



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA**

Bargaining Agent

and

**TREASURY BOARD  
(Employment and Immigration Canada)**

Employer

**RE:** Reference under Section 99 of the  
Public Service Staff Relations Act

**Before:** [Muriel Korngold Wexler, Deputy Chairperson](#)

**For the Bargaining Agent:** [Georges Nadeau, Public Service Alliance of Canada](#)

**For the Employer:** [Lois Lehmann, Counsel, and Anne Wallis](#)

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Heard at Toronto, Ontario,  
March 21 and 22; August 13 to 16; and November 18 to 20, 1996.  
(Written submissions filed January 20; February 28; and April 1, 1997.)

## DECISION

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On November 7, 1994, the Public Service Alliance of Canada (PSAC) filed a reference under section 99 of the *Public Service Staff Relations Act (PSSRA)* alleging that “on September 19, 1994, the Employer introduced a shift schedule on day workers without establishing during prior consultation that such hours were required to meet the needs of the public and/or the efficient operation of the Immigration Investigation Services in Toronto”.

The PSAC alleges a violation of clause 18.04 of the Programme Administration (PM) Group Specific Agreement between itself and the Treasury Board (Code: 308/89) in that the employer did not establish that the changes to the hours of work were required “to meet the needs of the public and/or the efficient operation of the Service” as specified in that clause.

The employer’s position is that it met all its obligations under the relevant collective agreement.

This matter was first scheduled to be heard on August 24 and 25, 1995 but was postponed at the request of the employer on the condition that some pertinent documents be provided to the PSAC. It proceeded on March 21 and 22, August 13 to 16, and November 18 to 20, 1996. The parties called five witnesses: Messrs. John Dorion, Michael O’Reilly, Luke Jonaitis and Philip Norrad and Ms. Christine Mamcarz. In addition, the parties submitted 27 exhibits, including a “Book of Documents of the Employer” consisting of 16 tabs. Furthermore, written submissions followed the oral hearing. The PSAC filed its written argument on January 20, 1997; the employer replied on February 28, 1997; and the PSAC filed its rebuttal on April 1, 1997.

### The Evidence

This dispute concerns the Immigration Investigators employed at the Immigration Investigation Services (I.I.S.) of the Greater Toronto Area (G.T.A.) whose hours of work were changed as of September 19, 1994. These investigators worked out of the second floor office of 1280 Finch Avenue West, in North York (hereafter called the Toronto office). According to Mr. John Dorion, who has been one of three supervisors at I.I.S., the Toronto office has been the flagship operation of the Enforcement Program. It is the busiest office in Canada and the demand for services

is at its highest during the daytime when the courts and jails are open. The I.I.S. office receives information from various sources, such as the courts, police, jails, correctional centres, employers in general, members of the public, other immigration officers, etc. Once the information is received by I.I.S., it will try to determine if there is a possible violation of the *Immigration Act* and the information is then passed on to an investigator to deal with it. There are different techniques to achieve the mandate (E-mail; personal appearance in court; interviewing the person in question; radio communication; computer information; pager; telephone; written correspondence; etc.). The investigators have support staff available to assist them in administrative matters such as the handling of paperwork; answering telephones; recording data in the computer systems; maintaining radio communication; expenditures of funds; procurement; personnel matters; etc. These investigators and their three supervisors are responsible for the identification, location and apprehension of persons who have been detained and are identified for removal from Canada.

According to Mr. Dorion, the public perceives the federal government to operate from 09:00 to 17:00 hours. Thus, most calls from the public come in during those hours and the interviews in jails also occur during the daytime. Mr. Dorion declared that the peak demand for I.I.S. services is during the day.

Mr. Philip Norrad has been the Regional Manager, Central Ontario Region, Canada, since June 12, 1996. He has been continuously employed with Citizenship and Immigration Canada since September 29, 1975. He first started as an Immigration Examiner Officer (PM-1) at Fort Erie. He also acted as an Immigration Counsellor (PM-2) and did investigations. In August 1978, he was promoted to Shift Superintendent (PM-3) and in May 1980, he became a Senior Operations Officer at the Niagara Falls office. In October 1984, he was promoted to Manager of the Niagara Falls office (PM-5) and it is during this tenure that the Niagara Falls office went from a conventional shift schedule to a variable hours of work arrangement. In the fall of 1988, Mr. Norrad became the Manager of the Fort Erie office (PM-5). In February 1990, he became Area Manager of Terminal 2 at the Pearson International Airport (acting PM-6). This was a shift-work environment. In January 1991, Mr. Norrad was promoted to Area Manager, Terminal 1, at Pearson International Airport. This was also a shift-work environment; it operated 24 hours a day even though the schedule was not conventional. In October 1992, he became the Area Manager of I.I.S. (PM-6)

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and he reported to Mr. Phil Pirie, Director, Inland Directorate, who in turn reported to Mr. Robert Land, Director General, Immigration, Ontario Region. On April 1, 1994, I.I.S. was absorbed by the Hearings and Appeals Directorate (at the time of the hearing of this matter this Directorate was called the Enforcement Directorate) and Mr. Norrad reported to Mr. Reinhard Mantzel.

Mr. Luke Jonaitis has been the Assistant Manager (PM-4) at the Toronto office since March 1994. He was appointed to that position as a result of a competition in which Mr. Dorion had competed also, albeit unsuccessfully. Mr. Jonaitis joined the Immigration Department in 1973 as an Immigration Counsellor (PM-1). He became an Immigration Investigator in 1974 (PM-2) and during his 18 years as such, he had occasion to be Acting Supervisor, Acting Assistant Manager, and Acting Operations Officer (four months). His duties as Assistant Manager have been to run the operations of the office. He has five supervisors reporting to him (including Mr. Dorion). The total complement of the Toronto office is 64 employees, including Mr. Jonaitis. In 1994, there were 36 investigators but at the time of the hearing of this matter there were only 30 or 31 at work.

Prior to April 1994, the Toronto office had two street units conducting investigations on the road in addition to one unit specializing in writing reports on permanent residents convicted of serious offenses and to cover the courts and track cases through the courts. If services had to be performed after 16:00 hours, these needs were handled through scheduled overtime. An overtime schedule was posted one week in advance. Mr. Jonaitis controlled the number of hours of overtime to be worked. The investigators interested in working overtime would initial the schedule (Exhibit 17). Prior to 1993, investigators had been authorized to work four days of scheduled overtime (Monday to Thursday). However, in 1993, and up to September 19, 1994, the four evenings of scheduled overtime were reduced to two because of budgetary restraints. The supervisors were responsible for evaluating whether overtime was appropriate according to the written information provided by investigators on the "list of calls". On this form the investigator would write the target name and all relevant information concerning his/her request to work overtime. It was up to the supervisor either to approve the proposed scheduled overtime or not to do so. Investigators on scheduled overtime worked in pairs as a team.

On March 7, 1994, the I.I.S. management team held a meeting at the Ramada Inn which Mr. Dorion attended (Exhibit 16). Shift work was not discussed at this meeting and Mr. Dorion did not raise this issue. On March 28, 1994, a second meeting was held at which an operational plan and an implementation schedule were agreed upon (Exhibit 15). On April 18, 1994, the Toronto office was reorganized (Exhibit 21). The Toronto office was divided into three "District Street Units" and a fourth unit, called the "Information Management Unit", which processed the information coming into the I.I.S. office. This reorganization had no impact on the scheduled overtime. Then, in July 1994, 12 investigators were assigned for a period of six months to a special task force called the "Joint I.I.S.-Royal Canadian Mounted Police (R.C.M.P.) Task Force". According to Mr. Dorion, this had a significant impact on the operations of I.I.S.. This task force dealt with particular cases, namely the heavy duty criminal cases ready for removal. However, all along the priorities of I.I.S. remained the same: (1) criminality (persons convicted of offenses deported under the *Immigration Act*); (2) providing services to the police community; (3) persons under removal order who had disappeared (the investigators must try to locate them); (4) persons who failed to appear for other immigration procedures, e.g. for an Immigration Inquiry; (5) tips; (6) marriages of convenience (situations where it is believed that the parties entered into marriage to circumvent the *Immigration Act*); and (7) the rest. There have also been joint forces projects, e.g. when the Metropolitan Toronto Police asks I.I.S. to join in the arrest of illegal immigrants.

The I.I.S.-R.C.M.P. Joint Task Force had a duty officers system parallel to I.I.S.' which, according to Mr. Dorion, "caused some confusion to the police forces". (Except for this declaration, no other evidence was submitted in this regard.) The duty officer was the person who responded to calls from the police or others outside normal business hours (08:00 to 16:00 hours). In the Toronto I.I.S. office, there were two duty officers; however, in the rest of the province of Ontario there was only one duty officer per immigration office. Eventually, in July-August 1994, there was only one duty officer system covering I.I.S. However, the Joint Task Force did not reduce the I.I.S.' workload after 16:00 hours.

Mr. Dorion testified that he joined I.I.S. in 1979 and he became a supervisor (PM-3) on August 25, 1993. However, on July 20, 1994, he was seconded to the I.I.S.-R.C.M.P. Task Force at 225 Jarvis Street until March 31, 1995; he volunteered to

join the Task Force. Then, from April 3, 1995 to April 12, 1996, he was a PM-3 on a special project at the Regional Immigration Office at 4900 Yonge Street. On April 15, 1996, he returned to his PM-3 substantive position at 1280 Finch Avenue West. In the spring of 1996, he became the Vice-President of Local 613, C.E.I.U., a component of the PSAC.

Mr. Dorion explained that prior to September 19, 1994, the I.I.S. was a daytime operation, Monday to Friday. He added that he started “working in this type of service” in 1979 and “experienced the approach of this service”. The I.I.S. had a daytime operation which formed the core and, if service was required, it was done immediately. In many instances, the immigration investigators had to look for individuals and preparatory work had to be done beforehand. When the courts, jails or police called I.I.S., the whereabouts of the individual in question were known. In Mr. Dorion’s experience, the police knew when to call the immigration investigators because these calls came in between 08:00 and 16:00 hours. When an immigration investigator was not dealing with these calls, time was spent developing cases, working clues (like puzzles), finding out the whereabouts of the individual in question, who he or she was, where to find him or her, etc. In some instances a determination could be made that it would be more suitable to apprehend the individual in question outside normal business hours. Policing is a 24-hour per day occupation. Mr. Dorion added that I.I.S. provided an on-call service when dealing with the police. This on-call service provided all police divisions with a notice indicating where to call. These calls were then answered by a pager service who contacted an immigration investigator on standby who in turn called back the police. In Mr. Dorion’s view, there had never been a problem with this system and he had never been told that there had been any complaint with the on-call service. According to Mr. Dorion, at the time of the hearing of this matter, this service was still in effect.

Mr. Dorion explained that this on-call service occurs when the police have a person in custody and they need advice from I.I.S. with respect to the person’s status in Canada or if an offense has been committed under the *Criminal Code* which will or might affect the person’s status in Canada. The police may also believe that this person is in Canada illegally and the immigration officer on call may decide to attend to the matter that night or wait until the next morning when the person is

apprehended and charged while in custody. It is up to the immigration officer to decide whether the matter requires his or her immediate attention.

The procedure for standby duty was as follows. A list (form) was circulated in the office and interested immigration officers would sign on. Once scheduled to work, they would be provided with a pager and their briefcase was equipped like a mini-office. The number of hours worked by the immigration officer who placed his or her name on the list (form) depended on the work and money available. This overtime assignment was voluntary and the work was distributed equitably.

When on standby duty the procedure was as follows. The police would call for information and the immigration officer would then try to obtain the information by calling a border point immigration office whose hours of operation were 24 hours a day, such as Niagara Falls or the Toronto Pearson Airport. The 24-hour operation would check the "Field Operational Support System (FOSS)" computer system and the information would be relayed back to the police.

The immigration investigators would also work overtime in circumstances other than this standby duty (duty officer). This overtime concerned work performed by the immigration investigators after business hours. The work might have concerned finding a person for removal after 18:00 hours. The immigration investigators might have accumulated a number of these cases (situations) and requested permission to work overtime. The cases would be done according to whether the manager approved the overtime and depending on the amount of overtime money available. This overtime procedure was as follows. Immigration investigators interested in working overtime wrote their name on a list (form) and, in theory, the supervisor would decide upon the work to be done. However, in practical terms, the immigration investigators would negotiate with the supervisor the priority of the case, the number of hours required and what number of hours of overtime could be authorized. When the overtime was approved by the Assistant Manager, or in his absence by the Supervisor, the dates would be written in on the list (form) and the number of immigration investigators who would be authorized to work the overtime depended on the money available to pay for the overtime hours listed. This type of overtime was called "scheduled overtime". Mr. Dorion declared that he was aware of two instances prior to September 1994 when the employer refused to

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approve this scheduled overtime. In 1991, during a period of six months there was no scheduled overtime at the “Toronto office”. No witness could recall this event except for Mr. Dorion and no explanation was provided for this hiatus in scheduled overtime. However, at the time, Mr. Dorion was working in the Mississauga office. Then, in December 1993 and part of January 1994, scheduled overtime was cancelled for a period of one month (because of “leaks to the press”).

Mr. Dorion added that the Assistant Manager might also have incurred overtime expenses and special projects might also have required overtime work. He pointed out that not all overtime incurred had a direct bearing on the immigration investigators’ overtime expenses.

In cross-examination, Mr. Dorion explained further that the Assistant Manager was the one who “signed” (approved) the scheduled overtime list (form) (Exhibit 17). The list (form) was posted during a two-week period and the interested immigration investigators wrote in their names. However, prior to posting the list (form), a decision had already been reached as to the number of investigators “required” and the days to be worked. Two immigration investigators worked per team on the overtime evening hours. Furthermore, the rule was a minimum of two teams on overtime. The supervisor and the investigator concerned would be the ones to analyze the work that had to be done in the evening. In 1992, the scheduled overtime was cut back to two evenings a week. Mr. Dorion, as a supervisor, did sign scheduled overtime when an arrest had to be made in the evening. The response to the police is required 24 hours a day. However, courts, correctional centres and parole officers operate from 08:00 to 16:00 hours.

