Date: 20060323

File: 166-2-32613

Citation: 2006 PSLRB 34

Public Service Staff Relations Act

Before an adjudicator

BETWEEN

MICHAEL LANNIGAN

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Lannigan v. Treasury Board (Correctional Service of Canada)

In the matter of a grievance referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: Thomas Kuttner, Q.C., adjudicator

For the Grievor: John Mancini, UNION OF CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN

For the Employer: Suzanne Landry, counsel

Heard at Moncton, New Brunswick,
March 8, 2005.

Grievance referred to adjudication

[1] This grievance – adjudication matter arises under the provisions of a binding collective agreement between the Treasury Board (Correctional Service of Canada) (CSC) and the UNION OF CANADIAN CORRECTIONAL OFFICERS – SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA – CSN (UCCO-SACC-CSN), effective April 2, 2001, – May 31, 2002, (Exhibit 1). By grievance presented May 6, 2002, the grievor, Michael Lannigan, claims that the employer failed to pay to him the annual clothing allowance of four hundred dollars ($400.00) to which he is entitled as an employee who is not required to wear a uniform routinely during the course of his duties, contrary to the provisions of clause 44.03 of the collective agreement. By way of remedy he seeks, in addition to declaratory relief, an order directing the employer to pay him the annual clothing allowance to which he is entitled (Exhibit 2 A).

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former *Act*").

[3] For the reasons given below, I find that this grievance must be allowed and grant relief accordingly.

Summary of the evidence

[4] The Board heard testimony from two witnesses – the grievor and his immediate supervisor at the time the circumstances giving rise to this grievance took place – and its review of the evidence draws on their testimony and the exhibits filed.

[5] The grievor is employed as a correctional officer at Dorchester Penitentiary in New Brunswick. Dorchester is a multi-level correctional facility housing a mix of minimum, medium, and maximum security inmates. Approximately 170 correctional officers are employed at Dorchester and are assigned principally to 4 units, each under the supervision of a unit manager. David Niles, a 14-year veteran with CSC at the time of the hearing, was transferred from National Headquarters in Ottawa to Atlantic Regional Headquarters in 1998 where he served as Coordinator of Correctional Operations at Dorchester. In 1999 he became Unit Manager for Unit 1 at Dorchester with general responsibility for correctional officers and other correctional staff

assigned to that unit. Correctional officers are assigned throughout Dorchester on a rotational basis and at any one time there are 15 to 20 officers in the Correctional Officer 02 (CX 02) classification and several dozen officers in the Correctional Officer 01 (CX 01) classification assigned to Unit 1. There are in addition auxiliary functions associated with Unit 1, including the Recreation Department to which six Correctional Officers are assigned on a 'slow rotation' basis i.e. for longer-term stints than is otherwise the norm. Three are classified at the CX 02 level, and three at CX 01 level. As unit manager, a position which he held until his transfer to Westmorland Correctional facility in late 2002, Mr. Niles reported directly to the Deputy Warden at Dorchester responsible for correctional operations.

[6] At the time he filed this grievance in May 2002, the grievor, a 16-year employee of Dorchester, held an acting CX 02 position in the Unit 1 Recreation Department where he had been assigned on a slow rotation basis for approximately 2½ years, initially in the CX 01 classification. The Recreation Department comprises an indoor gym and associated facilities including a weight lifting room, games room, and canteen as well as outdoor ball fields, tennis courts and a skating rink. It services the recreational and exercise needs of the inmates. In addition to their ordinary security functions, Correctional Officers assigned to the Recreation Department are expected to mingle with inmates in recreational activities both indoors and outdoors.

[7] Ordinarily, Correctional Officers are expected to wear a Correctional Officer Uniform as spelled out in the Employee Clothing Reference Manual issued pursuant to Commissioner's Directive 350 "Materiel Management" (Exhibit 5). The scale of issue of clothing articles for the correctional officer uniform is listed at Annex "B" in the Reference Manual and includes both summer and winter issue as well as year round clothing items. Clothing is issued centrally through the Crown Assets and Distribution Center of Public Works and Government Services Canada, and includes as well as shirts, trousers, shoes, boots, blazer, and accessories seasonally appropriate wear such as sweaters, parka, hat, gloves etc. Each item of clothing is given a point value and correctional officers are entitled initially to a maximum point value of 130, with a yearly maintenance point allotment of 40, which may be accumulated year by year.

[8] Correctional Officers assigned to the Recreation Department do not wear the standard Correctional Officer uniform. Rather, because of their role interacting with inmates in recreational and exercise activities, they are expected to wear civilian

clothing, for which they have historically received a clothing allowance as stipulated at Annex "E" of the Employee Clothing Reference Manual, the scale of issue of clothing articles for recreation officers. That scale of issue provides for the local commercial purchase by recreational officers of one three-piece sweat suit per year, to a maximum value of $90.00; four sports shirts or T-shirts per year, to a maximum value of $40.00; and one pair of running shoes per year, to a maximum value of $80.00. Although that adds to a total value of $210.00 annually, both Mr. Lannigan and Mr. Niles testified that, in point of fact, the clothing allowance previously in effect for correctional officers assigned to the Recreation Department was $120.00 annually.

