1994 to March 1996, presented a final investigation report

(Exhibit E-4) to the employer in which she recommended Mr. Noël's termination of employment for disciplinary reasons.

Forty-six witnesses, including the grievor, were heard in this case.

The incidents

The employer accuses Mr. Noël of using a portable tape recorder to bother and intimidate his colleagues. Ms. Boisvert and Ms. Miner, union representatives, testified that they had both clearly informed Mr. Noël that he was not allowed to use a tape recorder at work.

The grievor denies having received this instruction and claims that he never recorded colleagues without their knowledge. During the hearing, he expanded on his statement before the investigation committee, claiming that, with respect to the incident on February 24, 1995, he had even played music on his recorder to prove to Guy Bélanger that he was only using it for his own pleasure and not to record others.

The employer called several witnesses with respect to Mr. Noël's intimidating and disturbing behaviour in the office, in the parking area, outside the office and even at social events. This evidence showed that the grievor was often noisy and aggressive toward his colleagues and even his supervisors. Mr. Noël denied almost everything. He claimed that his actions were often misinterpreted. Some of the witnesses who came to support Mr. Noël stated that he was simply doing his job as a union representative in a difficult environment.

Mr. Noël was also criticized for unconscionable behaviour at an appeal hearing on May 29, 1992 before Pierre Baillie, Chairman of the appeal committee. It should be noted that during the hearing of this appeal the grievor was represented by his father. In the decision rendered on June 9, 1992 (Exhibit E-9), Mr. Baillie described Mr. Noël's unacceptable behaviour in the following terms:

[TRANSLATION]

The appellant was called as a witness and it was at the beginning and end of his testimony that the disagreeable events occurred. Because of certain interventions by the Department's representative during the cross-examination of the witnesses, the appellant took the witness table and turned

it completely around so as to face only his representative. I had to intervene and tell him that, as a witness, he must address himself to the court and not to his representative. Even though I told him to put the table back in its place, he did so only in part. I found his attitude to be childish and inappropriate. I then allowed him to testify.

(...)

The appellant's representative then made a comment which I considered to be extremely disrespectful to the effect that if I were better trained, I would understand the P.R.H. I then lost my temper and told him that I would not accept such remarks under any circumstances. The appellant became completely hysterical; he began shouting and stood up and I felt physically threatened. I did not respond but I immediately thought about the possible consequences of physical violence.

I decided to close the appeal in part because I do not think anyone has the right to threaten me physically when I am working (especially when I am sitting as a tribunal) . . .

Mr. Noël contradicted Mr. Baillie claiming that everything was relatively calm. According to the grievor and his father, who also testified on this matter, the controversy around the incident at the appeal arose from a misunderstanding.

The employer accused the grievor of showing disrespect to women by making vulgar and sexist comments. It also accused him of calling some of his colleagues incompetents. Several people testified in support of these allegations by the employer. The grievor denied most of these accusations and gave his version of various incidents that had occurred at the St-Laurent CEC. According to Mr. Noël, the employer and several of the witnesses called by the employer were out to get him and would do anything to make him look bad simply because he had done a good job as a union representative.

The employer also accused Mr. Noël of behaving in an improper and threatening way toward Denise Hébert, with the result that the latter had to take sick leave. It was evident during her testimony that Ms. Hébert had, and still has, a real and often pathological fear of the grievor. Mr. Noël assumed no responsibility for Ms. Hébert's state of health. Indeed, he denied virtually all of the allegations against him to this effect.

During his testimony, Mr. Noël stated that the sheer volume of evidence adduced by the employer led him to believe that the witnesses who appeared against him were probably misinformed. The grievor also testified that most of the incidents of which the employer accused him were trivial and that he had never received any warning or formal reprimand with respect to most of them. The grievor is asking to be reinstated and says that he can work with his former colleagues, including those who were manipulated to testify against him.

Arguments

The representatives of the parties were required to submit their arguments in writing. The employer submitted its brief on June 9, 1997 and the representative for the grievor submitted his arguments on July 4, 1997. The employer forwarded its reply on July 21, 1997. To better understand the nature of the evidence in this matter, I have reproduced *verbatim* the arguments submitted by the parties.

For the employer

[TRANSLATION]

PART-I

MISCONDUCT OF JEAN-ERIC NOËL

On October 11, 1995, pursuant to his delegated authority, André Gladu, Assistant Deputy Minister, Quebec Region, Human Resources Development Canada, terminated Jean-Eric Noël's employment for disciplinary reasons [section 11(2)(f) of the Financial Administration Act]. The retroactive termination of employment (E-2) took effect on July 10, 1995, the date on which Mr. Noël had been suspended from his duties while awaiting the findings of an investigation into his misconduct.

Mr. Noël 's misconduct and inappropriate behaviour, which were the grounds for the termination, are described in the final investigation report (E-4), as well as in the letter of September 15, 1995 (E1) sent to him.

According to Ms. Brisebois (E-4), over the past few years, Jean-Eric Noel had created an unhealthy, fearful and anxious working atmosphere through various acts of intimidation, disrespect and harassment against his fellow workers and members of management. The evidence gathered shows that he:

1(a) Carried a tape recorder with him with which to intimidate colleagues and managers who spoke with him, in spite of the numerous warnings to the contrary and reminders he was given by several members of management over the years.

- Three managers, namely, M. Brisebois, L. Boisvert and N. Laforest, testified that they had told Jean-Eric Noël that he was not allowed to use a tape recorder at work.

- This prohibition was reiterated by A. Miner, union representative, following a complaint she received from S. Durocher (E-16). According to Ms. Miner, members felt that they were being watched and spied upon.

- Jean-Eric Noël himself did not deny having a tape recorder, but he did deny any unauthorized recording of his colleagues. He also testified that he had never been told not to have a tape recorder at work. During the administrative investigation, he testified that he carried a tape recorder to "avoid false accusations" (P-49, page 2 or page 6).

N.B. In respect to the transcripts of Jean-Eric Noël's three interviews during the investigation conducted by Jean-Maurice Cantin, that is, documents P-48, P-49 and P-50, the first page number cited refers to the typed transcript and the second to the handwritten transcript.

1(b) The most recent incidents involving the tape recorder occurred:

(i) during a meeting with Guy Bélanger and Denis Riendeau on February 24, 1995:

- Guy Bélanger testified that he heard the "click" of the tape recorder at the end of his meeting with Jean-Eric when the latter had just left his office and in spite of the fact that the latter had twice denied that the tape recorder was on (E-7);

- according to Jean-Eric Noël's testimony at the hearing, he gave his tape recorder to Mr. Bélanger, the latter started it and it played music. Mr. Noël had not mentioned this to Ms. Brisebois at any previous time. Nor does this version of events appear in the transcripts of Jean-Eric Noël's testimony during the administrative investigation (P-48, P-49 and P-50).

(ii) during a meeting with Marlynn Brisebois and Jean-Marc Nolet, in which Jean-Eric Noël completely denied carrying a tape recorder, in spite of the fact that

he admitted the opposite later to the investigation committee:

- According to Ms. Brisebois, Jean-Eric Noël completely denied having a tape recorder during the meeting on 24-02-95.
- Mr. Nolet stated that he saw the tape recorder during this meeting.
- According to Elizabeth Parisot, at this meeting Mr. Noël apparently put his briefcase on the table, showed the tape recorder, placed the tape recorder back in the briefcase and then placed the briefcase on the floor.
- According to Jean-Eric Noël, he admitted having a tape recorder to the investigation committee but denied that he had made any recordings whatsoever without authorization (P-48, page 6 or 10 and P-49, page 2 or 5).

The evidence in (1) is conclusive to the effect that Jean-Eric Noël had a tape recorder in order to avoid false accusations and that he had indeed been advised on several occasions not to use it at the office for these purposes.

2. Carried out other acts of intimidation toward colleagues and managers on various occasions by:

2(a) standing in front of a colleague's or manager's office without saying a word, sometimes with his arms crossed and refusing to move:

- Liliane Boisvert testified that she told Jean-Eric Noël to stop such activities. In her words, he watched Louise Janelle while resting his elbows on her partition.
- Louise Janelle testified that Jean-Eric walked in front of her office on several occasions, that he stared at her constantly, that she felt provoked and attacked, like her least gesture or word was being spied on, and that it became a strain on a daily basis.
- Sylvie Durocher testified that it was common practice for Jean-Eric to park himself outside of employees' cubicles.
- Danielle Bélanger testified that Mr. Noël often stood this way outside her office without saying anything.
- Jean-Eric Noël testified at the hearing and the administrative investigation that he was simply waiting outside the offices of persons in authority until they

were free to meet with him in connection with his union duties.

The evidence in 2(a) is conclusive to the effect that Mr. Noël did exhibit this behaviour and that his colleagues felt intimidated.

2(b) often going to the garage to smoke and closely monitoring what other employees did and said, parking on the street and watching the people who entered the garage; and/or standing in front of the door to the CEC and observing the employees going in:

- Joanne Devost testified that Jean-Eric Noël was often at the garage entrance in the morning and that regardless of the time of day, when she went out on business, he was very often in his car in the garage watching.

- Sylvie Mathieu testified that she often saw him at the entrance to the office, watching the employees and displaying an arrogant attitude.

- Liliane Boisvert testified that she saw Jean-Eric Noël situated in the garage in such a way as to be able to see people coming in and to watch them; she told him to stop staring at people.

- Jean-Eric Noël testified at the hearing and the administrative investigation that he only went to the entrance of the office and to the garage to smoke and that he had no interest in spying on others.

The evidence in 2(b) is conclusive to the effect that Mr. Noël watched the comings and goings of people in the office.

2(c) often rubbing his hands together and simulating punching his hand while saying such things to colleagues as "we are going to have some fun" or "we are going to get them, friends ", referring to the managers:

- Sylvie Boucher testified that Jean-Eric liked to be noticed and would arrive at meetings at the last minute, breathing hard, walking quickly and rubbing his hands together. He enjoyed confronting managers whenever he could.

- Francine Caya testified that he had a negative attitude toward the employer, that he was constantly casting doubt on what management said and that that made her insecure.

- Carole-Ann Georges testified that she often saw Jean-Eric Noël pass in front of her office two or three

times while rubbing his hands together; she said that she thought he was preparing something.

- Jean-Eric Noël testified at the hearing and administrative investigation that when he said, "We will get them", he was talking about the elections.

The evidence in 2(c) is conclusive to the effect that Mr. Noël displayed a negative attitude toward managers through his comments and actions.

2(d) asking Danielle Bélanger on several occasions where she lived, going back to see her to tell her that he had found out where it was, warning her that within three months something could happen to her new car, following her on the street when she was driving in her car immediately after work:

- Ms. Bélanger testified that she had been afraid of Jean-Eric since the time he kicked the wall and she had testified before P. Baillie (E-14).

- Ms. Bélanger also testified that, even though she did not want to tell him where she lived when he asked her, one morning he told her that he knew she lived in Laval and in which neighbourhood.

- As to Jean-Eric's comments concerning her new car, he so unnerved her that she told him that if something happened to her car he would be the first one she suspected.

- According to Ms. Bélanger, she had the strong impression that she had been followed by Jean-Eric because of the suspicious way he was parked in the garage, the fact that he went into a gas station, but not near the pumps, as soon as she indicated to him that she knew he was there.

- Jean-Eric Noël denied everything at the hearing and the administrative investigation, saying that he had never been interested in where D. Bélanger lived and that he had simply said to her, "I live here and you live there", and that he had never followed her in his car. He admits telling her that her car was very likely to be stolen simply because Hondas are the cars stolen most often in Quebec.

Ms. Bélanger's version in 2(d) is more credible.

2(e) in spring 1994, during a practice of the CEC softball team, hitting a ball with such force at Louise Janelle that

she was hurt; several other employees felt he had done it intentionally:

- Louise Janelle testified that Jean-Eric threw the ball during a warm-up exercise and that she felt he had done so deliberately. The ball was thrown so hard that she had to take a step back. She figured that had it been a hard ball, she might have dislocated her shoulder.

- According to Luc Simard, the players were practising in a gymnasium and were supposed to throw the ball to Louise Janelle gently because she was playing for the first time. Jean-Eric threw the ball with all his strength, overhand rather than underhand, so that Claude Tremblay yelled "Be careful! You're crazy, Eric".

- Claude Tremblay, who admitted at the hearing to being a good friend of Eric, testified that he did not remember the incident.

- Jean-Eric Noël denied throwing a ball at Louise Janelle. However, at the administrative hearing, his version was that he had thrown the ball to Ms. Janelle just as he would have thrown it to anyone and that "Tremblay yelled at me, but I did not deserve it" (P-48, page 4 or page 7).

The evidence in 2(e) is conclusive to the effect that Jean-Eric Noël threw a ball with force at Louise Janelle.

2(f) during a ball game, saying to Johanne Devost while pointing his finger at her in a threatening way, "do not speak to me like that, shut up", which frightened the employee and a witness:

- Ms. Devost testified that she was the assistant coach at the time of this incident, that she was rooted to the spot when Jean-Eric Noël came toward her menacingly and that she was afraid for days afterwards.

- This incident was corroborated by Sylvie Mathieu who testified that she found Jean-Eric Noël threatening and that the two of them had backed away.

- According to Luc Simard, who was the captain, Jean-Eric Noël apparently added "Shut up, shut up" to Ms. Devost at the same time.

- Jean-Eric Noël testified at the hearing and administrative investigation that it was Johanne Devost who started yelling at him and that he was not threatening when he made the comments.

The evidence in 2(f) is conclusive to the effect that Jean-Eric threatened Johanne Devost.

2(g) saying to Alain Doucet, who came to congratulate him on his appointment as president of the union local, that he had sullied his name for three days in order to win:

- *Alain Doucet testified that Jean-Eric Noël had told him that he had sullied his name during the election. Mr. Noël claimed, for example, that he was in the bosses' pockets, that he was a lap dog, etc.*
- *At the hearing and administrative investigation, Jean-Eric Noël denied having said these things.*

Alain Doucet's testimony is more credible.

2(h) telling Sylvie Mathieu that he wanted to call a tow truck to remove the car of a manager, Carole-Ann Georges:

- *Sylvie Mathieu, who was a member of the parking committee, testified that Jean-Eric Noël threatened to have Ms. Georges' car towed.*
- *Sylvie Mathieu also testified that Jean-Eric Noël constantly complained that Carole-Ann parked in the Sun Life spots, but never complained about anyone else.*
- *Jean-Eric denied this claim.*

The evidence in 2(h) is conclusive.

2(i) his unconscionable behaviour at an appeal hearing , once again in order to intimidate the witnesses, the department's representatives and the chairperson of the appeal board.

- *Danielle Bélanger testified that she did not feel well at the hearing and that she felt intimidated by the wandering of Jean-Eric Noël, who would get up, walk back and forth, take off his coat and put it back on, as well as by the loud voices and noises she heard after she left the room, which sounded like someone hitting a table with his fist. She also testified that Jean-Eric Noël said to her when he left the appeal room: "You should have stayed. You missed a good show."*
- *Denise Hébert testified that she was very afraid because Jean-Eric Noël was angry and had threatened the Chairperson of the appeal board, after which the*

chairperson had closed the hearing. She added that Jean-Eric Noël's eyes frightened her.

- Pierre Baillie, Chairperson of the appeal board for the Public Service Commission, testified that he was convinced that the noises made by Jean-Eric Noël at the hearing, his intense looks, his entire non-verbal conduct, were intimidating for the witnesses. When Jean-Eric moved the witness table and began shouting, he terminated the hearing because he too felt threatened. Mr. Baillie's appeal decision reflects these comments (E-14).

- Jean-Eric Noël testified at the hearing and the administrative investigation that he did not do anything, that he did not give any intimidating looks, and that he had simply said, in a moment of emotion, to the chairperson concerning his father, "You will kill him, he has a bad heart."

The evidence in 2(i) is to the effect that Jean-Eric Noël's behaviour was unconscionable and threatening at the appeal hearing.

2(j) by referring constantly, when in difficulty, to the fact that his father is a judge, that he knows politicians, lawyers and members of the media. He used this information to make himself look important and to try to intimidate his colleagues and managers in order to discourage them from taking any action against him for his behaviour:

- Ms. Brisebois testified that, during her two meetings with Jean-Eric Noël about the complaints from F. Vigneault and G. Bélanger on February 24 and March 21, 1995, he denied everything, said that it was a "frame up" and that it would be interesting when the politicians, journalists and his lawyers found out (P-45, P-46).

- According to Jean-Marc Nolet, Jean-Eric Noël's normal approach was to use verbal intimidation, making such statements as: "My father is a judge. You are going to find yourself in court, in the newspapers . . . I will be interested to see if the employees will say the same thing in the witness box".

- Liliane Boisvert testified that Jean-Eric Noël used his father to represent him at a meeting in which he objected to his performance assessment and during which he accused her of harassment.

- At the hearing and administrative investigation, Jean-Eric Noël denied using this type of threat, saying that he mentioned that his father was a judge only to close members of his union team.