Mr. Dorion testified that he first heard about the employer’s intention to introduce shift work a number of years back, prior to 1991. There were discussions about the concept of shift work back in 1988 and the first specific reference was in 1989 when the “Millman Report” was issued. The Millman Report contained a proposal to create a shift operation of immigration investigators at the Toronto I.I.S. office. This proposal affected only the immigration investigators of the Toronto I.I.S. office. Further discussions and comments followed this report when it was stated that the best way to run the I.I.S. operation was with shifts. These comments were made at supervisory and staff meetings. Then, sometime in 1993, the employer sent a letter to



Ms. Kathy Poulis, President, Local 613, C.E.I.U., informing the local union of the employer's intent to initiate a study on this issue. A copy of this letter went to the supervisors, including Mr. Dorion. The entire staff of the Toronto office held a vote to form a committee to represent the staff affected at the consultation meetings with the employer. The Staff Committee (local union) consisted of Messrs. Dorion, Ed Dunn, Michael O'Reilly and Harold Musetescu, who was later replaced by Mr. Robert Kuching.

In October 1993, the "Extended Hours of Work Study, Immigration Investigative Service CIC (Part I)" (Exhibit 3, tab 2) was provided to the Toronto I.I.S. staff. The Staff Committee met to discuss the contents of this study and then a meeting was convened with the employer to enter into the consultation phase. This consultation meeting took place on December 16, 1993 (Exhibit 4, tab 4). The discussions consisted of setting up the framework for consultation and clarification of the roles of the persons participating in the consultation. The employer proposed an agenda and some preliminary questions were raised by the local union. The staff side wanted to know the reason "why they were embarking on this task". The meeting lasted close to two hours. In addition, the local union requested further information and various documents (Exhibit 5).

Following the meeting, the local union made various comments on the minutes (Exhibit 6) and on December 21, 1993, Mr. Dorion wrote the following formal request (Exhibit 5):

*SUBJECT: Request for Information with respect to the  
Management/Union Consultation Per 18.08  
of the Collective Agreement*

*This is further to our meeting of Thursday,  
16 December 1993 at which time it was agreed that I would  
supply you with a list of material I would require in order to  
assist the staff in preparing a response to your Extended  
Hours of Work Study dated October 1993.*

*It would be appreciated if the following material is proved or  
authorized for access:*

- \* Access to all original data or information referenced in  
the attachments to the study*
- \* Full access to policy files covering areas such as  
Budget, Units of Business, etc.*

- \* *Copies of any report or study related to program delivery by I.I.S. undertaken at the Local, Region, and National level during the past 6 years*
- \* *Copy of the evaluation of the Niagara Falls Port of Entry CIC pilot project*

*Depending on the course that our study takes, there may be some additional requests made.*

The local union asked for a copy of the “Niagara Falls Port of Entry CIC Pilot Project” and “copies of all reports and studies concerning overtime”. According to Mr. Dorion, the employer never forwarded these documents as requested. However, the local union was successful in finding two principal reports. Mr. Dorion found a copy of the 1989 Millman Report (Exhibit 8) in a policy file and the local union also obtained a copy of the “Expanding Hours of Service of Investigation Units”. The first draft of this document was dated January 1994 (Exhibit 7, tab 6). Mr. Dorion learned of the existence of this document at a staff meeting in late February 1994. Mr. L.E. Jodoin, Director, Control and Intelligence Directorate, Immigration Enforcement Inland Service, provided Mr. Dorion with a copy of this document. The local union also received a copy from the employer.

On January 25, 1994, a second consultation meeting was held concerning the shift schedule work study (Exhibit 9, tab 5). The local union circulated its written comments to the employer’s shift work proposal (Exhibit 9(c), tab 5):

**IMMIGRATION SHIFT WORK PROPOSAL**  
**EFFICIENCY OF THE OPERATIONS**

**SUMMARY OF EVENTS**

*A constant theme in the discussion of the introduction of shift work at I.I.S. is management’s opinion that real costs saving can be realized through the use of shift work to eliminate scheduled overtime and duty officer calls. In order to demonstrate this actual overtime submissions were used during a two year period and the work done. A shift was substituted during this period and the resulting savings were estimated to be \$110,000.00. This number is considered by the staff committee to be nonsense. When one relates the issues to be considered in the Manager’s guide that affect costs (and were never considered), and the productivity that will be negatively affected during the day, the alleged savings will turn into significant additional costs. In summary, the*

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*introduction of a shift will not only reduce productivity, the per unit cost of the operation will rise.*

**STAFF COMMITTEE RESPONSE**

- *The office Health and Safety committee has never been presented with this proposal for discussion. The typical Health and Safety issues which must be addressed have not been considered. Management will have to provide shower and change room facilities. These are currently not available and will have to be installed at additional costs. Safety in the building complex is a serious concern due to the high robbery rate in the complex and the generally high risk nature of the community in which the office is located and the danger to which the staff will be exposed. There will certainly be additional costs of upgrading lighting in parking areas, improving building access and upgrading of security in the parking areas. Property Management has not been approached to evaluate lease considerations and what additional costs will be incurred to provide additional cleaning, additional air conditioning/heating, and additional electrical use. The current lease provides for standard day time operation. These issues in themselves may well wipe out the alleged first year \$110,000.00 "savings".*
- *The study recognizes that there will still be overtime costs incurred as officers who have arrested an individual at the end of their shift will have to remain and finish the documentation (afternoon shift only). We believe that the 3 hours allotted overtime is underestimating the potential for overtime costs. The study does not adequately analysis (sic) extra hours work in terms of its nature and consequent costs. Cases do not neatly work out to 3 hour time packages. Our belief is that the number is 30-40% below actual.*
- *The office has an absenteeism rate of approximately 25%. The study does not provide for the replacement of staff with additional staff through overtime (this would be the only choice as no other staff from other offices can be moved in to replace investigators due to their specialized training and equipment).*
- *The study failed to identify the additional operational costs of keeping the Investigators on the road for extended lengths of time. Items such as vehicle operation costs, and meals costs come immediately to mind.*

- *In the absence of any support staff, functions and duties usually undertaken by CR3s will have to be done by persons paid at the PM2 level. One could reasonably expect that time of at least one of the proposed four PM2s working the evenings would be spent doing support functions. This in itself is a \$35,000.00 new additional cost.*
- *The study argues that one need of the “community” which can be met with greater cost efficiency is the JFO (Joint Forces Operation). This is also referred to in the manager’s guide as an expense to be considered. Recent events show that this is a work approach which we will become involved in more and more. This (sic) is no cost analysis on this subject in the study even though this is supposed to be something of a major cost concern. Perhaps this is because the authors of the study have no experience in this area and never asked anyone who has. Our experience is that these costs are budgeted for on a case by case basis and have no part of a shift study.*
- *The authors of the study have not identified their credentials as being competent in the area of study. Neither one, in fact, has ever undertaken an offender investigation in their career and have no sense as to the time costs involved in the investigation and apprehension of an individual.*
- *Just as the afternoon shift will incur inescapable overtime due to involvement in arrests etc., so will the morning shift. This cost is not factored into the cost of operations.*

**IMMIGRATION SHIFT WORK PROPOSAL**  
**WHY SHIFT WORK?**

**SUMMARY OF EVENTS**

*The events leading up to the current shift proposal have their roots deeply imbedded in the history of the office in Toronto and in the Enforcement Program. We believe that the employer has failed to demonstrate to any reasonable thinking person that the idea is well researched, documented or presented. The process and the study fails to meet the manager’s own standard of excellence. There is no improved service to the public being requested or demonstrated. Quite the contrary, service will deteriorate from current minimal standards. Cost of producing the same or less amount of work will go up and real dollar expenditures will increase not*

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*decrease. We believe that we are undergoing this exercise for two reasons. Firstly, we have a management structure deeply envious of investigator incomes and independence. Secondly, we have management making key fundamental decision about which they know essentially nothing. The current crisis in the Enforcement program was created by the very experts who claim we can solve their financial and operational problems by placing all of our investigative staff on shifts! We believe that what we have here is harassment in the work place in the truest sense.*

- Toronto in 1989 involved the Minister's Office to investigate what was considered to be harassment on the part of the then District Administrator. Shortly thereafter the Enforcement arm of the Immigration program was moved to the geographic edge of the city, poorly accessible by transit and located in a notoriously dangerous area of the city.*
- The Director responsible at the time for the Investigative program announced publicly that "he was pissed off" with the amount of money investigators made (we have a tape of these remarks).*
- At management meetings declarations were made with respect to the shift assuming that it would be put in place and how it would be constituted even before the study was done.*
- The staff committee has been continuously misled (dare I say lied to) with respect to information. We were not voluntarily given the manager's guide to implementing shifts, and previously studies couldn't be found!*
- In order to ram through this decision personal rights were violated including the Privacy Act and the Public Service Staff Relations Act, Section 8.*
- Minutes of meetings were improperly recorded and transmitted without consultation.*
- Management postponed meetings ad nauseam then issued the edict of the start of September 19 because it couldn't wait any longer.*
- One committee member, in the middle of the consultation process was declared surplus and threatened with reassignment.*

- *Scheduled overtime was capriciously withdrawn through a thinly veiled “punishment” for person at the office allegedly talking to the media (never found or proven).*

Mr. Dorion declared that, at this two-hour meeting of January 25, 1994, the employer clearly stated that it intended to implement shift work; this was the single issue to be discussed. There was no discussion on other options, such as job sharing or “alternate work hours”.

Following this meeting, management and the local union tentatively scheduled, although unsuccessfully, a number of follow-up meetings. Then, on May 12, 1994, Mr. Norrad circulated Part II of the study (Exhibit 10, tab 7) to all members of the consultation committee on the shift schedule. Part II consists of additional information relating to the need for after hours coverage. Mr. Norrad indicated in a memorandum dated May 12, 1994 (Exhibit 10, tab 7) that he was deferring arranging a meeting to discuss this matter further until Mr. Dorion’s return from leave on May 25, 1994. Thus, the next consultation meeting took place on June 14, 1994 (Exhibit 11, tab 8). In the meantime, the local union prepared its response to the study, Parts I and II (Exhibit 12(b) and (c), tab 9).

Mr. Dorion explained that, in the local union’s view, there was more than one solution concerning the coverage of after hours investigations. The local union reviewed the employer’s study (Parts I and II) and presented its concerns at the consultation meeting of June 14, 1994 (Exhibit 12(a), tab 9). The local union objected to the introduction of a shift schedule on the ground that the employer did not demonstrate its need as provided for by the relevant collective agreement. The minutes of the June 14, 1994 meeting (Exhibit 12(a)) indicate that:

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- f) *John [Dorion] stated that there was a clear consensus among the staff members who participated in the survey that there was no justification for shift work although there was recognition that the requirement for after hours service was necessary. John reiterated that the staff do not want to be shift workers. They are, however, willing to discuss methods to solve this problem, eg. extended hours such as keeping the office open until 8 pm. There was fear that eventually shift work would go beyond what has been proposed in the*

*report. He felt that a number of options should be proposed instead of just shift work. We should look at the pro and cons as well as costs of shift work and extended hours. John was not sure that either shift work or extended hours would either save money or be more efficient. He also pointed out that productivity in the office was very good at this time.*

*g) Phil [Norrard] outlined overtime costs in this office for the fiscal year 93-94. Duty (overtime) costs were 45 to 50% of expenditure and voluntary overtime costs were 50 to 55% of expenditure.*

*h) John stated that it isn't staff's position to look for solutions but that the study should provide alternatives.*

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*m) Reinhard [Mantzel] pointed out that the overtime budget Regionally had been reduced by 25% from last year. He stated that he was very supportive in helping us meet our goals and held out hope that we may not have to face a full 25% reduction in our overtime budget.*

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Mr. Reinhard Mantzel has been the Director of Enforcement and Control. Prior to this meeting, the local union polled its members concerning the shift proposal (Exhibit 25). On June 8, 1994, Mr. Dorion circulated the staff side (investigators' representatives) decision concerning the shift schedule. The staff did not believe that there was a need to have a shift system and opposed the study (Exhibit 26). Then, in early July 1994, Messrs. Norrad and Dorion had a further discussion on this issue; they agreed on the goals to be achieved but they could not agree on how to achieve them. On July 16, 1994, Mr. Dorion sent an E-Mail to Mr. Norrad informing him of the local union's position (Exhibit 27):

*Subject: Shift Study*

*Phil, this is further to our discussion where you indicated that you would like to have more specific information in terms of an alternative to your shift proposal from the staff committee.*

*The committee has met, and the following is a statement of their position.*

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*In view of the recent developments with the Special Task Force and the likely diminished staff remaining at I.I.S., the committee felt that it does not make any sense to continue with this discussion and the staffing levels at I.I.S. are confirmed, and the overall review of our enforcement strategy by N.H.Q. is completed.*

Mr. Dorion declared that he knew that the issues to be dealt with at the consultation meetings were the needs of the public and/or the efficient operation of the Toronto I.I.S.. The staff side went through the study and concluded that the proposed shift work would not provide better service. “They” looked at the overtime expenditures and the actual work done by the investigators during this overtime. The staff side found that they did not see the analysis and the impact on the job in the same light as the employer. Their approach to achieve the same overtime savings was different. The local union did not see in the employer’s study how the savings could be realized through this shift work. In their view, there were other ways to achieve overtime savings. (Mr. Dorion did not elaborate further on this point, except to propose the elimination of Ms. Christine Mamcarz’ position.) Mr. Dorion spoke of “hours of work to fit the job”. He declared that he could work from 08:00 to 16:00 hours and if circumstances of his work required him to work outside the 08:00 to 16:00 hours, he could adjust his hours of work to accommodate this situation. He called this accommodation “flexible hours or alternate hours of work”. He added that this accommodation occurred when he was seconded to the I.I.S.-R.C.M.P. Joint Task Force.

