Date: 20101020

Files: 166-02-35086, 35088 to 35091, 35093 and 35094

Citation: 2010 PSLRB 110

Public Service Staff Relations Act

Before an adjudicator

BETWEEN

CHRISTIAN DAUPHINAIS, CONRAD GAMACHE, MARCEL LAROQUE, BENOÎT QUINTAL, MARIO ROIREAU, GILLES TURMEL AND MICHEL TURCOTTE

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Dauphinais et al. v. Treasury Board (Correctional Service of Canada)

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

REASONS FOR DECISION

Before: Roger Beaulieu, adjudicator

For the Grievors: John Mancini, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Employer: Caroline Proulx, counsel

Heard at Drummondville, Quebec,
August 12 to 14 and 24, 2009.

I. Grievances referred to adjudication

[1] In April 2004, Christian Dauphinais, Conrad Gamache, Marcel Laroque, Benoît Quintal, Mario Roireau, Gilles Turmel and Michel Turcotte ("the grievors") from Cowansville Institution in Quebec filed similar grievances requesting that the Correctional Service of Canada ("the employer") pay for time worked in excess of 1956 hours for the period from April 1, 2003 to March 31, 2004.

[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*, these references 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] At the start of the hearing on August 12, 2009, counsel for both parties agreed to argue Mr. Gamache's case and agreed that the decision would apply to the six other files, taking into account the hours worked by each grievor in excess of 1956 hours per year. Counsel also agreed that the applicable collective agreement was signed on April 2, 2001 ("the collective agreement").

[4] Mr. Gamache requested the following:

> *. . . that my employer pay me as stipulated in my collective agreement, with interest, for all surplus hours worked in fiscal 2003-2004, since I worked more than 2,030.5 hours during that period, some 74.5 surplus hours.*

[5] The grievance was referred to adjudication under paragraph 92(1)(*a*) of the former *Act*.

[6] Therefore, I must interpret the applicable provisions of the collective agreement.

II. Summary of the evidence

A. For the grievors

[7] The grievors have the burden of proof. They adduced five exhibits and called one witness, Mr. Gamache.

[8] The employer called three witnesses, Robert Charlton, Benoît Desrosiers and Suzanne Legault, and adduced nine exhibits.

[9] When he filed his grievance, Mr. Gamache was a correctional officer classified at the CX-02 group and level. He was receiving the maximum annual pay for his level, specifically, $53 137 (Appendix "A", page 91 of the collective agreement), and his hourly rate of pay was $27.16 (Appendix "A-1", page 93).

[10] According to the Union of Canadian Correctional Officers ("the union"), annual pay must be calculated based on the fiscal year, which is from April 1 to March 31 of the following year, and thus from April 1, 2003 to March 31, 2004 in this case.

[11] Also according to the union, an annual salary of $53 137 means that 1956 hours are worked in a year, calculated by dividing that salary by $27.16 (hourly rate in effect that year).

[12] The following facts were adduced and were not contested:

- Mr. Gamache worked an average of 37.5 hours per week for the entire period in question, and he was paid for 75 hours every 2 weeks.
- Since 2001, Mr. Gamache has worked a variable schedule in accordance with article 34 of the collective agreement (see Exhibit S-3, including a summary page), including from April 1, 2003 to March 31, 2004.
- The schedule adduced in Exhibit S-3 is for Cowansville Institution, and it covers 16 employees classified at the CX-02 level. Each works three consecutive weeks on rotation, which is referred to as a drop down schedule (*horaire par roulement*). Each works 3 consecutive 12-hour shifts, followed by 3 days of rest. After 48 weeks, they have worked the same number of hours had they worked 37.5 hours per week.
- Mr. Gamache's annual pay is based on working 37.5 hours per week.
- If, for some reason during the complete 48-week rotation period of the 16 CX employees at Cowansville, it is necessary for employees to change work shifts, that change is arranged by mutual agreement among the 16 CX employees.
- The collective agreement provides for balancing the hours of work of CX-02 employees when on training inside or outside the Cowansville Institution.

- Finally, Mr. Gamache mentioned during his testimony that he filed a similar grievance in 1999.

B. <u>For the employer</u>

[13] The employer's evidence can be summarized as follows:

- The first witness, Robert Charlton, has 35 years of service in Canadian penitentiaries. He worked as a union member and as the president of his union in Kingston. At the end of his career, he was the manager and advisor in charge of work schedules for Canadian penitentiaries.