The evidence in 2(j) is conclusive to the effect that Jean-Eric Noël made such references, as mentioned above, to discourage possible action against him.

2(k)(i) the piercing and menacing stare sometimes used by Jean-Eric Noël,

(ii) his quick movements to check on everything, his questions about other people's business;

(iii) his constant search for someone to blame rather than solving a problem;

(iv) his constant disruption of others; intimidate his colleagues and managers.

(i) The following witnesses testified about Jean-Eric Noël's menacing stares:

- "looks that could kill " (G. Gohier)
- "accusatory, threatening looks" (C. Craig)
- "tinted lenses, weird looks" (M. Brisebois)

(ii) Rapid comings and goings were mentioned by several witnesses.

- "entered with a full head of steam" (A. Doucet)
- "came in like the wind" (C-A. Georges)
- "pacing back and forth; hysterical" (M. Brisebois)
- "came rushing in" (R. Royer)
- "nervous walk; wandering around the floor a lot" (J. Devost)
- "lots of comings and goings" (D. Bélanger)
- "quick, nervous steps" (C. Craig)
- "opened the door like there was a fire" (J.-M. Nolet)
- "fast walk; over-excited" (M. Brisebois)

(iii) his constant searching for someone to blame came out in the following testimony:

- "in his view, never admit or accept responsibility, someone else is always to blame" and "he is never guilty of what he is accused". (J.-M. Nolet)
- "Dont say its me ... Say it is an aggressive client." (D. Bélanger)
- "always trying to undermine the credibility of other employees" (L. Boisvert)
- "J.-E. Noël never accepts the facts; never shown any remorse; never apologized". (M. Boisvert)

(iv) Several employees reported that Jean-Eric Noël was very disruptive.

- " he was breathing hard and making noise"; "snorting like a horse" and "he was often grumbling". (R. Royer)

- "he took up everyone's time " (M. Brisebois)
 - "draining, he required a great deal of energy" (J.-M. Nolet)
 - "interventions from J.-E. Noël every day" (N. Laforest)
 - "disturbing and disruptive" (A. Miner)
 - "often grumbling" (R. Royer)
 - "he clung stubbornly to an opinion all the time; he never agreed with anything". (G. Gohier)
 - "it was annoying, bothersome". (D. Bélanger)
 - "I complained because he was disruptive" (J. Devost)
- Jean-Eric Noël denied everything.

The evidence in 2(k) is conclusive to the effect that Jean-Eric Noël exhibited the above-mentioned behaviour.

3. Many disrespectful comments about women

(a) deeply wounded a colleague, Ginette Gohier, on two occasions by laughing at her in her presence because of her weight, comparing her to pictures (comic strips) of beautiful women with large buttocks and breasts:

- Ginette Gohier testified about two incidents. In the first, Jean-Eric Noël allegedly said to E. Parisot when she was bumped by Ginette Gohier in the hallway: "Don't worry. She (Ginette) is the one who is too fat!" In the second incident, Jean-Eric Noël compared her to a cartoon strip showing fat women saying: "Look, it reminds me of Ginette".
- Johanne Devost also testified that Jean-Eric Noël apparently referred to the "fat Janelle" when speaking to Claude Tremblay in front of everyone at a softball practice.
- Jean-Eric Noël completely denied any lack of respect toward these two women. At the hearing, he testified that it was the curly blonde hair on the cartoons that reminded him of Ginette Linteau (and not Ginette Gohier). He had never given this explanation before. At the administrative investigation, he simply denied it, saying that he never told a colleague that she was fat or that the cartoons reminded him of her.

The testimony of Ginette Gohier and Johanne Devost is more credible.

4. On various occasions, made denigrating and disrespectful comments about colleagues or members of management, going so far in some cases as to undermine their reputation, in particular:

4(a) implying that François Vigneault was incompetent in performing his duties, stating on February 10, 1995, in front of colleagues, that he had received a complaint from a client about him, which was not true:

- Mr. Vigneault testified that he had been upset to hear from a colleague and in front of other colleagues that there had been complaints from a client about him and that, in spite of his request for clarification, Jean-Eric Noël had apparently not given him any explanation.

- Luc Simard and Catherine Craig, who were present, confirmed that Mr. Noël had in fact said to François Vigneault that he had received a complaint about him from a client.

- Jean-Eric Noël denied that he had refused to give Mr. Vigneault any explanation about these complaints.

The evidence in 4(a) is conclusive to the effect that injurious comments about the incompetence of François Vigneault were made.

4(b) in late April 1995, he mentioned to Francine Caya, in front of François Vigneault and other employees, that there finally was someone competent on the parking committee.

- Mr. Vigneault stated that he felt that the comments were aimed at him, that the message was that he was incompetent.

- Francine Caya testified that she too felt the comment was directed at François Vigneault and that she felt uncomfortable at the time of this incident.

- Sylvie Boucher said that Jean-Eric Noël's comments had made her angry because, in her opinion, François Vigneault was competent and highly respected.

- Jean-Eric Noël denied this incident at the hearing and administrative investigation.

The evidence is conclusive to the effect that injurious comments were indeed made by Jean-Eric Noël.

4(c) speaking of Guy Bélanger, he said that he was unable to perform his duties properly.

- Guy Bélanger testified that, when Jean-Eric Noël exclaimed "the LAN analyst can't do that, it would take two or three months as usual", he felt that he was questioning his competency and trying to discredit him

in the eyes of the other members of the office. He therefore made an official complaint against Jean-Eric Noël.

- Renée Royer heard Jean-Eric Noël's comments that Guy Bélanger "did not know how to do his job"; she testified that "if it had been me, I would have slapped him".

- Johanne Devost also testified that she heard Jean-Eric Noël say that Guy Bélanger "did not know how to do his job".

- Ginette Gohier testified that Jean-Eric Noël said the following to Louise Janelle about Guy Bélanger: "He is incompetent. I have been asking him for a month and he has not done it".

- Jean-Eric Noël denied these comments at the hearing and the administrative investigation.

The evidence is conclusive to the effect that Jean-Eric Noël said that Guy Bélanger was unable to perform his duties properly.

4(d) he said that Claude Tremblay, Investigation and Control Officer and union treasurer, was no good:

- Guy Bélanger testified that at the time of the elections, Jean-Eric Noël apparently said that Claude Tremblay was no good, that he always needed help.

- At the hearing, Jean-Eric Noël said that he might have said that, but it referred to tennis. This explanation was never given to the administrative investigation committee (P-48, page 6 or 11). During his second meeting with the committee, Mr. Noël added that, "there were moles among the executive, like Tremblay" (P-49, page 2 or 5).

The evidence is conclusive.

4(e) he treated Denise Hébert haughtily, in particular, by saying to her, "you will be quiet, you will speak only when I give you permission":

- Denise Hébert stated that Jean-Eric Noël had pestered her on several occasions about the set up of her office saying to her, "You are not legal" or "It isn't right" and that finally, when he pointed his finger at her and threatened her saying "You will be quiet, you will only speak when I give you permission", she "had the shakes".

- Alain Doucet, who witnessed the incident, said that Jean-Eric was shaking so much that he did not know if he was going to attack Denise Hébert. Alain was afraid for her.
- Jean-Eric Noël denied everything at the hearing and the administrative investigation.

The evidence is conclusive.

5. He overstepped his bounds in certain instances relating to parking, and disregarded agreements reached with management concerning the local parking committee. His insistence on personally overseeing each vehicle parked in the garage, giving orders to members of the committee and to management about certain situations, and trying to assume authority over others, contributed to creating an unhealthy climate:

- François Vigneault, a member of the parking committee, was told by Eric Noël that he would have his mandate taken away from him.
- Catherine Craig testified that Jean-Eric Noël told François Vigneault: "If you are not able to fulfil your mandate, we will take it away from you".
- Sylvie Mathieu, a member of the parking committee, testified that Jean-Eric Noël said to her in an aggressive tone, "I am going to have you removed from the committee".
- Louise Janelle testified that Jean-Eric Noël constantly came to her office to complain when employees, especially supervisors, were parked illegally, threatening to have them towed, which was not his role.
- Sylvie Mathieu stated that Jean-Eric Noël constantly came to see her about the car of Carole-Ann Georges, a manager, threatening to have it towed.
- Renée Royer heard Jean-Eric Noël say to François Vigneault: "At any rate, the damn red car in the garage, do something about it".
- Jean-Eric Noël denied threatening François Vigneault and Sylvie Mathieu about having them taken off the committee.

The evidence is conclusive to the effect that Jean-Eric Noël contributed to creating an unhealthy atmosphere by threatening to remove François Vigneault from the committee because of Guy Bélanger's car, threatening Sylvie

Mathieu in the same manner concerning Carole-Ann Georges' car and constantly threatening to have supervisors' cars towed.

6(a) His conduct toward Denise Hébert contributed to ruining her health by causing her to have an unhealthy fear of being with him, an inability to perform her duties in the same office with him and even anywhere in the Montréal Island network, for fear of running into him:

- Denise Hébert testified that, in her opinion, Jean-Eric Noël "was there to destroy her and make her afraid", that she thought about resigning at one point, and that she did not "feel able to even walk in front of the St-Laurent office".

6(b) The events involving Jean-Eric Noël relate to Denise Hébert's testimony at the appeal filed by Jean-Eric Noël with the Public Service Commission when he stared at her with "evil" eyes during her testimony:

- Denise Hébert's testimony appears in paragraph 2(i).

6(c) Jean-Eric Noël's actions to convince Denise Hébert to rearrange the furniture in her office, his comments and his frequent passing back and forth in front of her office, culminating in his comments, which were perceived as threatening when, pointing his finger at her, he ordered her to be quiet and to speak only when he gave her permission:

- The testimony of Denise Hébert and Alain Doucet on this matter appears in paragraph 4(i).

6(d) His allusion to the fact that he had a large variety of guns in his house:

- Denise Hébert testified that he raised his voice to say that he had lots of guns in his house, and that she found this threatening.

6(e) His blocking her entrance to the garage for about five minutes until a member of management arrived:

- Denise Hébert stated that, in her view, Jean-Eric Noël had intentionally blocked the entrance to the garage. He knew that she was there because they had gone down the ramp at the same time. She locked her door because she was afraid.

6(f) Jean-Eric Noël's allusions to the fact that someone other than she would be selected for a position in Lachute:

- Denise Hébert stated that as soon as Jean-Eric Noël knew that Ginette Linteau and she had applied for a position in Lachute, he apparently said "Ginette will do well in Lachute" just to make her afraid that she would not get the assignment.

Jean-Eric Noël denied everything in 6.
The evidence is conclusive.

7(a) Mr. Noël's overall behaviour had a major detrimental impact on the quality of working life of his colleagues. Several members described Mr. Noël as, among other things, arrogant, unpredictable, irrational, unstable, lacking self-control, a "busy-body", and someone who bothered everyone:

Here are some of the comments made by witnesses during the hearing with respect to this matter:

- "I saw him shouting and losing control" (A. Doucet)
- "He jumped up, shouting; it was not nice to see" (P. Baillie)
- "I have no confidence in Jean-Eric Noël; I find he over-reacts too much" (R. Royer)
- "He was always trying to undermine the credibility of other employees" (L. Boisvert)
- "He is impatient, insistent and creates stress at work" (N. Laforest)
- "He started pawing in the sand like a bull about to charge". (C-A Georges)
- "Jean-Eric has a quarrelsome and hostile attitude at meetings". (J.-M. Nolet)

7(b) Jean-Eric Noël is also described as a person who lacks respect, who is against management and whom one prefers to avoid:

- "His shouting, his reactions against authority, I have seen him shout and lose control" (A. Doucet)
- "Whatever he is asked, he says no" (G. Gohier)
- "Very disrespectful toward management" (L. Janelle)
- "Jean-Eric is proud if he can offend a manager" (R. Royer)
- "He makes comments against local management to discredit them" (G. Bélanger)
- "He showed a lack of respect to R. Royer by moving her partition without asking her" (M. Brisebois)
- "He enjoys confronting managers at meetings" (S. Boucher)

7(c) Employees also mentioned that Jean-Eric Noël is aggressive, verbally abuses people and likes making people afraid. Some people even consider him to be psychologically deranged, a time bomb. Most employees preferred not to complain for fear of reprisals.

- "I felt threatened"; "I burned out, partly because of Jean-Eric Noël" (A. Doucet)
- "I can't handle it any longer, I can't even stand having him walk by me" (G. Gohier)
- "I felt like I was being provoked and attacked" (L. Janelle)
- "I literally felt like retching when I arrived at the garage and his car was there" (L. Janelle)
- "I regularly had nightmares because of him" (G. Gohier)
- "He acted violently" and "I am always afraid" (D. Bélanger)
- "He kicked the wall violently; I was surprised, upset by the incident" (D. Bélanger)
- "I was afraid, he looked scary" (J. Devost)
- "He pointed his finger at me and was even more threatening" (C. Craig)
- "he looked at me accusingly, threateningly" (C. Craig)
- "I felt intimidated, trapped behind my desk" (F. Vigneault)
- "He was behind it. I thought he was there to destroy me and to make me afraid" (D. Hébert)
- "He made me very afraid. I considered his to be an assailant". (D. Hébert)

7(d) Some of Jean-Eric Noël's own comments are examples of verbal abuse or disrespect and were intimidating and/or injurious to his colleagues.

- "Blood will flow" (to Alain Doucet)
- "It will hurt; there will be blood because of this" (to D. Bélanger and S. Boucher)
- "You will be quiet. You will only speak when I give you permission" (to D. Hébert)
- "You will not speak to me like that" (to J. Devost)
- "I have a long memory" (to G. Gohier and D. Hébert)
- "When I have a target, I never miss". (to L. Simard)
- Shut up, shut up!" (to J. Devost)

PART - II

MANAGEMENT'S CONSIDERATIONS WITH RESPECT TO THE BREACHES OF CONDUCT

(A) AGGRAVATING FACTORS

The Department's management took into consideration the following aggravating factors before recommending the termination of Jean-Eric Noël's employment:

1. The seriousness of the offences

- impact on the emotional health of Denise Hébert
- Ginette Gohier's nightmares
- threats toward Alain Doucet
- physical violence against L. Janelle during the softball incident

- threats toward Pierre Baillie and colleagues at the appeal hearing
- undermining the professional reputation of Guy Bélanger, F. Vigneault
- veiled threats (guns, tape recorder, surveillance and staring at employees)
- doggedly hounding Danielle Bélanger
- lack of respect toward his colleagues.

2. Repeated offences over a long period

- the same type of offences over a five-year period.

3. All of the many reminders to no avail

- reminders from L. Boisvert about the tape recorder and the way in which Jean-Eric Noël watched people
- written reprimand from N. Laforest in June 1994 and list of five incidents (E-12)
- verbal reprimand from M. Brisebois in October 1994 concerning Jean-Eric Noël's lack of respect toward R. Royer regarding the layout of her office
- verbal reprimand from M. Brisebois in January 1995 concerning Jean-Eric Noël's unacceptable behaviour when he returned from sick leave.

4. Devastating effect on colleagues and the work atmosphere

- D. Hébert's uncontrollable fear about running into Jean-Eric and the impact on her health
- G. Gohier's nightmares
- L. Janelle's retches
- A. Doucet's worries and burn out attributed in part to Jean-Eric Noël.
- the troubled work atmosphere as described by a majority of employees in paragraph 7.

5. Lack of remorse or repentance, lack of recognition of the impact of his behaviour and his constant efforts to blame someone else.

- categorical denials with respect to the tape recorder, the incident with the papers, the softball incident with L. Janelle, the fact that he sullied the name of A. Doucet, threats to tow C-A Georges' car, various threats to seek recourse through his father the judge and his lawyers, and lastly, his threatening looks and aggressiveness toward D. Hébert;
- accusing the majority of the employer's witnesses of being liars;
- admission of some incidents, but always limiting his responsibility, attributing another meaning to his words

or diminishing the extent of the impact of his behaviour, such as the parking incident with F. Vigneault, his threats of "We will get them", "Blood will flow", his disrespectful comments about women, his accusations about the incompetence of G. Bélanger and F. Vigneault.

6. The fact that as president of the union local, he should set an example; on the contrary, he took advantage of this position to abuse his power.

- This abuse of power is especially evident in the various parking incidents.

7. The fact that even the interventions of more senior union representatives did not make Jean-Eric Noël recognize the effects of his behaviour.

- The interventions of Anita Miner, regional union representative, with respect to having a tape recorder were unproductive.

8. The danger of reprisals against witnesses at the investigation.

- Jean-Eric Noël's threatening behaviour toward Denise Hébert worsened following her testimony at the appeal court before the PSC;
- It was following her testimony against Jean-Eric Noël about the incident of kicking the wall and during the appeal hearing before P. Baillie that Jean-Eric Noël's behaviour was threatening toward D. Bélanger, to the extent that he followed her in his car and suggested that her new car would be stolen.