In Mr. Dorion’s view, the analysis of the data found in Mr. Norrad’s report did not demonstrate the requirements under paragraph 18.04(a) of the relevant collective agreement. Mr. Dorion reviewed in detail the arrest statistics (Exhibit 3(b), page 4) and pointed out that 58.1 percent of the arrests were made during the 08:00 to 16:00 hours whereas 39.9 percent were made outside those hours. The employer proposed a standard shift from 16:00 to 23:00 hours. According to Mr. Dorion, the difference of 41.9 percent (100 percent - 58.1 percent) does not identify the number of cases that could have been dealt with during the daytime business hours. Moreover, the 41.9 percent does not reflect accurately when the arrests could have occurred. Mr. Dorion was of the opinion that the employer should have looked at individual arrests to determine if the arrest had to be made outside normal hours of work. Clause 18.03 of the relevant collective agreement provides that “the scheduled work



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day shall be seven and one-half (7 1/2) consecutive hours, exclusive of a lunch period, between the hours of 7: a.m. and 6 p.m.”. Mr. Dorion added that the employer did not propose a shift to cover the period between midnight and 08:00 hours and he questioned the arrest statistics for the period 16:00 to midnight because they included the arrests made by the duty officer. Moreover, without looking at the case files there was no way of knowing how many of these arrests could have been made during the day. Mr. Dorion insisted that the busiest time for the I.I.S. office was during the daytime. However, Mr. Dorion did not know the level (number) of staff required to cover the demand for services in the evening. In his view, the police see the I.I.S. as the “immigration police”. Since the police have a 24-hour a day coverage with three shifts, their expectation is that I.I.S. also cover 24 hours a day. The I.I.S. office deals predominantly with the Metropolitan Toronto Police Force which is a 24-hour a day, seven days a week function. This police force requires the I.I.S. to respond to its needs. Mr. Dorion could not say how many immigration investigators were required to respond to this police force. He suggested one duty officer with a pager. In his view, the study made no link between the peak hours of the police (16:00 to 02:00 hours) and the necessity for the immigration investigator to be at work. Moreover, the R.C.M.P. had a section called the “Immigration and Passport Unit”. Part of this unit’s mandate was to investigate possible violations of the *Immigration Act*. Thus, in Mr. Dorion’s view, there may have been an overlap between that R.C.M.P. unit and I.I.S. but he had no information or data on how this R.C.M.P. unit’s work affected I.I.S.

Mr. Dorion pointed out that the study (Exhibit 3(c), tab 1, “Cost Factors”, and Exhibit 3(b), tab 2, page 6, “Attachment 5”) does not differentiate between overtime costs that had to be incurred and those that could have been saved had the (overtime) work been done in a different time and/or way. Mr. Dorion explained that if on call, the investigator may work both the duty call and the overtime work. These two costs could not be separated. However, Attachment 5 of the study (Exhibit 3(b), page 6, tab 2) had both costs mixed together: the scheduled with the discretionary overtime. The study has not identified what proportion of the overtime cost for 1992-93 (\$597,000) was actual duty work and how much of that had to occur between 16:00 and 24:00 hours. Moreover, the study makes no reference to actual cases of arrest. However, the study found that during 1992-93, approximately 48 percent of the \$597,000 was spent on duty and 52 percent on scheduled overtime (page 6).

Mr. Dorion did not know where the employer got these numbers. In addition, the study indicates that “the overtime that was currently being expended during the period 16:00-24:00 (approximately \$422,000) will be reduced significantly if functions performed on an overtime basis are performed by officers on a regularly scheduled basis” (Exhibit 3(b), page 6, tab 2). Mr. Dorion commented that it was difficult to know what this paragraph means because the study refers “to numbers and not case work” concerning the \$75,000 cost to cover the standby function on weekends and midnight. Mr. Dorion’s opinion was that his argument would contradict the need for a shift since it seems to support the argument that it would be better to contact directly the Port of Entry instead of the duty officer. Mr. Dorion was also concerned that the study mentioned only the immigration officers and not the support staff (Exhibit 10, tab 7, page 2).

Mr. Dorion added that I.I.S. operates 24 hours a day, seven days a week. However, the office hours were from 08:00 to 16:00 hours, Monday to Friday, and the on-call service was used after business hours. The study focuses on arrests and reports but no distinction is made as to arrests and reports that could have been made during business hours. The productivity of each immigration officer is measured by the number of reports and arrests. Management could have dealt with unnecessary overtime so as to reduce the expenditures to meet budgetary reductions. Mr. Dorion commented that in the years 1992-93 and 1993-94, expenditures were reduced without resorting to shift work. In his view, there has never been an analysis of the work that has to be done during the day and what will happen to this work when the investigators are not working days because of shift work. Mr. Dorion insisted that there are other options to shift work since arrests could be made during business hours.

The study indicates that “25% of the workload was completed on an overtime basis (duty and scheduled) at a minimum of time and a half” (Exhibit 10, page 3, tab 7). According to Mr. Dorion, the “workload” does not accurately define the work because “the workload is during the 08:00 to 16:00 hours”. Concerning the Niagara Falls Port of Entry Service, the study found that “[this] has led to a co-operative spirit and investigators have full police assistance when making arrests of criminals and/or dangerous individuals”. Mr. Dorion declared that the staff side took issue with the Niagara Falls Port of Entry Pilot Project because the employer never tabled a report

evaluating this project. This pilot project concerned nights and weekend service. In Mr. Dorion's view, taking investigators away from the business hours to work the evening shift would mean that a chunk of the daytime work could not be done and the investigators' productivity would diminish.

Mr. Dorion also raised health and safety concerns because the I.I.S. Jarvis Street office is located in a high crime area. He had no information on whether anyone had approached the Health and Safety Committee in this respect and he personally had not approached the Health and Safety Committee to do a study on this matter. In his view, it was not the local union's duty to rewrite the study; all they had to do was to raise issues. Mr. Dorion was concerned that the air conditioning system would be turned off during the evening hours. Furthermore, "during the evening shift, the supervisor may be required to assume the responsibility of clerks and management" (Exhibit 12(c), page 4, tab 9). Mr. Dorion added that, in his view there was no supporting evidence in this study to the statement that "there will also be greater (sic) number of officers to pursue persons wanted for removal who cannot be apprehended during the day period" ("Extended Hours of Work Study, Part 2, Evidence/Fact Finding" (Exhibit 10, page 33, tab 7)).

Mr. Dorion explained that the Toronto office remains with the same number of staff. What the shift schedule does is simply remove investigators from the day shift to place them on the evening shift. In his opinion, to be equally efficient in the evening will require the same amount of support staff as during the 08:00 to 16:00 hours. Mr. Dorion questioned also the reason why the employer used the period January 18 to 22, 1993 to do the analysis of overtime charges and arrests between 16:00 and 24:00 hours (Exhibit 10, "Extended Hours of Work Study, Part 2", Appendix D, page 10, tab 7). Mr. Dorion had also concerns with the letter from the Metropolitan Toronto Police, dated April 26, 1994, where it is stated that "the most frequent number of calls for (I.I.S.) services occur between 15:00 and 20:00 hours" (Exhibit 10, Appendix E, page 11, tab 7). (This letter adds that the afternoon shift could only assist the police further by giving greater and quicker access.) In Mr. Dorion's view, this letter expresses feelings and not facts.

Mr. Dorion commented that this letter does not say that I.I.S. services are in greater demand after 16:00 hours. Mr. Dorion did not accept the data furnished by

this study in Appendices B to F (Exhibit 10, pages 13 to 16, inclusive, tab 7) supporting the implementation of a shift to 23:00 hours. In his view, this data is misleading because “we do not know what is happening during the daytime. The evening shift will affect the day work. The priority is work with the courts and jails; there will be less investigators during the daytime to deal with the criminal element and to do removals. In addition, during the evening shift productivity will be less because of a lack of administration and support staff”. The staff side did not approach the employees for their views in this regard. Moreover, Mr. Dorion added that the employer’s estimate that, even with the evening shift “... there will be unscheduled overtime costs to deal with carryover from the evening shift at the rate of 5 officers for 3 hours per week and one supervisor for 15 hours per week at a cost of \$49,900”, is not accurate (Exhibit 10, “Other Considerations”, page 34, tab 7). Mr. Dorion did not elaborate further at this point and he did not know how absenteeism (25 percent) of investigators was factored into the five-person evening shift.

Mr. Dorion declared further that during the consultation meeting of June 14, 1994, the staff side had a sense that they were not discussing service but rather a money issue. He pointed out that the study makes reference to costs even though the January and March 1994 policy entitled “Overview - Expanding Hours of Service of Investigation Units” (Exhibit 7, tab 6) seems to indicate that the issue of costs should not be a factor for a change in hours of work (page 2). The purpose of this document was to provide management with a guide for examining the need to expand hours of service outside the 07:00 to 18:00 hours core operation. This document was prepared because there was a national concern about all immigration investigation offices and there was a need to be more cost-effective and efficient. A committee was struck to look at this need and the result was Exhibit 7. Mr. Philip Norrad attended one or two meetings in this regard. Mr. Norrad did not write this document although he did provide some input. In March 1994, the final version was distributed to all managers and staff. Mr. Dorion recognized that this document was a guide with a general purpose. He found that it was a “fairly good document”. Mr. Dorion felt that the study proposing shift work might be biased because it was done by Mr. Norrad and Ms. Christine Mamcarz. Ms. Mamcarz had been assigned to the Toronto I.I.S. office first as an acting administrative manager and

then on special projects to prepare the technical part of the study. Mr. Dorion pointed out that Mr. Norrad was also the proponent of the evening shift for investigators. In Mr. Dorion's opinion, it seems that this study sees efficiency as related to cost and in his view Mr. Norrad and Ms. Mamcarz were not competent to do it.

Mr. Dorion addressed each concern expressed by the local union in Exhibit 12(b), tab 9. He elaborated further that there was no analysis of arrest cases found in the study. Moreover, savings had already been realized so why resort to a shift operation to realize further savings? The study made no distinction between overtime worked by investigators and other staff. Scheduled overtime is a controllable expense and it could be made expendable. The work encompassed not only police calls; there were other activities. The study did not mention the investigators' workload and it was not quantified. He recognized, however, that the investigators' presence is required; there is a constant need for their presence and the service does not finish at 16:00 hours. However, at the same time, he indicated that the study does not demonstrate that there is such sufficient demand and a necessity to require their presence 24 hours a day. During the consultation process, the discussion always came back to a money issue. There was no evidence that shift work would provide better service or improve productivity. The local union raised the concern that the evening shift only applied to immigration investigators. There were 30 investigators and five would be placed on evening shift. Thus, the local union questioned the impact of such a reduction during the daytime operations. Moreover, management expected the investigators to maintain productivity standards.

Mr. Dorion testified that in March 1994 he was a member of the management team comprised of Mr. Norrad, Mr. Luke Jonaitis (the Assistant Manager), the supervisors and the Chief of Administrative Services. The management team held a two-day session during which it developed an action plan related to the Toronto I.I.S. office where shift work was not an issue. They discussed the redeployment of staff. This management team came up with a set of recommendations on how to improve services and, in his view, as a result the productivity of the office went up. He explained further that this reorganization of the office took place in the spring of 1993 whereby the "Immigration Case Management Unit" was created and the study makes no reference to this new unit.

Moreover, in Mr. Dorion's opinion, management presented no other option to the local union but shift work. He questioned why management had singled out the Toronto office. Mr. Dorion proposed that the savings sought by management be realized by eliminating Ms. Mamcarz' position. Ms. Mamcarz is at present the Regional Programme Specialist, Citizen and Inland Directorate. In June 1994, she returned to the Regional Office Inland Directorate (1400 Yonge Street). Ms. Mamcarz has been a member of the same bargaining unit and bargaining agent as Mr. Dorion. Mr. Dorion proposed that "the cut should have started there [with Ms. Mamcarz] before visiting the entire [I.I.S.] operation to change it to shift work". Furthermore, the Niagara Falls Pilot Project was never evaluated. Mr. Norrad's study estimated a saving of \$110,000 if shift work was to be instituted. Mr. Dorion commented that investigators working evenings would generate more work to be picked up by the daytime investigators who were now reduced by five. The local union raised a concern related to the air conditioning, heating, and the care and maintenance of the building where I.I.S. is housed. Furthermore, the investigators on evenings will have to do the work of the support staff and the supervisor is the most senior person in the office during the evening shift. Thus, there may be an increase in responsibilities which may affect job descriptions. Mr. Dorion pointed out that the study mentions that 25 percent of the work will be done in the new shift. In his view, this is erroneous because the shift will start at 15:00 hours and end at 23:00 hours (and not from 16:00 to 24:00 hours). Thus, the fact finding on which the study based its proposal for the evening shift refers to a different time period than the actual shift.

Mr. Dorion recognized that "removals" are a priority and an extremely important issue. However, Mr. Dorion questioned the study's statement that "there will also be greater number of officers to pursue persons wanted for removal who cannot be apprehended during the day period" (Exhibit 10, page 5, tab 7). In the local union's view, the study does not indicate the number of arrests to be made in the evening instead of the daytime. Mr. Dorion explained that the sample used by Mr. Norrad and Ms. Mamcarz must be carefully viewed because there are highs and lows in arrests and reporting. There is a hiatus in the workload during the Christmas season and the workload can change seasonally. Moreover, no mention is made in the study concerning investigators on leave or on special projects and how this would affect the work. Mr. Dorion added that the cost to be incurred because of the evening

shift is on the conservative side because investigators working evenings do not finish their work at the end of the shift; overtime would still be required. Mr. Dorion declared that the study did not follow the guidelines stated in the document entitled "Guide/Overview" (Exhibit 7, tab 6) and some items mentioned in this document were never provided to the local union. Mr. Dorion referred to the number of complaints from the public, the cost of arrests (and it varies depending at which time the arrest is made), the number of no-shows, the anticipated results with the evening shift (Exhibit 7, page 3, paragraph 5.4, tab 6).