[9] Mr. Niles testified that from the time he first assumed his duties as coordinator of correctional operations at Dorchester in 1998, he had been concerned with the dress worn by Correctional Officers assigned to the Unit 1 Recreation Department. Although he was in agreement that it was appropriate to relieve the Correctional Officers assigned to the Recreation Department of the obligation to wear the Correctional Officer Uniform and to allow them to wear civilian clothing more in keeping with their role as recreational officers, he was concerned that there was no uniformity in dress, which would enable Correctional Officers to be readily distinguished from inmates. Although the civilian clothing worn was appropriate, it ranged from jeans to sweat suits and from golf shirts to denim shirts depending on the predilections of the individual Correctional Officer. He himself had once mistaken an inmate for a recreational officer precisely because the latter were not distinguishable by dress.

[10] At that time, the bargaining agent representing Correctional Officers was the Public Service Alliance of Canada (PSAC). In March 2001 the Board certified UCCO-SACC-CSN as bargaining agent for certain CSC employees formerly represented by PSAC, including Correctional Officers. In April 2001 Treasury Board and UCCO-SACC-CSN negotiated a first collective agreement, the terms of which included clause 44.03 providing for an annual clothing allowance of $400.00 to be paid to Correctional Officers CX 01 and CX 02 who are not required to wear a uniform routinely during the course of their duties. Pursuant to that clause, recreation officers at the time working in the Unit 1 Recreation Department, including the grievor, received the $400.00 clothing allowance that was payable under clause 44.03 for the year 2001.

[11] Between January and April 2002, Mr. Niles discussed with the Deputy Warden his concerns about the lack of uniformity in the dress worn by Correctional Officers assigned to the Unit 1 Recreation Department. With the Deputy Warden's approval, he directed Jean LeBlanc, a Welfare Program Officer in the Recreation Department, to consult with the Correctional Officers regarding the purchase of uniform clothing to be worn by them while assigned to the Recreation Department as recreation officers. Mr. LeBlanc, who works with the Correctional Officers is not in the same bargaining unit, but rather in a bargaining unit represented by PSAC. After consulting with employees and providing them with samples of casual sports clothing from local suppliers, Mr. LeBlanc reported back to Mr. Niles that a general consensus had been reached amongst Correctional Officers in the Recreation Department as to appropriate wear. With that information in hand, Mr. Niles authorized the purchase of 2 pairs of cargo pants, 4 golf shirts and a zippered wind breaker, to colour and material specifications, from a local commercial supplier to be issued to each Correctional Officer assigned to the Unit 1 Recreation Department. Arrangements were made through Mr. LeBlanc to obtain individual size requirements for each Correctional Officer prior to placing the order. Mr. Niles testified that it was his understanding that the cost per officer for the clothing issue purchased was in excess of $400.00. Because of the decision taken to implement this new clothing standard, no annual clothing allowance was paid in 2002 or after that date to Correctional Officers assigned to the Unit 1 Recreation Department at Dorchester Penitentiary.

[12] On May 6, 2002 the grievor filed a grievance alleging that, in so acting, the employer had violated clause 44.03 of the collective agreement governing the clothing allowance. A reply to his grievance was given by Remi Gobeil, the Atlantic Regional Deputy Commissioner on March 19, 2003, in the following terms:

> *"This is further to your grievance of May 6, 2002. In your grievance you stated your objection to having received articles of clothing instead of the $400.00 annual clothing allowance. Your grievance was not answered at Level 1. I regret the delay that has occurred in providing this response at Level 2.*
>
> *It is my understanding that you are or were posted to the gym location/Recreation Department at Dorchester Penitentiary as a CX 02. I believe your grievance was filed following the implementation of clothing standard for officers in the Recreation Department, particularly for officers at the CX 02 level.*

> *I am advised that a decision was made to have officers in the Recreation Department wear clothing that was comfortable and appropriate for the gym setting, uniform and recognizable in appearance and tasteful in terms of material and style. Such clothing would constitute the "uniform" for officers in such posts. A consultative process was implemented with staff in the area to arrive at clothing selections that meet the above-noted comfortable, uniform and tasteful requirements. As a result of this process a decision was made on the specific clothing articles that would be provided to staff and that they would be required to wear while on duty in the Recreation Department.*
>
> *It is my view that the Recreation Department attire for CX 02 officers at Dorchester is reasonable and appropriate for the duties performed. The attire constitutes a uniform for all intents and purposes. With this attire, officers are spared the expense of providing their own clothing. Accordingly, there is no entitlement to the $400.00 annual clothing allowance referred to in Article 44.03 of the collective agreement.*
>
> *Based on the above I must deny your grievance".*
>
> [Exhibit 2 B]

Summary of the arguments

For the grievor

[13] On behalf of the grievor, Mr. Mancini submits that this is a straightforward case of failure on the part of the employer to comply with the clear terms of the collective agreement mandating the payment of a $400.00 annual clothing allowance to employees in the Correctional Officer classification who are not required to wear a uniform routinely during the course of their duties as stipulated at clause 44.03 of the collective agreement. That provision is an explicit limitation on managerial rights otherwise preserved at article 6.01. The clothing standard and issue unilaterally imposed by the employer to be worn by Correctional Officers when on duty at the Unit 1 Recreation Department, although of common design such as to make its wearers readily identifiable from the inmate population, is not a uniform within the meaning of the collective agreement. Only clothing issue that complies with the Treasury Board Uniforms Directive, which forms part of the collective agreement pursuant to subclause 41.03(a), can be said to be a uniform within the meaning of the collective agreement.

