

Date: 20111025

File: 569-02-86

Citation: 2011 PSLRB 120



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

**UNION OF CANADIAN CORRECTIONAL OFFICERS -
SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN**

Bargaining Agent

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

*Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada
- CSN v. Treasury Board (Correctional Service of Canada)*

In the matter of a policy grievance referred to adjudication

REASONS FOR DECISION

Before: [Renaud Paquet, adjudicator](#)

For the Bargaining Agent: [Marie-Pier Dupuis-Langis, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN](#)

For the Employer: [Adrian Bieniasiewicz, counsel](#)

Heard at Kingston, Ontario,
October 5, 2011.

REASONS FOR DECISION

Policy grievance referred to adjudication

[1] Angela Cooper, a local union president for the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the bargaining agent” or “the union”) filed a policy grievance alleging that the Correctional Service of Canada (“the employer” or CSC) violated the collective agreement signed by the Treasury Board and the bargaining agent for the Correctional Services Group bargaining unit on June 26, 2006 (“the collective agreement”). The union is grieving the employer’s decision of November 2009 to change the work schedule of correctional officers, level 1 (CX-01) working modified work schedules on the night shift at the Ontario Regional Treatment Center (RTC(O)).

[2] According to the collective agreement, work schedules are jointly developed by a local union-management scheduling committee. When that committee agrees on a schedule, it submits it for approval to a national union-management scheduling committee. After the proposed schedule has been reviewed and certified by the national committee, it can be implemented in the workplace. After applying that process, new work schedules were implemented at the RTC(O) in April 2009.

[3] The schedule at issue in this grievance only applies to the CX-01s working modified work schedules on the night shift. According to the schedule approved in April 2009, that shift started at 18:30 and ended at 07:15 for a total duration of 12.75 hours. On November 9, 2009, the employer informed those correctional officers that their schedules did not comply with the principles of effective scheduling outlined in Appendix “K” of the collective agreement. The employer also informed them that effective December 1, 2009, their schedule would be changed to the following: start time 18:00, end time 06:45. The union disagreed with that decision and filed this grievance.

Summary of the evidence

[4] Most of the evidence adduced by the parties was not contradicted. The union called Gaston Bélanger as a witness. Mr. Bélanger works at the RTC(O) as a correctional officer. He is also the local union vice-president and a member of the RTC(O) local scheduling committee. He has been a member of that committee since 1999. The employer called Barry Niles as a witness. At the time of the grievance and of the facts leading to its filing, Mr. Niles was the manager of Deployment Standards and Scheduling at CSC Headquarters. He was also a member of the national

union-management scheduling committee. The parties adduced 10 documents in evidence.

[5] With the coming into force of the collective agreement in issue, the work week of correctional officers was increased from 37.5 hours to 40 hours a week. This required major changes to the existing schedules of correctional officers. Also, the parties agreed to put in place joint local and national scheduling committees that would develop and approve the new schedules. Those schedules would respect the basic principles of being cost effective, meeting operational needs and satisfying all clauses of the collective agreement. To ensure that all parties involved would adhere to those principles and develop coherent schedules, the union and the employer jointly trained members of the local committees across the country, including the two union and two employer members of the RTC(O) local scheduling committee who were trained in early January 2007.

[6] In early 2009, the RTC(O) local union-management scheduling committee agreed on schedules covering all groups and shifts for RTC(O) employees, including the CX-01s working the night shift. That schedule was also approved by the CX-01s to whom it applied. According to that schedule, the starting time was 18:30 and the ending time 07:15. That schedule was submitted to the national union-management scheduling committee who approved it for implementation starting April 1, 2009.

[7] Mr. Niles testified that it was an oversight for the national union-management scheduling committee to approve the 18:30-07:15 schedule for the RTC(O) night shift. He explained that the schedule was not the most cost-effective because it had the potential to increase overtime costs and prevent maximizing the utilization of substitute relief positions. Furthermore, it differed from a grid developed by the national union-management scheduling committee that contained examples of effective schedules. Mr. Bélanger testified that he does not remember having seen such a grid.