Mr. Dorion concluded that the consultation was not meaningful because management did not address the issues envisaged by the "Guide/Overview". Mr. Dorion reviewed the document in detail and his evidence is to the effect that the employer did not address most of the issues. Mr. Dorion's comments were that consultation did not address all the work and the whole operation; there was no discussion as to the effect of the evening shift on the supervisors and support staff and the employer never provided an evaluation of the Niagara Falls Pilot Project even though the local union had requested it. The removals were not discussed, nor were the organizational structures and lines of communication. Moreover, the Immigration Case Management Unit had just been created and the local union had no clear understanding as to how the evening shift would affect this new unit. This unit was to be comprised of three investigators, six support staff and one supervisor, all drawn from the existing pool of staff. The unit would do all the preparatory work for the cases assigned for investigation and then the cases would be directed to new units located at various geographic areas. The City of Toronto was divided geographically and so were these new units. Furthermore, management never quantified the demands from the courts and joint forces operations, etc. The only issue addressed was the Metropolitan Toronto Police. Even though the local union was informed as to how often the police contacted I.I.S., it did not know how often the investigators travelled to a scene. No information was provided as to whether the police contacts required a visit by the investigator or just a telephone call. In Mr. Dorion's opinion, the productivity of the office would be affected by changing supervisors and the daytime was the heart of the operation. The local union questioned also the accuracy of the numbers provided in the study. (Mr. Dorion did not elaborate on this matter.) According to Mr. Dorion, the investigators did not trust management and the issue of

shift work was a very serious matter. Mr. Dorion wished that the employer had followed the Guide/Overview (Exhibit 7, tab 6) since it would have made the “process” quicker and the study would then have had more credibility. “It would have been more comprehensive and would have dealt with the local union’s concerns.” Moreover, it would have set the framework for the whole consultative process.

Mr. Dorion was not on site at 1280 Finch Avenue West from July 1994 to April 1995. On July 20, 1994, he was seconded to the I.I.S.-R.C.M.P. Joint Forces Task Force at 225 Jarvis Street until March 31, 1995. Mr. Dorion came to the Finch Avenue West office in 1979 as a supervisor. He acted in the Assistant Manager position (PM-4) from October 5, 1992 to July 9, 1993; August 10 to 25, 1993; and August 25, 1993 to July 20, 1994. Mr. Dorion stated that when the study was done “they” had very little experience with joint forces operations and no study was done as to how this joint forces operation would affect the staff. The costing of this operation should have been done. The local union realized during the consultation that the overtime budget would be significantly reduced but it did not know the exact amount of the budget and decrease. Moreover, in April 1994, the overtime continued without any reduction and the local union had difficulty in believing that there would be a reduction in 1995-96. Mr. Dorion would have liked to “dialogue” with the employer on a number of different ways to make arrests without resorting to overtime. However, the local union did not ask the employer for case files to ascertain whether arrests had to be made in the evening. Mr. Dorion did not believe Mr. Phil Pirie, Director, Inland Operations, when he remarked that there would be a 500 P/Y reduction for the Ontario region. In Mr. Dorion’s view, Mr. Pirie lacked credibility. Mr. Dorion declared that he had no faith in him.

Mr. Dorion recognized that during the consultation Mr. Norrad mentioned variable hours of work as an option but the local union chose not to respond to this. Mr. Dorion explained the lack of response from the local union on the time spent during consultation discussing the reason why the bargaining agent and management’s representatives were meeting. The local union did not put forward a proposal for variable hours of work because “it was trying to find out what was being discussed and the purpose of the consultation”. The local union was “confused as to whether they had to address shift work or variable hours of work” and, when



management told the local union at the June 14, 1994 meeting that they intended to implement shift work, it decided not to respond further to this statement.

On October 22, 1993, Mr. Norrad wrote to all investigators that he intended to “enter into meaningful consultation to establish a schedule which meets operational requirements but wherever possible addresses staff preferences”. (The memorandum mentions both extended hours of work and shift work.) Attached to this memorandum was Part I of the study (Exhibits (3)(b) and (c), tabs 2 and 1). Mr. Dorion recognized that the local union did not propose alternatives to a conventional shift even though on July 22, 1994 Mr. Norrad wrote to all staff indicating his willingness to discuss alternatives (Exhibit 13, tab 11):

*SUBJECT: Implementation of Conventional Shift  
Schedule effective 19 September 1994*

*The purpose of this letter is to formally advise all the Investigator staff and the Unit Supervisors of the Investigators that conventional shift schedules will be implemented in this office on 19 September 1994.*

*The mechanics and the details of the schedule will be posted in accordance with the requirements of the collective agreement. This position is in accordance with a national directive on this matter. This implementation date is also being required of both the Vancouver and Montreal offices that have investigators on-site. They will also have to implement conventional schedules in the absence of an alternative signed agreement.*

*As always I or in my absence, my representatives are willing to discuss alternatives to the conventional schedules, but in the absence of a signed agreement for an alternate arrangement with all the necessary approvals by all the required parties by the required implementation date then conventional schedules will prevail.*

*Both budgetary and service demands dictate a resolution to this issue by the implementation date alluded to above.*

Mr. Dorion recalled having an informal discussion with Mr. Norrad in the summer of 1994. They had a very cordial, relaxed discussion concerning the overtime and shift work issues where Mr. Dorion reiterated that there were ways to address the overtime issue other than shift work (but he did not elaborate on this declaration).

Mr. Dorion declared that “the staff did not agree with the text (content) and the numbers provided in the study, Parts I and II”. In their view, the study did not justify the decision to implement shift work. Mr. Dorion “did not consult experts or consultants outside his own organization to refute the employer’s position”. Mr. Dorion stated that Mr. Norrad was incompetent to write the study. He and Ms. Mamcarz had no experience and no background in the area of investigations in Toronto. “They have difficulty telling him and other Toronto investigators how to do their job because of differences in their respective experience and Mr. Norrad’s experience did not qualify him to assess the work in Toronto because he does not have the degree of familiarity with the work of investigators in Toronto”.

Mr. Dorion testified that he does not want to be a shift worker even though he had to work shifts during his assignment to the Joint I.I.S.-R.C.M.P. Task Force. During his tenure as a supervisor at the Toronto I.I.S. office, Mr. Dorion had worked scheduled overtime and he had earned extra compensation. He recognized that substantial amounts of money could be made if overtime opportunities arose and the investigator wrote his name on the form (list).

Mr. Dorion stated that the staff side was given access to the “police files”. Nevertheless, in his view, management had failed to provide all materials requested, e.g. the Millman, Carrière and Mitchell reports. At the consultation meeting of June 14, 1994, the staff side raised a formal harassment complaint alleging that management had constantly harassed the investigators and the latest harassment was the shift proposal (Exhibit 12(b), tab 9). This matter was not investigated by management and the complaint was not pursued.

Mr. Dorion stated that, in his view Ms. Mamcarz should have done her statistical study over a period of two years instead of focusing on a period of four months in one year (Exhibit 3(c), Attachment 5, pages 9 to 11, tab 1). The local union decided not do their own review because they were not there to do the study. In their view, the study was inadequate and all they had to do was express this opinion to management.

Mr. Dorion declared that he knew Mr. Gerald (Gerry) Leblanc, Manager, Mississauga C.E.I.C., for some time. Mr. Dorion had worked at that office for some

years before coming to the Toronto office. Mr. Leblanc had been his manager. Mr. Leblanc came to I.I.S. in late 1993 to help manage the office. He attended the consultation meetings. Mr. Leblanc encouraged all staff to make suggestions to improve services and Mr. Dorion responded. Thus, Mr. Dorion wrote Exhibit 18 which he faxed to Mr. Leblanc's hotel where the latter was attending a meeting on January 13, 1994. In that document, Mr. Dorion stated that "the (sic) would be no need for shift work at the new location or within the unit, ...". Mr. Dorion proposed a daytime operation situated in the core area of the City of Toronto. He suggested a small unit of four investigators and one supervisor to deal with the courts, jails and downtown police divisions. Mr. Dorion explained that, when he made this suggestion, he resided in downtown Toronto. This proposal was a preliminary idea and an alternative to shift work. It was meant as a start for a dialogue with management. However, Mr. Dorion could not recall if his proposal was specifically discussed. Mr. Dorion added that he did not raise his proposal at the consultation meetings with Mr. Norrad because the subject under discussion was shift work. Mr. Dorion declared further that in September 1994 he was not aware of discussions between Mr. Cres Pascucci (PSAC) and Mr. Michel Paré (the employer) at the national level (tab 15).

Mr. Michael O'Reilly joined the Department in October 1975 as an Immigration Counsellor (PM-2), and I.I.S. in the fall of 1985. He recognized that the priorities of his work are criminal removals, warrants for removals and inquiries, visitors' overstay and unauthorized employment which come to the employer's attention in the form of tips. Mr. O'Reilly was selected by Mr. Dorion and the investigators to sit on the staff side of the consultation committee established to discuss the employer's proposal for shift work. Mr. O'Reilly did not request to sit on the committee. (Mr. Ed Dunn, the union representative, organized an election on this matter.)

Mr. O'Reilly declared that in 1980, and in particular from 1985 to 1990, the evening work consisted of going to an area where the tips indicated that a person could be found and the investigators would select the latest tip to try to find the person in question. Ninety-five percent of Mr. O'Reilly's arrests were made on overtime of which 99 percent consisted strictly of cases of visitors' overstay or unauthorized employment, or a combination of both. It was left to the investigators' discretion to plan their evening (overtime) activity. In cases of criminality, the

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investigators would be accompanied by a police officer. However, very few of Mr. O'Reilly's tips involved criminality. From 1985 to 1990-91, Mr. O'Reilly's number of arrests was higher than his colleagues. His partner was Mr. Dale Lewis until 1991 when two units were created and they were separated. Since 1991, Mr. O'Reilly changed partners but the work methods during the evening remained the same (until September 19, 1994 when shift work was introduced). Moreover, as of 1993, the investigators had to present to their supervisor a list of calls for the evening before they went on the road. They worked until 21:15 hours and they would take two files concerning warrants and five or six tips but there was rarely criminality involved. They worked in teams of two investigators. Until 1994, the investigators also had to fill the "arrest book" to indicate who was arrested, where the person was detained and the time of the arrest. Mr. O'Reilly stated that 95 percent of the "arrest book" referred to visitors' overstay, unauthorized employment or a combination of both. (The arrest book was not produced in evidence.) In Mr. O'Reilly's view, the willingness of the investigator to accept assignments was a feature of the "Performance Evaluation Report". Management knew that the work performed during scheduled overtime was low priority. Mr. O'Reilly added that "Not all the tips could be done during the daytime because there was not enough time".

Mr. O'Reilly declared that, subsequent to September 1994 when the shift work was implemented, there was no change in the composition of arrests. Mr. O'Reilly added that he personally had not arrested anyone during the 15:00 to 23:00 hours shift who was a criminal, unless that person was in police custody. The investigators on the evening shift responded mainly to police calls to investigate a person already arrested as a criminal and who was in violation of the *Immigration Act* or who had been arrested on a warrant relating to a violation of the *Immigration Act*. Since June 1994, and as a consequence of the "Bayliss-Gayle" incident, the emphasis has been placed on criminality. (This incident concerned the shooting death of Mr. Todd Bayliss, a police officer, by Mr. Gayle, a criminal ordered deported and who was still in Canada.) When tips came in during the evening shift, they were left for the daytime investigators. Mr. O'Reilly discussed with Mr. Norrad the impact the shift work would have on him and his children. (Mr. O'Reilly is a single parent.) Mr. Norrad offered and Mr. O'Reilly accepted, that he could start his evening shift on the last cycle (fifth week).

During the December 1993 consultation meeting, Mr. O'Reilly told Mr. Phil Pirie that the investigators were not interested in overtime and to reduce costs by eliminating scheduled overtime. Mr. Pirie replied that he would think about it but at the January 1994 meeting he replied no. Mr. O'Reilly raised this offer again at the June 14, 1994 meeting to Mr. Mantzel, who had replaced Mr. Pirie as Director. Mr. O'Reilly could not recall his response. Mr. O'Reilly stated that it was clear to him that management wanted to implement shift work. He recalled that in 1989 Mr. Gerry Savard, the then Director, had unsuccessfully attempted to institute shift work. (This 1989 shift proposal was withdrawn when management had not met the obligations under the relevant collective agreement.) Mr. O'Reilly added that I.I.S. has a very harmonious relationship with the Metropolitan Toronto Police Force and 95 percent of their work comes from that police force. Mr. Mantzel told the staff side at the June meeting that the reason to institute shift work was to maintain good relations with the police. Mr. O'Reilly was surprised by this comment because the investigators had already established an excellent rapport with the police through enthusiasm and collaboration.

Mr. Luke Jonaitis was surprised by Mr. O'Reilly's declaration that 95 percent of the arrests were visitors' overstay or unauthorized employment or a combination of both because the I.I.S.' priority was criminality. Visitors' overstay was not a priority; it was to be done when there was a warrant and the person was in the neighbourhood. In 1993, Mr. Jonaitis worked the communications system (radio) during scheduled overtime and he saw the list (of work) of proposed calls. Mr. Jonaitis recalled that most of these proposed calls were criminality and warrant calls which had to be done in the evening. The investigators on scheduled overtime had the practice of completing the paperwork that same evening which could take one to one and a half hours to do. Thus, on September 8, 1993, Mr. Jonaitis instructed all investigators that the paperwork should be completed during the daytime office hours (Exhibit 20). Mr. Jonaitis declared that shift work was not a subject of discussion during the two meetings of March 7 and 28, 1994 when the office reorganization was the topic.

Mr. Jonaitis confirmed that the evening shift was instituted effective September 19, 1994 (Exhibit 13, tab 11). Originally, it was a five-week schedule for investigators and a four-week schedule for supervisors. The investigators were divided into five crews of six or seven investigators each. The same people worked

every five weeks. When the 12 investigators assigned to the Joint Forces Task Force returned to I.I.S. in the summer of 1995, they were integrated into the existing shift schedule. However, as a result of complaints that there were not enough investigators to do proactive work, the five crews were reduced to four.

Mr. Jonaitis commented that there was no problem with the lack of support staff on the evening shift because there had never been any support staff on scheduled overtime and the system worked well so he questioned why it would not work well with the shift work. Historically, the scheduled overtime was instituted because calls had to be done in the evening since they could not be done during the daytime. For Mr. Jonaitis, the same reasoning applied to the shift situation. Mr. Jonaitis explained further the difference in costs between the duty system and the scheduled overtime with the institution of the evening shift; the calls between 23:00 and 07:00 hours are handled by a duty officer on standby. When on duty, the investigator works alone unless there is a need to transport the person in question. However, on scheduled overtime investigators worked in pairs to respond to a police call.