[14] Changes to the Uniforms Directive can be effected only in accordance with the procedures there laid down, including consultation with bargaining agent representatives, formal notice to employees, consultation with the government Clothing Advisory Service and the obtaining of Treasury Board authorization. None of that occurred here. Rather, Mr. Niles as Unit Manager, with support from senior managerial officials, directed the wearing of specified clothing by Correctional Officers while on duty at the Unit 1 Recreation Department without any reference whatsoever to the Treasury Board Uniforms Directive as required by the provisions of subclause 41.03(a), thereby violating both that article and clause 44.03 of the collective agreement. The grievor is entitled to declaratory relief and payment of the annual clothing allowance to which he was entitled and which was improperly denied to him.

For the Employer

[15] On behalf of the employer, Ms. Landry first raises a jurisdictional challenge. As originally filed, the grievance references only clause 44.03 of the collective agreement governing the clothing allowance and asserts that the employer has breached its terms. At the hearing the further allegation was made that in doing so the employer violated as well subclause 41.03(a) generally and the Treasury Board Uniforms Directive in particular. This the grievor cannot do as he is, in effect, remitting for adjudication an issue not originally grieved and over which I, as adjudicator, have no jurisdiction. The nature of a grievance cannot be changed even if agreed to by the parties, and certainly not unilaterally by the grievor as is the case here. I am limited to considering this matter solely on the basis of whether or not there has been a breach of clause 44.03 of the collective agreement. In support, counsel cited the decision of the Federal Court of Appeal in *James Francis Burchill v. Attorney General of Canada* [1981] 1 F.C. 109.

[16] As to the merits of the grievance, counsel submitted that in the exercise of its managerial discretion under clause 6.01 of the collective agreement, the employer may issue directives regarding the wearing of standardized dress in the Unit 1 Recreation Department. The employer had legitimate concerns that the safety and security of the institution would be compromised if Correctional Officers were not readily identifiable by wearing standardized dress that distinguished them from the inmate population. As wearing the standard issue Correctional Officer Uniform is not appropriate in the setting of the Recreation Department, alternative standardized dress was required and issued. Such standardized dress falls within the meaning of the term “uniform” found at clause 44.03 of the collective agreement as that word is commonly understood. The

grievor is not entitled to receive the annual clothing allowance of $400.00 provided for in clause 44.03, as he was required to wear a uniform routinely during the course of his duties as a Correctional Officer in the Unit 1 Recreation Department. In support, counsel referred to the decision of Adjudicator Oakley in *Newfoundland Department of Works, Services and Transportation and N.A.P.E.* (1994) 40 L.A.C. (4th) 372.

Reasons

Preliminary Issue: Jurisdiction

[17] As noted, counsel for the employer rests her argument that I am without jurisdiction to consider a breach of subclause 41.03(a) of the collective agreement on the decision of the Federal Court of Appeal in *Burchill v. Canada (supra*). There, the grievor filed a grievance alleging entitlement to special lay-off provisions made by Treasury Board for indeterminate employees, which had been denied to him. The issue to be determined through the grievance process was whether the grievor retained his original indeterminate status notwithstanding his having subsequently accepted a term position at the Anti-Inflation Board. That was a question not referable to adjudication under subsection 91(1) of the former *Act*, but rather to be finally determined at the grievance stage. His grievance having been denied, the grievor then sought to have it referred to adjudication, alleging that his layoff was in fact a disguised disciplinary action taken by the employer against him leading to his dismissal and thus referable to adjudication. In upholding the adjudicator's decision that he had no jurisdiction to entertain the grievance, Chief Justice Thurlow wrote on behalf of the Court:

> *"5. In our view, it was not open to the applicant, after losing at the final level of the grievance procedure the only grievance presented, either to refer a new or different grievance to adjudication or to turn the grievance so presented into a grievance complaining of disciplinary action leading to discharge within the meaning of subsection 91(1). Under that provision it is only a grievance that has been presented and dealt with under section 90 and that falls within the limits of paragraph 91(1)(a) or (b) that may be referred to adjudication. In our view the applicant having failed to set out in his grievance the complaint upon which he sought to rely before the Adjudicator, namely, that his being laid off was really a camouflaged disciplinary action, the foundation for clothing the Adjudicator with jurisdiction under subsection 91(1) was not laid. Consequently, he had no such jurisdiction".*

[18] The *Burchill* case stands for the proposition that a grievance must be framed in sufficiently clear terms so as to enable the employer to meet the case against it. It would be unfair and prejudicial to the employer to require it to meet a case not clearly put before it. But that principle cannot be said to be so broad as to impose, in an absolute sense, an obligation on a grievor to reference every provision of the collective agreement implicated in a grievance, the substance of which is clear on its face. The courts and arbitrators have long been intolerant of claims of defect in form or of technical irregularity in the processing of grievance complaints. Failure to provide particulars has long been held to fall within this rubric. Over 40 years ago, Justice Judson, speaking for the majority of the Supreme Court of Canada in *Re Galloway Lumber Co. Ltd. and British Columbia Labour Relations Board* (1965) 48 D.L.R. (2d) 587, wrote with respect to an objection made as to the sufficiency of a grievance claim:

> *"First, it says that a complaint in writing from an employee that his dismissal is wrongful is not a notification of any cause to be arbitrated under the Collective Bargaining Agreement because something equivalent to a bill of particulars ought to have been delivered. This is more than the technicalities of common law pleading ever required at any time in a case of this kind. The objection is entirely without merit."* [at p. 588].