[8] In the summer of 2009, the employer undertook a national review of all existing schedules. It then concluded that, in its opinion, the RTC(O) CX-01 night shift schedule did not respect the principles of effective scheduling required by the collective agreement. According to the employer, in order to respect the collective agreement, the starting time should be 18:00 with an end time of 6:45. The employer conveyed its conclusion to Mr. Bélanger and suggested to him that the night shift schedule should

be changed to comply with the cost-effective principle enshrined in the collective agreement. Mr. Bélanger told the employer that he was not open to change that schedule. He did not understand from the employer's explanation why the existing schedule did not respect the cost-effective principle enshrined in the collective agreement. Mr. Bélanger testified that, in his view, the explanations provided by the employer did not make sense. He also testified that the union was open to discuss any changes that would improve matters. He testified that the local union-management scheduling committee never met to discuss changes to the schedule that had been agreed upon in early 2009 for the night shift.

[9] Mr. Niles testified that the RTC(O) night shift schedule for CX-01s was discussed by the national scheduling committee in October 2009. The committee could not come to an agreement because the union members on the committee would not agree to the changes proposed by the employer members. Faced with that refusal, the employer made the decision to unilaterally change the schedule. The employer communicated its decision to all RTC(O) correctional officers on November 9, 2009. They were then informed that, effective December 1, 2009, the night shift for CX-01s would start at 18:00 with an end time of 06:45. Before the change, CX-01s on the night shift started their shift at 18:30 with an end time of 07:15. Mr. Bélanger testified that the CX-01s were opposed to the change. Although the change in the schedule did not lead to a financial loss, it impacted on their family life by shortening their dinner hour and making their commute to the institution more difficult due to increased traffic.

Summary of the arguments

[10] The union argued that the employer violated article 34 and Appendix "K" of the collective agreement by unilaterally changing the night shift schedule for CX-01s at the RTC(O) in November 2009. It did not have the right to act as it did. It should have first obtained the approval of the local and national union-management scheduling committees before amending the schedule. Furthermore, the initial schedule was developed and approved as per the procedure outlined in Appendix "K" of the collective agreement. It could not later be changed unilaterally by the employer.

[11] The employer argued that it did not violate the collective agreement in amending the night shift schedule for CX-01s at the RTC(O). It was an oversight by the national committee to have approved the existing schedule in the spring of 2009. That schedule should have been refused since it did not respect the cost-effective principle

contained in the collective agreement. However, the national committee had had a high number of schedules to approve at the time and had approved RTC(O)'s by mistake. All schedules must respect the principles of Appendix "K" and this one did not. There was an established grid proposing models for local scheduling committees, and the RTC(O) local scheduling committee did not respect those models.

[12] The employer argued that it approached the local union to discuss the night shift schedule, but the union refused. The employer then raised the issue with the national committee, but the union did not agree to change the RTC(O) night shift schedule. In order to respect the scheduling principles of Appendix "K", the employer decided to change the RTC(O) night shift schedule. The employer also argued that the change had no financial implication on the employees who were affected.

Reasons

[13] This policy grievance raises the question of whether the employer has the right to unilaterally change a night shift schedule that was developed as per the procedure outlined in Appendix "K" of the collective agreement. However, I must begin by stating that this grievance and my decision only deal with modified hours of work as defined in article 34 of the collective agreement. The following clauses of the collective agreement must be examined to decide this grievance:

APPENDIX "K" PRINCIPLES OF EFFECTIVE SCHEDULING

There are three basic principles of effectively scheduling to meet the business need of the Correctional Service of Canada (CSC).

1. Economic: *Ensuring that the schedules are developed in a cost effective manner within existing funded resources.*

2. Operational: *Ensuring that the schedules are deploying the resources to all of the identified security activities.*

3. Contractual: *Ensuring that the schedules meet all of the clauses within the Collective Agreement.*

...

PROCESS FOR APPROVING SCHEDULE AND SCHEDULE CHANGES

Prior to any schedules being approved for implementation at any institution, they shall be reviewed and certified by the national committee identified for the purpose of overseeing the schedules. The national committee will confirm that the above principles have been adhered to and reflected in the schedules. If the schedules do not reflect the principles then the schedule submitted shall not be certified for implementation and referred back to the local for further changes/amendments.