At the time of the hearing of this reference under section 99 of the *PSSRA*, Ms. Christine Mamcarz occupied the position of Regional Programme Specialist, Citizenship and Inland Directorate. Ms. Mamcarz joined the Department in 1974 and the Immigration Branch in 1983. In 1991, Ms. Mamcarz was assigned to the Assistant Manager position at the North York office and in June 1992, she was assigned to I.I.S. where she remained until June 1994. From 1992 to 1993, she was the Assistant Manager in Administration Support Service to the Operations. Then in 1993, and for a period of three months, she was the Assistant Manager, Operations (Mr. Jonaitis' position). From 1993 to June 1994, she was assigned to special projects and in June 1994, she returned to the regional office. Since February 1996, Ms. Mamcarz has been responsible for any questions dealing with refugees in the inland side.

Ms. Mamcarz testified that she prepared the Extended Hours of Work Study (Exhibits 3(b) and (c), tabs 1 and 2) with Mr. Norrad. Part I of the study was completed in October 1993. Mr. Norrad provided her with directions and requested her to do a statistical analysis to determine if there was an operational need for a shift after 16:00

hours. Ms. Mamcarz did the statistical part of the study (Exhibit 3(c), tab 1) and she and Mr. Norrad together wrote the narrative part (Exhibit 3(b), tab 2).

On August 14, 1996, Ms. Mamcarz testified that following Mr. Dorion's testimony in this case, she noticed some errors in her analysis (Exhibit 3(c)). (Mr. Dorion was the first witness called.) She had listed Messrs. Peter Donaldson and Terry Alton under both the overtime and duty costs with the same amount, which could not be realistic. Thus, she went over the calculations and tabulated manually the numbers. However, some documents were no longer in existence and she made the corrections on the basis of eight hours of overtime and four hours of call-back time. The result was a minor adjustment of a difference of five percent.

On August 13, 1996, Ms. Lois Lehmann, counsel for the employer, submitted in evidence documents amending Exhibit 3(c), Attachment 5, and Exhibit 10. Mr. Georges Nadeau, representative of the PSAC, objected to the introduction of the amended documents on the basis that the consultation was based on an inaccurate study. At the hearing, I decided to reserve my decision on the admissibility of the amendments. I have now had an opportunity to review the matter and I find the amendments relevant and admissible. The difference in calculations is minor and of no consequence to the debate in question here. The amendments do not affect the probative value of the study. The original study, Part II (Exhibit 10, tab 7, at page 4), stated that the implementation of an evening shift would reduce standby costs by approximately \$110,000. Ms. Mamcarz amended this figure to read \$98,000. Ms. Mamcarz added that the narrative of the study, Part I (Exhibit 3(b), tab 2, at page 6), had to be amended in light of these corrections. The October 1994 document stated that an estimated \$284,000 was spent on duty calls in the fiscal year 1992-93. This number was amended to read \$269,000. Furthermore, the funds expended on the standby function on weekends and midnight was first found to be \$175,000. Ms. Mamcarz amended this figure to read \$170,566. The differences concerning Attachment 5 of Exhibit 3(c), tab 1, are of a similar nature. The differences are not substantial. Thus, these documents are admissible.

Ms. Mamcarz explained that Mr. Norrad asked her to analyze two factors: cost and operational needs or statistics. However, there were two units of business to measure the I.I.S.: arrests and reports. These were the main units of performance for

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investigators. Ms. Mamcarz prepared her study on reports from a run of the “Field Operations Support System” (FOSS).

Her description of the unit as indicated on pages 1 and 3 of Exhibit 3(b), tab 2, resulted from time she spent with each unit supervisor when she first joined I.I.S.; they each explained their work. At the time, Ms. Mamcarz did not know that she would be working on this study. In addition, Ms. Mamcarz met with Mr. Jonaitis on this matter. She did not specifically interview the investigators but they knew that she was working on the study and they had informal discussions about it.

Ms. Mamcarz also obtained from Mr. Rick Carlton, Immigration Statistics Unit, a run from the FOSS for the year April 1, 1992 to March 31, 1993 concerning the number and the time of arrests as entered into the system. Furthermore, the time of day was broken down by three time periods (08:00 to 16:00 hours; 16:00 to 24:00 hours; and 24:00 to 08:00 hours). Ms. Mamcarz decided to take a “snap shot” at a period in time. This was a tool to see whether or not there was a need for shift work. The FOSS also computes the notice of arrest which indicates the time of arrest (the actual time the officer or investigator performed the arrest). Ms. Mamcarz was satisfied with Mr. Carlton’s information. Ms. Mamcarz’ statistics found in Exhibit 3(b), Attachment 3, tab 1, relate to the time of offense. She interpreted these times to indicate that there had been most likely involvement by the police in those activities.

Ms. Mamcarz asked also the McLean-Hunter Answering Service for a printout detailing the date, time, the name of the police officer who called I.I.S. after 16:00 hours, the police station or badge number, the name of the person who called or who generated the call, etc. Ms. Mamcarz went manually over the 150 pages provided by this company and prepared a summary. She captured the police calls which she considered to be the only relevant ones. Ms. Mamcarz did not consider the calls received during the daytime because this answering service does not capture calls during the day except on weekends and she herself did not capture the daytime calls because she would not have had an accurate count of day telephone calls. The investigators on duty were mainly responding to police calls. With respect to the non-police calls, investigators would take a message or tell the caller to call back during business hours (08:00 to 16:00 hours). Ms. Mamcarz found that the bulk of the calls came in during the period of 16:00 to 02:00 hours.



Ms. Mamcarz relied on data from the Metropolitan Toronto Police because they are I.I.S. service partners. Ms. Mamcarz did not study the number of police calls received during the daytime. These would have been difficult to capture because it meant asking the investigators and clerks to identify each police telephone call. Moreover, there is no data concerning telephone calls coming from the courts, correctional services or informants during business hours. She did not approach other police forces because the majority of the calls came from the Metropolitan Toronto Police as evidenced by the McLean-Hunter Answering Service data. During scheduled overtime, the McLean-Hunter Answering Service was not involved in capturing calls because there was a radio supervisor on duty. Ms. Mamcarz took also into consideration immigration offenses which are described on the immigration warrants. Ms. Mamcarz calculated the costs based on the salary (pay cheque) of the investigators who had worked scheduled and non-scheduled (duty) overtime.

The four weeks on which the study is based (August 17 to 24, 1992; January 18 to 25, 1993; March 15 to 22, 1993; and June 14 to 21, 1993) were picked at random by Ms. Mamcarz and Mr. Norrad. The purpose of the study was to separate the costs for overtime duty, weekend and a 24-hour operation. She was not asked to look at the whole operation but only at the evening situation. The study demonstrated that the cost was split almost 50 percent between overtime and duty. Moreover, after discussions with Mr. Norrad, Ms. Mamcarz concluded that the shift complement between 15:00 and 23:00 hours was to be comprised of eight investigators, one supervisor and one support staff. The Niagara Falls Port of Entry Project and the McLean-Hunter Answering Service would cover the period 23:00 to 08:00 hours.

Ms. Mamcarz testified that the local union did not approach her in regard to the study. No questions were raised by the staff side concerning the study. Moreover, every staff member received a copy of the study.

Ms. Mamcarz participated in the meeting which produced the Guide/Overview (Exhibit 7, tab 6). When some of the investigators claimed that Mr. Norrad and Ms. Mamcarz had not followed the Guide/Overview, the latter prepared Part II of the study (Exhibit 10, tab 7). The conclusion was the same as in Part I of the study even though another FOSS run was used (Appendix F). In Part II, Ms. Mamcarz used the 1993-94 fiscal year. Even with a change in break of hours in four periods and

covering the fiscal years 1992 to 1996, the conclusion remained unchanged (Exhibit 23). Ms. Mamcarz explained that she was concerned with the operational requirements as well as the cost. Ms. Mamcarz was not aware of any complaints about the system in place prior to September 19, 1994. Ms. Mamcarz testified that the "Units of Business" document (Exhibit 24, tab 13) was prepared prior to May 1994 when Part II of the study was done. This document was provided to Ms. Kathy Poulis, President of the Local, when she requested it at the January 25, 1994 consultation meeting (Exhibit 9(b), point 6, page 6, tab 5).

Ms. Mamcarz indicated that Exhibit 24, tab 13, shows that the majority of the reports were completed during the daytime. She did not do an analysis of these reports. Ms. Mamcarz could not say how many and the percentage of reports which dealt with criminality. The court tracking is done during the daytime by I.I.S. and cannot be done during the evening because there is no night court duty. She pointed out that the arrests cannot be postponed if they have to be made in the evening; the reports, however, can. Ms. Mamcarz also considered the economic climate in the Public Service which resulted in downsizing and diminishing resources. The Department (employer) realized that there were insufficient resources and management had to find alternate ways of doing business. When Ms. Mamcarz participated in the brainstorming session that produced the Guide/Overview (Exhibit 7, tab 6), she became aware that shift work was being looked at.

Ms. Mamcarz added that she prepared Part I of the study in the summer of 1993. It was the first time that she conducted such a study and it was not her only project at the time. Ms. Mamcarz did not have any prior shift studies to consult. She checked with the Regional District Office in this regard. Ms. Mamcarz did not have a model shift study.

In December 1993 or January 1994, Ms. Mamcarz could not recall if she or Mr. Norrad informed the staff side that the Guide/Overview was being developed. She did not consider informing the local union because it was at the planning stage and she did not know when the document would be forthcoming to Mr. Norrad. Ms. Mamcarz did not attend a meeting held between the investigators and Mr. Len Jodoin, Director of Enforcement, at National Headquarters. Ms. Mamcarz prepared Part II of the study at Mr. Norrad's request. She and Mr. Norrad went over

the material for the study, Part I, and completed it to the best of their ability following the guidelines provided in the Guide/Overview (Exhibit 7, tab 6). At page 3, Part II, of the study (Exhibit 10, tab 7), it indicates the actual expenditures on scheduled overtime and duty costs. The study also shows that there was a five percent decrease in the number of arrests in 1993-94 as compared to 1992-93. Ms. Mamcarz did not inquire as to the reason for this five percent decrease in arrests. In her view, the savings in scheduled overtime would be approximately \$169,980 and there would also be a reduction in the standby cost of \$98,000 for a total savings of \$270,000 compared to an additional cost for shift premium of \$62,000. The total savings would therefore amount to \$208,000 based on 24 investigators working (7 1/2 hours) one evening every two weeks and two supervisors working one evening each week.

Mr. Philip Norrad testified that when he arrived at I.I.S. in October 1992, he was asked to assess the viability of implementing shift work or extended hours of work at I.I.S., improve communication with staff, and review the situation at I.I.S. concerning a problem with the media because there had been leaks to the press. Mr. Pirie made him aware that management wanted someone in this job with shift experience. Mr. Norrad had joined the Department on September 29, 1975. Prior to joining I.I.S., his experience had been in smaller immigration investigations centres. When he joined I.I.S., it was his first experience as a manager of a large centre. However, he had experience in shift work. Mr. Norrad clarified that his mandate at I.I.S. was not to institute shift work. He had been asked to study the operation and make an objective evaluation as to whether the institution of a shift at I.I.S. would be appropriate. Management had a genuine concern with the overtime cost at I.I.S. Managers of other centres questioned this overtime in light of the fact that all managers were competing for the same resources. In response to this negative perception concerning the overtime issue, Mr. Norrad created the Niagara Falls Pilot Project which went on for one year. Mr. Norrad testified that he attended a series of management meetings within the Inland Directorate where the I.I.S. overtime cost of \$600,000 was questioned because it was considerably higher than the other centres' overtime expenditures. The other managers' perception was that I.I.S. had people who screened their own telephone calls, investigators on standby, and that there was possible abuse. Thus, the Niagara Falls Pilot Project was instituted to screen the calls.

Concerning the leaks to the press, Mr. Norrad learned that a member of the I.I.S. staff had faxed a copy of an internal confidential memorandum to the *Toronto Sun*. Mr. Norrad conducted an investigation and a memorandum, dated December 3, 1993 (Exhibit 2), resulted. This matter had nothing to do with the hours of work issue.

In the fiscal year 1992-93, a national directive was issued requiring a concentration on criminal removals. The first priority was to identify and find the criminal removals and then investigators were to deal with general removals. There were also other priorities, such as “representations and political interest questions from Members of Parliament”. Other priorities concerned persons who worked illegally or persons charged with a criminal offense in Canada and who had lied on their application to enter Canada. Thus, Mr. Norrad’s priority was to study I.I.S.’ hours of work and operation. During the first months, Mr. Norrad observed and reviewed the operation so as to acquire knowledge and acclimatize himself. Then, in late spring or early summer 1993, he and Ms. Mamcarz worked on the study, Part I (Exhibits 3(b) and (c)). In October 1993, a copy of this study was presented to the bargaining agent. Mr. Norrad was considering the extension of hours of work to 23:00 hours. Thus, he was looking at some type of shift work or variable hours of work. There was a need to change the hours of work and Mr. Norrad was offering to the bargaining agent the opportunity to work it out together.

Mr. Norrad discussed the issue with the ten most senior investigators. Some expressed their wish not to work evening hours and a discussion ensued as to “the reasons to exclude them from the process”. The investigators believed that they were “day workers” because they had worked only days. Mr. Norrad emphasized to them that the extended hours of work would apply to all investigators. Moreover, Mr. Norrad informed them that all newly hired investigators had agreed to work shifts and this had been made a condition of their employment.

Mr. Norrad testified that there was more demand for services in the Toronto I.I.S. office. It had been made into a flagship and was subject to more extensive scrutiny. This office was the most visible and it had allocated investigators to do investigations exclusively. Mr. Gerald (Gerry) Leblanc, who had been the Manager of

the Mississauga office, joined I.I.S. as the Special Projects Manager when the Mississauga C.I.C. office merged with Toronto I.I.S.