B. MITIGATING FACTORS

Mr. Noël's 16 years of service is the only mitigating factor in this case

PART - III

CONSIDERATIONS WITH RESPECT TO A POSSIBLE REINSTATEMENT

Reinstatement subject to certain conditions presupposes and indeed requires a reasonable expectation that the reinstated employee can and wishes to alter his behaviour and attitude to permit a continuation of employment in an environment free from the behavioural problems that have poisoned the work atmosphere in the past. Without such assurances, reinstatement is an exercise in futility that invites future problems and inevitably leads to termination of employment at a later date.

In the case of Jean-Eric Noël, given the aggravating factors identified, and especially the lack of remorse and failure to acknowledge his unacceptable behaviour, it is obvious that Mr. Noël is incorrigible and will not improve his behaviour and attitude, even if he is placed in another environment. This was clearly demonstrated at the hearing, at which Jean-Eric Noël continued to deny any guilt or responsibility for the various accusations made against him.

Therefore, should the adjudicator find that the facts in this case do not justify the termination of Jean-Eric Noël's employment, the department maintains that reinstatement would not be desirable since management has lost all trust in this individual. Based on the following case law (attached), the department would suggest instead that damages be awarded to Mr. Noël.

1. Hébert (Board files 166-2-21575 and 21666)
2. Slattery (Board file 166-2-17850)
3. McMorrow (Board file 166-2-23967)
4. U.S.W.A., Local 12998 v. Liquid Carbonic Inc. 29 O.R. (3d) 468

PART - IV

CONCLUSION

In light of the above information, management concluded and still maintains today that the termination of Jean-Eric Noël's employment was the only valid option under the circumstances, in spite of the fact that there was no progression in disciplinary measures. According to management, the employee would not have adopted a different behaviour even if managers had taken more serious measures earlier.

For all of these reasons, we ask that Jean-Eric Noël's grievance be dismissed and that his termination be upheld.

For the grievor

[TRANSLATION]

INTRODUCTION

Jean-Eric Noël was employed with the Public Service for more than seventeen years. In July 1995, he was suspended from his duties, without pay, pending the outcome of an internal investigation launched by the employer. Mr. Noël filed two grievances against this disciplinary action. On October 11, the employer dismissed Mr. Noël, who filed a

grievance against the dismissal for disciplinary reasons within the time prescribed by the collective agreement.

At the hearing, Yvon Tarte asked the two parties to submit written arguments.

We therefore analysed the employer's argument in detail, examining each point and evaluating them on the basis of the documentary evidence adduced and all of the testimony received. We will present our version of the facts and state our conclusions.

ANALYSIS OF THE EVIDENCE

1 (a) Carried a tape recorder with him with which to intimidate colleagues and managers who spoke with him, in spite of the numerous warnings to the contrary and reminders he was given by several members of management over the years:

There is an eloquent observation to make with respect to this incident: has the employer discharged its burden of proof in the story of the tape recorder, particularly when, even in spite of depositions used, there are no specifics as to the location, date, time or even the year. There is no mention of this incident in either the grievor's personnel or disciplinary file, or even in a PER. (Ref: E-12, E-15, E-17, P-8, -35 [sic], P-36, P-37, P-38, P-39, P-40, P-41, P-42, P-43). The witnesses used vague language, full of insinuations, often quoting bits of phrases and events out of context, in order to create a balance of probabilities.

The grievor clearly stated that he had never received a formal warning not to have a tape recorder in the work place. This appears to be confirmed by actions and written evidence. He did not meet with a manager, alone, for this reason, always being accompanied for more security. Moreover, he is definite on this point. He was never informed or warned by Anita Miner that he was not permitted to use his tape recorder. Moreover, the latter exaggerated the facts during her testimony when she said that S. Durocher had complained about having been taped, as did many other employees. This does not reflect the content of Exhibit E-16, an unsigned document that was dated at a later time (see the notes on this matter).

Because the grievor had some computer problems, he decided to go see Denis Riendeau. It was morning, he saw Mr. Bélanger. The grievor had his tape recorder. When Mr. Bélanger asked him if he had a tape recorder, he told him that he used it for taking notes (statement of Jean-Eric Noël, administrative investigation, May 23, 1995, P-48) and to listen to music. The grievor put it on the table. That is his

testimony, which was not contradicted by G. Bélanger. Moreover, where is Riendeau? He was somewhere in the room; would his testimony have corroborated that of Mr. Bélanger or that of Jean-Eric Noël (the burden of proof in on the employer)?

At the second investigation meeting (P-49), there was never any mention of the legal opinion that was allegedly obtained (where is this legal opinion?) on the illegality of using a tape recorder without an individual's authorization or knowledge. At this second meeting, Jean-Eric Noël said, "some people think I have a tape recorder which would prevent false accusations". Mrs. Boisvert and everyone else knew that the grievor had a tape recorder. As Jean Eric Noël testified, he used it at certain district meetings, after asking permission. All of this was done openly with everyone's knowledge (P-49, pp. 603, 604 of 8/6/95).

1(b) The most recent events involving the tape recorder occurred:

(i) At a meeting with G. Bélanger and Denis Riendeau on February 24, 1995:

The only person who heard a "click" was Guy Bélanger. The employer did not call Denis Riendeau to testify although he was present at the meeting. It was undoubtedly because he could not support G. Bélanger's position (see P-10, p. 3). Probably with reason. Further, the grievor maintained the same position that at the investigation (See p. 48. "I had a tape recorder, I listen to music . . ." "You have a tape recorder, show me" . . . "I placed the tape recorder on the table . . .")

The grievor has stated and restated that he never recorded anyone without their permission. His machine could have been used to record important work-related information, such as the meeting with Ms. Doyer, Ms. Michaud and Ms. Boisvert on May 4, 1993 at which Jean-Eric Noel asked and obtained permission to record this information. This statement by the grievor was not contradicted by anyone.

In conclusion, with respect to this incident, we were not impressed by the testimony of G. Bélanger. His testimony at the hearing differs from that in P-10. He accuses Jean-Eric Noël of various wrongdoing but is unable to support them. It is the employer's responsibility to prove the claims. There is no conclusive proof that the grievor used the tape recorder to tape G. Bélanger, not even from D. Riendeau.

Further, if Mr. Bélanger is capable of treating a women like "dirt", one might expect him to do anything; he is not credible

in our eyes and, in terms of this incident, it is prudent to accept the grievor's version which is consistent and credible.

(ii) During a meeting with Marlynn Brisebois and Jean-Marc Nolet in which Jean-Eric Noël completely denied having a tape recorder, in spite of the fact that he admitted the opposite later to the investigation committee.

Here again, we find the different versions of this event offered by Ms. Brisebois and Mr. Nolet troubling. In response to written complaints from Mr. Bélanger and Mr. Vigneault, Ms. Brisebois and Mr. Nolet allegedly met with the grievor on February 24, 1995 to question him about the two complaints. Was a computer problem discussed that day or was a tape recorder discussed. The employer's official documents (see p. 46, grievance report) make no mention whatsoever of this matter, nothing about the tape recorder; the report is signed by Ms. Brisebois. Which is the correct version: her testimony two years later or the official document signed at the time?

The grievor's version is different and is well supported. Let us take a close look at Exhibits P-45 and P-46. You will clearly see that they refer to two different incidents. At the February 24 meeting, in the afternoon with Mr. Nolet, there was no mention of the tape recorder (P-46). Moreover, Ms. Parisot confirms this claim in her testimony.

It should also be noted that Ms. Brisebois's statement that Jean-Eric Noël allegedly contradicted himself at the investigation by stating the opposite of what he allegedly said at the time, is at the very least mistaken. Ms. Brisebois stated that Jean-Eric Noël denied everything on February 24, 1995 around 10:00 a.m. and that, before the committee, he allegedly said the opposite. Let us look at Exhibit P-45, Item 9. It is all there. Jean-Eric Noël denied taping anything, but he did not deny having a tape recorder which is exactly the same version he gave before the investigation committee (P-48, 49 and 50). She therefore made a mistake in the investigation report, in the facts and during her testimony. Further, in her testimony, Ms. Parisot confirmed the testimony of Jean-Eric Noël with respect to all of the points in Mr. Bélanger's complaint.

The following conclusions can be drawn about the tape recorder:

- a) no mention whatsoever in any letter of reprimand and no disciplinary action;
- b) nothing confirms the warnings allegedly given - nothing in the employee's personnel file or any disciplinary file;
- c) the employer did not see any need to act at the time;

- d) *no only is there no preponderance of evidence, but there is no evidence at all that the grievor had a tape recorder for the purpose of preventing false accusations;*
- e) *as for the numerous warnings, the facts and documents adduced do not support the testimony.*

2. Carried out other acts of intimidation toward colleagues and managers on various occasions by:

2(a) standing in front a colleague's or manager's office without saying a word, sometimes with his arms crossed and refusing to move;

Here again, the grievor's words and actions are taken out of context and they do not reflect the employer's actions. Let us put things back in context.

The grievor's position is as a labour market analyst; he is also president of the union local and a member of the occupational health and safety committee. Because of his duties, he often has to meet with members of management or colleagues at their work stations. When the grievor arrived at the office of either a manager or a colleague, if that person was on the telephone or already with someone, he waited. It was a matter of courtesy, that is all. So why do some witnesses have a problem with this?

Let us try to put things in their proper perspective. For years, Jean-Eric Noël stayed late after normal working hours to work overtime; Ms. Janelle also worked late. Ms. Janelle and Jean-Eric Noël chatted a lot about work. She never chastised him about this behaviour and we know that the grievor talked to her a lot. Since 1991, when Ms. Boisvert became Jean-Eric Noël's supervisor, he has never received any verbal or written warning of any kind on this issue.

The offices of Mr. Laforêt and Ms. Boisvert were located close to the office of Danielle Bélanger, the secretary; it is true that the grievor waited for Ms. Boisvert or Mr. Laforêt to be free before entering their offices. He did the same when he wanted to meet with Ms. Janelle. Her office is close to that of Sylvie Durocher, her administrative assistant. What is even more curious is that no one questions the reasons for which the grievor went to see the managers or his colleagues. That is because Jean-Eric Noël's various responsibilities are sufficient explanation.

Furthermore, during the cross-examination of Ms. Bélanger, she admitted that the grievor had asked her if he frightened her and she had answered "No". Who else complained? No one . . .

During their testimony, the managers all acknowledged the different responsibilities that the grievor had had and the fact that he had assumed them. Because of these responsibilities, the grievor had to meet with them often. And rather than interrupting someone, he waited. There is really nothing to it . . .

Once again, there is no mention anywhere of this behaviour, which has not been clearly defined by the employer: nothing in his PER, no disciplinary measure, no verbal or written notice. It is easy to claim now, two to four years after the fact, that the grievor was warned about this behaviour, but there is nothing to support that claim: no date, no incident, except for a very vague mention, at the very most. We must remember that when a dismissal or acts of intimidation are involved, hard and fast facts must be provided.

If Ms. Janelle or Ms. Boisvert felt provoked, attacked and their every word or action spied upon, then they should have said so and acted at the time, not several years later.

2(b) often going to the garage to smoke and closely monitoring what other employees did and said, parking on the street and watching the people who entered the garage; and/or standing in front of the door to the CEC and observing the employees going in:

This is another example of a distortion of the facts, where they have been embellished to justify the dismissal. In effect, two employees (J. Devost and S. Mathieu) and one manager (Ms. Boisvert), out of a total of more than 80 employees at this employment centre find it strange that, since 1993, the garage has been the only place to smoke, especially during the winter months, or out in front of the CEC.

The grievor has smoked cigars for more than 20 years and it is easy to understand why the grievor would leave the office to smoke so as not to inconvenience his colleagues. Moreover, the grievor had no choice, since he must be outside the work place. If the two employees in question were there, it was undoubtedly for the same reason, namely, to smoke.

Once again, there was no reprimand, written or verbal, at the time the events took place. We are told that Ms. Boisvert allegedly told him verbally to stop this behaviour. We doubt it. Several colleagues and employees testified that they saw the grievor on numerous occasions smoking in the garage, at the garage door or outside the CEC, and that they saw nothing out of the ordinary. Seventeen witness testified to this fact alone.

The most candid testimony was that of Richard Rinfret who smoked with the grievor most of the time. His testimony on this matter is strong and not easily contradicted.

First of all, we must remember that we are talking about impressions. "he seemed to be watching . . ." Was he asked if he was watching? No. Did the employer, namely, Ms. Boisvert or someone else, take any disciplinary action, issue a written or verbal reprimand? There is no evidence to support this theory.

The employer cannot hold it against the grievor that he parked his car on the street early in the morning. At least five witnesses testified as to what was going on. Before the office opened, a group of "early bird" employees would go for breakfast at the restaurant across from the office. They parked their cars in the garage after breakfast once the doors opened. This is perfectly normal and usual.

What interest would the grievor have in watching the comings and goings of employees? Did the grievor allegedly use this information against his colleagues with the employer? There is no evidence to support this argument. The investigation into this matter may have found a preponderance of proof but, based on the testimony of the many witnesses at the hearings, we cannot reach the same conclusion. There is no evidence that the grievor was there to watch; indeed, the very opposite was proved: he was there to smoke, as was permitted. The employer is trying to attribute malicious intentions to Jean-Eric Noël's behaviour, but is unable to support its claims. The accusations are vague and no concrete action was taken by the employer. This incident definitely cannot be held against the grievor.

2(c) often rubbing his hands together and simulating punching his hand while saying such things to colleagues as "we are going to get them, friends ", referring to the managers.

With this accusation as with the others, everything is very vague, nothing is precise, there are no specific facts. S. Boucher was cross-examined on this matter and was unable to describe a specific incident. Nor was she able to do so before the investigation committee on May 11, 1995. François Vigneault was with her at that time and could not add anything further. She claimed that Jean-Eric Noël took his role as president of the union local very "seriously", but there is nothing reprehensible about that; indeed, just the opposite.

As to the interpretation the employer would like to give to Francine Caya's testimony, we submit that the employer erred in its interpretation, particularly at page 4 of its arguments.

In effect, during her testimony at the hearing, Ms. Caya very clearly stated that she was made to feel insecure by the uncertainty surrounding her work, with respect to some new duties, and not because of the grievor.

She attended the union's election meeting and voted for Jean-Eric Noël and his team; she thought it was the better team because the other one seemed too pro-management.

At the end of her statement or testimony, she said that she had no reason to complain about Jean-Eric Noël (see P-22).

What can we say about Carol-Ann Georges's perceptions when she saw Jean-Eric Noël passing by her office, rubbing his hands together and when she said "that Jean-Eric Noël had to be preparing something"? When this type of daydreaming is used to support a dismissal, the employer

must really be short of arguments. The real question we must ask ourselves at this point, and probably right to the end of the analysis of the evidence, is the following “Who was watching whom?”

It is worthwhile mentioning that Ms. Georges never mentioned her impressions to Jean-Eric Noël in any way; never. It is curious that this type of impression contrasts with the testimony of more than half of the employees in the office who had only positive things to say about Jean-Eric Noël’s behaviour and his unquestioned effectiveness in providing professional service. The investigation committee took none of that into account, preferring to conclude that the weight of evidence was against the grievor, based on such impressions. The employer does the same thing in its arguments to justify the dismissal.

No facts, no specifics, no circumstances were presented to support this vague, highly questionable and even malicious allegation. It sheds a bad light on the reasons the employer has given for dismissing Jean-Eric Noël.

And what about the statement, “We will get them, friends”, which the employer is trying to say indicates a negative attitude toward managers. It was said at the time of the union elections. First of all, who complained about it? No one at the investigation, and no one at the hearings. No one testified as to where, when, who, how, etc. . . .

The grievor told the investigators and the chairperson that he made these comments during the elections, which he won handily. So where is the problem, who is being attacked? Why attribute intentions to the grievor on the basis of a few words said more than three years ago and the meaning of which was taken out of the original context. Once again we are dealing with a process that clearly borders on bad faith.

It must be remembered that there had not been a union local for more than 14 years. The president had a role to play and the grievor did that. Whether it was Mr. Laforêt, Ms. Boisvert, Ms. Brisebois or any of the others who testified, no one testified that the grievor had failed to show them respect while performing his union duties. Without exception. Mr. De Chantal and Mr. Allard, two managers, testified that Jean-Eric Noël was always very positive toward them.

So what are the allegations in 2(c) based on? Absolutely nothing. No facts, no specifics, no action by the employer, no warnings, no reprimands. In conclusion: Nothing, but air.

2(d) Asking Danielle Bélanger on several occasions where she lived, going back to see her to tell her that he had found out where it was, warning her that within three months

something might happen to her new car, following her on the street when she was driving in her car immediately after work;

We strongly submit that the employer cannot use or mention anything about the incident on February 27, 1991, nor even describe it. The reason is found in Exhibit P-2, in the reply to the grievance QUE-95-MTL-014 in which the employer admits that there was no repeat offence within two years and that under the master agreement, this letter of reprimand should have been removed long ago from his personnel file and should not have been in the hands of the members of the investigation committee (see E-3, the committee still took it into consideration). For all practical purposes, this means that this incident did not exist and cannot be taken into consideration in the grievor's dismissal.

