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File: 566-02-719

Citation: 2011 PSLRB 44



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

DOUGLAS STEWART SWEIGER

Grievor

and

**TREASURY BOARD
(Department of the Environment)**

Employer

Indexed as
Sweiger v. Treasury Board (Department of the Environment)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: [Roger Beaulieu, adjudicator](#)

For the Grievor: [Daniel Fisher, Public Service Alliance of Canada](#)

For the Employer: [Joshua Alcock, counsel](#)

Heard at Hamilton, Ontario,
November 25, 2009,
and at Toronto, Ontario, June 14 and 15, 2010.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] When he filed his grievance, Douglas Stewart Sweiger (“the grievor”) was an enforcement officer, classified at the GT-04 group and level, in the Wildlife Enforcement Division (WED) of the Department of the Environment (“the employer”). The central issue in the dispute is interpreting clause 30.02 (“the standby clause”) of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Technical Services Group; expiry date June 21, 2007 (“the collective agreement”) and, more specifically, the meaning of the expression “as quickly as possible.” The standby clause reads as follows:

ARTICLE 30

STANDBY

...

30.02 An employee designated by letter or by list for standby duty shall be available during his or her period of standby at a known telephone number and be available to return for work as quickly as possible if called. In designating employees for standby, the Employer will endeavour to provide for the equitable distribution of standby duties.

[Emphasis added]

[2] The grievance reads as follows: “I grieve that management is not administering the ‘stand by’ processes within the meaning of the collective agreement.” For corrective action, the grievor requested: “[t]hat management administer the ‘stand by’ processes within the terms of the collective agreement.”

[3] At the first and second levels of the grievance process, the employer denied the grievance for lateness, but addressed the merits of the grievance nevertheless. The lateness issue was abandoned at the final level of the grievance process and was not raised at adjudication.

[4] The grievance was referred to adjudication on December 19, 2006. The employer was not available for hearing at the dates originally offered to the parties and, as a result, the hearing of this matter started on November 25, 2009.

II. Summary of the evidence

A. For the grievor

[5] The grievor's representative stated in his opening statement that he would rely on the employer's past practice of time to report to work when on standby from an employee's "family residence."

[6] The grievor had the burden of proof. He testified on his own behalf and he adduced in evidence eight exhibits. He called no other witness.

[7] The grievor's work location is Burlington, Ontario, known as "Headquarters" for the five Burlington enforcement officers, including the grievor. Each enforcement officer is on standby during off-duty hours for one week out of every five weeks, which equitably divides standby duties between all five officers. The grievor's family resides in Tobermory, Ontario, in the Northern Bruce Peninsula, which is approximately 298 km from Headquarters. Tobermory is in a snow belt area.

[8] In October 2001, the grievor was hired by the employer, and in 2002, he became a wildlife enforcement officer. Subsequently, the grievor received an offer from his employer to move his family to the Headquarters area, if he wished (Exhibit U-4). The grievor decided not to move his family, but in summer 2004, he accepted relocation assistance from Royal LePage Relocation Services (a third-party contractor acting on the employer's behalf) after he confirmed his new principal residence in Mississauga, Ontario (Exhibit U-4). At that time, the grievor elected not to sell his family residence in Tobermory, but opted instead for a Personalised Cash Payout Allowance pursuant to the *National Joint Council Relocation Directive*, thereby increasing his payout. He thus retained a percentage of the real estate agent commission that could have been payable had he sold his family residence in Tobermory. The grievor's decision not to sell his family residence in Tobermory did not mean that his Mississauga residence was not his new principal residence for work purposes, which allowed him to live closer to Headquarters and to be eligible for relocation assistance.

[9] The grievor stated that, when he was hired in 2001, there was no requirement that he have a residence in the Headquarters area. He submitted into evidence Exhibit U-5, which is a full and comprehensive description of his work functions that applied when he filed his grievance. The grievor's position was that, while on standby at his

family residence in Tobermory, he could still respond to any call and drive to Headquarters. The grievor's work description contains the following requirement:

...

Interruptions while doing inspections and minor investigations, and awareness and training programming, or while on-call, are a regular feature of the officer's work life. The officer carries a duty officer pager, in a rotating schedule with other inspectors, that provides 24-hour service response to other Environment Canada officers, and to officers of other government departments. These interruptions occur on a daily basis (evenings and weekends while on call), and are unpredictable in numbers, duration, and timing. Frequent interruptions at the enforcement office from other staff and from the public increases the multiple demands placed on the officer and results in occasional levels of high stress.

...

[Emphasis added]

[10] In addition, the grievor introduced evidence through Exhibits U-6, U-7 and U-8 alleging that the employer unilaterally introduced substantive changes to standby duties without sufficient consultation. He specifically referred to suggestions and options that he had raised but that the employer eventually denied.

[11] Furthermore, the grievor stated that his standby responsibilities are purely advisory and that they can be handled by telephone.

[12] Finally, the grievor submitted that, if he is required to be on standby for one week out of every five, then he and his family will suffer from the negative effects of that requirement.

[13] In cross-examination, the grievor acknowledged that his family residence is in Tobermory but that his work residence is in the Greater Toronto Area (GTA), at his Mississauga address. The grievor also acknowledged that he can exchange his duty officer (DO) responsibility with one of his four colleagues in the event of a conflict provided that the exchange is not at the last minute and that their supervisor is advised and has accepted in advance.