[19] The concern of the Supreme Court of Canada that form not triumph over substance in the arbitral process has been echoed in the decisions of other courts. Thus, Justice Brooke speaking for the Ontario Court of Appeal in *Re Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters & Joiners of America, Local 2486* (1975) 57 DLR (3d) 199, cautioned:

> *"No doubt, it is the practice that grievances be submitted in writing and that the dispute be clearly stated, but these cases should not be won or lost on the technicality of form, rather on the merits and as provided in the contract and so the dispute may be finally and fairly resolved with simplicity and dispatch."* [at p. 204]

In endorsing that approach Justice Osler, speaking for the Ontario Divisional Court in *Re Communications Union Canada and Bell Canada* (1977) 71 DLR (3d) 632, commented:

> *"Nothing can be more calculated to exacerbate relations between employers and employees than to be told that their differences, plainly designed to be finally settled by*

> *arbitration as the statute requires, cannot be examined because of a defect in form."* [at p. 639]

[20] Justice Manning of the Alberta Supreme Court tied this distaste for technicalities in the processing of grievances to the exclusivity of the arbitral process for the resolution of collective agreement disputes. In *Re International Woodworkers of America, Local 1-207 and Zeidler Forest Industries Ltd.*, (1978) 84 DLR (3d) 482, the grievor had failed to list the articles of the collective agreement alleged to have been violated, as required under the grievance procedure. In rejecting the argument that such failure was fatal to the grievance's arbitrability, he wrote:

> *"It must follow, it seems to me, that on principle, seeing that access to the Courts has been denied to persons who work under collective agreements, justice demands that, whenever reasonably possible, the way to arbitration should be kept open. In other words, there should be an avoidance of strict interpretation of procedural provisions of the Agreement because that can so easily result in a denial of the right to arbitration; and in my opinion it is an error to state that strict interpretation should take place."* [at p. 487-8]

[21] The arbitral jurisprudence is equally as insistent on the need to combat the tyranny of form. See, for example, *Re Fabricated Steel Products (Windsor) Ltd. and United Automobile Workers, Local 195* (1978) 16 LAC (2d) 148. Granted, as Arbitrator O'Shea noted there, a grievance should state with sufficient particularity when, where, how and by whom the grievor alleges that the terms of the governing collective agreement have been violated. This has a two-fold purpose – namely, that the processing of the grievance might be facilitated and as well that the employer might be made aware at the earliest possible opportunity of the nature of the dispute. But such particularity is not to be insisted upon at the expense of arbitrability.

[22] The matter is well addressed in *Re United Steelworkers, Local 3998, and Dunham Bush (Canada) Ltd. (*1965) 15 LAC 270, where Arbitrator Lang quoted from a paper delivered by Professor Bora Laskin, as he then was, as follows:

> *"The grievance documents are, so to speak, the 'pleadings' of the court lawsuit, but whereas rules of procedure govern the particularity of the statement of a cause of action (as well as the defence) in a lawsuit, and provide an orderly scheme for amendments, the labour arbitrator has no such formal code of control, save as one may be found in the particular collective agreement. In my submission, it is better that he be left fairly free to help the parties, if necessary, to pinpoint*

> *the issues in a grievance claim. The expedition and informality sought through arbitration would be lost if the written grievance form became the sovereign talisman, and if formal motions to amend had to be made. After all, we are not concerned in labour arbitration with meticulous definition of issues for a jury, nor are we concerned with tactical maneuvers designed to protract proceedings or to compound costs. Of course, neither party to a labour arbitration, should be put at a disadvantage by reason of the opponent's amendment of claim or answers; but this can usually be resolved on the spot, or an adjournment could be granted to permit preparation to meet what turns out to be a new or modified form of the issue between the union and employer."* [at p. 274]

[23] To be sure, occasions may arise where a lack of particularity in the framing of a grievance is so egregious as to deprive the party against whom the allegations are made of its right to a full and fair determination of the dispute. But that is not this case. Here, the details of the grievance on the grievance presentation form are couched in the following terms:

> *Art. 44.03 Clothing Allowance*
>
> *Clothing Allowance not received, instead articles clothing were supplied. This clothing was considered to be a uniform although not approved by CSC [Exhibit 2 A].*

The provisions of clause 44.03 stipulate:

> *"Those CX-1 and CX-2 employees who are not required to wear a uniform routinely during the course of their duties shall receive an annual clothing allowance of four hundred dollars ($400.00). This allowance will be payable March 31st of each year.*
>
> *The provision applies to those CX-1 and CX-2 employees assigned to such duties for periods of time of not less than 6 months per fiscal year.*
>
> *Any employee receiving this allowance shall not be eligible to receive points toward a uniform issue."*