Throughout the hearings we objected to any documents which made mention of this incident being adduced. We strongly maintain this objection. This means that the entire chapter on this incident in Exhibit P-3 should be removed (page 5, section (c), points 1.1, 1.2 and 1.3).

In any event, we will return later to the question of disciplinary measures vs personnel file. It should be noted that in Exhibit P-2, the employer states in writing that this disciplinary measure was recorded in a grievance file, not the personnel file. The existence of this measure was discovered by the grievor on June 9, 1995 through P-30 which was in his personnel file. It too should have been destroyed. As for the incident at the appeal hearing on May 29, 1992 (E-14), we will examine this matter fully under item 2(i).

We therefore object to all of Danielle Bélanger's testimony which relates in any way to this incident. If even the slightest allusion to the incident of February 27, 1991 is taken into consideration, then the collective agreement, grievance process and adjudication procedure no longer have any meaning. It should also be removed from the argument (page 4, item 2(d), paragraph 1).

D. Bélanger's testimony was a lot more qualified than we were led to believe from the argument, especially after the cross-examination.

Let us go back to the summer of 1994. She accused Jean-Eric Noël of following her in his car for a distance of about 2,000 feet, and of wanting to know her home address; she says that she felt so threatened about her new Honda that she suspected the grievor. Let us look at each of these three points in light of her testimony at the hearing compared to that at the investigation. We will see that the preponderance of proof may not be as conclusive as one would like us to

believe, and we submit that the grievor's version is far more credible.

Let us not forget that it is more than three years after the two incidents that allegedly made her afraid of Jean-Eric Noël. Nor should we forget that Ms. Bélanger worked throughout this time typing Jean-Eric Noël's reports as part of her work. According to her own testimony, their relationship was limited to professional contact and that, on this level, everything was fine. No complaints from Ms. Bélanger or Mr. Noël. Ms. Boisvert, the Director, for whom Ms. Bélanger was her secretary, also testified that she had never seen any aggressive or threatening behaviour by Jean-Eric Noël, even though her office was close to his and that of Ms. Bélanger. She states that Ms. Bélanger never complained to her about Jean-Eric Noël, neither at the time nor afterwards. And she continued to type lists for Jean-Eric Noël on a regular basis. This certainly does not indicate a fearful attitude, quite the contrary.

2 (d)(i) Appeal hearing:

She said that she was intimidated and bored by the long questions asked by the grievor's father, who was representing him. She did not understand anything. She said that Jean-Eric Noël intimidated her. When asked "Why?" under cross-examination, she said that she did not know why, that that was just the way she felt. It seemed to her that Jean-Eric Noël wanted to get her attention, but she was unable to say why or how. Then she says she then left the hearing room and therefore did not see the rest of the hearing, which lasted quite a long time, according to her. And that is all for that part of her testimony. She said nothing about menacing looks or any other threatening behaviour, except that "Jean-Eric Noël got up, bent over and took off his jacket". If that was the intimidating behaviour, then we should tell everyone to stay at home and never go out again. In light of her testimony, the appeal hearing incident is only a pretext, particularly since she was not present for the rest of the hearing and therefore did not witness anything else.

2(d)(ii) incident where she claims that she was followed by the grievor.

It should be remembered that, for Mr. Nolet and Ms. Brisebois, this was the deciding factor that led them to establish an investigation committee, which found that the grievor might be dangerous. Consequently, it is important to analyse what was said carefully.

She told the investigation committee that, one day during summer 1994, she was followed by a Jeep, that she recognized Jean-Eric Noël, that he followed her for a distance

of 2,000 feet on Marcel Laurin Street, that she waved at him but that he did not respond, and that he then changed direction.

At the hearing, Ms. Bélanger was even more vague and more so again after cross-examination. First, she had the impression that she was being followed because she knew that he had to go to Lachute and that, by going that way, it would take him longer, therefore "he seemed to be following me".

The reality is as follows: when you come out of the CEC garage, you are on Décarie North, which is one way; 2,000 feet farther along, there is an Ultramar station. Consequently a driver has no choice, he must go in that direction. Jean-Eric Noël regularly stopped at this station to fill up. At the hearing he adduced a series of gas receipts from the station, bills and costs, covering a long period of time. Considering that Ms. Bélanger lives in Laval, that she was only 2,000 feet from the CEC, she is far from being able to say that Jean-Eric Noël was following her, especially on a one way street, which goes in the same direction, that is, toward Lachute. If she saw J.-E. Noël follow her as far as Laval, then she might have been justified in having some doubts. We therefore submit that the version of the facts given by the grievor is much more plausible and closer to reality than Ms. Bélanger's version.

Ms. Bélanger has a tendency to over-react to things. Note her testimony at the hearing where she spoke of the grievor's "attack dogs". Under cross-examination, she acknowledged in the end that it was not Jean-Eric Noël who had spoken to her about them, she could not remember who it was, how, when or where. Is this a credible witness? Clearly, the grievor cannot be criticized for denying these claims.

2 (d)(iii) As for her new Honda, the grievor's version is just as credible, if not more so. Jean-Eric Noël read an article in the Journal de Montréal which talked about the frequent theft of these vehicles. The grievor had the office next to Ms. Bélanger and simply mentioned this to her. The article mentioned that Hondas were the vehicle stolen most often in Quebec. For her to take this information and suspect the grievor if her car was stolen takes a person with a tendency to over-react.

2 (d)(iv) where she lives:

Here again there are no specifics about when this happened, no complaint, nothing. Remember that the grievor had an office beside Ms. Bélanger at the St-Laurent office from 1991 to 1993. Throughout that entire time, Ms. Bélanger never complained to anyone about Jean-Eric Noël's behaviour, and yet she appears to have been traumatized since 1991.

This is too much to ask us to believe and the members of the investigation committee did not do their job properly. The grievor's version is unquestionably more plausible. He did not know where Ms. Bélanger lived and still does not. He was never interested in knowing, especially since their relationship was limited to the performance of their respective duties, which is also what Ms. Bélanger said at the hearing.

In this context, Mr. Noël's version is far more credible. It makes sense and it has never changed. The same cannot be said of Ms. Bélanger's version. If she was afraid of the grievor, why did she not complain to her superiors? She was afraid of reprisals? What reprisals? She never testified that the grievor threatened her. We submit that it cannot be accepted.

2(e) In spring 1994, during a practice of the CEC softball team, hitting a ball with such force at Louise Janelle that she was hurt; other employees felt he had done it intentionally.

Here again we are faced with contradictions, inconsistencies and nonsense. The location is a gymnasium, after work, away from the office. Ms. Janelle testified that she was an inexperienced player. At the time of the incident, Jean-Eric Noël was the pitcher, Claude Tremblay the batter and Ms. Janelle the catcher. Claude Tremblay was a much more experienced player. The grievor threw the ball to the batter. Ms. Janelle apparently caught the ball thrown with such force that she took a step back. We submit that this is a big exaggeration. Particularly when it is mentioned that she was lucky that it was not a hardball because she might have dislocated her shoulder. This ball is soft in name only. If it had been thrown with that amount of force and had struck her directly in the shoulder, she would have been injured and would not have been able to continue to play for the rest of the day. That was not the case.

When the incident occurred, she did not complain to anyone - neither to Mr. Tremblay, nor to the grievor - that she felt any pain whatsoever. She continued practising as though nothing had happened. The first time that she mentioned the incident was during the administrative investigation, a year and a half later. It was only then that the grievor heard of the incident. Further, since that investigation, the grievor has always maintained the same story, that is, he threw several balls to Ms. Janelle as he would have thrown them to anyone who was the catcher at the practice. Remember that these balls were actually being thrown to his friend Claude Tremblay, an experienced batter.

Further, Mr. Laforêt and Carole-Anne George, managers along with Ms. Janelle, were also present. No one said

anything about the incident, not at the time and not afterwards. The contradictory part of this story is the statement, "hitting a ball with such force directly at Ms. Janelle". Neither Ms. Janelle, nor anyone else, testified that Jean-Eric Noël hit the ball. Then what happened? Did he hit it or throw it? At the very least, there is no consistency. No complaint, no action by the employer, in spite of the fact that it was aware of the incident at the time. Mr. Tremblay does not confirm these claims and the fact that he is a friend of the grievor does not mean he should not be believed. He testified that Jean-Eric Noël has a fiery temper but that that had nothing to do with the softball incident.

2(f) during a ball game, saying to Johanne Devost while pointing his finger at her in a threatening way, "do not speak to me like that, shut up", which frightened the employee and a witness.

During this softball game and at the time of the above incident, there were many managers present, including R. Tremblay, the Director at Verdun and C.-A. George. The grievor gave a clear explanation in his testimony. Ms. Devost's behaviour, on the other hand, was somewhat irrational and she had a bottle of beer in her hand. She was the assistant coach and she did not hesitate to shout inappropriate remarks. She shouted at the grievor who was on third base to come sit down and let someone else have his place. Jean-Eric Noël did not like being spoken to in that way and said to her, "do not speak to me like that". Sylvie Mathieu testified that Jean-Eric Noël said "Go sit in the corner". Who can tell us exactly what Jean-Eric Noël said? Only he himself. Mr. Simard's testimony does not add anything. The grievor then sat down on the bench beside Mr. Tremblay, Dominique Lachapelle and other colleagues.

The grievor went on to play several other games with managers, including Mr. Laforêt, the Director, who had been informed of the incident by Ms. Devost. Everyone participated in the Lennoxville tournament. The grievor learned of this incident for the first time at the administrative investigation. What else is there to say about this incident which occurred during a sporting event. Ms. Lachapelle and Mr. Tremblay testified that these events were sports events and that the following games were played amicably. Mr. Laforêt would undoubtedly have acted in his capacity as a manager if he had felt there was a reason to do so. Under cross-examination, Ms. Devost testified that she reported the incident to Mr. Laforêt. He no doubt did not find her to be credible because he took no action.

In this context, we submit that Mr. Noël's version is simply credible. Respect has to be earned.

2(g) saying to Alain Doucet, who came to congratulate him on his appointment as president of the union local, that he had sullied his name for three days in order to win.

All of this occurred in a restaurant the night of the election of the executive of the union local, outside office hours. Mr. Doucet was a defeated candidate. Ms. Linteau, the returning officer, declared Mr. Noël the winner, with a sizeable margin, although she had not given specific numbers.

Mr. Doucet's testimony is filled with little white lies. Under direct examination, he stated that Jean-Eric Noël told him that "blood will flow". Then after two questions from his counsel, he remembered that Jean-Eric Noël had not told him this. As for the rest of his testimony about the elections, his comments are vague and he seemed to want to move on to something else. That was when he said that Jean-Eric Noël had allegedly sullied his name for three days in order to win; he went on to say that "there were three people around when Jean-Eric Noël said this". These three people were Elisabeth Parisot, Carole Lalonde and Claude Tremblay and they testified at the hearing.

The three people saw Mr. Doucet speak to Jean-Eric Noël, but none of them heard Jean-Eric Noël say these words to him. None of the testimony corroborated Mr. Doucet's testimony. There was no complaint to the union, no complaint to the employer, and three witnesses did not support what Mr. Doucet claimed. How can one conclude that Mr. Doucet's testimony is more credible!

2(h) Telling Sylvie Mathieu that he wanted to call a tow truck to remove the car of a manager, Carole-Anne Georges.

She too testified that she did not have any particular problem with the grievor. She was not the only one of the employer's witnesses to say that. This point will be raised again later in this argument.

Rereading Ms. Mathieu's testimony, we note that it does not match with the version reported in the argument. She actually said that Jean-Eric Noël often came to tell her that Carole-Anne Georges was parked in a Sun Life spot. But she never testified that Jean-Eric Noël had threatened to have the manager's car "towed". That statement is not found in her testimony from the administrative investigation. Therefore, the evidence is not conclusive to this effect and cannot be.

Lastly, it is clear from this file that parking was a real problem, very few union-management meetings occurred where it was not discussed and the union had to try a variety of measures to solve the problem. There were many

infractions and the union local had to do its job, which did not please some people. It is disturbing for management when it is used to doing what it wants because there is no local executive to have its say. It was the union's responsibility to intervene in this matter and it did so. The way in which the union president did so was not appreciated, but how else would local management react when it was being told that a policy was not working properly!

2(i) His unconscionable behaviour at an appeal hearing, once again in order to intimidate the witnesses, the department's representatives and the chairperson of the appeal board:

We have already covered the matter of Danielle Bélanger under item 2(d). We will come back to the whole question of incidents which happened several years ago later in our argument.

Denise Hébert's testimony about the appeal can be summarized as follows: "I was asked by Ms. Janelle to testify about the PHR. That was in 1991. I knew that Jean-Eric Noël did not agree." When asked in cross-examination whether the grievor had told her that he did not agree, she answered "no".

She then repeated that she was called to testified. Jean-Eric Noël was represented by his father. It was his father who asked me the questions and asked me to look straight at him. In response to a question in cross-examination, she said that it was the father who wanted her to look straight at him. When she finished testifying she took a seat at the back of the room. At some point, Jean-Eric Noël asked to move his table so as to be able to see better. Later Jean-Eric Noël became angry and threatened the judge: "Do not speak to my father like that, I will kill you". It was his father who restrained him. I did not see him (Jean-Eric Noël) make any gesture toward me, he did not threaten me. He did not threaten the other witnesses. It was Jean-Eric Noël's look that I found intimidating during the appeal.

I did not have any contact with Jean-Eric Noël himself. Under cross-examination, she admitted that she never spoke with him about it afterwards.

As to the story about "a threat to kill", Mr. Baillie testified and clearly stated that Jean-Eric Noël did not make any such threat against him and that if he had, Jean-Eric Noël would have found himself in "big trouble". In our opinion, this nullifies Ms. Hébert's testimony on this matter. Jean-Eric Noël did not threaten appeal officer Baillie, which adds credibility to the grievor's testimony that he said, "You will kill my father if you continue, he has a bad heart, he has had four bypasses". Even if the word "kill" was used, it was not as a

threat against Mr. Baillie. Moreover, as Mr. Baillie testified, if Jean-Eric Noël had threatened to kill him, he would have noted it in his decision, which makes sense. Exhibit E-14 is quite clear on this at page 8. Nothing the appellant said is recorded. We therefore submit that J.-E. Noël did not threaten anyone during this hearing.

Rereading E-14, we see that D. Hébert only attended a small part of the hearing, as was the case with Ms. Bélanger. It was Mr. Baillie's decision to have the witnesses wait outside the hearing room. This further reduces the scope of their testimony.

Let us go back to Ms. Hébert. She herself admits that Jean-Eric Noël did not threaten her or any other witnesses. She felt intimidated by Jean-Eric Noël's look. But what kind of testimony is that?

There was a heated verbal exchange between the appeal officer and the appellant's representative: the appellant was concerned for his father, he shouted. And then what happened? Mr. Baillie testified that it was the appellant's representative who made a disrespectful comment which made him lose his temper as he mentioned in his decision (E-14). He stated that he would not accept that type of comment and that he reacted quickly and emotionally. He was not the only one who reacted that way. We must assume that Jean-Eric Noël acted the same way. Mr. Baillie commented that Jean-Eric Noël was acting childish when he turned the table half-way around. And later . . . Mr. Baillie went on to say that "Jean-Eric Noël was standing, waving his fists in the air, and that if he (Jean-Eric Noël) had jumped me, I would have had to hit him." He added that he was not afraid of anyone and that the appellant's behaviour did not intimidate him any more than that.

Ms. Hébert stated that "it was his eyes that frightened me". Gently, under cross-examination, she was asked "how is it that she was afraid of his eyes, why did they make her afraid"? She told us that she did not know why, "it was just like that, that was how I felt". We submit that you cannot take this type of testimony into consideration. No causal relationship has been established. It is very easy to say such things, which can be very serious and have a drastic result, as is the case in this instance.

Jean-Paul Noël also testified in this instance and he confirmed what happened at the hearing, his loud argument with the appeal officer and his son's emotional reaction on his behalf. He explained that his son was concerned about his health and that he had not threatened anyone, including the appeal officer. This testimony confirms that of Ms. Hébert in

several respects, as well as that of Mr. Baillie, with respect to the threat. There can be no doubt about this testimony.

Lastly, a decision was published (E-14); members of management and employees were present at the hearing. Everything took place in the open. The decision was issued on June 9, 1992. No complaint was filed by anyone, no action was taken by the employer, not even a mention, no disciplinary action and that was not for lack of knowledge.

2(j) By referring constantly, when in difficulty, to the fact that his father is a judge, that he knows politicians, lawyers and members of the media. He uses this information to make himself look important and to try to intimidate his colleagues and managers in order to discourage them from taking any action against him for his behaviour.