- Mr. Charlton's explanation of the pay system is based on the following parts of clause 2.01 of the collective agreement:

> ***2.01*** *For the purpose of this Agreement:*
>
> *. . .*
>
> *(j)* ***"hourly rate of pay"*** *means a full-time employee's weekly rate of pay divided by thirty-seven point five (37.5) (taux de rémunération)*
>
> *. . .*
>
> *(t)* ***"weekly rate of pay"*** *means an employee's annual rate of pay divided by fifty-two point one seventy-six (52.176) (taux de rémunération hebdomadaire).*
>
> [Emphasis in the original]

[14] According to Mr. Charlton, based on those two definitions in the collective agreement, multiplying 52.176 weeks by 37.5 hours gives a CX correctional officer on average 1956.6 hours of work per year.

[15] Mr. Charlton further testified that a year consists of 52 weeks and 1 day for three years at a time and 52 weeks and 2 days for leap years, which is how 52.176 weeks was determined for calculating annual pay.

[16] Mr. Charlton stated that the key element in calculating pay is the 37.5-hour weekly average, as stipulated as follows in clause 21.02(a)(i):

> ***21.02*** *When, because of the operational requirements of the service, hours of work are scheduled for employees on a rotating or irregular basis:*
>
> *(a) they shall be scheduled so that employees:*
>
> *(i) on a weekly basis, work an average of thirty-seven and one-half (37 1/2) hours*

[17] The witness further stated that, not only do the work schedules not necessarily balance over a period of 12 consecutive months, no such requirement exists in the collective agreement. However, the collective agreement contains a mandatory requirement in the second paragraph of article 34, which reads as follows:

> *For shift workers, such schedules shall provide that an employee's normal work week shall average the weekly hours per week specified in this agreement over the life of the schedule. The maximum life of a schedule shall be six (6) months.*
>
> [Emphasis added]

[18] Mr. Charlton continued to testify about 37.5 hours being the key element of Mr. Gamache's variable hours of work schedule. He explained that, according to Exhibits E-1 to E-3, the schedules at Cowansville balance over 48 weeks of work for each employee, including Mr. Gamache, working the schedules set by the employer. In addition, those employees have worked those schedules for years. According to that formula, 16 employees each work 3 shifts, 12 hours per day, for 3 consecutive weeks, for 16 consecutive rotations, which equals an average of 37.5 hours per week over a 48-week period. For those 48 weeks, the 16 employees, including Mr. Gamache, all work an average of 37.5 hours per week.

[19] As for the half-hour meal break for 2003-2004, the employer stated that that break was not paid and that it was not specifically paid until after the collective agreement was renewed in 2006.

[20] The following is a summary of Bernard Desrosiers' testimony. He was the employer's second witness.

[21] Mr. Desrosiers began working for the employer in 1988. At the time of the hearing, he had worked, without interruption, in positions classified at the CX-01 and CX-02 group and levels, specifically as a correctional supervisor at Cowansville. During

that time, he was also in charge of the work schedule and the assignments of all CX employees at Cowansville.

[22] Mr. Desrosiers testified that he was on duty when Mr. Gamache's grievance was filed and that Mr. Gamache was not subject to the provisions of clause 21.07(b) of the collective agreement. Consequently, Mr. Gamache was able to move about freely during his meal breaks with no restrictions. That evidence was not challenged.

[23] Mr. Desrosiers adduced Exhibit E-6, which is the variable hours of work schedule that both parties signed on February 14, 2003. It was in effect when Mr. Gamache filed his grievance.

[24] In addition, Mr. Desrosiers corroborated Mr. Charlton's testimony that the meal break for employees classified at the CX-02 group and level at Cowansville was not paid when Mr. Gamache's grievance was filed.

[25] Finally, Mr. Desrosiers clearly established that Exhibit S-3 was an important document not only because of the schedules of all CX group employees but also because the main schedule allowed each CX employee to check the drop down (*horaire par roulement*) schedule monthly, which was repeated month after month. That important document was posted on the consultation bulletin boards and was available electronically so that all employees could verify any change to the schedule and point out irregularities or if CX employees had exchanged shifts. The main schedule was also posted so that CX employees could go back several years to see all changes made.

[26] Finally, Mr. Desrosiers corroborated Mr. Charlton's testimony that no link exists between the variable hours of work schedule and the fiscal year.