[24] Both the grievance and clause 44.03 address the wearing of a uniform (Exhibit 1). The clause speaks of Correctional Officers "[not] required to wear a uniform routinely during the course of their duties", and the grievance speaks of the clothing supplied to a Correctional Officer assigned to the Unit 1 Recreation Department as "considered to be a uniform although not approved by CSC." But the employer's otherwise unrestricted clause 6.01 managerial right to require that

Correctional Officers wear a uniform while on duty is specifically addressed, and thereby restricted by subclause 41.03(a), the relevant terms of which stipulate:

> *"The following directives, as amended from time to time by National Joint Council recommendations and which have been approved by the Treasury Board of Canada, form part of this Agreement:*
>
> . . .
>
> *Personal Protective Equipment and Clothing Directive*
>
> . . .
>
> *Uniforms Directive"* [Exhibit 1]

It follows that both the grievance as framed and the provisions of clause 44.03, referring as they do to uniforms, necessarily engage the limiting provisions of subclause 41.03(a) of the collective agreement.

[25] In short, this is not a case in which the employer is placed at a disadvantage by reason of the grievor's modification of the clothing allowance and uniform issue raised in his grievance as originally filed. That modification - his explicit reference at the adjudication hearing to the Treasury Board Uniforms Directive incorporated by reference into the collective agreement by virtue of subclause 41.03(a) - in no way substantially alters the issue for determination. Rather, it clarifies it. I leave aside the fact that, when he referred this matter to adjudication, the grievor referred to his reliance on "article 44 and related articles" on Form 14, which he filed on July 29, 2003. The objection to my jurisdiction to address subclause 41.03(a) of the collective agreement and the Treasury Board Uniforms Directive there referred to is denied.

Merits

[26] It is common ground between the parties that, if the clothing issue supplied to the grievor was a uniform within the meaning of the collective agreement, then this grievance must fail as the clothing allowance provided for at article 44.03 is payable only where correctional officers "are not required to wear a uniform routinely during the course of their duties". The employer places much reliance on *Newfoundland v. N.A.P.E. supra* in support of its position that the clothing issue supplied to the grievor while assigned to the Unit 1 Recreation Department is a uniform, as that term is commonly understood.

[27] There, the collective agreement provided for the issuance of protective clothing itemized in the collective agreement itself "where the Employer requires the wearing of uniforms" by persons engaged in several named classifications, including that in which the grievors worked. The employer required the grievors to wear certain items of clothing which it issued from this itemized list so as to distinguish them from students on the community college campus where they worked. However, it denied that these comprised a uniform entitling employees working outdoors, as were the grievors, to an annual issue of rainwear under the protective clothing provisions of the collective agreement.

[28] The adjudicator held that any combination of clothing issued by the employer under the provisions of the agreement that was required to be worn by employees, comprised a uniform as that term is commonly understood. In upholding the grievance he wrote:

> *"The collective agreement does not specify a particular meaning for the word "uniform". Article 27.02(b) simply provides for the issuance of certain items of clothing to employees in specified classifications who are required to wear uniforms. In our view, a uniform may consist of various combinations of the items listed under art. 27.02(b). It is of some importance that art. 27.02(b) contain the words "where the Employer required the wearing of uniforms". It does not contain the words "where the employer required the wearing of the uniform". The inclusion of the word "the" immediately preceding the word "uniform" would lead to an obvious presumption in favour of the employer's position.*
>
> *In the absence of specific wording in the collective agreement establishing the existence of a single uniform, we are inclined to approach the grievance on the basis of the common usage of the word "uniform". The following definition, taken from the Gage Canadian Dictionary builds on the definition put forward by the union and, in our view, reflects the most salient features associated with the wearing of uniforms:*
>
> *. . .*
>
> *"Uniform (noun) -- the distinctive clothes worn by a member or a group when on duty, by which they may be recognized as belonging to that group".*
>
> *"Uniform" means distinctive clothes by which a member of a group may be recognized as belonging to that group. Do the MR Is in this case wear distinctive clothes identifying them as belonging to a group? In the facts considered in the prior*

> *award, the MR Is wore badges attached to their shirts, and performed a significant security function. However, the absence of a badge, when the same clothing is issued, does not mean that the clothing is no longer a uniform. Also, the security function of the MR Is was reduced but not eliminated. The MR Is are required to wear the clothing issued to them to distinguish them from students on the campus. The clothing is worn to ensure they are recognized as belonging to a group. Therefore, the clothing issued to the MR is is a uniform.* [at pp. 379-80]

[29] Initially attractive as that approach to the meaning of word "uniform" may be, it has to be understood within the context of the wording of the collective agreement under consideration in that case. Adjudicator Oakley commenced his analysis by noting that the collective agreement did not specify a particular meaning for the word "uniform", thus leaving it open to him to interpret it as consisting of various combinations of those clothing items specifically enumerated in the collective agreement itself. That is a very different situation from the one before me where the parties, although leaving it to the employer in the exercise of its managerial discretion to determine whether employees will be required to wear a uniform, have put into place a protocol to be followed in the exercise of that discretion.

[30] The Treasury Board Uniforms Directive, effective July 1, 1997, comprises that protocol and the relevant part of it stipulates:

> ***"Treasury Board of Canada Secretariat National Joint Council***
>
> ***Uniforms Directive***
>
> ***General***
>
> ***Collective agreement***
>
> *This directive is deemed to be part of collective agreements between the parties to the National Joint Council (NJC), and employees are to be afforded ready access to this directive.*
>
> ***Purpose and scope***
>
> . . .
>
> *It is the policy of the government to provide appropriate items of clothing to employees where the nature of the work is such that special protection is required or where special identification at the local, national or international level will*

aid in the effective performance of duties and in meeting program objectives.