[14] Finally, the grievor's representative, in reply to the grievor's cross-examination, declared that the grievor had been on stress-related sick leave from November 2006 to

February 2007. He also stated that, from February to May 2007, the grievor was removed from his regular enforcement duties and was assigned administrative duties until a medical evaluation in May 2007 established that he was fit to return to his regular duties. In July 2007, the grievor accepted an assignment to Ottawa that lasted eight months. Finally, on March 5, 2009, the grievor went back on stress-related sick leave and was still on sick leave as of the start date of the hearing in November 2009.

B. For the employer

[15] Gerry Brunet was the sole employer witness. At the time of the hearing, he was the operations manager for the employer's Ontario Southern District Region, responsible for nine inspection enforcement officers at Headquarters and in Windsor, Ontario, including the grievor.

[16] Mr. Brunet has 19 years of service. He began as an investigator then gained responsibility for all investigations in the employer's Ontario Region. He was a key member of the senior management team, involved in the policies and procedures of the Ontario Region.

[17] The WED, the Canada Border Services Agency (CBSA) and the Canadian Food Inspection Agency (CFIA) have a long and effective history as partners cooperating to control the illegal importation and exportation of endangered species (both live animals and live plants) at Ontario ports of entry. Canada is a signatory and an active member of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).

[18] It is recognized that the employer, the CBSA and the CFIA have limited resources and that they need to focus their enforcement efforts on those areas that will best protect the most endangered species. As part of the joint effort, Mr. Brunet stated that pagers for enforcement officers are not only necessary but also critical because the Ontario Region has 50.53% of the *CITES* violations for the whole of Canada. Thus, according to Mr. Brunet, quick and coordinated intervention by enforcement officers is required to protect endangered species and to satisfy the three partners' needs. According to Mr. Brunet, not only do the three partners have to work together expeditiously, it is also critical that they rely on each other in all inspections and investigations. Otherwise, proof of a violation of the *CITES* could be challenged in court.

[19] When asked the following question: "How did the standby system at Burlington, Ontario work in 2006?", Mr. Brunet stated that he had five enforcement officers at Headquarters who rotated the DO responsibilities for one week out of every five. They were required to be on standby, in compliance with a pre-established schedule for each officer. When paged, the DO had to report to work as quickly as possible.

[20] Mr. Brunet also referred to two emails on that subject that he had sent to the enforcement officers on March 29 and April 13, 2006 respectively (Exhibit U-6), which read as follows:

All, please note that Denise has created the DO schedule as per discussions with me for FY 2006/2007. Welcome aboard Todd . . . you are now a permanent part of the DO schedule.

Each of you will find the schedule under Denise's Outlook Calendar which I understand each of you has access to through your office computer.

As per last year, any changes contemplated are to be discussed and approved through myself please (alternatively Gary in my absence).

Starting April 3rd the schedule shows the following staff assigned:

*Stan - April 3-9
Val- April 10-16
Todd -April 17-23
Doug - April 24-30*

Andrew - May 1-May 7

And so on.....

Please review and know your schedule. Please plan your life and duties accordingly when covering off your DO rotation. As in past years the expectation is that the DO will be available within the GTA area when scheduled. As well, each of you has a responsibility to be available for duty while covering off the DO rotation, if and when required. The DO concept has been discussed at a number of MTM's in recent months and we do plan to pen a SOP in the near future that will capture in writing what we has been agreed to historically.

One item which has been brought to my attention and that may be a change for some of you staring April 1st is: while we have previously stated that DO responsibilities were 8M -

10 PM (Dane's era) it has come to my attention we actually have been paying you for 2 occurrences on weekdays (4-8 and 8-12) and 4 occurrences on weekends (8-12, 12-4, 4-8, and 8-12). With that in mind, if not already done, please ensure your pagers remain on until 12AM (midnight) both weekdays and weekends.

Thanks all,

Gerry

...

Subject: Re Duty Officer pager and standby Discussions

Inspectors the below note is intended as a summary of the discussions had at the meeting held between yourselves, Gary and I on Tuesday, April 11, 2006. The note also speaks to some of the points expressed by Officer Sweiger in an e-mail dated March 30, 2006.

The MT has informed all Inspectors that it has every intention of drafting an SOP on Duty Officer and Standby Responsibilities a means of improving upon the already existing regional SOP and clarifying the expectations, of same for all staff involved.

The MT has explained it now expects officers to lengthen the coverage of the DO responsibilities from 22:00 hr. to 24:00 hr. The reasons for this are simple. Involved staff have been receiving payment for 2 occurrences on week days (16:00-20:00 and 20:00-24:00) and for 4 occurrences on weekends (08:00- 12:00, 12:00-16:00, 16:00-20:00, and 20:00-24:00). It makes little sense for the employer to put out funds for work not being performed. As well, it is known some of the Inspections staff have already been covering off the extended period until 24:00 hr. The plan will see us advise our partners of the change in coverage and a change will have to be made to the DO business cards currently in circulation.