[27] The employer's third witness was Ms. Legault, who has worked for the employer since 1983. She worked as a CX employee at Cowansville from 1985 to 1990. She then became a parole officer and subsequently a manager of a unit of 102 inmates with responsibility for about 100 employees classified at the CX-01 and CX-02 group and levels. She then became the assistant warden of security operations, which included responsibility for the work schedules at Cowansville.

[28] As part of her testimony, Ms. Legault adduced Exhibit E-9, which addresses the issue of unpaid meal breaks. That memo, dated September 27, 2002, sent by the Assistant Commissioner, Human Resource Management, to the regional deputy

commissioners and the National President of the union representing the employees, reads in part as follows:

> [Translation]
>
> . . .
>
> ***A) For day shifts**:*
>
> - *The 0.5 hour **unpaid** meal break applies only to an employee working a **day shift**;*
> - *For a **day shift** schedule of 8 hours, an employee is scheduled 8 hours of **paid** work and 0.5 hours of **unpaid** meal break for a total of 8.5 hours;*
> - *For **day shift variable hours of work schedules** of 9, 10 or 12 hours, the employee is scheduled, as applicable, 9, 10 or 12 hours of **paid** work and 0.5 hours of **unpaid** meal break for a total schedule of 9.5, 10.5 or 12.5 hours;*
> - *The 0.5 hour **unpaid** meal break begins when specified on an employee's schedule that he may leave his post and ends when specified on his schedule that he must return to his post;*
> - *The 0.5 hour **unpaid** meal break may not be taken at the beginning or end of a day shift;*
> - *It is imperative that employees working day shifts be informed that they **are allowed to leave** the institution during their **unpaid** meal break;*
> - *An employee working a day shift and required to remain in the institution during his meal break or who is called back to the institution during his meal break must be paid at the applicable overtime rate set out in clause 21.13 of the CX collective agreement for missed meal breaks if the employee completes all hours scheduled for that shift.*
>
> . . .
>
> [Emphasis in the original]

[29] Ms. Legault also corroborated the testimonies of the two other witnesses for the employer, according to which CX employees at Cowansville were free to come and go during the meal break unless they were required to carry out work for which they were paid at the overtime rate for the half-hour, in accordance with the provisions of the collective agreement and Exhibit E-6.

[30] Finally, Ms. Legault corroborated the testimony of Mr. Desrosiers, according to which Mr. Gamache was not prevented from taking his meal break, as were other CX employees.

III. Summary of the arguments

A. For the grievors

[31] According to Mr. Gamache, Mr. Charlton's evidence is not relevant because he was required to work 1956 hours annually, and the surplus in fiscal 2003-2004 of 74.5 hours should have been paid, in accordance with the collective agreement.

[32] Mr. Gamache stated further that, when exchanging shifts, it must be documented; otherwise, "[translation] it is guesswork."

[33] Mr. Gamache questioned the basis of the meal break because some employees are paid and others are not. That should not happen, in his view. He referred to clause 21.15(c) of the collective agreement and stated that it allegedly prevents some employees from leaving the institution during their meal breaks.

[34] Still on the issue of meal breaks, and in particular, Exhibit E-9, Mr. Gamache argued that the employer is not entitled to unilaterally change the collective agreement.

[35] Referring to article 34 of the collective agreement, Mr. Gamache added that the general terms provide no exceptions. Thus, the work must be consecutive, and Mr. Charlton did not consider consecutive time.

[36] Mr. Gamache concluded by stating that the employer is not complying with the collective agreement with respect to meal breaks and that, specifically, the employer is simply seeking a way to save a half-hour per day on the backs of the CX employees.

[37] Finally, Mr. Gamache clarified that the main purpose of Exhibit E-6 is the question of paid meals and that meals are the central issue of that exhibit, which was signed by the parties.

[38] He asked me to allow his grievance.

B. <u>For the employer</u>

[39] The employer declared that the union has a misunderstanding of the basis of the 1956 annual hours of work.

[40] First, the correct number is 1956.6 and not 1956.

[41] It is necessary to begin with the definitions in clauses 2.01(j) and (t) of the collective agreement and then examine the provisions of clause 21.02(a)(i) to understand that the key element in calculating annual pay is the average of 37.5 hours of work per week, payable every two weeks.

[42] Thus, the work schedules in this case, as per Exhibits E-1 to E-4, were established based on an average of 37.5 hours of work per week.