When clothing provided under this directive also meets the purpose of the Personal Protective Equipment and Clothing Directive, departments shall ensure that the requirements of both directives are met.

Departments and agencies shall review their existing clothing policies to ensure that they comply with this directive.

This directive is intended to assist departments in ensuring that their practices provide adequate protection and identification for employees, are economical, equitable and reasonably consistent with those throughout the Public Service and are comparable with those for similar occupations outside the Public Service.

Application

. . .

This directive applies to all departments and agencies listed in Schedules 1, 1.1 and II of the Financial Administration Act.

Authorities

This directive was approved by the President of the Treasury Board under Section 7 of the Financial Administration Act, following consultation within the National Joint Council.

This directive replaces Part II/Uniform Clothing of the former Clothing Directive and supersedes all previous Treasury Board authorities on the provision of uniform clothing but does not affect those authorities dealing with allowances or the provisions contained in collective agreements. Part I of the former Clothing Directive dealing with protective clothing has been incorporated into the revised Personal Protective Equipment and Clothing Directive.

The President of the Treasury Board has delegated authority to approve exceptions to the directive. Requests for such exceptions should be made in the form of a letter to the Chief, Human Resources Officer, Human Resources Branch.

Such requests should be signed by departmental officials who have authority to sign submissions and should contain the same information as submissions.

Deputy heads have the authority to issue necessary items of clothing and determine the requirements for identification

items except when the design of a uniform is changed. In this case prior Treasury Board approval must be obtained.

The introduction of new uniforms, or changes to present departmental uniform policy, shall be subject to Treasury Board authorization.

Requirements

1. Responsibilities

1.1 Public Works and Government Service Canada (PWGSC) provides clothing advisory services to departments and agencies, through the Clothing Advisory Service.

1.2 These services are listed in Appendix A.

1.3 It is the responsibility of each department:

- *to ensure that appropriate consultation takes place including the participation of the workplace safety and health committee or representatives;*

- *to identify the situations where the provision of clothing is necessary;*

- *to determine that the type of clothing provided is adequate and suitable; and to develop and to maintain up-to-date clothing standards and scales of issue.*

. . .

2. Union management consultation

2.1 Departments shall consult with employee representatives at the local, regional or national level, as appropriate, regarding the application of this directive, and prior to any planned changes in existing practices.

2.2 Departments and agencies should be aware of the consultation provisions of the relevant collective agreements when applying this directive.

2.3 When clothing serves for both identification and personal protection, departments shall ensure that workplace safety and health committees or safety and health representatives, if any, assist in the determination of personal protective equipment and clothing requirements. (see Personal Protective Equipment and Clothing Directive).

3. Consultation with the clothing Advisory Service

3.1 Departments shall consult with the Clothing Advisory Service:

- *before introducing new items of clothing or replacing existing issues;*

. . .

- *to ensure that the quality and quantity of clothing to be provided to employees performing similar functions in similar working environments re reasonably consistent from department to department;*

- *to ensure fabrics selected for protection meet good industrial safety practices, and fabrics selected for uniforms meet the PWGSC criteria;*

- *not later than two years prior to introduction of new uniforms.*

. . .

4. Inquiries

4.1 All inquiries regarding this directive should be routed through departmental headquarters.

4.2 For interpretation of specific policy statements contained in this directive, designated members of the departmental headquarters should contact the:

Safety, Health and Employee Benefits and Services Group Labour Relations and Human Resources Management Division Human Resources Policy Branch Treasury Board Secretariat.

. . .

Provision

7. General

7.1 Uniforms and other items of identification shall be issued to employees free of charge when there is a requirement for identification of employees. There are four distinguishing conditions under which identification of the employee may be required:

(a) when identification of the employee is required by management to provide a sign of vested authority in directing, inspecting or enforcing specific laws and regulations;

> *(b) when identification of the employee is required by management to provide an appropriate identification of the employee's function;*
>
> *(c) when identification of the employee is required by management, either permanently or in an emergency, to control emergency equipment and direct persons during an emergency. Such employees must be readily identifiable by the local public;*
>
> *(d) when identification of an employee's authority is required by management to access and work in a secure area. (Identification clothing may supplement the primary form of identification).*
>
> . . .
>
> *7.5 Bulletins shall be issued to employees when the wearing of uniform clothing is required. Such bulletins normally will identify and enumerate clothing commodities, state the employee's responsibility for clothing received and specify the manner of accounting for clothing when the employee is no longer eligible to receive or retain (e.g. on promotion, demotion, separation or due to a change in working conditions).*
>
> ***Clothing allowance***
>
> *13.1 The Treasury Board prefers the direct issue of clothing to the payment of clothing allowances. However, Treasury Board does not wish to preclude payment of such allowances in cases where the practice is established or the economy of introducing a new allowance can be clearly demonstrated.*
>
> *13.2 No new allowances or changes in existing allowances shall be introduced without the prior authorization of the Treasury Board."*
>
> . . .
>
> [Exhibit 6]