The MT has explained that the carrying of the DO pager is not a voluntary responsibility for the involved Inspectors. They have been providing the service for an extended period of time and are paid standby pay as per the collective agreement to perform the responsibility. The MT considers this responsibility to be part of an Inspectors job duties. The MT explained that the Inspectors are not able to "opt out" of the responsibility.

The MT has explained that there has always existed an understanding that the DO would remain within the "GTA" area when carrying the pager. The 'GTA' concept was explained in that the Burlington office represents our

headquarters and each Inspector involved has a residence within an acceptable corridor from the headquarters office. Doug, in your case and for the purposes of work, the MT has been advised that the Department considers your residence to be in the Toronto area. The MT has explained and the Inspectors have verified that the vast majority of calls to the DO pager are for the Toronto (PIA) area. The MT has explained that it is the DO's responsibility to be available during his or her period of standby at a known telephone number and be available to return to work as quickly as possible if called. The MT has explained that DO's are responsible for planning their lives when scheduled as DO. It has been explained that calls to the pager must be answered immediately and when required the DO must be in a position to return to work quickly therefore it is incumbent upon the DO to ensure they are in a position to meet these obligations, especially outside the normal office hours (Monday-Friday). If the DO is aware of a personal conflict when scheduled to be a DO they must find a partner officer to cover off for them during the required period, but notification of such changes must also be passed through their Supervisor.

The Inspectors have asked for the MT to consider defining a 'radius' or zone they can be located in while operating as the DO vs. stating the 'GTA'. The MT agreed to consider same for the new SOP.

The current regional SOPs dealing with pager calls and responses to PIA Passenger Operations states the pager is to be called in Priority I scenarios or when suspected CITES controlled commodities without accompany CITES permits are found to be one of the following: a) live animals, b) live plants, c) Appendix I products, d) imports considered to be commercial quantities, e) perishable goods. The DO must respond to the call immediately and review the circumstances of the occurrence. If a decision is made that it is necessary to attend at the Port of Entry to initiate some form of enforcement action, the DO has a number of options for response they may consider ranging from refusals of entry to various forms of prosecution. Depending on the circumstances the DO may elect to contact members of the MT and consider involving an Investigator or RIO. Other examples of calls are considered Priority 2 scenarios and the DO is still expected to respond to the call immediately, record necessary particulars, and arrange for WED to pick goods up from the port of entry at an appropriate time (i.e. once/week). N. B.: Consult your regional SOPS Manual for details.

The MT explained that starting this fiscal year DO's will not be scheduled for project work that might take them outside the 'GTA'. The MT asked for the Inspectors cooperation in pointing out if an error is made in this area and they are

placed on a project that will conflict with their DO responsibilities as described.

The MT has explained that during the week a DO is scheduled it is their responsibility to ensure they confirm with CBSA or attend at PIA Passenger and Cargo in the middle of that week to check on the status of CBSA detentions, and process or pick up the goods. There is a significant concern with live detentions made by CBSA on behalf of the WED. The DO is to attend or arrange for a partner officer to attend to deal with said products.

The MT has explained that the DO Log Book is to be completed for all pages received by the DO during their scheduled rotation.

Some Inspectors asked the MT to consider extending the service of DO responsibilities to other officers working in the office. The MT agreed to review/consider such a step in the future.

Thanks,

Gerry

[Sic throughout]

[Bold in the original]

[Emphasis added]

[21] In addition, Mr. Brunet introduced into evidence Exhibit E-1, which concerns standby, DO responsibilities, standard operating procedures (SOPs) for Headquarters and other related issues in the Wildlife Enforcement duties and responsibilities in this strategic Ontario region.

[22] A specific SOP has been developed for the GTA and Toronto's Pearson International Airport (PIA), which reads as follows (Exhibit U-8):

Standard Operating Procedures For Detentions of CITES Protected Wildlife that Occur at PIA Passenger Operations

1. Partners:

***Canada Customs, (Canadian Border Services Agency)
Canadian Food Inspection Agency
Wildlife Enforcement Division, Environment Canada***

2. Introduction

Both Canada Customs (Canadian Border Services Agency) and the Canadian Food Inspection Agency routinely encounter suspected CITES controlled wildlife, without accompanying valid CITES Permits, during the course of their inspection duties. Both agencies have a long and effective history of Cooperating with Environment Canada to control the illegal importation or exportation of endangered species of plants and animals at Ontario Ports of Entry.

It is recognized that all three agencies do not operate with unlimited resources, and that all three agencies wish to focus their enforcement efforts on those areas that will have the greatest impact on the protection of those most endangered species. With this in mind, these developed Standard Operating Procedures differentiate between the enforcement responses that are expected between two distinct classes of detentions under CITES, as follows:

- **Priority 1 - CITES Importations Requiring Immediate Contact with Environment Canada**
- **Priority 2 - Importations Requiring The Detention of the CITES Listed Articles, with follow up Contact with/by Environment Canada**

3. Priority 1 - CITES Importations Requiring Immediate Contact with Environment Canada

Environment Canada, Wildlife Enforcement Division, requests that each agency immediately contact them in the following instances that involve suspected CITES controlled plants and/or animals that are imported or exported **without valid CITES permits**:

CFIA will contact Environment Canada in occurrences involving:

- Live Animals
- Live Plants

CCRA will immediately contact Environment Canada in occurrences involving:

- Live Animals
- Live Plants
- Appendix I Products (i.e.: products made from elephant ivory, tiger, sea turtle.)
- Imports considered to be commercial quantities. (i.e. 25 snakeskin wallets, alligator purses, etc.)
- Perishable Goods (Caviar)

4. How to Contact the Wildlife Enforcement Division of Environment Canada

Duty Officer (0800 to 2200) 7 days a week
Pager # . . .