During her testimony before the Board, Elisabeth Parisot, who testified for the grievor about the complaints in February 1995, strongly contradicted Ms. Brisebois's claims about the comments about politicians, journalists and lawyers which he allegedly mentioned in order to intimidate managers. She testified at that time about what took place at the meeting on February 24, 1995 at which she was present. As to whether the grievor used the same tactics with colleagues, we have been unable to find any evidence to this effect.

Reviewing the testimony of J.-Marc Nolet, it is surprising to find that he was unable to give a specific time or place. No examples, he is unable to remember a single specific fact, not even the meeting on February 24, in spite of the fact that he was there. This says a lot about what happened at that meeting. In terms of the evidence, this is the only incident in which the grievor is alleged to have threatened management.

The grievor confirmed the allegation by Liliane Boisvert that he used his father as his representative at a meeting in which he objected to the contents of an evaluation report. What is surprising about that? From a union perspective, there had not been a local executive for almost fourteen years, which meant there was no steward or union representative to help him.

The grievor has always maintained that he told his friends on the local executive that his father was a judge; everyone ended up knowing it. Where is the problem? What is the harm if the grievor asked his father, who has spent his life in law, for advice on his rights, especially if he felt he was being abused, unfairly treated or harassed in the work place. It is a good resource, how can he be criticized for that.

Other than the meeting on February 24, 1995, no evidence has been adduced about a single incident in which the grievor allegedly used this strategy. This is important; there are only general, unsubstantiated statements.

When counsel for the employer questioned the grievor under cross-examination about Ms. Brisebois's testimony and the grievor denied that testimony as it related to the meeting, could he have done anything else. Should he have said "yes" in order to look good, when the employer's only other witness did not remember and another witness, Ms. Parisot, had denied it? He has to at least be consistent. If the grievor had answered "yes", I can just see counsel for the employer smiling and asking the following question: "In that case Mr. Noël, are you suggesting by your answer that Ms. Parisot was lying?" Given the evidence, it is very likely that the behaviour of which the grievor is accused at this meeting never occurred.

2(k)(i) the piercing and menacing stare sometimes used by Jean-Eric Noël; (ii) his quick movements to check on everything, his questions about other people's business;

What can we say about these accusations, which are nothing more than a smoke screen to give the illusion that there was repeated behaviour, which is seen as damning, but which has no substance because it is the product of a completely tainted environment. The grievor is being made out to be a sick and deranged individual. The investigation report came to this conclusion when it recommended that Jean-Eric Noël be examined by Health Canada (Exhibit E-3, page 17, recommendation #3).

This is what happened. The grievor went along with this recommendation. He met with two psychiatrists, Dr. Gérard Beaudoin, the grievor's psychiatrist, and Dr. Jacques Lesage, the psychiatrist recommended by Dr. Vigneault of Health Canada, the employer's psychiatrist. Both reports are conclusive and both come to the same conclusion (P-54 and P-55). Let us take a brief look at the report from the employer's physician as it is quite informative. It is difficult to contest as it is the report from the employer's own physician (P-55).

Jean-Eric Noël was alone with Dr. Lesage (page 1). According to Dr. Vigneault, Mr. Noël displayed signs of character and behavioural disorders (page 2). It is obvious that this physician had a copy of the appeal decision (E-14) and the investigation report (E-3) because the exact same facts reported in these two documents are found in the physician's report. The report also cites the words of witnesses as found in section 2(k)(i), (ii), (iii) and (iv) (see pages 2 and 3 of P-55). Dr. Lesage then proceeded with his assessment of Mr. Noël

and discussed with him the problems of which he is accused (pages 3 and 4). The grievor's responses to Dr. Lesage's questions were always logical and coherent (page 4). He was reported to have healthy defence mechanisms (page 5). He did not appear to try to control his responses and he answered the questions without hesitation. He had no attention, memory or concentration problems . . . no perceptual difficulty, no any impairment of judgment (page 6). It is enlightening to read this document through to the end. While this was a psychiatric examination, the fact is that Jean-Eric Noël is a normal person, with good morals, and normal mental functioning, who can work effectively.

A second important point needs to be raised at this time. It is the unusual fact that, in a dismissal case, 24 of Jean-Eric Noël's colleagues testified on his behalf. This has enormous impact. Consider Ms. Brisebois's testimony that the entire office was against the grievor. That is certainly not the case. These 24 witnesses came to tell the Board that the grievor's actions, movements and behaviour were perfectly in keeping with his duties as an analyst, president of the union local and member of the health and safety committee; that what he did he did solely to serve and look after the interests of the members of the CEC-St-Laurent, while respecting the abilities of the managers concerned, and that he did his job well.

We must also point out that several of the employer's witnesses mentioned during their testimony that they did not have any particular problems with Mr. Noël, and some managers even said that Jean-Eric Noël had never acted disrespectfully toward them. Several said that they did not have any problem with the grievor, either personally or professionally.

We must not overlook the fact that a few of the employees who testified against the grievor were opponents who lost to the grievor in the two elections for president of the union local. This needs to be raised because some of the reasons the employer gives for the dismissal relate to this issue.

Mention is often made of the way he looked at people which was described as threatening, intimidating, nervous . . . The grievor explained in his testimony that he suffers from severe myopia and must, at times, wear tinted lenses and/or contact lenses which make his eyes look large. If his look was intimidating or uncomfortable, then perhaps it would be good to know why, rather than to say that the grievor had a threatening or intimidating stare; it might paint a different picture of the grievor.

All of this to say that the accusations in points (I) and (ii) serve little purpose other than to deliberately try to destroy a reputation. It is easy to describe a gesture or condition as

“looks that could kill” (G. Goyer), “hysterical” (Ms. Brisebois), “as though there was a fire” (Mr. Nolet), “over-excited” (Ms. Brisebois). It is possible to condemn anyone using such unfounded and unjustified expressions. But is it enough to justify dismissing an employee?

(iii) His constant searching for someone to blame has been mentioned in the following testimonies:

This particular issue was raised in J.-M. Nolet’s testimony in particular. However, he did not give any concrete examples, which makes it an extremely weak accusation. In actual fact, the grievor demonstrated that he actively engaged in problem-solving. Consider Exhibits E-27 and E-28 which are minutes of meetings with the employer in which the grievor was acting in his capacity as president of the union local and displayed respect for others. None of the other managers raised this criticism of Mr. Noël.

As for the second point, D. Bélanger’s statement, it should not be there; the reason was explained in detail in 2(d).

(iv) Several employees reported that Jean-Eric Noël was very disruptive:

Surely the employer was suffering from chronic laziness or it would have viewed these comments as frivolous. “He was breathing hard” (Ms. Royer). Where is the problem? As for the statements by the other managers, why was action not taken at the time? Ms. Miner did not work with the grievor. On what basis does she make her statement? Ms. Devost says she complained. Where, when, about what? Where does the evidence show what action was taken on that complaint?

Mr. Noël’s evaluation reports (Exhibits P-35 to P-43) show that his work was satisfactory. What may have been trying or disconcerting is that the grievor performed his duties as local president and was steadfast in his activities on behalf of his members. Management was not used to that; moreover, there were so many changes at the management level, the atmosphere was affected and management handled the situation badly. Exhibit P-31 clearly shows this, and that was why a new team was brought in. During his testimony at both the investigation and before the Board, Mr. Noël allowed his frustration to show, which clearly reveals the lack of consistency by management. His expectations were not met. It is not the grievor who should suffer as a result of this situation.

As for the complaint by Ms. Devost, there appears to be a misunderstanding about what she said. During her testimony at the investigation, she referred to the constant comings and goings in the office on the third floor, which was very disruptive. She complained about the activity on the floor, not

about the grievor. It should be noted that the grievor's office was off by itself on the third floor and employees had to go upstairs to meet with him in connection with his work.

In short, these impressions and vague generalities, sometimes based on frustration, do not and cannot lead to any unfavourable conclusion with respect to the grievor. It would be very dangerous to condemn the grievor on the basis of these non-facts.

(3) As for the disrespectful comments about women:

In order to analyse and evaluate these allegations, we carefully reread the following exhibits:

(P-18) Ginette Gohier
(P-16) Johanne Devost
(P-29) Elisabeth Parisot
(P-48 à 50) Jean-Eric Noël

which are their testimonies during the investigation and at the Board's hearing.

Ms. Gohier told investigators that the grievor laughed about her weight in front of E. Parisot and Ms. Devost, on two occasions. She also testified that Jean-Eric Noël compared her to PHOTOGRAPHS of beautiful women with large buttocks and breasts (see P-18, page 1, para. 5).

Ms. Devost did not testify to this effect before the investigators. Nothing appears in Exhibit P-16. And yet, this is a very serious matter and investigators should have been very thorough: they were not. It is not for us to judge this investigation, the facts speak for themselves.

The same thing occurs with Ms. Parisot in P-29. There is no mention of this important incident.

As for the grievor, in E-49 he responds as follows: "I never told a colleague that she was fat or that the photos or comic strips reminded me of her." Further on at page 3 of P-39: "I never referred to women as "chicks", "brood mares", or anything else. I have a great deal of respect for women. I never said that, not even in jest." There is nothing in P-48 or P-50.

We subsequently checked the testimony of these same persons, as well as that of Mr. Tremblay, at the hearing.

First, Ms. Devost and Ms. Parisot contradict Ms. Goyer outright. Ms. Devost mentioned that Jean-Eric Noël said "the fat Janelle" during a baseball game, in front of Mr. Tremblay. The latter denied the whole thing. Immediately after, in

response to a question from her counsel, Ms. Devost added: "I never heard Mr. Noël make similar comments about other women." As for Ms. Parisot, she contradicts Ms. Goyer in her testimony and adds: "Jean-Eric has too much respect for women to say things like that." This raises doubt about the credibility of Ms. Goyer's testimony and shows that it is not conclusive.

Lastly we looked at the testimony of Ms. Goyer. It is full of contradictions, is confusing and lacks detail. She said that she was at the photocopier with Ms. Devost looking at comic strips. Mr. Noël allegedly saw them and said: "Don't worry, she is the one who is fat". First of all, Ms. Devost does not corroborate this testimony. Secondly, under cross-examination, she was unable to give any details about anything; not the time that this incident occurred, who was involved or who the comment was aimed at. She does not even remember which comic strip it was. This is a very serious accusation and it must be supported by much more than this.

As to the allusions to "chicks" or "brood mares", she does not remember anything; not where, not who, not when (maybe it was 12 years ago! . . .), nothing. And yet, at the investigation, the testimony of Ms. Goyer and J. Devost was considered to be more credible. Exactly the same thing is repeated in the argument and indeed about all the items.

Mr. Noël has steadfastly denied this story. He learned during the hearing that it referred to Ms. Goyer. Consequently, it is not surprising that the grievor's explanation at the hearing is not part of the investigation testimony. Nor was there anything from Ms. Devost or Ms. Parisot during the same investigation. If, during the investigation, he was asked a vague questions similar to : "have you ever laughed at a female colleague because she was fat or have you ever compared a woman to a cartoon strip" without mentioning the colleague's name, his answer is completely plausible and does not in any way contradict his testimony before the Board. Not only that, but there was no mention of the "fat Janelle" during the investigation.

In light of these observations, how can the credibility of Mr. Noël's testimony be questioned on the basis of an explanation HE COULD NOT HAVE GIVEN BEFORE? We must not make the same mistakes that the investigation committee made. That investigation was handled very poorly and it led to biased and unfounded conclusions. A review of the testimony given before the Board certainly cannot lead to the same conclusions as those of the investigation. It would not make any sense.

Let us finish this section by adding the following: of the twenty-four people who testified in support of the grievor, more than half were women. All of them mentioned the grievor's respect for them, that he was pleasant and very helpful. Ms. Gagné expressed appreciation for Mr. Noël's conduct when she was having problems with her employer (Mr. Nolet) and needed assistance. Mention was made of his courtesy and politeness. Ms. Linteau testified that she would be proud to have Mr. Noël as a boss. That is a lot to say. These twenty-four individuals did not have any personal interest in testifying to this effect. The same cannot be said of some of the employer's witnesses. Let us add that Mr. Noël was re-elected president of the local by a sizeable majority and that the participation rate was more than 90%, the majority of union members being women.

Consequently, the picture that Ms. Goyer and a few others are trying to paint of Mr. Noël is unfounded in evidence or in fact.

4. On various occasions, made denigrating and disrespectful comments to colleagues or members of management, going so far in some cases as to undermine their reputations, in particular;

4(a) implying that François Vigneault was incompetent in performing his duties, stating on February 10, 1995, in front of colleagues, that he had received a complaint from a client about him, which was not true.

It is sometimes interesting how people remember things. On the morning of February 10, 1995, Mr. Noël arrived at Mr. Vigneault's office on the second floor. He said to Mr. Vigneault:

- i) According to Mr. Vigneault: "I have received several calls from a dissatisfied client".
- ii) According to Mr. Simard: "I am still getting complaints about you . . ." "but I want to talk to you about the parking."
- iii) According to Ms. Craig: "I have received a fair number of complaints about you, talking about complaints, there are some in the garage."
- iv) According to Mr. Noël: "I received a call from a dissatisfied client, but I solved the problem."

Now let us put the players back at the scene. Mr. Vigneault was definitely in his cubicle. He had to have been talking to Mr. Simard because the latter testified that the grievor arrived and interrupted them. Therefore they were close to each other. Ms. Craig was in the cubicle beside that of Mr. Vigneault. The latter testified that when Mr. Noël mentioned "several calls", he immediately asked him for an

explanation. This testimony does not make sense when compared to the other three versions.

Neither Mr. Simard nor Ms. Craig mentioned in their testimony that Mr. Vigneault asked Mr. Noël for explanations. Neither of them heard the same thing. And if we compare it to what Mr. Noël says he said, he did not have to give an explanation because the problem had been solved.

This type of situation not only leaves a bad taste but it is somewhat hard to digest. The day is February 10, 1995, just a few days before Mr. Vigneault files his complaint (E-6) on February 15, 1995. In that document, his story is different again and does not match the versions given by Mr. Simard and Ms. Craig. In the second paragraph he writes: "When I asked him the client's name and the nature of the problem, he said that that was not why he wanted to see me, but rather to talk about the parking." Curiously, he does not mention Mr. Simard or Ms. Craig. Things are not much better in Exhibits P-21 and P-24, the testimonies at the investigation.

Such differing testimony from people who were in the same place at the same time cannot be accepted.

What is even more serious and shows a lack of professionalism is to then conclude: "The evidence in 4(a) is conclusive to the effect that INJURIOUS COMMENTS WERE INDEED MADE ABOUT MR. VIGNEAULT'S COMPETENCY (the capitals and underlining are added).

What was actually said, what was injurious, which comments alluded to incompetence on the part of Mr. Vigneault? If we knew who had said what, perhaps we could then talk about conclusive evidence. Certainly in this context. Mr. Noël's version is equally credible and even better, because it has been consistent.

4(b) In late April 1995, he mentioned to Francine Caya, in front of François Vigneault and other employees, that there finally was someone competent on the parking committee.

According to the testimony before the Board, three people were smoking in the garage (F. Caya, S. Boucher and F. Vigneault). Jean-Eric Noël arrived and said to Ms. Caya: "Good morning, Ms. Caya, congratulations on your appointment; heaven knows we can use competent people." How is this statement INJURIOUS?

The parking situation had been the subject of numerous complaints for a long time. It was the source of strong discontentment among employees at the St-Laurent CEC. The grievor as actively involved in this issue. There is no doubt

that as president of the local, Mr. Noël was happy that Ms. Caya had been appointed to the parking committee.

If we look at this testimony, it is interesting to note the following: neither Ms. Boucher nor Ms. Caya said that the words were directed to Mr. Vigneault. He himself said only that: "I felt that the remarks were aimed at me". It was Ms. Caya who added, after the grievor left: "Is he that stupid?" It was Ms. Boucher who, after the second election, went to see Ms. Pothier and Ms. Miner to ask how to go about getting the executive changed (see her testimony on this point).

In his testimony, Jean-Eric Noël confirms that he made these comments. He did not deny them. As to the conclusion that these were INJURIOUS words, he is certainly within his rights to deny it. And that is what he did.

4(c) speaking of Guy Bélanger, he said that he was unable to perform his duties properly.

In order to assess as fairly as possible the value that should be attached to this testimony, it is important to know what Mr. Bélanger thought of Mr. Noël. During Mr. Bélanger's cross-examination, there was a great deal of time spent to find out when things changed with Mr. Noël and especially how. Here is his testimony on this matter.

Initially their relationship was friendly. Mr. Bélanger felt that Mr. Noël wanted to help him fit into the organization. They talked about everything. According to Mr. Bélanger, their relationship changed when Mr. Noël was re-elected. Mr. Bélanger reported that there were a great many people at the meeting. He went on to say that he asked each candidate why he or she was running. Then the election was held and Mr. Noël was elected. It was at this point in his testimony that G. Bélanger stated: "I realized that Mr. Noël had apparently not appreciated my questions. I realized that I was no longer part of his group. He no longer treated me the same way. He was somewhat paternalistic. He showed less interest and less familiarity."