[31] All government departments and agencies are required to ensure that their clothing policies comply with the Treasury Board Uniforms Directive. The Correctional Service of Canada has done so by way of Commissioner's Directive 350 "Materiel Management" as outlined in its Employee Clothing Reference Manual [Exhibit 5]. The Reference Manual is a compilation of all internal policies developed by the CSC relating to clothing requirements and entitlements. Its terms are set by national headquarters

both as to clothing type and frequency and quantity of issue ("Annex A"). The relevant part of the Reference Manual reads:

> ***"EMPLOYEE CLOTHING REFERENCE MANUAL 1995-08-01***
>
> ***INTRODUCTION***
>
> *This manual is a reference guide containing all internal policies pertaining to clothing and footwear articles issued to the Correctional Service of Canada employees. The emphasis is placed on the Correctional Officer uniform.*
>
> *This manual will be of benefit to both Institutional and Materiel Management staff in their day-to-day dealings with these issues as well as to management and uniformed personnel in promoting a high standard of dress, deportment and appearance. When applicable in this manual, the words importing the masculine gender include the feminine gender.*
>
> *This manual contains the following sections:*
>
> *i) Commissioner's Directive 350, "Materiel Management";*
>
> *ii) Employee Clothing Entitlements;*
>
> *iii) Employee Dress, Deportment and Appearance;*
>
> *iv) Materiel Management Bulletins;*
>
> *v) Measurement Charts for Individual Clothing Articles.*
>
> *As stated in the Commissioner's Directive 350, "Materiel Management", the enclosed requirements on Employee Clothing Entitlements and on Dress, Deportment and Appearance are mandatory.*
>
> *All inquiries concerning this manual should be addressed to the Director, Support Services at National Headquarters (613) 995-5374.*
>
> ***EMPLOYEE CLOTHING ENTITLEMENTS***
>
> *POLICY OBJECTIVE*
>
> *1. To identify clothing entitlements for the Correctional Service of Canada employees.*
>
> *MANDATORY REQUIREMENTS*
>
> *2. The enclosed Employee Clothing entitlements shall be mandatory.*

ESTABLISHING ENTITLEMENTS

3. *The responsibility for establishing and maintaining appropriate scales of employee entitlements shall be in accordance with Annex "A", entitled "Responsibility for Setting Employee Entitlements".*

CLOTHING ITEM ENTITLEMENTS

4. *The following groups of employees are entitled to a full scale issue of the Correctional Officer Uniform:*

    a. *Correctional Officers;*

    b. *Correctional Supervisors;*

    c. *Unit Managers;*

    d. *Administrative and Discharge Officers;*

    e. *Visits and Correspondence Officers.*

5. *The following group of employees is entitled to a limited scale issue of the Correctional Officer uniform;*

    a. *Drivers;*

Note: *Correctional Officers working in a minimum-security institution and Senior officers are not entitled to a uniform. Senior officers are defined as follows: Excom members, Institutional Heads, Deputy Wardens, District Directors, Superintendents and Area Managers.*

6. *Correctional Officer trainees, Institutional Emergency Response Team members, Food Service Officers, Hospital Services' personnel and Recreation Officers are entitled to clothing articles or protective clothing for reasons of health, cleanliness and safety, as detailed in the respective annexes.*

SCALES OF ENTITLEMENTS

21. *Employees of the Service shall be issued clothing items with respect to their duties and needs, in accordance with the scale of issue listed respectively in the annexes which follow:*

    a. *Annex "A": Responsibility for setting employee entitlements.*

    b. *Annex "B": Scale of issue of clothing articles for the Correctional Officer uniform.*

> c. *Annex "C": Scale of issue of clothing articles for participants in the Correctional Officer Induction Course.*
>
> d. *Annex "D": Scale of issue of clothing articles for the Correctional Officer who is a member of the Institutional Emergency Response Team.*
>
> e. *Annex "E": Scale of issue of clothing articles for Recreation Officers.*
>
> f. *Annex "F": Scale of issue of clothing articles for Drivers.*
>
> g. *Annex "G": Scale of issue of special occupational clothing articles for Food Services employees.*
>
> h. *Annex "H": Scale of issue of special occupational clothing articles for Hospital Services employees.*
>
> i. *Annex "I": Scale of issue of protective clothing articles for safety reasons.*
>
> j. *Annex "J": Scale of issue of protective clothing articles for health and cleanliness reasons.*
>
> *SCALE OF ISSUE OF CLOTHING ARTICLES FOR THE CORRECTIONAL OFFICER UNIFORM*
>
> *The scale of issue is based on a point system. Each article of clothing or footwear has been assigned a point value relative to its actual cost. The maximum initial issue point allotment is 130 while the yearly maximum maintenance point allotment is 40.*
>
> *In the initial issue, officers shall adhere to the maximum point allowed per article. A new officer will be issued items in accordance with specific scale of issue up to the maximum points allowed per articles, i.e., he may take less and not require certain items. The total point value of any garment(s) not chosen during the initial issue shall not be carried over in the subsequent year. In subsequent years the officer will choose the quantities and colours of shirts and other articles he or she wants up to the yearly maximum maintenance points allowed. Unused yearly maintenance points are to be carried over into the subsequent fiscal year(s) up to a maximum of 230 points."* [Exhibit 5]