5. Priority 2- Importations Requiring The Detention of the CITES Listed Articles, with follow up Contact with Environment Canada.

For all other importations or exportations of suspected CITES controlled wildlife **without a valid CITES Permit** and found **not to be a Priority 1**, it is requested that Canada Customs detain the suspected CITES controlled wildlife under a K24 (non-monetary receipt) and deliver, by hand, to the importer or exporter of record, the one page WAPPRITTA information sheet, attached as Annex A. There is no requirement by CCRA or CFIA to immediately contact EC in these instances.

6.0 Environment Canada's Actioned Protocol

6.1 Priority I - CITES Importations Requiring Immediate Contact with Environment Canada

All calls received from CCRA & CFIA during business hours, or via the pager after hours, will be the responsibility of the on-call Duty Officer.

Options for Response

Environment Canada will respond to all calls as above in a prompt manner and review the circumstances of the occurrence.

Should the decision be to attend the Port of Entry to initiate some form of enforcement action, the following options are available.

1. Refusal of Entry and Issuance of a Notice to Remove (pursuant to section 18 of WAPPRIITA).

This is primarily utilized when the animal is a personal pet. The importer will be instructed that they have to remove the animal at their expense.

2. Issuance of a Warning Notice

The attending Environment Canada Wildlife Enforcement Officer will issue a Warning Notice and an Environment Canada Receipt.

3. Proceed by way of a Part I Provincial Offences Act Notice of Infraction

- as per S.O.P. for CWS-OR Enforcement Actions.

4 Proceed by way of a Part I Summons

- as per S O P for CWS-OR Enforcement Actions

5. Proceed by way of a Part III Prosecution

- as per S.O.P. for CWS-OR Enforcement Actions.

6. Proceed by way of Provincial (Criminal) Court

- as per S.O.P. for CWS -OR Enforcement Actions.

6.2 Priority 2 -. Importations Requiring The Detention of the CITES Listed Articles, with follow up Contact with Environment Canada

The Environment Canada Wildlife Enforcement Officer will visit PIA Terminals and contact other Main Ports of Entry once a week to collect, assess, and to dispose of all goods detained by CCRA and/or CFIA that relate to CITES concerns.

7. Telephone Contact with the Importer of the Suspected CITES Wildlife

The Environment Canada Wildlife Enforcement Officer who receives a telephone call from the importer or exporter of record to discuss the wildlife detention made under K24, as requested through the one page WAPPRIITA information sheet, shall assess the circumstances of the file.

Options:

1. The goods have been inspected and identified by the attending Environment Canada Wildlife Enforcement Officer as non-controlled. In this instance, the goods will be approved for Environment Canada release, and all parties advised

2. The goods have been inspected and identified by the attending Environment Canada Wildlife Enforcement Officer as falling under one of the Wild Animal and Plant Trade Regulations Exemptions. In this instance, the goods will be approved for Environment Canada release, and all parties advised

3. The goods have not been inspected to date. In this instance, the Environment Canada Wildlife Enforcement Officer will confirm with the caller their telephone number and address and advise them they will be contacted once the inspection and identification takes place.

4. The goods that have been inspected and identified to be CITES controlled and a violation has occurred. The

Environment Canada Wildlife Enforcement Officer will inform the importer of record of the need to discuss the matter. A date and location of the meeting will be set.

During meeting with the importer or exporter of record, the Environment Canada Wildlife Enforcement Officer will review the circumstances of the occurrence and make a decision relative to the appropriate course of action. The Options as detailed on pages 4 and 5 of these SOP's will be considered.

8. If the Importer is Not Available to Meet

If the importer is not available to meet to further discuss the matter, the Environment Canada Wildlife Enforcement Officer will mail out the completed Warning Notice and Environment Canada receipt indicating that the items have been forfeited.

Depending on the quantity, value, and level of endangerment of the items, etc., the Environment Canada Wildlife Enforcement Officer may elect to physically attend at the importer's residence, work site or business location to conduct further inquiries into the matter

9. If the Importer does Not [sic] Call as Directed by the CITES Info Sheet (Annex A)

If no call is received from the importer of record within 7 days from the date of the wildlife detention made under Customs form 1(24 and the goods have been identified being CITES controlled, the Environment Canada Wildlife Enforcement Officer will proceed as per 8, above (i.e. if the Importer is Not Available to Meet).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)

The goods described on the related K24 Revenue Canada Receipt [sic] have been detained under authority of Section 101 of the Customs Act for referral to Environment Canada.

Please ensure you make contact with the addressed below agency no later than 7 calendar days following the date stamp on your Customs K24 (non-monetary) receipt to address this wildlife entry.

...

[Bold and underline in the original]

[Emphasis added in double underline]

Those SOPs are part of the employer's operational requirements. They must be respected by the enforcement officers assigned to Headquarters, including the grievor. According to counsel for the employer, the responsibilities in those SOPs are not voluntary but are an integral part of the officers' duties.