[43] The concepts of average and balancing the schedules are explicit in the provisions of article 34 of the collective agreement as set out specifically in the first two paragraphs of the general terms of variable hours of work.

[44] An employee may not stop work during the period and claim hours, because he or she is paid based on 37.5 hours per week on average, paid every two weeks based on the number of hours of work per week set out in the collective agreement for the life of the schedule. In this case, the schedule consists of 48 weeks, as indicated in Exhibits E-1 to E-4.

[45] Furthermore, the collective agreement does not specify that the work schedule must begin on April 1 and end on the following March 31. Mr. Charlton's testimony is clear on that point. That evidence was not contradicted, despite being contested by the union.

[46] In this case, the schedule is balanced on an average of 37.5 hours of work per week per 48-week period, which complies with the collective agreement in force.

[47] The employer stated that, in the event that I ruled that the schedule must be balanced on a fiscal year (which she claims is not the reality based on Exhibit E-4) and that hypothesis was confirmed, Mr. Gamache would have worked a total of 1944 hours and not 2030.5 hours, as he claimed.

[48] The calculation of hours in Mr. Gamache's work schedule is based on 12-hour shifts and not on 12.5-hour shifts. Mr. Gamache claimed that the half-hour meal breaks should have been paid because they were mandatory. According to the employer, meal breaks are not paid.

[49] The employer's position is that the half-hour meal breaks are not paid, in accordance with clause 21.07 of the collective agreement. Had the parties agreed that the half-hour meal breaks would be paid, it would have been reflected in clause 21.07. It is not.

[50] For example, the employer stated that, when the parties agreed that meal breaks would be taken during overtime under the specific conditions set out in clause 21.15 of the collective agreement, the parties provided for specific payment in clause 21.15(c). That clause reads as follows:

> ***21.15 Overtime Meal Allowance***
>
> . . .
>
> *(c) Reasonable time with pay, to be determined by management, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to his or her place of work.*

[51] In addition, the union claimed that the application of clause 21.07 and the provisions of clause 21.08 of the collective agreement led to the inequitable treatment of day- and night-shift employees. On that point, the employer argued that no inequitable treatment or any form of discrimination occurs for a given employee between the day, night or evening shifts provided that the employee continues to work the same schedule for its entire life because, at the end of the 48-week cycle, all employees will have worked an average of 37.5 hours per week.

[52] Finally, the employer stated that, not only is there no paid meal break provided in the collective agreement, nor is there any provision for a paid meal break in the variable hours of work agreement, signed on February 14, 2003.

[53] According to the employer, the central aspect of that agreement is the 12-hour work shift, worked during the day between 06:50 and 19:20. No mention is made of a paid meal period.

[54] The employer is not contravening the collective agreement with respect to the half-hour meal break.

[55] If the union wishes paid half-hour meal breaks, it will have to request them during the next round of bargaining.

[56] According to the employer, it is clear that, if it asks a CX employee to remain at work during his or her half-hour meal break, the employee will be paid overtime for the half-hour meal break under the provisions of the collective agreement.

[57] According to the employer, Mr. Gamache was able to leave his workplace for meal breaks during his shifts. Moreover, he did not demonstrate that he was required to work during meal breaks. However, had he been so required from time to time, he would have been paid overtime, in compliance with the employer's established directives.

[58] As for article 34 of the collective agreement, the union raised the question that the principle of consecutive hours was not respected. The employer's view is that the concept of consecutive hours did not correspond with Mr. Gamache's request because his hours of work were never interrupted.

[59] The employer acknowledged that several benefits in the collective agreement are based on the employer's fiscal year, including holidays and the accumulation of annual leave credits.

[60] However, work schedules are not based on the fiscal year.

[61] The work schedules in this case complied with the provisions of the collective agreement and the provisions of the parties set out in Exhibit E-6. Mr. Gamache did not work any overtime based on 37.5 hours of work per week, payable every two weeks, as per his schedule. Paid meal breaks would have been contrary to the provisions of the 2001 collective agreement. The employer further argued that I do not have jurisdiction to amend the collective agreement.

[62] In support of its arguments, the employer referred me to the following cases: *Gamache v. Treasury Board (Correctional Service of Canada)*, 2004 PSSRB 94; *UCCO-SACC-CSN v. Treasury Board*, 2004 PSSRB 38; and *Veilleux et al. v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 152.

[63] Finally, the employer asked me to dismiss the grievance.