[32] When read in conjunction with each other, it is abundantly clear that the provisions of the Treasury Board Uniforms Directive, together with those of the CSC Employee Clothing Reference Manual, comprise a comprehensive framework for the establishment and enforcement of employee clothing entitlement generally and, in

particular, those applicable to Correctional Officers. As is clear from the very first paragraph of the Reference Manual there is a specific Correctional Officer uniform and the scale of issue of clothing articles for that uniform is listed in Annex "B" to the Manual. Paragraph 4 of the Reference Manual identifies those employees entitled to a full scale issue of the Correctional Officer uniform, whereas paragraph 6 lists those employee classifications – including that of recreation officer – entitled to clothing articles or protective clothing for reasons of health, cleanliness and safety. In the case of recreation officers, the scale of entitlement is that which obtained prior to the inclusion of clause 44.03 governing the clothing allowance in the first collective agreement negotiated between the parties and effective on April 2, 2001. This provided for the annual local commercial purchase of itemized clothing, up to a maximum of $210.00. Commissioner's Directive 350 makes no provision for setting a scale issue of clothing articles for recreation officers at regional headquarters or by managerial personnel at a correctional facility, much less for the introduction of a recreation officer uniform.

[33] Indeed, even if CSC national headquarters was of a mind to introduce a new uniform for recreation officers (and this is not the case) it could do so only in compliance with the Treasury Board Uniforms Directive. The Directive stipulates under the heading "Authorities" that a change in uniform design requires prior Treasury Board approval, and the introduction of a new uniform or changes to present departmental uniform policy is subject to Treasury Board authorization. The procedure both for the introduction of new uniforms and for new items of clothing is carefully laid out in the Uniforms Directive. Union/management consultation is required at the departmental level prior to implementing any planned changes in existing practice (paragraph 2.1) as is consultation with the Clothing Advisory Service of Public Works and Government Services Canada (paragraph 3.1). In the case of the introduction of a new uniform such consultation must take place "not later than 2 years prior to introduction of new uniforms" (paragraph 3.1). Bulletins must be issued to employees where the wearing of uniform clothing is required, identifying the terms and the conditions of its issuance (paragraph 7.5) and, indeed, the CSC Employee Clothing Reference Manual issued pursuant to Commissioner's Directive 350 is such a bulletin.

[34] As Mr. Niles testified, none of these procedures was followed by him when he determined that Correctional Officers assigned to the Unit 1 Recreation Department

were to wear the clothing issue purchased under his authorization and provided to them. Nor was any request made to Treasury Board through its Human Resources Branch to approve an exception to the directive as provided for under the heading "Authorities". Indeed Mr. Niles candidly admitted that he consulted neither the Uniforms Directive nor subclause 41.03(a), pursuant to which it is deemed to form part of the collective agreement, in coming to his decision to implement a clothing standard for Correctional Officers in the Unit 1 Recreation Department. Nor did the Regional Deputy Commissioner, Remi Gobeil, in reaching his decision to deny the grievance on the basis that it constituted "a uniform for all intents and purposes" (Exhibit 2A).

[35] But this is simply not so. Unlike the situation in the *Newfoundland v. N.A.P.E.* case, the word "uniform" found at clause 44.03 has a specific meaning within the context of this collective agreement. It is that clothing standard identified as the "Correctional Officer uniform" in the CSC Employee Clothing Reference Manual issued pursuant to Commissioner's Directive 350. That directive is in compliance with the Treasury Board Uniforms Directive, which itself is incorporated by reference into the collective agreement by virtue of subclause 41.03(a). That being the case, the grievor falls within the class of Correctional Officers "who are not required to wear a uniform routinely during the course of their duties" within the meaning of clause 44.03, and hence is eligible to receive the annual clothing allowance benefit there stipulated.

[36] This matter was argued on the basis that the Unit 1 Recreation Department clothing standard for Correctional Officers under consideration here was a uniform within the meaning of the collective agreement. A word is in order should it be claimed that, even if not a uniform, it is a clothing standard which CSC has the authority and responsibility to establish pursuant to the Uniforms Directive [Authorities; paragraph 1.3], and which it may issue pursuant to the scale of issue of clothing articles for recreation officers as found at Annex "E" of the Employee Clothing Reference Manual. There is a short answer to this. The Treasury Board Uniforms Directive stipulates that it "does not affect those authorities dealing with allowances or the provisions contained in collective agreements" [Authorities]. In short, its terms, relating to clothing directives and issuance other than uniforms, are subject to the specific provisions of clause 44.03 of the collective agreement. These terms require the payment of an annual clothing allowance of $400.00 to Correctional Officers who are not required to wear a uniform routinely during the course of their duties. As such, clause 44.03 supersedes Annex "E" of the Employee Clothing Reference Manual

and comprises a Treasury Board authorized clothing allowance under paragraph 13.2 of the Uniforms Directive.

[37] For all of the foregoing reasons, this grievance must be allowed.

[38] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[39] This grievance is allowed. The employer is directed to compensate the grievor in the amount of the annual clothing allowance of $400.00 to which he was entitled to be paid on March 31, 2002.

[40] I remain seized of this matter for a period of 90 days for purposes of implementation.

March 23, 2006.

Thomas Kuttner, Q.C.,
adjudicator