[23] Mr. Brunet underlined that the PIA is one of the busiest work locations for the WED officers because of the high volume of illegal and legal importation and exportation of live animals and plants. Again, Mr. Brunet insisted that a quick response was required whenever a DO was called.

[24] There was an email exchange between the grievor and Mr. Brunet regarding the DO responsibilities (Exhibit U-7). The first email, from the grievor, is dated April 26, 2006, which reads as follows:

...

Sirs; For purposes of clarification I am assuming that the references to the acronym "MTT made in your written communications of April 13th 2006 mean Management Team which I believe consists of Regional Director Gary Colgan and Assistant Regional Director Gerry Brunet.

After serious & careful deliberation of the assertions made in your written direction to me on the above date, I am obliged to respond & request that you consider the options following, so that we are able to continue "to maintain harmonious and mutually beneficial relationships between the Employer (MT) and the employee" (Douglas Sweiger) (Collective Agreement Part 1, Article 1, 1.01)

In brief summary I understood from the verbal direction that I received from Gary Colgan and Gerry Brunet (henceforth referred to as the MT) in our meeting of April 11, 2006, & further confirmed in the written communication to me on April 13, 2006, that I will no longer be permitted to return home to my family on my days of rest for 10 weekends in fiscal year 2006/2007 when I am scheduled to be on standby as the Duty officer. I further understand that I have been directed to remain in the Greater Toronto Area during these 10 weekends & as remuneration will receive a total of 4 hours pay for 32 hours of standby on each respective weekend. Since being employed by the Wildlife Enforcement Division 4 & 1/2 years ago in October 2001 the weekend Duty Officer standby function has been carried out, with

managements knowledge, from my home in Bruce County, or from work assigned projects sites at various locations throughout the province. For two years from October 2001 to October 2003 this Duty Officer standby responsibility was accepted voluntarily without pay 24 hours per day, 7 days per week in rotation with from 2 to 3 other Officers. From Jan 2003 until present, there has been a total of 4 after hours paged call outs to the GTA, on weekdays only, recorded in Duty Officer pager log. All the hundreds of other pager responses over that period have been actioned via telephone &/or attended during working hours during the week. In the fall of 2003 Inspections Supervisor Dane Wesley was able to negotiate for standby pay for the previously unpaid Officers, to cover periods from 16:30 hours to 22:00 hours on weekdays and from 7:00 hours to 22:00 hours on weekends. At about that time the Officers working in Compliance Inspections were advised by their supervisor (Dane Wesley), that the Chief (Gary Colgan) wanted Duty Officers to remain in the GTA if possible during the work week. Throughout this period I continued to carry out the Duty Officer standby function from my home in Bruce County during my days of rest. Most importantly I must note that the Duty Officer standby function was unpaid, & had no geographic impositions or restrictions when my family and I elected not to relocate to Burlington in 2002. Therefore, the recent MT expectation & orders to remain in the GTA when on Duty Officer standby on days of rest, were made after my decision to not re-locate my home & family to Burlington. Further I have routinely volunteered to work throughout my days of rest as various projects in the past have required, & will continue to volunteer to work during these periods in the future as required. However, to be forcefully separated from my home and family for a further 10 weekends per year, while on standby only, will & is causing extreme duress.

The following proposed options submitted for consideration should allow resolution to this impasse & allow the Management Team & Douglas Sweiger to continue to work together in an atmosphere of mutual trust & respect.

OPTION # 1 On the normal days of rest when Douglas Sweiger is assigned the Duty Officer responsibility (Saturday & Sunday) the MT could allow Douglas Sweiger to report to work at Burlington on those days & subsequently use the compensatory time gained to take two days off the following week.

OPTION # 2 Continue to respond to the Duty Officer standby function during my regular days of rest from my home in Bruce County as has been my practice since 2001.

OPTION # 3 *Opt out of the Duty officer standby responsibility entirely during my regular days of rest so as to be able to return home to my family.*

With regard to some of the points made by the MT in writing to me on April 13, 2006 there has not “always existed an understanding that the DO would remain within the GTA area when carrying the pager”. If there was such an understanding I would presume that this message would have been communicated when I first began employment With CWS/WED in 2001. Despite the fact that I have the use of a room in the GTA when working out of CCIW during the week the MT is well aware that my home & family are in Bruce County. The . . . paid to me by EC in lieu of relocation & used to alleviate travel & accommodation expenses between work & home represented a significant saving to EC as apposed to the projected . . . cost of actually relocating my family to Burlington.

To the best of my knowledge I have always been available at a “known number” to return to work if required as quickly as possible while on standby in Bruce County during my days of rest.

In the event that the MT, for any reason does not find option 1 or option 2 palatable, I would respectfully request that the MT either carry, or re-assign the Duty Officer responsibility during my days of rest.