IV. Reasons

[64] The relevant articles and clauses of the collective agreement that I must consider are the following:

> *ARTICLE 2*
> *INTERPRETATION AND DEFINITIONS*
>
> ***2.01*** *For the purpose of this Agreement:*
>
> . . .
>
> *(j)* ***"hourly rate of pay"*** *means a full-time employee's weekly rate of pay divided by thirty-seven point five (37.5) (taux de rémunération);*
>
> . . .
>
> *(t)* ***"weekly rate of pay"*** *means an employee's annual rate of pay divided by fifty-two point one seventy-six (52.176) (taux de rémunération hebdomadaire).*
>
> . . .
>
> *ARTICLE 21*
> *HOURS OF WORK AND OVERTIME*
>
> . . .
>
> ***21.02*** *When, because of the operational requirements of the service, hours of work are scheduled for employees on a rotating or irregular basis:*
>
> *(a) they shall be scheduled so that employees:*
>
> *(i) on a weekly basis, work an average of thirty-seven and one-half (37 1/2) hours,*
>
> *and*
>
> *(ii) on a daily basis, work eight (8) hours per day.*
>
> *(b) every reasonable effort shall be made by the Employer:*
>
> *(i) not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift,*
>
> *(ii) to ensure an employee assigned to a regular shift cycle shall not be required to change his or her shift*

more than once during that shift cycle without his or her consent except as otherwise required by a penitentiary emergency,

and

(iii) to avoid excessive fluctuations in hours of work;

. . .

21.03

(a) Shift schedules shall be posted at least fourteen (14) calendar days in advance of the starting date of the new schedule in order to provide an employee with reasonable notice as to the shift he or she will be working. The shift as indicated in this schedule shall be the employee's regularly scheduled shift.

(b) The Employer agrees that, before a schedule of working hours is changed, the change will be discussed with the authorized representative of the Bargaining Agent if the change will affect a majority of the employees governed by the schedule.

(c) Within five (5) days of notification of consultation served by either party, the Bargaining Agent shall notify the Employer in writing of the representative authorized to act on behalf of the Bargaining Agent for consultation purposes.

(d) An employee whose regularly scheduled shift is changed without forty-eight (48) hours prior notice shall be compensated at the rate of time and one-half (1 1/2) for the first (1st) full shift worked on the new schedule. Subsequent shifts worked on the new schedule shall be paid for at the straight-time.

. . .

21.04 *An employee's scheduled hours of work shall not be construed as guaranteeing the employee minimum or maximum hours of work.*

21.05 *Provided sufficient advance notice is given and with the approval of the Employer, employees may exchange shifts if there is no increase in cost to the Employer.*

. . .

21.07 *Except as may be required in a penitentiary emergency, the Employer shall:*

(a) permit a Correctional Officer to take a reasonable amount of time to eat a lunch or meal during any shift,

and

(b) notwithstanding paragraph (a) above, a Correctional Officer may be required to eat the lunch or meal at his or her work location when the nature of the duties makes it necessary.

. . .

21.15 Overtime Meal Allowance

(a) An employee who works three (3) or more hours of overtime immediately before or following the scheduled hours of work shall be reimbursed expenses for one (1) meal in the amount of nine dollars ($9.00) except where a free meal is provided.

(b) When an employee works overtime continuously beyond the period provided in (a) above, he or she shall be reimbursed for one (1) additional meal in the amount of nine dollars ($9.00) for each four (4) hour period of overtime worked thereafter, except where a free meal is provided.

(c) Reasonable time with pay, to be determined by management, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to his or her place of work.

(d) This clause shall not apply to an employee who is in travel status which entitles the employee to claim expenses for lodging and/or meals.

. . .

ARTICLE 34
VARIABLE HOURS OF WORK

The Employer and the bargaining agent agree that the following conditions shall apply to employees for whom variable hours of work schedules are approved pursuant to the relevant provisions of this collective agreement. The agreement is modified by these provisions to the extent specified herein.

It is agreed that the implementation of any such variation in hours shall not result in any additional expenditure or cost by reason only of such variation.

1. General Terms

> *The scheduled hours of work of any day as set forth in a work schedule, may exceed or be less than the regular workday hours specified by this agreement; starting and finishing times, meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer and the daily hours of work shall be consecutive.*
>
> *For shift workers, such schedules shall provide that an employee's normal work week shall average the weekly hours per week specified in this agreement over the life of the schedule. The maximum life of a schedule shall be six (6) months.*

. . .