Mr. Norrad described the services I.I.S. has to provide to the public, namely, the taxpayer, police, other law enforcement agencies, courts, social services, jails, employers, and other government services. The goal of I.I.S. is to investigate and remove immigration criminals, protect the rights of employers who hire persons living illegally in Canada, and respond to the needs of the police. Section 3 of the *Immigration Act* provides ten objectives. Amongst these are “to maintain and protect the health, safety and good order of Canadian society” (subparagraph 3(i)); and “to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity” (subparagraph 13(j)). I.I.S. is the immigration police. The needs of the public are a 24-hour per day operation and this is true in particular in the case of the police. The jails, courts, welfare services, schools, social services, etc., are mainly day operations. Mr. Norrad testified that there is a 24-hour per day need for services but he had to consider the resources available to meet those needs. He had to ask himself what was the most efficient way to run the operation to meet the demand for services. Mr. Norrad explained that essentially the police have two needs in the course of their activities. When they arrest individuals or investigate a crime, they could need, from time to time, information from I.I.S. or try to obtain more information on an individual. In addition, it may require I.I.S. intervention. The police will call the system up which will then provide information on whether the individual was or is involved in any immigration violation, if I.I.S. intervention is required, and if the individual should be arrested and detained. This information is conveyed mostly by telephone. The two main reasons for contact are to obtain information and assistance in identifying a person and appropriate response. These requests come in 24 hours a day. Hence, the more investigators I.I.S. has on duty, the timelier will be the response to the police. In addition, as a result of the “Bayliss-Gayle” incident, a special task force was created comprised of members of the R.C.M.P. and I.I.S. investigators. Mr. Norrad was directed to participate in this joint forces operation. He was instructed to second 11 investigators and one supervisor and he was even told their names. I.I.S. had participated in a number of joint forces operations but all these special task forces had minimal importance on the decision to extend the hours of operation of I.I.S. This I.I.S.-R.C.M.P. Task Force

left I.I.S. with 20 investigators during the summer of 1994. The R.C.M.P.-I.I.S. Special Joint Task Force was under the direction of Ms. Christine MacNamara, Manager. The secondments provided that the 11 I.I.S. investigators and one supervisor work shift work. Mr. Norrad declared that there was an overall I.I.S. budget for the Toronto office and for fiscal years 1991, 1992 and 1993, 90 or 95 percent of the budget was spent on overtime for investigators (\$600,000) even though some of this overtime was spent for some administrative clean-up.

When in October 1993 the study, Part I, was distributed to all staff, Mr. Norrad recognized that to extend the hours of work required first formal consultation. Hence, Mr. Norrad approached the local union for their representations. On the local management side, Mr. Norrad had himself, Ms. Mamcarz, Mr. Leblanc and Mr. Bernie Osborne, Chief, Administration, who was the administrative expert on interpretation and application of collective agreements.

Mr. Norrad declared that at the first meeting on December 16, 1993, the local union made no formal representations. Mr. Norrad had already prepared a draft schedule by that date but he decided that it would have been ill-advised on his part to discuss it at this stage. At the January 25, 1994 meeting, the representatives of the staff side requested a number of documents, such as the Millman, Carrière and Mitchell reports. Mr. Norrad never located the Carrière and Mitchell reports and with respect to the Millman report, he saw it for the first time at the hearing of this reference under section 99 of the *PSSRA*. In his view, these three reports were dated and they would not have been useful to the present realities (1993 to 1995). Moreover, there was no report written with respect to the Niagara Falls Pilot Project. That project was cancelled when they could no longer provide the service to screen after hours and weekend calls. Thus, the calls received by the McLean-Hunter Answering Service went directly to the investigators. Towards the end of the January 25, 1994 meeting, the staff side tabled their response to the study, Part I (Exhibit 9(c), tab 5), but the concerns raised therein were not discussed at that meeting. Mr. Norrad did review the local union's concerns and addressed part of the union's response in Part II of the study.

Moreover, on or about that time (January-February 1994), Mr. Len Jodoin, Chief, Investigations, Detentions and Removals, who had invited Mr. Norrad (and

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Ms. Mamcarz) to join the project team on the Guide/Overview, came to the Toronto I.I.S. office to attend a meeting to discuss the delivery of a program. It was at that meeting that Mr. Jodoin mentioned the Guide/Overview to all staff. So, this guide became an issue with the local union. In addition, the I.I.S. budget was reduced. The staff component had been 71 of whom 66 were investigators. This number was reduced to a staff of 59 of whom 30 were investigators. The effect of this reduction was to change I.I.S. priorities significantly during the spring of 1994. All management's energies were channelled to draft a reverse order of merit process and try to find alternate employment for employees declared surplus. At the same time, the new central processing centre in Vegreville, Alberta, was being staffed. Thus, all staffing processes for the Vegreville office were put on hold to give an opportunity to I.I.S. investigators to transfer to Vegreville. For two months, most of the activities at I.I.S. related to the staff reductions and it delayed the consultation process concerning the extended hours of work.

In addition, Mr. Norrad decided to do a second study with reference to the Guide/Overview and the staff side's response (tab 7). Mr. Norrad did not try to follow the Guide/Overview but he did want to address the bargaining agent's concerns. Ms. Mamcarz and Mr. Norrad picked up suggestions from the Guide/Overview that could be applicable to I.I.S. This was done in an attempt to facilitate discussions with the staff side. However, Mr. Norrad addressed only concerns relevant to the hours of work issue.

Mr. Norrad explained that he did not apprise the local union of the Guide/Overview. It was only when Mr. Jodoin met with the investigators that the staff was made aware of this document. Mr. Norrad could not recall when he first received a copy of the Guide/Overview draft. Mr. Norrad "did not feel it was important to inform his staff of this document because it was just a guide and he had followed most of it".

During the consultation meetings of December 1993 and January 1994, the employer was discussing a shift comprised of eight investigators, including one supervisor, working a shift from 15:00 to 23:00 hours. However, as a result of the budgetary restraints confirmed in March-April 1994, Part II of the study, and the changes in resources, the shift proposal was amended to five investigators and one

supervisor (Exhibit 10, tab 7). Thus, by December 1993 and January 1994, Mr. Norrad had a shift proposal in mind. He knew the direction he was going but not the details.

At the June 14, 1994 meeting, Mr. Dorion proposed to extend the hours of work for coverage up to 20:00 hours. Mr. Dorion explained that the investigators were seeking hours of work from 07:00 to 20:00 hours and in this fashion they would not be shift workers. Mr. Norrad had no authority to amend the hours of work provided under the collective agreement. He could not extend the hours of work beyond 18:00 hours (as provided in subclause 18.03(a)).

Mr. Norrad explained that the demands were such at I.I.S. that it justified his proposal. With the shift, arrests could be made in the evening. Mr. Norrad chose to start the shift at 15:00 hours because of informal conversations he had with the bargaining agent and staff. He also chose to end the shift at 23:00 hours even though I.I.S. is a 24-hour per day operation, seven days a week, and an argument could be made for a 24-hour shift system. Moreover, the Niagara Falls Pilot Project had no impact on the decision to implement a shift. The McLean-Hunter Answering Service made life easier and it did not relate to the afternoon period. Mr. Dorion never suggested any alternatives to the proposed shift to provide coverage to 23:00 hours and he never mentioned what "other strategies" there were to deploy investigators to avoid imposing shift work on the I.I.S. Thus, the local union rejected the employer's proposal and offered no options to deal with the problem.

On the morning of June 14, 1994, Mr. Dorion expressed the view that there was no further need to discuss the issue but Mr. Norrad went on in the afternoon with the consultation meeting anyway (Exhibit 12(a), tab 9). Mr. Dorion presented the local union's position during the June 14 meeting and their written response at the very end of this meeting (Exhibits 12(b) and (c), tab 9). It was clear to Mr. Norrad that the local union no longer wanted to discuss the issue (Exhibit 12(a), tab 9). When Mr. Norrad suggested that they meet again, the staff side did not respond. Mr. Dorion proposed that the matter be referred to the Treasury Board. Mr. Dorion stated that he wanted a third party to assess the project and that it should be reviewed in some fashion. It was then that Mr. Dorion proposed that the I.I.S. office be kept open until 20:00 hours (Exhibit 12(a), paragraph (f), tab 9) and Mr. Norrad responded that this would still entail shift work since the hours of work would go beyond the 18:00 hours



provided in the collective agreement. When Mr. Norrad indicated at the June 14 meeting that he wanted to implement shift work by Labour Day, the mood of the staff side and the meeting changed. In Mr. Norrad's view, he tried to be creative to provide the necessary coverage. The local union's position was that the study did not establish a requirement for shift work until 23:00 hours as alleged by Mr. Norrad. Mr. Norrad declared that the study showed the demand for the extension of hours of work. He proposed a shift from 15:00 to 23:00 hours and an alternative would have been variable hours of work. The past expenditures had demonstrated a pattern in that investigators worked until at least 21:00 hours. The local union never admitted the need to meet the demand for I.I.S. services and they did not wish to discuss options such as in the cases of the Montreal and Vancouver offices where the employer had reached an agreement with the bargaining agent and the investigators on this same issue. (The investigators in Vancouver agreed to work variable hours of work with coverage until 24:00 hours. Mr. Rob Johnson has been the Manager of the Vancouver Enforcement Office. In Montreal, Mr. Ronald Blanchette has been the Manager. The staff at the Montreal office has agreed to work extended hours through self-directed teams and a scheduled duty officer who answers calls from police after 16:00 hours.)

In July-August 1994, Messrs. Norrad and Dorion had a further, albeit informal, discussion on this issue. They agreed to discuss the matter to try to understand each other's position. Mr. Dorion did not present anything workable but it was his personal view that they still had a good exchange. Mr. Dorion insisted again on the proposal to change the hours of work clause to 20:00 hours. His view was to make the hours of work fit the job and adjust them accordingly. Mr. Norrad declared that the shift work established for the Joint I.I.S.-R.C.M.P. Task Force was not useful to I.I.S. because it concerned a specialized endeavour by a dedicated group to arrest criminals illegally in Canada or under an order for removal. It did not require much interaction with other services whereas I.I.S. was concerned with a variety of situations and needed to interact with police forces and other services.

Mr. Norrad declared that as of December 1993, the I.I.S.' budget declined. In 1993-94, the I.I.S. overtime budget was \$447,000; in 1994-95, it was reduced to \$300,000; and in 1995-96, it was reduced further to \$250,000. Mr. Norrad offered the following comments in response to the concerns raised by Mr. Dorion and the local

union. The staff side made an assumption that, whenever an investigator scheduled on the evening shift would be absent, he or she would be replaced. However, this is not so. It is possible that because of the overtime cost incurred, I.I.S. may operate with one investigator less. In addition, who is to say that costs incurred due to the shift would not all work out? Mr. Norrad did not anticipate an increase in costs for accommodation because there are none and he did not address any health and safety issues because none existed. Mr. Norrad invited "Labour Canada" to inform all staff about health and safety matters when investigators refused to work following the "Gayle-Bayliss" incident.

Mr. Norrad explained that originally the study was going to include support staff but everything hinged on the investigators. Thus, the support staff issue was forestalled to a later date. Mr. Norrad envisaged further discussions concerning the support staff. Furthermore, they were required during the day and there had been a number of complaints in this regard (problems with records management). Therefore, Mr. Norrad decided not to include them in the shift proposal. The shift was required to meet budgetary constraints and there were savings for standby duty. Mr. Norrad decided not to implement a shift to cover 24:00 to 07:00 hours and weekends because these are the most difficult periods from a social aspect.

Concerning Mr. Dorion's argument that the I.I.S. office had been already reorganized with no reference to shift work, Mr. Norrad commented that the reorganization did not deal with shift work. Late in 1993 and early 1994, management reviewed the Toronto office's structure and concluded that the office should be divided into four geographical units. These were to be multi-purpose units (as opposed to specialized units) in addition to one information unit. Priorities were developed during two meetings (Exhibits 15 and 16). This reorganization applied only to the work performed during business hours (day work). Thus, there were two separate processes being discussed: discussions relating to the reorganization of the office into four units (day work) and the consultation to implement shift work.

With respect to the health and safety issue raised by Mr. Dorion, this was not a concern because there was no evidence of a problem. The investigators had been working scheduled overtime for numerous years at the same location without an incident. At any rate, consideration had to be given to the fact that arrests and

apprehensions could be dangerous work. Mr. Norrad had received no health or safety complaints with respect to the building or office.

In relation to the shift premium costs, Mr. Norrad explained that we must consider the total cost of the after hours operation. Mr. Dorion also raised the issue of a diminished efficiency in the afternoon shift because of a lack of support staff. Mr. Norrad did not believe that this was a compelling argument. In his opinion, on the contrary, the shift caused a gain in efficiency and capacity to respond to calls in the evening.

Mr. Norrad had no knowledge whether, and if so as to the reasons why, scheduled overtime was suspended between April and September 1991 as alleged by Mr. Dorion. Mr. Norrad questioned the accuracy of this allegation because of the \$600,000 overtime expenditure for the 1991-92 fiscal year. Moreover, in Mr. Norrad's view, I.I.S. had a legitimate need for overtime. As far as he knew, the overtime costs had been spent for legitimate demands.

Mr. Dorion proposed that the position of Ms. Christine Mamcarz be eliminated, to which Mr. Norrad responded that her position was irrelevant to the debate on extended hours of work because her salary did not transfer to the overtime budget. There are two separate budgets; one for salary and the other for overtime.

Mr. Norrad added that Ms. Mamcarz chose to use for her study four weeks picked at random. The study was done objectively. Moreover, the staff side never produced a model or figures to refute the study. The Guide/Overview was only a guideline; it was not a mandated checklist. Mr. Norrad reviewed the FOSS run from 1992 to 1995 (Exhibit 23) and explained the drop in number of arrests for 1994-95 by the fact that 33 percent dropped because of the assignment of staff to the Joint Forces Task Force; 11 investigators and one supervisor had been assigned to it which meant one-third of the I.I.S. investigators. The schedule for the evening shift was posted on September 2, 1994 and started on September 19. Four out of 20 investigators worked the evening shift, 15:00 to 23:00 hours (Exhibit 14, tab 14).