To speak to the MT decision to withdraw my days of rest, work vehicle parking privileges, behind the locked gate & inside the locked garage at the Grand River Conservation Authority / Wildlife Enforcement Division Training Facility at Luther Marsh; please allow me to clarify that this arrangement was made based on an offer, my friend of the past 30 years, & Manager of the GRCA Facility, Robert Bell, made to me, unsolicited in 2002. My intent was to protect Crown assets from weather & unauthorized access from the public when I was not in attendance during my days of rest & to provide more convenient access between the GTA, Burlington & my home. I would not be able to provide this level of security at my room site in the GTA when I was not in attendance & the locked GRCA Facility garage was less distance from the Burlington office than some of our other Officers drive on a daily basis to their homes. Bob Bell would have no difficulty in asking me to move the work vehicle elsewhere if it was in his way. The MT expressed concern that the work vehicle may be burnt, stolen or vandalized at the GRCA Facility while unattended during my days of rest. I sincerely believe that the work vehicle is better protected at the GRCA Facility than it would be in the parking lot at CCIW. I could relocate the work vehicle on my days of rest to either my sister’s residence nearby, upstream on the on the

Grand, where it would be secure, or even to the local Police Detachment if the MT was agreeable? I have begun arrangements to bring my personal vehicle to CCIW as directed by the MT, if their original direction stands. With reference to the MT remark that "Your situation is unique in that you are the only employee who has elected through the relocation initiative to leave their family and primary residence at a distant location so as to operate from a second residence for the purposes of work"; my reasons for doing so were deeply personal & complex, furthermore you may have forgotten that my spouse & I were deeply involved in litigation with a logging company that had illegally logged our property and were unable to sell our property during the window of opportunity for relocation even if we wished to do so. The illegal logging litigation initiated in 1998 was not settled until 2006.

In closing I sincerely hope that the Management Team will re-consider their decision with respect to the negative effect their current position will have on my family & I in future.

...

[Sic throughout]

[Emphasis in the original]

[25] Mr. Brunet replied to the grievor, on May 6, 2006, the following:

...

Doug, the following is a follow up to your letter and meeting of April 26th on the above captioned subject matter. The Management Team (MT), of the WED - Ontario Region would like to thank you for taking the time to meet with us on April 26th and for writing your thoughts on paper with some suggested options. Your comments and options have been reviewed by the entire WED - Ontario Region MT (see below), discussed, and given careful consideration.

Firstly, responding to your letter, the MT is an acronym that has been used for a number of years in our Division and means Management Team. The MT currently consists of three members, Director Gary Colgan, Assistant Director Gerry Brunet, and Administrative Assistant Susan Morgan.

Duty Officer Responsibilities:

As per the written directive sent to you on April 13, 2006, the MT has moved to ensure that coverage by the Duty Officer in the WED is consistent and in keeping with the terms of the collective agreement.

A meeting was held on April 11, 2006 between Gary, myself, and all staff responsible for conducting these duties in Ontario Region, namely the Wildlife Inspectors (Bruce, Chow, Kish, Morton and Sweiger). At that meeting, all staff affected were advised of management's plan to improve and streamline the DO system within the region and informed an amended SOP would follow documenting the responsibilities. The amendments planned have been discussed by the MT and are designed to treat each of the involved employees equally with the understanding that Burlington is our Division's main office or HQ if you wish. With Burlington as our HQ and recognizing Article 30.02 of the collective agreement states "An employee designated by letter or by list for standby duty shall be available during his or her period of standby at a known telephone number and be available to return to work as quickly as possible if called." the MT has advised Officers responsible for monitoring the DO pager that during their rotation they must plan their personal lives accordingly during off hours so they can respond as stated above. All five inspectors reside within a reasonable distance from Burlington to respond as quickly as possible in the MTs opinion. In your specific case, our Human Resources office has advised that your residence is considered to be in Mississauga for the purposes of work based on an agreement you made with the Department over relocation within the first two years of your employment with the WED.

Decisions made by yourself or any staff related to relocation within the first two years of employment with our Division are independent and personal decisions that the MT has no involvement with.

As has always been the case, each of the five Inspectors rotates through a defined DO assignment that covers a Monday - Sunday period (7 days). This is the MTs way of endeavoring to provide for the equitable distribution of standby duties, also as per Article 30.02. Each Inspector has the responsibility to cover his/her rotation off in accordance with the collective agreement. For operational reasons and concerns, the MT has advised each Inspector that they must be in a position to respond as quickly as possible to Burlington (their HO) and an area that has previously been described as the 'GTA' with respect to the DO responsibilities. Obviously from an equality point of view with respect to each Inspector, the MT expects each DO will cover their assigned shift as scheduled and in accordance with managements direction. The MT does recognize that from time to time, conflicts will develop for assigned DOs. As per past agreements, if a DO has a conflict that prevents them from carrying the DO pager during their assigned rotation, they must discuss same amongst the other Inspectors to find an

alternate DO and advise their supervisor of the arrangements made for coverage.

You have provided the MT with three options that you felt we should consider for circumstances that are unique to yourself. Each of the options have been reviewed and discussed, but the MT continues to find that in order to implement any of these options we would be placing ourselves in a position viewed as being inconsistent and unequal because we would be treating you differently than the other four Inspectors responsible for being DOs. To demonstrate this point, a few comments on each of your suggested options follows:

OPTION # 1 On the normal days of rest when Douglas Sweiger is assigned the Duty Officer responsibility (Saturday & Sunday) the MT could allow Douglas Sweiger to report to work at Burlington on those days & subsequently use the compensatory time gained to take two days off the following week.