In response to our questions under cross-examination, Mr. Bélanger clearly said that these were his impressions, from body language. That Mr. Noël never said anything to him to confirm these impressions. As for "body language", it can be interpreted in as many different ways as there are individuals. Mr. Bélanger never received any direct explanation from Mr. Noël.

It is remarkable to note how many incidents or how much testimony is linked to these infamous elections at which Mr. Noël was elected president. It is also interesting that,

according to Mr. Bélanger, it was these elections that changed his relationship with Mr. Noël. These were his impressions, based on Mr. Noël's body language . . .

We will not reiterate here all of the testimony relating to the incident that led to Mr. Bélanger filing his complaint (E-5). One thing, however, stands out. According to Ms. Brisebois, she did not ask Mr. Riendeau, Ms. Doucet or S. L'Abbée about this incident. They were possible witnesses of the exchange.

Only Ms. Royer testified at the hearing. She claims to have heard what Mr. Noël said to Mr. Bélanger but she was unable to remember the exact words. This is quite strange since she added: "If it had been me, I would have slapped him." This testimony cannot be accepted. With such a strong reaction, she should be able to remember what was said.

Mr. Bélanger said that when Mr. Noël saw him, he got up and spoke loudly so everyone could hear him. He even said that there was no one on the line. How can he make such a statement? Perhaps this was another impression or another interpretation of Mr. Noël's body language.

We do not wish to be facetious. We simply want to show that, when accusing someone of trying to destroy your reputation, it is important to make sure things happened as you claim they did.

No one was able to confirm the words that Mr. Bélanger claims Mr. Noël said. This is crucial since this complaint is what triggered the investigation. The grievor's testimony is unquestionably more thorough and more logical given the circumstances around this event. The big question is why the employer did not call Mr. Riendeau to testify?

There was a longstanding issue between Mr. Bélanger and Mr. Noël concerning a computer problem. It had been going on for almost two years. It seems that it was Mr. Laurendeau who was finally able to solve the problem (see P-9). He was modest during his testimony: the full meaning of the content is clear in the written version. Mr. Bélanger, who received a copy of P-9 certainly must not appreciate these findings. Note that "WRITTEN WORDS DO NOT GO AWAY".

As for Ms. Gohier's story that she allegedly heard Mr. Noël tell Ms. Janelle that Mr. Bélanger was incompetent, Ms. Janelle never mentioned this incident during her testimony. That is why Mr. Noël has always claimed that he never said about Mr. Bélanger: "he was incompetent and he did not know how to do his job".

As for what Ms. Devost allegedly heard, it does not tell us much. There was a discussion between the two, Mr. Bélanger

and Mr. Noël , they were speaking loudly. She was not there with them, and all that she heard of this altercation was Mr. Noël allegedly saying: "did not know his job". As for the details, such as the location, date, time, context -- none of that was adduced. It is certainly not conclusive. Was it in 1990, 1992 or 1995 -- she does not remember. We submit that Ms. Devost's testimony should not be taken into consideration on this issue and we believe that Mr. Noël's version is much more credible.

Lastly, we would like to point out that Mr. Noël explained what happened at length. He adduced documents in support of his version of the incident: P-9, P-44, page 2 of the PER, P-47 (the famous list) and P-52. He gave a very good chronological account of the events that led him to say what he said on the telephone, without demeaning or humiliating Mr. Bélanger. He even indicated to whom he was speaking. He knew him, as did Mr. Bélanger.

4(d) He said that Claude Tremblay, Investigation and Control Officer and union treasurer, was no good.

One has to really be full of malice or truly detest someone to the point of not being able to sleep in order to testify to such nonsense. That is certainly the case with Mr. Bélanger when he made this statement. He has a tendency to manipulate words in an insidious and especially dangerous way.

It has been clearly established by both Mr. Noël and Mr. Tremblay that they are the best of friends and have been for a long time, that they played tennis together and that they got along very well. Further, Mr. Tremblay was the treasurer on Mr. Noël's union team. Mr. Tremblay, Mr. Rinfret and Mr. Noël have known each other for a long time.

In testifying as he did, Mr. Bélanger took part of a sentence, took it out of context and gave it a perverse and harmful meaning, betraying his friends and stabbing them in the back. It is a very serious matter for Mr. Bélanger to make such a statement, which is not corroborated by anyone and certainly not by the two persons concerned. In our view this is a very revealing claim, especially when we know conclusively that Mr. Bélanger treated a sick woman, who is now dead (Ms. Lachapelle-Vérité) like "DIRT", a woman who in the words of several witnesses was a "lady" in the true sense of the word. Not only does Mr. Bélanger appear to lack manners but he has also shown that he lacks RESTRAINT, that his impressions appear to be based mainly on somewhat questionable feelings about people who are not part of his circle. We submit that this individual does not have the necessary objectivity to be considered a credible witness. His comments are vicious and vile, as are his descriptions, and

his claims are not corroborated by anyone. That is all for Mr. Bélanger.

At both the investigation and the hearing, Mr. Noël has steadfastly stated that Mr. Tremblay was and is his friend. Mr. Tremblay testified for the grievor and said that he took this story with a grain of salt.

We therefore submit that this story about being "bad" and a "mole" is not credible, is unsubstantiated, is definitely not corroborated by anyone, and comes from a witness who is not credible.

4(e) He treated Denise Hébert haughtily, in particular, by saying to her, "you will be quiet, you will speak only when I give you permission".

6 (a) His conduct toward Denise Hébert contributed to ruining her health by causing her to have an unhealthy fear of being with him, an inability to perform her duties in the same office with him and even anywhere in the Montréal Island network, for fear of running into him.

6(b) The events involving Jean-Eric Noël related to the testimony of Denise Hébert at an appeal filed by Jean-Eric Noël with the Public Service Commission when he stared at her "menacingly" during her testimony.

6(c) Jean-Eric Noël's actions to convince Denise Hébert to rearrange the furniture in her office, his comments and his frequent passing back and forth in front of her office, culminating with his comments, which were perceived as threatening when, pointing his finger at her, he ordered her to be quiet and to speak only when he gave her permission.

6(d) His allusion to the fact that he had a large variety of guns in his house.

6(e) His blocking her entrance to the garage for about five minutes until a member of management arrived.

6(f) Jean-Eric Noël's allusions to the fact that someone other than she would be selected for a position in Lachute.

We have combined in 4(e), the points raised in the employer's argument under items 2(I), 6(a), 6(b), 6(c), 6(d), 6(e) and 6(f), those points relating to Denise Hébert. However, we will not reiterate what was written in 2(I), except to say that two full years went by between the appeal incident and the others recounted in the testimony.

Let us talk about the incident with the table. At the time, Ms. Hébert was an unemployment insurance investigator.

Her furniture was arranged in such a way as to be unsafe for her clients and even more for herself. It was particularly dangerous in the event that a claimant was dissatisfied and became violent. Mr. Noël was an active member of the health and safety committee and he explained to Ms. Hébert that she should rearrange her office to give claimants more room to come and go from interviews. There was the risk of an accident occurring.

The employer called two witnesses to support this allegation. Mr. Doucet stated: "I stopped, I heard an argument, Mr. Noël went in and said to Denise: you will be quiet, you will speak only when I give you permission to speak, be quiet. I was afraid for Denise . . . It calmed down and then I left. I was afraid someone would get hurt."

As for Ms. Hébert, she said, inter alia: "Our offices were small, we had to rearrange them. We had to leave more room for clients. Mr. Noël went by my office and said that the way in which it was arranged was not legal. Ms. Lachappelle had said the same thing. That is when Mr. Noël said: you will be quiet, you will speak only when I give you permission to speak, while pointing his finger at me. I was shaking - I went to see the Director and told her (Ms. Boisvert). He came back later with my supervisor, Mr. De Chantal. He sat down in the client's seat. Mr. Noël said:- the client can hit you, you might get hit-. I took that as a threat to me by him. I did not leave it there, I told the Director."

Ms. Boisvert's testimony is quite brief on this matter. She remembers a vague incident, she did not follow up on it. As for Mr. Doucet's testimony, it differs with respect to what was said.

Mr. Noël and Mr. De Chantal testified about this incident. It occurred in the presence of his supervisor, Mr. De Chantal, and Ms. Bouchard, the Assistant Director, Ms. Lachapelle and Ms. Parisot. Mr. De Chantal testified that it was he who mentioned that she could get punched or hit by a claimant because the claimant might feel trapped. Afterwards, she rearranged her office appropriately.

Ms. Hébert is constantly seeing Mr. Noël's menacing eyes, both at the appeal and at the time of the incident in the office. However, at the appeal, she stated that Mr. Noël did not threaten her. In her testimony at the investigation, she spoke of Mr. Noël's hunting rifles and gave the impression there had been a threat. Under cross-examination, she said that Mr. Noël did not talk to her about the guns, it was someone else; she did not know who or when.

As for the incident at the garage door, Mr. Rinfret testified about what happened. Ms. Janelle was also there. Therefore,

with the incident of the garage door, as with the poorly-arranged office, MANAGEMENT WAS AWARE OF WHAT WENT ON and decided to do nothing. This was also the case with the appeal hearing. Mr. Noël did not know until recently that the car behind him was that of Ms. Hébert. It is not important, however, because Mr. Rinfret's and Mr. Noël's testimony is very similar. Ms. Janelle was silent on this issue. No follow-up, no mention, no reprimand AT THE TIME. Nothing until the dismissal, several months later. Ms. Hébert even testified under cross-examination that Mr. Noël did not even look at her that morning outside the garage. Ms. Hébert may have been frightened but it was not of Mr. Noël because he did nothing to make her afraid.

She said that she had been afraid of Mr. Noël since the appeal hearing, which did not prevent her from working with him close by for several years. She attended the union's election meetings. She made a scene at the last union meeting. Carole Lalonde set the record straight in her testimony. She provided the necessary explanation, which was that persons on sick leave did not receive the notice.

As for the story of a position that Ms. Hébert wanted in Lachute, Ms. Linteau's testimony to shed some light on this supposed threat. Ms. Linteau' was interested in the position in Lachute as well and she asked Mr. Noël for information since he lived in Lachute. In the end, Ms. Linteau decided she was not interested in the position and Ms. Hébert obtained it on an acting basis. There was no basis for complaint.

When Ms. Hébert wanted to return to the CEC, it was Mr. Nolet who told her on the telephone that the employees did not want to see her anymore. As for saying that Mr. Noël was involved, there is nothing to support this claim. On the contrary, it is apparent that Ms. Hébert had serious problems with her colleagues to the extent that a supervisor had to tell her about it. She stated: "in April 1994, Jean-Marc Nolet told me that my colleagues no longer wanted me. They all ignored me and did not even want to say hello, including M.-C. Baigner, E. Parisot, D. Clermont, F. Caya and Ms. Lachapelle. After that I went to see Ms. Miner".

Something else contradicts her claim of an unhealthy fear of Mr. Noël. She stated that she did not want to work at the St-Laurent CEC any longer, not even on Montréal Island, for fear of running into him. However, she attended union meetings (she was not alone, she says, but neither was she at the office) and she asked for a transfer to Lachute where Mr. Noël lives only two blocks from the CEC.

Since then she has been sent to St-Jérôme, where she thinks that she saw Mr. Noël 's "menacing eyes" in a black jeep. It is obvious that this person has a problem. What is it? No one

knows and no objective medical or psychological evidence was adduced to explain the condition from which she suffers. We most strongly object to the allusion made by Ms. Miner to this effect. Ms. Miner is neither a physician, nor a psychiatrist. She cannot therefore testify to this effect.

As for the statement in the argument that "by his conduct Jean-Eric Noël contributed to ruining her health . . .", we submit that the employer did not provide any witness to this effect, that no evidence was adduced to this effect and that this allegation cannot be accepted. It is unfounded and has not been proven, neither in law nor in fact. However, it is a very serious allegation . . . the fact that the employer includes this allegation clearly shows bad faith.

As for us, we suggest to you that Mr. Noël's testimony about this witness was very restrained and that our conduct during the cross-examination was very delicate and respectful of this person's state of health. However, this should not be interpreted in any way as an admission by us of the problem Ms. Hébert is experiencing.

5. He overstepped his bounds in certain instances relating to parking and disregarded agreements reached with management concerning the local parking committee. His insistence on personally overseeing each vehicle parked in the garage, giving orders to members of the committee and to management about certain situations, and trying to assume authority over others contributed to creating an unhealthy climate.

We will not go over all that has been said about the parking policy and the CONFUSING role of the parking committee. You have only to reread the minutes of the union-management meetings (P-27) as a whole from March 1993 to April 1995, to see that parking remained a problem, even after the committee was set up.

The committee's role was vague and ineffective; this is immediately clear from P-4. Let us explain.

This policy sets forth the principles governing the allocation of parking spaces. It sets out the criteria and categories, as well as the conditions for eligibility and, finally, parking fees. Next, five conditions are listed. These conditions must be met by the parties, that is, the local parking committee. Inter alia, the committee must ensure that conditions (a), (c) and (e) are respected by each holder of a parking permit. Administrative services must ensure that conditions (a), (d) and (e) are respected: the same (a) and (e) as the local committee.

The first observation is that no one was responsible for (b). The rest is equally confusing. The fact is that for years

parking had created problems and was still an issue at the time of the incidents. Mr. Bélanger parked where he was not supposed to. This has been clearly established. The fact that he did overtime is not a factor. He did not park in the space assigned to him. That is a fact.

As for the grievor, he had his part to play. He did so. Mr. Noël maintains that he did not have to remove Mr. Vigneault from his mandate with respect to parking and he did not do so. He stated this at the investigation and at the hearing. Ms. Parisot confirmed this during her testimony and that is why he wanted Ms. Parisot as a witness in connection with the incident with Mr. Vigneault. The same applies to Ms. Mathieu. Further, Ms. Mathieu did not make any mention, either at the investigation or at the hearing, of a threat to tow C.-A. Georges' car.

Lastly no one among the employees or management complained about Mr. Noël's behaviour in connection with the parking. The employer did not take any action at the time.

7(a) Mr. Noël's overall behaviour had a major detrimental impact on the quality of working life of his colleagues. Several members described Mr. Noël as, among other things, arrogant, unpredictable, irrational, unstable, lacking self-control, a "busy-body", and someone who bothered everyone.

We reviewed the testimony of Mr. Doucet at the investigation and at the hearing. We did not find the passage where he allegedly said: "I saw him shout and lose control". Mr. Doucet was careful to explain that he was "burned out" but that Mr. Noël was in no way to blame, even though he added later that it had not helped. This tells us nothing. Mr. Doucet's testimony is very vague, lacks specifics, contains only generalities, such as "head full of steam", "I did not feel well", "I felt personally attacked" (when Mr. Noël spoke to him of an appeal of the investigator's position). - "No one said that blood was going to flow" - No examples... As for his explanations about Ms. Hébert, we have already covered this under items 4(e) and 6.

What happened at the appeal hearing has already been covered in depth.

Ms. Royer testified that she felt Mr. Noël was too extreme. However, we need to put this statement in context. It was the reason she gave for deciding for whom to vote at the union elections at which she said: "Jean-Eric Noël seemed too extreme as president, I felt that the other group was more for the people than Jean-Eric Noël's team". She also testified at the hearing and at the investigation that she and Jean-Eric

Noël were neither enemies nor close friends, therefore their relationship was neutral.

All of the other statements relating to this issue were made by managers.

Ms. Boisvert never gave any concrete examples of what she had said.

At the start of his testimony, Mr. Laforêt stated: "I have never had any problems with Jean-Eric Noël. There is a good atmosphere and good relationship". In July 1994, he felt that Mr. Noël was performing his duties satisfactorily. He mentioned Mr. Noël's interest in meetings. We did not find any examples to support this statement, which is taken out of context.

As for the "bull" story, we can only laugh. Ms. Georges herself decided that this gesture was directed at Ms. Janelle. We don't know what to say. One has to be really desperate to make up such a story. Moreover, according to her own testimony, she found it amusing.

As for Mr. Nolet, his testimony is largely biased by his frustration in face of management's alleged inaction. He wanted the Director to rap Mr. Noël's knuckles and the Director did not think it necessary. Mr. Nolet [sic] of having a hostile and belligerent attitude during meetings. This was not the case. Mr. Noël never received either a verbal or written reprimand to this effect. Many witnesses stated the opposite of what Mr. Nolet claimed. This claim cannot be accepted.

7(b) Jean-Eric Noël is also described as a person who lacks respect, who is against management and whom one prefers to avoid.

Once again twenty-four people came to contradict this statement, including two managers, Robert De Chantal and Robert Allard; all of the witnesses stated that Mr. Noël was respectful. Ms. Linteau even added that she would work for Mr. Noël.