Once a schedule has been approved and implemented, it shall only be altered by the mutual consent of the local Union and management and after the subsequent review and certification by the national committee. However, in cases where a change in the security level of the institution or organizational change (e.g. number of approved posts, hours of operations for posts, classification or type of posts for deployment purposes), the schedule shall be re-submitted to the national committee to review the compliance with the above principles. The national committee shall on an annual basis, review schedules in effect in an institution to ensure continued compliance with the above principles.

COMMITTEE COMPOSITION

National Committee:

*two (2) employer representatives
two (2) union representatives.*

Institutional Committees- a minimum of:

*one (1) employer representative
one (1) union representative.*

...

ARTICLE 34 MODIFIED HOURS OF WORK

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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 of shifts, meal breaks and rest-breaks shall be established by agreement between the employer and the Union at the local level, and approved according to the attached letter of understanding. The daily hours of work are consecutive.

...

[14] The facts of this case are not disputed. First, the 18:30 to 07:15 night shift for CX-01s working modified hours at RTC(O) was jointly developed and approved by the parties in the spring of 2009 as per the procedure outlined in Appendix “K” of the collective agreement. Second, in November 2009, the employer decided unilaterally to change that schedule to 18:00 to 06:45 because it believed that the existing schedule did not respect the cost-effective principle specified in Appendix “K” of the collective agreement. The employer first tried to discuss the matter with a union member of the local scheduling committee but that member indicated that he was not open to the idea of changing the existing schedule. Then, the employer raised the matter at the national scheduling committee. The union members of the committee did not want to change the existing schedule. Faced with those refusals from the union, the employer made the unilateral decision to change the schedule.

[15] Even if the employer had made a convincing argument that the existing schedule did not fully respect one or two of the three principles of effective scheduling outlined in Appendix “K” of the collective agreement, it did not have the right to unilaterally change that schedule to one that fully respected those principles. In acting as it did, the employer clearly violated the collective agreement. The employer simply ignored the rules for altering schedules as outlined in the collective agreement, and it unilaterally imposed its own.

[16] Mr. Niles testified that it was an oversight of the national scheduling committee to have approved the 18:30-07:15 schedule for CX-01s at the RTC(O). I am inclined to believe him. However, that schedule did not appear out of thin air. It was developed by the four members of the local scheduling committee, which included two employer representatives. Those four local representatives had already been trained on the principles of effective scheduling. The schedule was then approved by the employees to whom it would apply. It is reasonable to believe that those people knew what they were doing. The last step of the process was for the national scheduling committee to approve the schedule, which it did, although the employer is now arguing that it was an oversight.

[17] There was a discussion with Mr. Bélanger on the matter, but the employer never formally raised its concern with the existing schedule before the local scheduling committee. Mr. Bélanger testified that, in his view, the explanation provided at the time by the employer did not make sense. However, he also testified that the union was

open to discuss changes that would improve matters. At the national level, Mr. Niles stated that the union opposed changing the schedule.

[18] When the parties agreed to include Appendix “K” in the collective agreement, they agreed to jointly decide on the schedules. If one of them, in this case, the employer, does not agree with the other, it cannot unilaterally impose its will on the other. If the employer believed that the schedule did not respect the principles of effective scheduling outlined in Appendix “K” of the collective agreement, it could have filed a policy grievance against the union. However, it did not have the right to “take the law into its own hands”.

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

(The Order appears on the next page)

Order

[20] The grievance is allowed.

[21] The employer violated Appendix “K” of the collective agreement.

[22] I order the parties to undertake discussions in accordance with Appendix “K” of the collective agreement in order to come up with an agreed schedule for those RTC(O) employees within 90 days of this decision. In the meantime, the present schedule will remain in place.

[23] I will remain seized of the grievance for a period of 120 days to intervene in the event that the parties do not come to an agreement as directed above.

October 25, 2011.

**Renaud Paquet,
adjudicator**