[65] I dismiss the grievance for the following reasons.

[66] First, Mr. Gamache had the burden of proof, which he did not discharge.

[67] The collective agreement does not make any provision for paid meal breaks. In 2002, the employer issued a notice about meal breaks not being paid. In 2003, the parties signed an agreement on the variable hours of work schedule, which provides for a 12.5-hour day shift. It does not mention a paid meal break. The grievances before me go back to April 2004.

[68] Clause 21.03(b) stipulates that, before a work schedule is changed, the change must be discussed with the authorized representative of the union if it is to affect a majority of the employees governed by the schedule. The union did not raise the question of consultation.

[69] The union carefully examined clause 21.07 of the collective agreement but, while relevant, it confirms the employer's position. Based on the evidence, meal breaks are not paid, unless the correctional officer is required to remain on duty.

[70] Had the parties wanted a paid meal break, they would have so specified in clause 21.07 of the collective agreement. They did not. On the contrary, in the collective agreement the parties used clear language in clause 21.15 to make a provision for "[r]easonable time with pay" for employees who work overtime.

[71] Finally, I point out that, in the collective agreement subsequent to that of this case, i.e., the agreement dated June 26, 2006, the parties included clause 21.07, which provides for a paid meal break.

[72] Furthermore, with respect to article 34 of the collective agreement, Mr. Gamache implied that consecutive hours were not always respected, but the union adduced no evidence on that point.

[73] I will now examine the central element of this case, namely, the schedule worked by CX employees at Cowansville under clause 21.02 and article 34 of the collective agreement. The central issue is the number of hours worked and paid. The evidence shows that the meal break was not paid unless it was worked as overtime.

[74] The parties adduced Exhibit E-3, a bundle that included 18 pages of work schedules for the 16 employees who worked the complete 48 weeks on rotation, referred to as a drop down schedule (*horaire par roulement*).

[75] The employer also adduced into evidence Exhibits E-1 to E-4, which reflect Exhibit S-3 and confirm that Mr. Gamache worked during the 48 weeks of his schedule.

[76] The contents of those exhibits were not contested. Moreover, as indicated earlier in this decision, the work schedules were the subject of consultations and were posted, in compliance with the collective agreement. All CX employees at Cowansville may consult schedules from earlier years.

[77] Exhibit E-1 confirms the work schedules of the 16 employees at the CX-02 group and level for the first rotation period in 2003-2004. In that exhibit, Mr. Gamache is shown on the 10th line.

[78] It is evident that, had the schedule been applied as set out at the start of the first rotation period in the 48-week schedule, each of the 16 CX employees would have achieved a balance after 48 weeks, since each would have worked 1800 hours in total, representing an average of 37.5 hours per week.

[79] Exhibit E-2 contains Mr. Gamache's schedule for his first rotation for the 2003-2004 period. Had no changes been made to his schedule, after 48 weeks, he would have worked 1800 hours, for an average of 37.5 hours per week.

[80] Exhibit E-3 includes Mr. Gamache's schedule, in which he had an unscheduled shift in one of the three rotation weeks from September 9 to October 19, 2003, resulting in him working 1836 hours rather than 1800 hours over that 48-week period.

[81] Exhibit E-4 is the schedule that Mr. Gamache actually worked from April 1, 2003 to March 31, 2004, as indicated by his union. In 2004, February had 29 days due to the leap year. During that fiscal year, Mr. Gamache actually worked 1944 hours.

[82] Nothing in the applicable collective agreement and nothing in the evidence adduced by the union indicates that the work schedule must correspond to the fiscal year. I find that the schedules established at Cowansville comply in all aspects with the provisions of the collective agreement.

[83] A review of Mr. Gamache's grievance shows a claim for 74.5 hours for all excess hours worked in the 2003-2004 fiscal year. Despite the burden of proof, I did not find any justification for the claim in the grievance process. Moreover, I did not find in the evidence any explanation or justification of the accuracy of the amount of excess hours worked (74.5) that Mr. Gamache claimed. The figure of 74.5 hours can be explained only if meal breaks were paid, based on a half-hour per shift (the schedule indicated that Mr. Gamache worked approximately 150 shifts per year). As I stated earlier in this decision, the collective agreement does not provide for the payment of meal breaks.

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

(The Order appears on the next page)

V. Order

[85] The grievances are dismissed.

October 20, 2010.

Roger Beaulieu,
adjudicator