Depending on your intentions, this would see the MT initiating an agreement outside the terms of the collective agreement. The collective agreement would require that after you worked your 37.5 hour shift (Monday-Friday) as DO we would have to compensate you at 1 1/2 X and 2x your salary on the first and second days of rest respectively.

Even if you were advocating that you would agree to work your first and second day of rest in exchange for straight time (15 hours) of CTO the following week the door would be open for you to make a claim in the future that you were entitled to this pay during these periods and the MT (Department) would have to agree to pay same as per the collective agreement.

OPTION #2 Continue to respond to the Duty Officer standby function during my regular days of rest from my home in Bruce County as has been my practice since 2001.

The MT has explained that this is no longer an option for you as a DO. The MT has explained that they are moving toward a system that will ensure the DO can respond as quickly as possible to their HQ area, historically described as the 'GTA' if required to do so. You have advised that your response time from Bruce County to your HQ area (or 'GTA' area) would take approximately 3 hours. The MT has explained that this response time is not acceptable. The MT has advised all DOs that they should plan their personal lives accordingly during their assigned rotation as DO and for the time periods of responsibility. This is an obtainable goal for all DOs operating from their residences during after hour

periods. In your case, your work residence is deemed to be Mississauga, Ontario.

OPTION # 3 Opt out of the Duty officer standby responsibility entirely during my regular days of rest so as to be able to return home to my family.

The MT has advised that this is not an option. As one of five Inspectors, one of your job responsibilities is to cover off the DO rotation (7 days - 8AM to 12 AM) when it is your turn. The Department compensates you for this service via the stand by pay provisions defined in the collective agreement during the hours 4PM-12AM on weekdays and 8AM-12AM on weekends.

WED Vehicle Paking at GRCA - Luther Marsh Wildlife Management Area:

Thank you for taking the time to comment on some of the details surrounding the parking of the WED vehicle you operate at the GRCA - LMWMA property and for making some suggestions re: possible alternatives.

As the MT described to you in a letter dated April 13, 2006 which followed our meeting of April 11, 2006 the MT is not comfortable with this arrangement. We are not prepared to change our minds on this issue and wish to move forth with our earlier direction.

Working under the understanding that your work residence is located in Mississauga and the WED office at Burlington is considered your headquarters, the MT is attempting to grant you the same provisions that currently apply to other officers working in the Division. I know you planned to have Todd Kish drive you to Luther yesterday (Friday, May 5, 2006) to pick up your personal vehicle, and I thank you for vetting that earlier request. This will now allow you to operate the Departmental patrol vehicle in accordance with the same operating principles the other officers follow commencing the week of May 8, 2006.

We trust that this answers your letter of April 26, 2006.

...

[Sic throughout]

[Emphasis added]

[26] Within the GTA, Headquarters was, in 2006, according to the uncontradicted testimony of Mr. Brunet, the only location in the Ontario Region with adequate facilities for the controlled handling of live animals and live plants.

[27] Mr. Brunet also referred to an email sent on November 17, 2006 to all enforcement officers (Exhibit E-1, tab 2), in which the responsibilities of DOs were clarified. The email stated the following in part:

...

To ensure that there is no misunderstanding as to what the expectations of the Management team are in this area, and to meet our commitment as to Para 2 above, this will confirm that our expectations is that when on standby duty, Wildlife Inspector will ensure that they are able to return to CCIW, our Headquarters area within 45 minutes. That is to say, please organize yourselves when on standby to be within 45 minutes of the office.

...

[Emphasis in the original]

[28] Mr. Brunet explained that the number of DO calls made for Ontario is growing and that more than half are reported at the PIA and in the GTA, both of which are serviced by the five enforcement officers at Headquarters. Statistics show as follows that, yearly from January 2003, the total hours worked off-duty has increased: in 2003, 164 hours; 2004, 208 hours; 2005, 282 hours; and, between January and June 30, 2006, 143 hours (Exhibit E-1, tab 4).

[29] Mr. Brunet presented investigation reports of multiple smugglings of protected species of snakes, in violation of the *CITES*, and of the illegal importation of protected eagle species from Vietnam, also in violation of the *CITES* (Exhibit E-1, tabs 5 and 7). In each case, a quick response, a seizure and an on-site investigation saved the lives of the threatened species and resulted in the convictions of the smugglers. The convictions were secured by quality results in court arising from the coordinated and efficient interventions and investigations by the enforcement officers, from the close collaboration with their partners, and from rapid notifications and investigations at the points of smuggling.

[30] Tab 8 of Exhibit 1 is Mr. Brunet's Google map of the distance by car from the grievor's family residence in Tobermory to his worksite at Headquarters and from his work residence in Mississauga to Headquarters. The distance from the grievor's family residence in Tobermory to Headquarters is approximately 298 km one way, for a

commute of 4 hours and 13 minutes. The distance from the grievor's work residence in Mississauga to Headquarters site is 43.6 km and takes about 30 minutes by car.

[31] Mr. Brunet testified that the employer did not impose a residency requirement on its enforcement officers on standby. However, it requires DOs to be able to respond to a pager as quickly as possible and within no longer than 45 minutes. Mr. Brunet emphasized that responding to a call when on standby was not voluntary but an obligation because it was part of an enforcement officer's job and part of operational requirements.