Further, the minutes of the union-management meetings and of the meetings of the health and safety committee reveal the opposite, that Mr. Noël knew how to get along with management, no problem. Moreover, no one ever mentioned that there was a problem.

As for the comments cited in the employer's argument, what can we say? Mr. Doucet was never able to give a single example of his claim. What did Ms. Royer give as an example? Nothing! These are vague generalities that are unfounded in fact and in law. Ms. Brisebois claims that Mr. Noël did not

show R. Royer respect when he moved her partition. When he returned from sick leave, Mr. Noël noted that his office had been rearranged. Robert Allard testified that he noticed the same thing and that he and Mr. Noël moved Ms. Royer's partition about one foot when Ms. Royer was not there. Does this criticism apply to both employees? Or, we should say, to each of them separately. Once again there are no grounds.

It would appear that, in this case, the employer is angry with Mr. Noël for breathing. This is a malicious attack by a few individuals: G. Bélanger, Mr. Nolet and Ms. Janelle, in particular.

As for the statement by S. Boucher, it does not appear anywhere; not in her testimony and not at the investigation (she did not say anything) (P-23).

7(c) Employees also mentioned that Jean-Eric Noël is aggressive, verbally abuses people and likes making people afraid. Some people even considered him to be psychologically deranged, a time bomb. Most employees preferred not to complain for fear of reprisal.

7(d) Some of Jean-Eric Noël's own comments are examples of verbal abuse or disrespect and were intimidating and/or injurious to his colleagues.

It is important to point out at this time that never during his eighteen years of service in the Public Service has Mr. Noël ever received, in his personnel file or his performance evaluation reports, any complaint, any warning about harassment, with respect to anyone. The two medical reports already cited state that Mr. Noël is a normal person, working effectively (P-54 and 55).

The impression that the employer is trying to create here is unacceptable in law and in fact. It is purely and simply a repetition of unproven actions which the employer wants to be perceived as damning. We have already offered our opinion on Mr. Doucet's testimony.

How does one explain the fact that Ms. Bélanger, who was the Director's secretary, who also typed documents and analyses for Mr. Noël, who worked with him for a long time, and whose office was beside that of Mr. Noël, never complained to the Director or to Mr. Noël? During all these years, she never displayed any so-called fear, either to her boss or to Mr. Noël. This is very strange to say the least.

As for the incident which occurred in February 1991, we firmly maintain the same objection. Nothing relating to this incident should appear in this file.

Ms. Janelle was made nauseous simply by seeing Mr. Noël's car. This is easy to say but there is nothing to support such an allegation.

Ms. Craig talks about Mr. Noël pointing and his menacing eyes. This goes back to the training incident. The person who came from Immigration to give the training made racist comments. Ms. Craig claimed that: "Mr. Noël pointed his finger at me as though to accuse me. I told him to stop being annoying, stop mixing your union business in everything." She also testified that Mr. Noël wanted to file a complaint against her in connection with this incident. There was no complaint, nothing, not even a hint. Mr. Nolet allegedly told her that no one wanted to "back him up". Mr. Allard and Mr. Tremblay also testified that the training incident and the incident involving Ms. Craig were no big deal, that Mr. Noël had remained calm. In conclusion, it is worth noting that Mr. Noël has never filed a complaint against another employee.

We have already covered the comments by Ms. Devost.

Mr. Vigneault felt trapped . . . behind his desk on February 10, 1995. He was surrounded by colleagues, which did not prevent him from going down to the garage with Mr. Noël and Ms. Parisot to see what was happening and to check out Mr. Noël's claims. People seem to have "fears" which quickly disappear, especially when something happens.

We have already covered the subject of Ms. Hébert.

As for the statements by Mr. Doucet, we have already discussed them, especially the comment about "blood will flow". Mr. Noël did not say this to Mr. Doucet and the latter confirmed this in his testimony.

"When I have a target, I never miss" - (L. Simard). Mr. De Chantal, R. Allard, R. Laurendeau and C. Tremblay all testified about this statement and completely negated the nature of this allegation. Mr. Noël learned of this comment for the first time when he read Mr. Simard's testimony at the investigation. Prior to that, there had never been any mention, no complaint, nothing. "I have a long memory" (Ms. Hébert and Ms. Gohier). There is nothing in the investigation about this. We do not know why they have remembered this statement now; no examples were given, no details nothing about when, etc. . . . It is very difficult to respond to such a statement. It cannot be accepted.

ARGUMENT:

The employer bases its argument on several criteria and cites examples to illustrate these criteria. All of these examples

have been analysed and evaluated in the preceding chapter. We will not go through this again. However, we strongly believe that the conclusion as to the seriousness of this matter is unfair, arbitrary and poorly founded, and definitely points to a very serious denial of justice.

If these examples are evidence TODAY of a serious problem, then they were equally serious YESTERDAY, that is, at the time that these incidents occurred. This is one of the employer's greatest mistakes over these years. Contrary to what Ms. Brisebois stated in her testimony, all of these facts were known by the employer at the time that they happened. The individuals concerned testified extensively to this effect in response to our questions.

Let us take the example of the appeal hearing, the decision from which was adduced as Exhibit E-14. The employer cannot plead ignorance, it had the document. In the case of the softball incident, Ms. Janelle is part of management, she said nothing at the time, she did nothing. The tape recorder incident is documented so extensively that the employer definitely knew about it. The same goes for all of the examples used for this criterion.

In reality, what is at issue here is the principle of disciplinary measures and how to administer them. The employer is largely at fault and the grievor should not suffer because of it.

Section 7 of the Financial Administration Act, section 106 of the Conditions of Employment Regulations, and the Staff Relations Act recognize the employer's right to manage and accordingly, its right to discipline. Sections 91 and 92 of the PSSRA are explicit in this regard. Further, based on long experience, the progressive approach to the application of disciplinary measures has been confirmed, not only in practice but especially in principle. It is the department's principle, the employer's principle. The employer did not apply that principle and that is a very serious matter.

According to the principles of disciplinary measures, Chapter III, paragraph 6, [Translation] "No unjustified delay should occur between when the offence is committed and management's response to it". It is obvious that the employer did not apply this principle in Mr. Noël's case. The same could be said for each of these fundamental principles. On the following page, under the heading [Translation] "Give objective and prompt attention to the offence", Item 2 covers the importance of prompt action. The following extract is very revealing: [Translation] "The best time to correct a mistake is as soon as possible after it has occurred, while the facts and impressions are still fresh in everyone's memory. The longer one waits, the more the disciplinary measure loses

its impact, and the relationship between the unacceptable conduct and its consequences blur". A little farther along in the same chapter, it goes on to say: [Translation] "An investigation might even determine that management was unfair, even deliberately so". And that is exactly the conclusion to which the investigation committee came in its report, Exhibit E-3, page 14, Conclusion.

[Translation] "The committee deplores management's laxness . . . As a result of the Commission's decision in 1992, management should have taken action . . . Over the years, a number of other incidents occurred. MANAGEMENT WAS INFORMED OF THE COMPLAINTS OF HARASSMENT AND INTIMIDATION . . . (the capital letters and underlining are added). Once again, management did not react with sufficient severity. . . ." Or it did not react at all. Either management decided that there was no reason to take action or it did not care about the problems. In either case, Mr. Noël should not be the one to suffer for it now.

The employer's negligence creates a number of problems of both a general and a specific nature:

(A) General:

When we mentioned at the start of this section the issue of a serious denial of justice, this is what we were referring to. How can an employee who is accused of unacceptable conduct five or six years later defend himself properly or react appropriately. He has no chance of doing so. The employer is chastising him for conduct that it has accepted for all these years. This is unpardonable and management should not be allowed to get away with it. When an employee has a complaint against his employer, there are very strict time lines set out in his collective agreement and the employee may not exceed the 25 days, otherwise the Coallier decision is waved in his face and that is the end of it for the employee; he must live with the situation.

The employer is trying to cover itself by putting together all of the incidents to which it did not react in the past and trying to justify the same end, that is, the employee's dismissal, as though it had acted in a progressive manner in each instance. We most strongly object to this approach. This is a case to which the doctrines of laches, weaver and condonation apply. We have appended several decisions, as well as an extract from Brown & Beatty. We have also included a few definitions which apply to the doctrine of laches and others.

Because of its failure to act, the employer has renounced its right to act: the delay has been too long and it must not be allowed to use these incidents to dismiss Mr. Noël. It would

send the message that, "Each incident is not serious, but we will put everything together and call the whole thing serious, which warrants dismissal". We cannot accept such an approach. If we did, what would be the use of these principles, what would be the use of laws, regulations and collective agreements? Of what purpose would adjudication be? In staff relations, these instruments set the rules, and they could be sidestepped. But we must not let that happen.

Still speaking generally, let us look at the principles described in Exhibit P-1. On the fifth page, there is a heading called "facts rather than deductions". The employer cannot claim to have applied this principle over the years. It has been lost and the reason is quite simple: too much time has gone by, the facts, specifics and dates have been lost. Consequently, it is impossible to achieve the positive objectives of disciplinary measures. In the Noël case, that is what happened. The investigation was based on vague claims: overall, they have been found to be unfounded and unacceptable. The investigation was not conducted properly; it reached biased conclusions because of vague testimony which lacked specifics and facts.

How can the employer criticize an employee for misconduct when it did not bring that conduct to his attention, when it did not take measures to correct it. On this level alone, the general level, the employer has not discharged its burden of proof and it cannot dismiss Mr. Noël.

(B) Specific:

The best example is the incident at the appeal hearing in 1992, which followed the incident on February 21, 1991, which is struck from the investigation and the file because more than two years passed without a repeat offence. Then why is the incident relating to the appeal hearing, which was held a few months later, being used IF THERE WAS NO REPEAT OFFENCE? This is unacceptable inconsistency by an employer who should follow its own rules. But let us return to the appeal hearing. When the decision was released, the employer should have reacted as soon as it was released, that is, in June 1992. It knew all of the people involved, both employees and managers. It knew Ms. Hébert. The facts gathered at that time would have been completely different from what has been gathered now. The necessary details would have been available. The employer had the right, the authority and the duty to do so. The rights of each party, both the employer and Mr. Noël would have been respected. Now, it is only the rights of the employer that we are being asked to uphold. Mr. Noël's rights cannot be respected, too much time has passed. He cannot object to the incident, he must object to his dismissal. It is quite a different situation and one that is completely unacceptable.

When we go through the evidence with a fine-toothed comb, it quickly becomes obvious that the same scenario keeps being replayed. Everything is vague, impressions, generalities, contradictions. The whole thing is like a collage that has been put together to make one believe that Mr. Noël is a deplorable individual. This is speculative and dangerous deduction and shows uncommonly bad faith. If we allow this type of conduct by the employer, all types of abuse will be acceptable in the future and the disciplinary system will be nothing more than a colossal farce, without any credibility.

Let us give you another example of inconsistency, or rather a voluntary inaccuracy showing bad faith. "Repeated offences over a long period, the same types of offences over a period of five years". Stated in this way, it is quite impressive. But in fact, it is completely false. The employer is going back to February 1991. However, under the collective agreement and according to a grievance filed by Mr. Noël, the offence has not been repeated since then. The employer therefore must withdraw the letter of reprimand. Accordingly, the appeal incident is not a repeated offence because it happened later. This brings us to the second half of 1994 and Mr. Noël is dismissed or suspended from the CEC around mid-1995. We are a long way short of the target.

What is worse is that the employer has dug up the February 1991 incident again. We objected to this throughout the hearing and we maintain our objection.

There is therefore no basis to the claim of repeated behaviour, either in fact or in law. The grievor's personnel file does not reflect this arbitrary statement under the circumstances.

Mr. Laforêt and Mr. Nolet testified at some length on this issue. There was nothing in Mr. Noël's PERSONNEL FILE. According to both managers, all of the documents adduced were in the GRIEVANCE files. We objected to these documents being adduced citing articles 33.04 and 33.05 of the master agreement. Accordingly, Exhibit E-12 should not be part of the evidence for two reasons: first because of the collective agreement since this document is part of the grievance file and second because according to page 44 of the policy, the document should have been removed after six months. This applies as well to the appendices. The same goes for Exhibit E-15. Mr. Noël never saw this document or the verbal reprimands mentioned in item 7 in his personnel file. Moreover, he has explained the incident satisfactorily. When an employee asks to see his personnel file, that is the file he is shown, not the grievance or other files. Exhibit E-17 covers this point.

Another specific impact that had significantly affected Mr. Noël's ability to defend himself is the vague nature of the harmful testimony of some witnesses. We do not need to go over it again, it is fully covered in the preceding section. These statements paint a terrible picture of repugnant behaviour, based on impressions, statements of "it seemed to me", "I felt" and "people said". And that is after months and years have gone by. We do not know if the incidents even occurred. This is very frustrating for the person at who these spectacular generalities are directed.

It was said that there were many reminders. What reminders? This is an untrue claim, a gross exaggeration. It is not supported by the evidence. The evidence shows that management did not take any action, that it was lax, etc. . . . So what is the purpose of this allegation, except to try to continue to perpetuate the bad image at all costs. We submit to you that this is bad faith.

Mr. Noël testified clearly about his relations with Mr. Laforêt and Ms. Boisvert and he assumed his responsibilities by maintaining steadfastly that neither Mr. Laforêt nor Ms. Boisvert had ever verbally complained to him. Moreover, there is no evidence which would lead us to believe the opposite. We believe that Mr. Laforêt was very satisfied with Mr. Noël's work and that his relations with Mr. Noël were cordial. We will not go over the five incidents again as they have been amply covered. We have also covered the story of the partition. What verbal reprimand was received concerning this partition? There is no documentary evidence relating to it.

There were not many reminders to no avail. Where is the verbal reprimand relating to Mr. Noël's return a day early from sick leave? It does not appear anywhere.

As to the devastating effects, we are repeating things that have already been mentioned in the previous section. We have already responded to them. However, there is one point that requires comment, namely, when the employer states: "the troubled work environment, as described by the majority of employees" in paragraph 7. It is claimed that Mr. Noël made trouble throughout the office. Remember that twenty-four of Mr. Noël's colleagues testified to the contrary. Who is going to say that they lied? What would they have to gain by lying?

It is much more likely that at least a few of the employer's witnesses had a great deal more to gain by exaggerating and inventing incidents than did the twenty-four. It was they who needed to justify a dismissal, not the others. They came of their own volition to testify on Mr. Noël's behalf. They

represent a significant MAJORITY of the office. We must not forget that.

Perhaps that is where the problem lies. Perhaps the problem is an unresolved union matter, a situation that management was unable to "manage". Let us take a look at the whole picture. This local had been without an executive and under guardianship for almost fourteen years. A group - Mr. Noël's - appears against the wishes of the establishment, both union and management. Ms. Miner was concerned and she opposed the group, twice, in fact. The employer was not used to having someone question its facts and actions. At the second election, there was an opposing group. All of these individuals made claims against Mr. Noël at the time of his dismissal. He was said to be disruptive. Perhaps he was. Both for management and for some people on the union side. Could there, by chance, have been a split within the office and management was unable to solve the problem? One thing is certain: Mr. Noël was duly elected and re-elected. Therefore he had the respect and confidence of the MAJORITY of his colleagues and we submit that he still does. This is very unusual and particularly revealing, since normally someone who has been dismissed is alone and isolated, especially when he is accused of having intimidated, threatened and shown disrespect toward his colleagues, particularly women who are a majority in this office. The picture that the employer has tried to paint of Mr. Noël does not reflect THE FACTS at all.

The employer then talks about a lack of remorse or repentance by Mr. Noël as an aggravating factor. This lacks substance in the current context. Mr. Noël cannot be allowed to deny everything with impunity but he also should not have to admit things when the facts show that he is right. He admitted that he might have seemed like a "liar" to Mr. Bélanger. He admitted having said "Janelle" once, but not "fat Janelle". But he does not have to admit to things he does not feel, if they did not exist. Mr. Noël gave the explanations about these incidents he was able to give, when he was able to do so. As for the rest, it is the employer's responsibility to prove what it claims. And we submit that it did not discharge this burden.

As for the examples the employer adduced in support of its conclusions in items 6 to 8, we have already responded to them at length.

Mr. Noël was the legitimate union president of this CEC and he carried out his duties very satisfactorily. There was no complaint from the employer to the union and none to the union from its members. When Ms. Miner referred to the tape recorder, it is obvious that she has no idea what she is talking

about. Further, she was unable to provide any of the necessary details around this incident.

In short, the management of this CEC did not know how to deal with the problems with which it was faced and did not know how to create the proper environment. Further, it did not act to solve the problems and did not provide the necessary stability for the effective operation of the office. There were many changes in management over the years. Several directors came and went. There was no sense of ownership and frustration developed. Mr. Nolet is a good example of this. This is clear from Exhibit P-31.

Lastly, we have reviewed all of the testimony and all of the documents adduced. We note that Exhibits P-51 and P-52 effectively describe the five-point incident that Mr. Laforêt raised. We submit again that the actions of the Director were taken much too late and that this is definitely unfair to the grievor. Moreover, this letter of reprimand was never placed in the official personnel file, as J.-M. Nolet testified. We therefore reiterate our objection and suggest that Mr. Noël's file was clean at the time of his dismissal.