Mr. Norrad had no idea how many calls were received during the daytime. There is an infrastructure in place during the daytime that answers these calls. He stated that 14 investigators had been sufficient to meet the daytime demands when

11 had been assigned to the Joint R.C.M.P.-I.I.S. Task Force. The service became more efficient with the institution of the evening shift because the costs were reduced and the investigators were scheduled on a regular basis. Mr. Norrad's evidence was that the situation until September 1992 had been to schedule two teams of two investigators to work scheduled overtime four nights a week. This was reduced to two nights a week as of September 1992. The scheduled overtime provided coverage only up until 21:00 hours because otherwise overtime could go on forever. Mr. Norrad had hoped that there would be productivity gains with the reorganization of the office. Mr. Dorion was supposed to head the Information Management Unit which was to screen the work of the various units. In April 1994, Mr. Norrad was hopeful that the four road investigator units would be assigned a more effective package. Mr. Norrad did not study the effect of the implementation of shift work on training "because training of staff is a reality".

#### ARGUMENTS

The parties submitted their extensive arguments in writing. I have provided hereunder a summary of the arguments submitted by the parties.

Mr. Georges Nadeau, representative of the PSAC, argued the following. Mr. Nadeau referred to Article 18 of the relevant collective agreement (Exhibit 1) and argued that the contractual language is clear. It creates an obligation to consult in advance of the introduction of a proposed change from daytime hours. Moreover, the employer must establish during such consultation that "such hours are required to meet the needs of the public and/or the efficient operation of the Service". The demonstration must be specific to the actual shift being implemented and that the specific hours are required. Mr. Nadeau recognized that consultation did take place as envisaged by the collective agreement. In his view, the issue concerns a determination as to whether the employer has or has not established that the introduction of the evening shift was required "to meet the needs of the public and/or the efficient operation of the Service". Mr. Nadeau recognized also that I.I.S. needs to respond to the public 24 hours a day, 365 days a year. This need has existed ever since the immigration legislation was enacted.

Mr. Nadeau added that Article 18 of the collective agreement imposes on the employer an obligation to establish, to prove (demonstrate), the requirement for the introduction of shift work. Mr. Nadeau referred to the definition of the word “establish” as found in Webster’s New World Dictionary (Second College Edition): .. 8. to prove; demonstrate .....

According to Mr. Nadeau, it is not up to the bargaining agent to provide alternatives to the shift work. The employer is the one who has to identify alternatives, study these and demonstrate to the bargaining agent that they are not feasible or efficient. Moreover, any determination in this regard must also address the impact on the day work of a reduction of a quarter of the workforce. Ms. Mamcarz recognized that the study did not address the question of daytime needs and that this issue would have required another study. Mr. Nadeau submitted that, since the employer did not inquire as to the needs of the public during the daytime, it could not demonstrate that it is more efficient to move resources from the daytime hours to the evening hours. The employer should have studied the impact of the evening shift on daytime activities and demonstrated that it is either insignificant or offset by gains in the evening. No such demonstration was put forward. Mr. Nadeau also questioned the number of investigators assigned to the shift. At first, the employer decided to assign eight investigators, one supervisor and one support staff (October 1993) but in May 1994, this component was reduced to four investigators and one supervisor. Mr. Nadeau pointed out that the needs of the public had not decreased during this period. Thus, how could the number of employees required on this shift change if there was no change in demand? In Mr. Nadeau’s view, the employer’s shift proposals were capricious decisions based not on fact but on intuition. The bargaining agent takes issue with the employer’s position that 25 percent of the arrests were conducted historically in the evening and that in itself proves the requirement for shift work. The bargaining agent submits that the determination of the needs of the public required a much more in-depth study. The bargaining agent’s position is that the needs of the public had been met quite successfully by the system that was in place before September 19, 1994. There had been no complaints that the “public’s” needs had not been met.

Mr. Nadeau recognized that the amount of scheduled overtime had been decreasing as a result of diminishing resources (overtime budget). Mr. Nadeau

questioned the employer's evidence to justify the evening shift. Mr. Nadeau referred to Mr. O'Reilly's evidence that, in his experience, during the scheduled overtime he had worked on illegal workers and visitors' overstay (the lowest priorities). Mr. O'Reilly commented that he could not remember when he last made an arrest stemming from a criminal file. In Mr. Nadeau's view, the statistics compiled by the employer have been traditionally based on units of business (Exhibit 24). Mr. Nadeau reviewed in detail Exhibit 24 and commented that it was strange how the employer ignored the units of business on reports that showed that the daytime hours are crucial to the operation of the service. Moreover, the employer provided no information on calls coming into the I.I.S. during the daytime. The impact of moving part of the resources from the daytime to the evening shift was not discussed during consultation meetings. Mr. Nadeau reviewed also Exhibit 23 to demonstrate that there was a significant decrease in the number of arrests conducted between 16:00 and 23:00 hours since 1993-94, and it is during that period that the evening shift was introduced. Mr. Nadeau indicated that this is not surprising because the actual period when arrests are stopped is 21:00 hours. However, the system in place before September 19, 1994 did not have such a limitation. Moreover, this decrease in arrests may also result from a decrease in staff during the daytime operation. Mr. Nadeau also questioned why the employer chose not to implement a night shift since 13 percent of the arrests are done during the night.

Mr. Nadeau recognized that in the context of the current budget restrictions, the bargaining agent understands that efficiency is of the utmost importance. It is an employer's right and obligation to make those management decisions that will ensure the efficiency of the service. However, those decisions should not be made on the basis of intuition or be capricious in nature. Article 18 of the collective agreement ensures that in decisions requiring changes in hours of work, the employer has the burden of proof in establishing its case.

In support of the bargaining agent's position, Mr. Nadeau cited the decision in Savard and Zirpdji (Board files 166-2-1768 and 1769). He concluded that the employer failed to demonstrate that the evening shift is required to "meet the needs of the public and/or the efficient operation of the Service". Therefore, the Board should order the employer to revert back to the daytime hours that existed prior to September 19, 1994 for investigators employed at I.I.S. in Toronto, Ontario.

Ms. Lois Lehmann, counsel for the employer, reviewed in detail the evidence pointing out contradictions in Messrs. Dorion's and O'Reilly's testimony. Ms. Lehmann submitted the following arguments. The evidence is to the effect that consultation took place over a period of almost a year from the time Mr. Norrad sent the initial October 22, 1993 memorandum to investigators with a copy of the study (Exhibits 3(a), (b) and (c)). This memorandum indicated that Mr. Norrad wanted to enter into "meaningful consultation to establish a schedule which meets operational requirements but wherever possible addresses staff preferences". Consultation took place via a series of meetings from December 16, 1993 to June 14, 1994 when Part II of the study was introduced (Exhibit 10). However, Mr. Dorion had lost interest in the discussions. Thus, there was little point in continuing the consultation. The bargaining agent closed the door when, prior to the final consultation meeting, it sent memoranda (Exhibits 25, 26 and 27) clearly stating that it did not make any sense to the staff side to continue with the discussions (Exhibit 27).

Furthermore, at no time did the staff representatives offer any viable alternatives to the afternoon shift except one suggestion that breached the provisions of the collective agreement. The staff side proposed to extend the hours of work to 20:00 hours. The evidence (Mr. Dorion) disclosed that alternative working arrangements (variable hours) pursuant to Article M-40 of the PSAC Master Agreement (Exhibit 1) were being used in other parts of the organization and at the Joint Task Force. Notwithstanding that the employer was prepared to discuss variable hours of work and that the Montreal and Vancouver offices had gone to variable hours to solve the problem (Exhibit 12(a), point 7), the system of variable hours was rejected. Mr. Dorion did testify that the investigators were willing to look at creative ways to solve this problem. However, the bargaining agent made no alternative suggestion except the one which is contrary to the provisions of the collective agreement.

Ms. Lehmann pointed out that, pursuant to clause 18.04 of the collective agreement, the employer needs only to meet one prong of the two-prong test. However, in this case it met both prongs. The uncontradicted evidence is that there is a requirement for after hours service (Exhibit 12(a), point (f)) and a demand for I.I.S. services 24 hours a day, seven days a week (Exhibit 12(c), point 8). The employer has shown, and this evidence has not been contradicted, with respect to the demands for service from police partners (Exhibits 3(b) and (c) and Exhibit 10). In particular,

Exhibit 3(c), Appendix F, shows that 26 percent of the arrests were made between 16:00 and 24:00 hours. Exhibit 23 further illustrates the pattern of arrests where 25 to 29 percent of the arrests were made from 1992-93 to 1995-96 between 16:00 and 23:00 hours. The staff side has admitted the need of the public for services 24 hours a day, 365 days a year. Thus, the first prong of the test has been met.

The employer has also met the second prong of the test. In the employer's view, efficient operation of the service means to perform the work quickly, cheaply and not wastefully. Considerations include economies of scale, timeliness. Mr. Dorion recognized that efficiency has to do with costs. The evidence (studies, Parts I and II, and Ms. Mamcarz' and Mr. Norrad's testimony) demonstrates that the budget for overtime has been reduced from \$600,000 in 1992-93 to \$250,000 in 1996-97. The introduction of the afternoon (evening) shift was the only way to meet the declining budget ceiling and the workload demand showing 25 percent of arrests occurring between 16:00 and 24:00 hours. Mr. Norrad had to meet the same operational demands with significantly fewer resources. He did this by the introduction of the afternoon shift.

The employer submitted that there is no issue with respect to the employer's openness to and disclosure of all files the investigators required in preparing their response (Exhibit 9(b), point 1). With respect to the Mitchell and Carrière studies, the employer was unable to find copies. Furthermore, they are not relevant to 1993 because they are so out of date. Nothing was hidden from the staff representatives. When the Guide/Overview (Exhibit 7) became known, the employer proceeded to conduct yet another study (Exhibit 10), Part II, notwithstanding that there was no requirement to do that pursuant to the collective agreement.

Ms. Lehmann pointed out that the employer identified alternatives, including variable hours and other alternative work arrangements. The constraint was the provisions of the collective agreement. The bargaining agent provided no evidence that staff levels during the daytime were inadequate to deal with the needs of the public. Mr. Norrad was faced with both a decrease in budget and staff members and yet a consistent demand for service, particularly after hours service. He also had to cope with the diversion of a significant number of investigators to the Joint Forces Task Force in June 1994. There was an infrastructure in place during the daytime that



could respond to the daytime calls. Mr. Norrad testified that it was more efficient to have a complement of investigators on the evening shift because they were performing their duties at straight time pay rates as opposed to paying them scheduled and duty overtime. Since “efficiency” equates with cost, it was more efficient for Mr. Norrad as a manager to proceed in this way.

Ms. Lehmann added that the bargaining agent has ignored the second prong of the test: “efficient operation of the Service”. The bargaining agent alleged that the previous system was acceptable because there were no complaints about it. However, the bargaining agent is ignoring the reduction in the budget for overtime by more than 50 percent in four years. The employer had to deal with this cost reality and change its way of providing service and continue to meet the needs of the public. The cancellation of scheduled overtime as alleged by the staff side was not indicative of a pattern. Moreover, one of the cancellations occurred in December 1993 (Exhibit 2) and was to deal with a security breach.

Concerning Mr. O’Reilly’s declaration that in his experience the majority of the evening work related to visitors’ overstay and unauthorized employment, this is contradicted by Exhibit 10, Appendices B, C and D, and Mr. Dorion’s testimony that criminal removals are a priority. Mr. O’Reilly’s evidence may be indicative of the reality during scheduled overtime when certain supervisors may have been authorizing overtime for non-priority work. In any case, Mr. O’Reilly brought to the hearing no notebooks or arrest books to support his contention.

The employer’s evidence demonstrates that it met the needs of the public during the daytime hours with as few as 14 investigators and a number of support staff. Since 25 percent of the public’s need was in the evening, it made good sense to deploy 25 percent of the staff to an after-hours shift to meet that service need at a time when the I.I.S.’ budget had been reduced by over 50 percent. The decrease in the number of arrests between 16:00 and 23:00 hours during 1994-95 was caused by the institution of the Joint Forces Task Force. Concerning the bargaining agent’s argument that there should also be a night shift because 13 percent of the arrests are made overnight, the employer submits that at some time in the future a 24-hour service may be a possibility.

Ms. Lehmann referred to Article M-6 of the PSAC Master Agreement (Exhibit 1) which allows the employer to manage the operation in the way most efficient for the operation as a whole. Moreover, there is nothing in clause 18.04 of the collective agreement that restricts the employer from showing the requirement for the change in only “specific circumstances”. The text of clause 18.04 merely requires consultation and establishment of one of the two facets of the two-prong test.

In support of her arguments, Ms. Lehmann cited the following precedents: Colbert and Dyck (Board files 166-2-21446 and 21447); The Council of Postal Unions and Treasury Board (Board files 169-2-44 and 45); Public Service Alliance of Canada and Treasury Board (Board files 161-2-76 and 169-2-49).

Concerning the remedy, Ms. Lehmann submitted the following:

*Pursuant to the language of Section 99 of the Act the extent of the Board's jurisdiction is to determine whether there has been an obligation and whether there has been a failure to observe or carry out the obligation. Therefore, in answer to paragraph 40 (of) the Union's Argument, the Employer says the Board does not have the jurisdiction to order a reversion back to day time hours that existed prior to the implementation of shift work in September, 1994 at the IIS. As far as enforcement of such an obligation, if found, is concerned, in the recent case in the Federal Court of Appeal, Professional Institute of the Public Service of Canada v. (Canada) Treasury Board (unreported A-683-93, October 20th, 1994 per Robertson, J.) the Court held that parliament intended that neither the government as Employer nor the union as bargaining agent would be subject to enforcement orders arising from policy grievances under Section 99 of the Act. Therefore, it is submitted, that, if the Board finds that the Employer failed to fulfill an obligation, in this case, to consult on the basis of Article 18.04, the Board has no jurisdiction to enforce the remedy of ending the afternoon shift and ordering a reversion back to the previous shift schedule.*

Mr. Nadeau replied to Ms. Lehmann's submissions as follows. The employer's submission concerning paragraph 18.04(a) is a convoluted statement to the effect that the shift work was implemented only after extensive consultation in advance to establish that the employer had met the requirements of this provision. However, in the bargaining agent's opinion, the employer not only did not establish the existence of such a need but also failed to establish this need during consultation. There must

be reasons of substance to introduce the hours of work being contemplated and these persuasive reasons have to be presented during consultation. While Mr. Dorion admitted not being at the office (while on secondment) after July 20, 1994, he nevertheless had knowledge of the events after that date through his contact with his colleagues. Moreover, he was on site during the period of the consultation and thus had a complete and comprehensive understanding of the operations at I.I.S. The existence of a demand for I.I.S. services 24 hours a day, seven days a week, does not establish the need for the evening shift. This demand existed all along; it is not something new.

The employer appears to suggest that it was the bargaining agent that had the onus to establish reasons of substance against the introduction of the shift. The collective agreement is quite clear; the onus is on the employer. This suggestion is really indicative of the weakness of the employer's position and arguments in this case. The employer had intended to implement the change in hours of work to shift work from day one and no real consideration of any other alternative was studied or seriously envisaged by the employer. Mr. Nadeau submitted that the "missing past reports" (Carrière and Mitchell) did not justify the establishment of the proposed evening shift. The employer's allegation that an evening shift would improve efficiency or provide better service (Exhibits 3 and 10) is illustrative of "the employer's lack of substance". The 24-hour a day, 365 days a year, demand for service has always existed and it has not, up to the fall of 1993, justified the introduction of an evening shift. "In fact, substantial reductions in overtime cost had been achieved without the introduction of shift work". Mr. Nadeau pointed out that it was the employer, in Part I of the study, who raised the Niagara Falls Port of Entry Pilot Project in support of the evening shift. It is quite telling that the employer would not voluntarily disclose the existence of the Guide/Overview. Part II of the study is more an exercise in self-justification than a serious attempt at addressing any of the new issues.

The data gathered by Ms. Mamcarz is of little value. Mr. Nadeau wrote:

16. *... While the statistics on criminality from the police indicate that crime occurs mostly during certain hours in the evening, there is no established relationship between such occurrence of crime and the service demand on the IIS from the police. It may be more likely that most of the service demands generated by*

*crimes committed in the evening are day time demands. The investigation of crimes and the arrest of criminals by police are not necessarily or even likely conducted in the evening.*

17. *There is simply no established relationship between occurrence of crime and service demands on IIS from the police. It would have been possible to establish such a relationship if we had the service demands from the police in the day time and were able to compare how this (sic) demands fluctuate in relation to occurrence of crime and in relation to the demand for service in the evening. The employer deliberately chose not to study the day time demand for service from either the police, the courts or the prisons despite the fact that they were proposing to reduce the daytime staff by at least a quarter of its resources. The change in hours of work being proposed by the employer was not simply the creation of a new evening shift.*
18. *A substantive analysis to establish the requirement for the introduction of the proposed hours of work shift in the context of limited resources would have included a determination of the service demand from all the clients for all periods of time and a cost benefit analysis to determine which approach to meet this demand would be more efficient.*

The requirement for 24-hour service was met by the duty/standby operation. The study, Parts I and II, failed to address the question of whether there is a requirement to modify the existing hours of work in the context of finite resources to meet the demand. The employer did not consider the question of the efficiency of the service. At the time of the consultation, the employer did not have the figures for any of the projected overtime expenditures because the budget had not been approved.

Mr. Nadeau distinguished the Colbert and Dyck (supra) decision on the ground that the provision of the collective agreement in question was different. The PSAC (supra) case confirms the employer's obligation to consult.

On the remedy, Mr. Nadeau wrote:

35. *Finally on the question of remedy, I believe the Employer has completely misunderstood the Federal Court of Appeal decision, Professional Institute of the Public Service of Canada v. Treasury Board*

(A-683-93). *What the Appeal dealt with was the question of using (the former) section 23 (repealed) as a remedy when the Employer failed to implement an action ordered by a Board member under section 99 of the Act. What the Court found in essence was that contrary to an adjudicator's decision that can be enforced by the Board, the Board cannot enforce a Board decision. Remedy would have to lie elsewhere.*

36. *The Federal Court of Appeal has dealt with the Public Service Staff Relations Board's ability to go beyond a declaration under section 99. Adjudicator Lorne O. Clarke was directed by the Federal Court of Appeal that he had the authority to direct action in the Public Service Alliance of Canada v. Treasury Board (169-2-165/166; FCA A-802-77).*
37. *This was also cited by Adjudicator J.M. Cantin in the DA (Data Processing) contracting out case that went eventually to the Supreme Court (169-2-473).*
38. *I would like to conclude by reiterating our request that you declare that the employer has contravened the collective agreement and order the employer to reiterate the daytime schedule.*

### Determination

The issue in dispute raised in this case is whether the employer violated subclause 18.04(a) of the PM Group Specific Agreement when it implemented the evening shift as of September 19, 1994. The question is one of fact and relates to the interpretation and application of subclause 18.04(a).

Subclause 18.03(a) provides for "Day Work":

#### *18.03 Day Work*

- (a) *Subject to clause 18.04, the scheduled work week shall be thirty-seven and one-half (37 1/2) hours from Monday to Friday inclusive, and the scheduled work day shall be seven and one-half (7 1/2) consecutive hours, exclusive of a lunch period, between the hours of 7 a.m. and 6 p.m.*

The exception to this "Day Work" is found in subclause 18.04(a) which reads as follows:

- (a) *When scheduled hours, other than those provided in clause 18.03 (a), are in existence when this Agreement is signed, the Employer, on request, will consult with the Alliance on such hours of work and in such consultation will establish that such hours are required to meet the needs of the public and/or the efficient operation of the Service.*

*Where scheduled hours are to be changed so that they are different from those specified in clause 18.03 (a), the Employer, except in cases of emergency, will consult in advance with the Alliance on such hours of work and, in such consultation, will establish that such hours are required to meet the needs of the public and/or the efficient operation of the Service.*

This dispute refers to the second paragraph of subclause 18.04(a).

After a careful review of the extensive evidence and jurisprudence, I find that the employer has met all obligations provided in subclause 18.04(a). The employer (Mr. Norrad) decided that, to meet the needs of the public and to reduce the excessive overtime costs generated by an ineffective scheduled overtime system, it had to resort to an evening shift. Mr. Norrad decided on an evening shift ending at 23:00 hours even though he could have justified a 24-hour per day shift operation. Having found that an evening shift was required, Mr. Norrad set out to respect the obligations imposed on the employer under subclause 18.04(a) and invited the bargaining agent to engage in consultation in advance with the view to discussing the need for extended hours of work.

In *Lakeland College Faculty Association v. Lakeland College* (1995), 35 Alta. L.R. (3d) 95 (Q.B), the Alberta Court of Queen's Bench found at page 104 that:

*... the word 'consultation' must be used in its common, everyday context which includes conferring about, deliberating upon, debating, discussing, and considering.*

Consultation does not presuppose the other party's agreement. It requires that the parties discuss, as in this case, the employer's intention to implement an evening shift or at least extend the hours of work to 23:00 hours before its implementation: *R. v. Sampson* (1995), 131 D.L.R. (4th) 192. Thus, I find that consultation did occur in this case. Mr. Norrad and the employer's representatives met officially three times with Mr. Dorion, the local union representative, and the staff side (investigators)

representatives. In addition, in June 1994, Messrs. Norrad and Dorion had a further meeting to discuss this same issue.

I will now address whether during this consultation with the PSAC's representatives the employer did establish that the evening shift or coverage until 23:00 hours was required "to meet the needs of the public and/or the efficient operation of the Service".

The evidence disclosed that I.I.S. is a 24-hour per day operation, 365 days per year. Moreover, there was agreement as to the priorities of I.I.S. and that criminality is the first priority. Mr. O'Reilly testified that when he worked scheduled overtime, 99 percent of his arrests consisted of cases of visitors' overstay or unauthorized employment or a combination of both. However, the documentary and oral evidence established that criminality was the number one priority of I.I.S. Thus, Mr. O'Reilly's testimony confirmed Mr. Norrad's concerns with respect to the inefficient use of scheduled overtime. If criminality is I.I.S.' number one priority, how was Mr. O'Reilly authorized to work scheduled overtime for lower priority matters such as visitors' overstay or unauthorized employment or a combination of both? In Mr. O'Reilly's case, very few tips involved criminality. He testified that when he presented his list of calls for the evening, this list rarely related to criminality. Mr. O'Reilly added that "management" knew that the work he performed during scheduled overtime was low priority. In addition, Mr. Dorion recognized that 39.9 percent of the arrests are made outside 08:00 to 16:00 hours.

Ms. Mamcarz and Mr. Norrad justified the implementation of the evening shift on the ground that the Toronto I.I.S. office had a \$600,000 overtime expenditure which was considerably higher than the overtime expenditure in other Canadian immigration centres. Furthermore, the demand of the Metropolitan Toronto Police Force required 24-hour per day coverage. On this basis, Mr. Norrad decided to implement a shift until 23:00 hours even though he could have justified shifts to cover the 24-hour period. Past expenditures demonstrated a pattern in that investigators worked overtime until 21:00 hours. Even Mr. Dorion recognized the need for greater coverage because he proposed that investigators change their hours of work to provide coverage until 20:00 hours. Furthermore, I.I.S.' budget had declined considerably between 1993 and 1996. It was reduced by at least \$350,000. Thus, I.I.S.

could no longer afford this “scheduled overtime” in light of the fact that the demands for evening coverage remained constant. The study demonstrated that the implementation of the evening shift would result in savings in the amount of \$208,000.

If I am to accept Mr. O’Reilly’s testimony, I must find that the scheduled overtime system did not conform to I.I.S.’ priorities. Mr. O’Reilly offered his services for scheduled overtime and 99 percent of this evening work dealt with low priority matters. Thus, Mr. Norrad had good grounds to be concerned with the efficiency of the service and whether I.I.S. met the needs of the public. Obviously, it did not.

Furthermore, Mr. Dorion’s arguments are not convincing. The pre-September 1994 system did not meet the needs of the service and was simply too costly. Investigators did not necessarily deal with criminality during scheduled overtime which was I.I.S.’ number one priority. Eliminating scheduled overtime was not a possibility without replacing it with something else. Coverage had to be provided to meet the demands as evidenced by the study. The employer had been considering for some time shift work to remedy the situation but it had failed in the past to respect the provisions of the collective agreement. This is the reason why the employer delayed its implementation until September 1994. It wished to respect the obligations provided in clause 18.04. The employer provided to the local union what documentation it had available. If the bargaining agent had other solutions to propose, it failed to present them to the employer. Mr. Norrad invited the staff side to discuss the problem. His memorandum of October 22, 1993 (Exhibit 3(a), tab 3) mentions the need to extend the hours of operation and it leaves open to discussion how this will be accomplished.

Mr. Dorion’s concerns with health and safety matters and the need for support staff have no merit. Investigators had worked scheduled overtime for years without health or safety incidents or complaints. The same is true for the fact that no support staff was available to them during the scheduled overtime and there seemed to have been no problem in that respect. The fact that the study did not address arrests made and calls received during the day period and that no cost analysis was done with respect to investigators overtime separate from other I.I.S. overtime costs and duty work, is of no consequence to the conclusion. The reality remains that 39.9 percent of



the arrests are made in the evening and there is a demand for I.I.S. services 24 hours a day.

The study indicated that 25 percent of the workload was completed on an overtime basis. In addition, the reduction in staff during the daytime does not seem to be a problem. Mr. Dorion did not offer concrete examples of a problem in light of the fact that during a period of six months, 11 investigators and one supervisor were assigned to the I.I.S.-R.C.M.P. Joint Task Force thus reducing considerably I.I.S.' day complement. Mr. Dorion raised the point that overtime costs should not be a factor for a change in hours of work and in this respect he relied on the Guide/Overview (Exhibit 7, tab 6, page 2). Mr. Norrad was not obliged to follow the Guide/Overview. This document was a simple guide. However, subclause 18.04(a) does make costs a factor when it refers to "efficient operation of the Service". The *Webster's Third New International Dictionary* defines "efficient" to mean:

*... 2. marked by ability to choose and use the most effective and least wasteful means of doing a task or accomplishing a purpose ....*

The French version of the relevant paragraph of subclause 18.04(a) reads as follows:

*Lorsqu'il faut modifier les heures de travail prévues à l'horaire de telle façon qu'elles diffèrent de celles qui sont indiquées à la clause 18.03 a), l'employeur, sauf dans les cas d'urgence, doit, au préalable, tenir des consultations avec l'Alliance au sujet de ces heures de travail et, lors de ces consultations, doit établir que les heures en question sont nécessaires pour répondre aux besoins du public et/ou de l'exploitation efficace du Service.*

The "*Dictionnaire canadien des relations de travail (deuxième édition)*" (Gérard Dion, 1986) explains "efficacité" in the following terms:

*Aménagement optimal des qualités et des ressources dont dispose une personne ou une organisation, qui lui permet d'obtenir le maximum de résultats avec le minimum d'efforts ou de dépenses, par l'établissement d'une correspondance étroite entre les moyens utilisés et les fins recherchées.*

It is obvious that in cases of budgetary restraint, when the same level of services must be maintained, managers must resort to cost cutting measures to

deliver their programs. Cutting overtime costs seems to be the most obvious cost cutting measure. Lay-off is another one.

Simply eliminating scheduled overtime is not a solution since the need of the Metropolitan Toronto Police Force remains. These calls have to be dealt with and criminality remains the number one priority. Investigators have to make arrests in the evening to meet the priorities and goals of I.I.S.

This case has to be decided on a balance of probabilities. The bargaining agent has not met its burden of proof and has failed to demonstrate that the employer violated the provisions of subclause 18.04(a) when it implemented the evening shift in September 1994. Moreover, the employer has made its case that the evening shift is required "to meet the needs of the public and/or the efficient operation of the Service".

For all these reasons, this reference under section 99 of the *PSSRA* is hereby dismissed.

**Muriel Korngold Wexler,  
Deputy Chairperson**

OTTAWA, July 2, 1997.