CONCLUSIONS: REINSTATEMENT VIABLE

We request that Mr. Noël be fully reinstated in his position, retroactive to July 10, 1995, 10:30 a.m. (E-2), with full salary, benefits and monetary compensation for the injury caused to him. Our position is based on the following points:

- 1) Jean-Eric Noël's eighteen years of loyal service;
- 2) Mr. Noël has always been an excellent worker. His performance evaluations confirm this. He has often had to work under difficult conditions and his performance has been very good. Further, this fact was confirmed by a large number of his colleagues and even a few managers;
- 3) The many changes in local management at this office largely contributed to the deterioration of the work atmosphere; a lack of consistency and no sense of belonging;
- 4) The employer did not act when it should have, thereby establishing an implicit understanding of acceptance and contributing itself to the deteriorating situation for which it holds Mr. Noël accountable;
- 5) By creating vague policies, such as the parking policy, thereby making them difficult to apply. See the supervisory duties of D. Lachapelle-Vérité;

- 6) *The employer did not follow its own policy on disciplinary measures, thereby creating a blatantly unfair situation to the detriment of Mr. Noël. We raised these points as they were analysed throughout our argument;*
- 7) *The employer did not respect the collective agreement with respect to the "personnel file", and therefore did not provide the monitoring that is essential to effective administration and management;*
- 8) *The employer did not know how to manage its problem with respect to the climate in the office, where there was a split. In spite of the recommendations of the investigation committee, these changes continued. Moreover, the investigation committee had identified this fact and considered it one of the causes of the employer's "laxness";*
- 9) *The conduct of the investigation was completely unacceptable. It was biased from start to finish, having accepted vague, unfounded, imprecise testimony, contravening every rule of equity relating to investigations. The picture that remains from this investigation: there was every reason to dismiss Mr. Noël;*
- 10) *The employer did not prove that it had taken any action whatsoever concerning Mr. Noël's alleged behaviour;*
- 11) *Another FUNDAMENTAL factor in Mr. Noël's favour is the opinion expressed by many of the witnesses at the hearing. Ms. Brisebois testified that the majority of employees in the office were bothered by Mr. Noël. Let us say first that twenty-four colleagues testified to the contrary. Moreover, we heard the following from the employer's witnesses:*

(Vigneault):

"No problem at work, we work quite well together, Jean-Eric Noël and I."

(D. Bélanger):

"I did not chat with him like a neighbour, had little contact with him, things were fine."

(R. Royer):

"Yes, I knew him to see him, to say good morning and good night. No particular problem with Mr. Noël. He did not impress me. He did not bother me. He always called me "Madame"."

(S. Mathieu):

"No particular problems with Jean-Eric Noël. I have known him for 14 years. Everything was fine."

(N. Laforêt):

"Mr. Noël could come and talk to me when he wanted to. He came often. There was nothing special about his behaviour toward me. He worked well."

(L. Simard):

"I have known Jean-Eric Noël since 1992. We have good working relations. No problem with Jean-Eric Noël. I never heard him say anything against the managers."

(F. Caya):

"We did not work together much. I am of the "old school". Jean-Eric Noël was our resource person and I had no problem with him".

(S. Boucher):

"Normal working relations. I have known Jean-Eric Noël since November 1990."

(C. Craig):

"I have known Jean-Eric Noël since early 1990 - there is no hierarchical link - no problem with Jean-Eric."

(C.A. Georges):

"I have known Jean-Eric Noël for a long time, there is no hierarchical link - we go to him as the LMIA - no particular problem. In general, good relations with Jean-Eric Noël."

If we add these ten people to the 24 other colleagues, the possibility of a return to work should not bother anyone.

12) With respect to a reinstatement, it should be noted that there have been numerous changes at this office:

Completely new management team:

- *Durocher has gone to LaSalle;*
- *Hébert is in St-Jérôme;*
- *Royer is in Verdun;*
- *Bélanger now works at the network;*

- *Brisebois, Director at Laval;*
- *M. Nolet, Regional Coordinator;*
- *Boisvert, Director at Verdun;*
- *Laforêt, Director at Ste-Thérèse;*
- *L. Janelle is no longer a supervisor;*
- *As for the employees who are still there and who testified for the employer, eight of them have testified as reported in Item 11. Only J. Devost, A. Doucet, G. Goyer and L. Janelle did not make this type of comment. The picture is quite different and it is favourable to reinstatement.*

13) *Twenty-four witnesses stated they were prepared to work with Jean-Eric again, no problem.*

14) *This dismissal was an important lesson for Mr. Noël. He has learned a lot. The employer's position with respect to Mr. Noël's future conduct is purely speculative and unfounded.*

15) *The employer handled the return of the union local very badly. It made a mess of it. It had a great deal of difficulty working with an active union local.*

16) *In the current context, Mr. Noël has a clean record.*

17) *According to the employer itself, there was a period of more than two years without any repeat behaviour.*

18) *Mr. Noël pointed out in his testimony that he is no longer the president of the union local and also mentioned that his foray into unionism created him a lot of problems for him.*

19) *Mr. Noël has never displayed any insubordination.*

20) *In early 1998, in January, part of this office will come under provincial jurisdiction.*

21) *Mr. Noël is still young, has urgent need of work and knows what to do.*

The employer cited four decisions in support of its position. However, we feel it is necessary to make the following comments:

A) *Hébert decision: One has only to read it to see that this case does not share similar or comparable facts so that the same conclusion could be reached. In Hébert, the*

insubordination was established, recorded and entered in her file. There was written record of repeated misconduct placed in her file. This is different from Mr. Noël's case. She refused to meet with Health Canada physicians. Mr. Noël cooperated and the results were favourable to him. Ms. Hébert refused to follow precise, written instructions. There is nothing like this in Mr. Noël's case. When there is insubordination, there is a refusal to obey. Mr. Noël always performed his duties and work effectively, unlike Ms. Hébert. Mr. Noël never made rude comments toward managers, such as "Fuck" or "Fucking".

In Hébert, the facts adduced were precise and detailed with dates and locations, the employer's witnesses took notes at the time of the events. This was not at all the case with Mr. Noël. No notes, no specifics, only vague situations.

Refusal of Ms. Hébert's colleagues to work with her again. It is completely the opposite with Mr. Noël. Ms. Hébert did not even mention an interest in being reinstated.

B) Slattery decision

The employee allegedly committed very specific acts of insubordination:

- Refusal to return to work - did not follow the rule of "obey first and complain later".
- Refusal to report to the CSST as required by the employer.
- Refusal to hand over notes.
- Refusal to return to work on certain assignments.

These points are completely different from the situation in Noël. The Slattery case is more clear-cut and serious. There is a point of no return and that is defying the established authority. Mr. Noël was never guilty of this type of insubordination.

C) McMorrow decision:

This case involves lascivious looks and intentional staring at colleague's bodies. This case has nothing to do with the instant case.

D) United Steel Workers

In this case, the adjudicator sets out the principles which must be used when faced with a certain option. It is very

applicable and we will no doubt reach the same conclusion, that is "was Mr. Noël's dismissal an appropriate action?" The answer will be a categorical no. The facts in this decision do not correspond to those in the Noël case. "Good facts make for good cases, bad facts for bad cases." In the Noël case, the employer adduced "bad facts".

The grievor has been discouraged and harassed as a result of this situation. For several years, Mr. Noël has been wounded by actions and comments. He too could claim to have been harassed when we look at the allegations made against him, such as, pawing in the sand like a bull, looks that could kill, accusatory looks, tinted lenses, weird looks, nervous walk, he passed wind, nervous and hurried steps, walked heavily, draining, monopolizing, wandering around the floor a lot, come rushing in, etc. . . . etc. . . . etc. . . . , and there are others. Who was watching who? Is it possible that Mr. Noël was being watched all the time? And then, the employer is prepared to accept his resignation "for health reasons". Anyone would feel put down, harassed and ridiculed after such treatment. And he is being dismissed because of this?

We request that you reject the measure imposed by the employer. It is definitely not the appropriate action. A great deal of responsibility rests with the employer. It did not ACT, as was its responsibility. Mr. Noël has suffered a great deal since July 1995, both financially and morally. His losses are enormous: overdue accounts, mortgage problems, fees of all sorts, loss of earnings.

Loss of his reputation, moral anxiety, loss of confidence, family problems, no self-esteem, no work, feelings of frustration and incompetence, feelings of having been unfairly treated. Mr. Noël has endured all of this. It must be taken into consideration.

We therefore ask you to allow the grievances in their entirety.

Employer's response

[TRANSLATION]

1. At page 11 of his argument, the bargaining agent objects to any mention by the Department of the incident involving kicking the wall.

The Department agrees that the disciplinary measure given to Jean-Eric Noël in connection with this incident should not

be part of the file and cannot be used with respect to his termination of employment, given that it dates back to 1991 and this behaviour was not repeated within a two-year period.

The event was not mentioned in the argument for that purpose, but rather to illustrate Danielle Bélanger's state of mind which was affected by the aggressive behaviour of Jean-Eric Noël at the time of that incident, as well as by the latter's demand that she not tell on him, but blame the incident on a client. Since it is not possible to erase Danielle Bélanger's memory, her impressions with respect to this episode came out during her testimony.

Danielle Bélanger's fear of Jean-Eric Noël explains her reaction to subsequent events about which she testified. Her testimony also sheds light on the probable reasons for Jean-Eric Noël's behaviour toward her.

2. At page 44 of its argument, the bargaining agent objects to the filing in evidence of documents E-12 and E-15, citing articles M-33.04 and M-33.05 of the master agreement.

As for article M-33.04 of the master agreement, the Department states that the contents of E-12 and E-15 were brought to Jean-Eric Noël's attention.

a) First of all, the letter of reprimand itself was in the personnel file consulted by Jean-Eric Noël in July 1994. Furthermore, Mr. Noël received this letter. He filed a grievance with respect to it (QUE-94-MTL-015).

b) As for the remaining documents in E-12 and E-15, they were adduced in connection with the testimony of Normand Laforest, who testified about what he took into consideration when he imposed the disciplinary measure, that is, the letter of reprimand. Even if, as the bargaining agent claims, these documents do not meet the requirements of article M-33.04, which we do not accept, Normand Laforest's testimony at the hearing is in the record with respect to the events.

c) The documents in E-12 and E-15 were not placed in the employee's personnel file but in his disciplinary and grievance files, where they should have been. The documents were in the grievance file because Mr. Noël had grieved the events at issue.

d) It was also evident at the hearing that Jean-Eric Noël had obtained a copy of his grievance and disciplinary files in July 1994 (see E-17). It is clear from reading Mr. Noël's submission to Louise Tremblay on

March 31, 1995 (P-52 and P-53), at the hearing at the final level into the incidents relating to the written reprimand, that the grievor had already had access to these documents.

The Department therefore argues that it did not contravene article M-33.04 of the master agreement.

The Department also argues that it respected article M-33.05 of the agreement because the letter of reprimand of July 1994 must remain in Jean-Eric Noël's file for a minimum of two years. It should therefore have been in his disciplinary file at the time of the termination of his employment on July 10, 1995, since the two-year period had not expired.

3. At page 41 of its argument, the bargaining agent states that the Department did not apply the recognized principle of progression in disciplinary action.

The Department maintains that, even though progressive disciplinary action was not applied, the fact remains that management intervened on numerous occasions through L. Boisvert, N. Laforest, J.-M. Nolet and M. Brisebois to try to correct Jean-Eric Noël's behaviour and attitude.

The following reasons explain in part why progressive measures were not taken and show that the Department is still in favour of termination in this instance.

a) As soon as the official complaints were filed in February 1995 by G. Bélanger and F. Vigneault, management immediately responded by setting up the investigation committee. It was not until the investigation that the extent of Jean-Eric Noël's behaviour problems surfaced, along with the harmful impact it had had on his work colleagues over several years. Nineteen employees expressed their various fears about Mr. Noël at the hearing.

b) Several employees stated that they feared reprisal from him if they complained to management. These individuals included D. Hébert, D. Bélanger, A. Doucet, G. Gohier and S. Mathieu.

c) Some managers were also intimidated by Jean-Eric Noël because of his various threats about using lawyers, politicians and the media, as well as his numerous grievances and interventions which took up much of their time. Ms. Brisebois testified to this effect. Normand Laforest was so fed up that he had to tell Jean-Eric Noël that he did not want to see him in his office any more. Jean-Marc Nolet described him as "draining" and had heard from a colleague that Jean-Eric Noël was after his

head. Louise Janelle was so frightened of him that "she would literally retched". Liliane Boisvert testified that while she was Director, Jean-Eric Noël reported directly to her because "looking after Jean-Eric and providing service was too much".

d) There was some confusion around the right of a manager to take action in connection with the misconduct displayed because of Jean-Eric Noël's position as the president of the union local, and management's desire not to become embroiled in the union's business. Anita Miner, the regional representative, received four complaints herself about Jean-Eric: one from Denise Hébert about harassment and intimidation, one from S. Durocher about the tape recorder, one from G. Bélanger regarding an insinuation about his being incompetent, and one from F. Vigneault about his mandate on the parking committee and an insinuation about his being incompetent.

Decision and Reasons for Decision

In light of the many evidentiary contradictions that arose in this case, I must first make some decisions on credibility. All of the witnesses, except Mr. Noël and his father, impressed me with their openness and sincerity. Were it not for the contradictory testimony -- often sprinkled with exaggerations and poorly-concealed inaccuracies -- of the grievor, my task would undoubtedly have been much easier. In effect, on several occasions, Mr. Noël appeared to simply invent a story as he went along. This lack of credibility on Mr. Noël's part leads me to favour the facts as presented by the employer's witnesses when that version contradicts that of the grievor.

Mr. Noël's conduct shows that he was nothing more than a bully, whose irresponsible and sometimes dangerous actions certainly did not help the union cause that he claimed to uphold. The grievor constantly used his position with the union to try to intimidate anyone who did not share his confrontational approach to labour relations. The confrontational approach to unionism constantly promoted by Mr. Noël does not have any place in a civilized work environment.

Regardless of Mr. Noël 's opinion, the presidency of a union local does not constitute a licence to disrupt and disturb the work environment. This heavy

responsibility as a union representative certainly does not give one the right to intimidate colleagues who are often members of the same union, on the pretext that their view is wrong.

The employer must, however, accept a large share of the responsibility in this sad affair. Fundamental staff relations principles require that, in the vast majority of situations involving unacceptable conduct, progressive discipline must be applied. The employer has been aware for a long time of Mr. Noël 's lack of decorum and aggressive temperament and yet, for all useful purposes, it did nothing. The only disciplinary measure found in the file is that imposed by Mr. Laforest in June 1994 (Exhibit E-12). It is a letter of reprimand which details five incidents which are typical of Mr. Noël 's stupid behaviour.

Further, the investigation committee chaired by Mr. Cantin even pointed out the employer's failure to follow the fundamental principle of discipline at page 14 of its investigation report (Exhibit E-3):

[TRANSLATION]

The committee deplores the fact that the management was lax in its dealings with Jean-Eric Noël. Following the Board's decision in 1992, management should have reacted firmly and recognized that Jean-Eric Noël's behaviour showed an unacceptable lack of control.

Over the years, there were many other incidents. Management was informed of complaints about harassment and intimidation involving Jean-Eric Noël. Here again, management was lenient. The committee is of the opinion that the fact that the manager in authority was only in the position for a relatively short period of time accentuated the problem. The result was that acts of harassment and intimidation involving threats to employees occurred on a regular basis and no one really tried to put a stop to them.

In this instance, the employer also displayed considerable incompetence in the management of its records. The provisions of a collective agreement relating to suspensions and disciplinary measures and record-keeping cannot be respected if the employer entertains itself by keeping several personnel files for the same employee, while calling them different things. I certainly was not impressed with the record-keeping practices of the employer in this instance.

This brings me to the conclusion that Mr. Noël's actions would have warranted his dismissal if the employer had respected all of the fundamental principles of discipline in the work place. Given the employer's failure to act, we cannot now determine with any certainty whether Mr. Noël would have changed his behaviour as a result of the application of progressive disciplinary measures by his employer.

Mr. Noël's actions toward his supervisors and some colleagues does, however, warrant the imposition of a strong disciplinary measure. Even though dismissal is not appropriate in this instance because part of the blame must be assumed by the employer, the fact remains that the grievor behaved very badly and he refuses to admit almost all of the misconduct of which he is accused. I am therefore substituting for the dismissal imposed a twelve-month suspension without pay beginning on July 10, 1995. Mr. Noël may be reinstated at the CEC of the employer's choice in the Montréal region. To the extent described above, Mr. Noël's grievances are allowed.

Yvon Tarte
Chairperson

OTTAWA, October 22, 1997.

Certified true translation

Serge Lareau