[32] Mr. Brunet referred to the work description (Exhibit U-5), for a more comprehensive understanding of the duties and responsibilities of an inspector of the WED.

III. Summary of the arguments

A. For the grievor

[33] The grievor's representative argued that the employer made a material change to the grievor's working conditions that negatively affected the grievor's personal and family life.

[34] The grievor's representative also argued that, if the standby requirement is so urgent, why does the employer not answer incoming calls between 11:59 and 08:00, seven days per week? According to the grievor's representative, the employer does not employ an answering service for that eight-hour period.

[35] Furthermore, why did the employer allow the grievor to work on standby for four years from his family residence in Tobermory, when it knew that he required more than three hours to reach Headquarters? The grievor's representative argued that no language in article 30 of the collective agreement suggests urgent work or emergency requirements.

[36] The grievor's representative pointed out Exhibit U-7 and argued that the employer could have accommodated the grievor and could have accepted at least one of the three options that the grievor presented when the issue of standby arose with the employer. The grievor's representative suggested that the employer's refusal of the grievor's options was unreasonable.

[37] In addition, the grievor's representative argued that the grievor was always reachable by pager when on standby and that the grievor never failed to provide service either before or after he filed his grievance in 2006.

[38] In conclusion, the grievor's representative stated that the collective agreement imposes no residential requirement on the grievor at Headquarters or in the GTA and that it is reasonable for the grievor to live in Tobermory and still perform his standby duties from there even though, in some exceptional circumstances, it may take him several hours to report to work.

[39] In support of his arguments, the grievor's representative adduced the following six cases: *Cochrane (Town) v. Canadian Union of Public Employees, Local 71* (2005), 141 L.A.C. (4th) 238; *Kamsack (Town) v. Canadian Union of Public Employees, Local 1881* (2000), 89 L.A.C. (4th) 153; *KVP Co. Ltd. v. Lumber & Sawmill Workers' Union, Local 2537* (1965), 16 L.A.C. 73; *Gasbarro v. Treasury Board (Canadian Transportation Accident Investigation and Safety Board)*, 2007 PSLRB 87; *Helmer v. Treasury Board (National Defence)*, PSSRB File No. 166-02-25427 (19940524); and *Dahl v. Treasury Board (Agriculture Canada)*, PSSRB File No. 166-02-25535 (19941123).

B. For the employer

[40] Counsel for the employer suggested in argument that answers are required to the following three questions: Is the grievance premature? If not, are the words "as quickly as possible" in the standby clause subject to a definition by management? If management is capable of establishing the meaning of "as quickly as possible," can the grievor still be allowed to handle his standby obligations from his family residence in Tobermory?

1. Is the grievance premature?

[41] Counsel for the employer opened his arguments by stating that the grievance was premature and that the adjudicator is without jurisdiction. The grievor has not proven that he was aggrieved as per subsection 208(1) of the *Public Service Labour Relations Act (PSLRA)*. In support of his prematurity argument, counsel for the employer submitted *Fok and Granger v. Treasury Board (Department of Transport)*, 2006 PSLRB 93, and *Young v. Treasury Board (Revenue Canada — Taxation)*, PSSRB File No. 166-02-22120 (19920908).

2. Defining the words “as quickly as possible” in the standby clause

[42] Counsel for the employer submitted several cases that examine the phrase “as quickly as possible.” The case that best fits this case is *Canada v. Beatrice (The)* (1895), 5 Ex.C.R. 9. The case states that “[a]s soon as possible’ means ‘within a reasonable time’ . . .” and “. . . what is a reasonable time must depend upon the facts governing the case in which the question arises.” Also, the Supreme Court of Canada described the phrase “as soon as possible” in *W.A. Bechtel Co. v. Stevenson & Van Humbeck Sawmill*, [1945] S.C.R. 652, as meaning to be “. . . bounded by a reasonable period of time. . . .”

[43] In the instant case, counsel for the employer argued that, if the employer cannot define the meaning of responding in time, then clause 30.03 of the collective agreement cannot be triggered and cannot apply. That clause reads as follows:

30.03 *No standby payment shall be granted if an employee is unable to report for work when required.*

[44] Finally, counsel for the employer referred to *Cochrane (Town)*, in which the arbitrator indicated that the employer had a legitimate concern about the response time from an employee on standby. In that case, the arbitrator stated that it might be reasonable for the employer to require a specific response time for standby employees. That also applies to this case. Further, the arbitrator in *Cochrane (Town)* stated that specifying a response time was reasonable because of the nature of the work (having to report as quickly as possible, as in this case) and because the employer was paying employees for being on standby. The arbitrator wrote the following: “[b]y paying employees extra for being on standby, the employer is entitled to have a degree of control over those employees’ free time that it would not otherwise have. . . .”

[45] As for responding “as quickly as possible” to a call, as stated in the standby clause, the grievor testified that, although much of his work involves providing advice over the phone, many of his calls result in his attendance to make a visual inspection and to ensure the health and safety of all parties at the site of a suspected illegal importation or exportation of live animals that are possibly endangered species. That is especially true due to the possibility of venomous animals and reptiles. Enforcement officers are specifically trained for reptile intervention and seizures. Although the health and safety of all partner intervenors involved in on-site investigations are important and often critical, it is also critical to comply with legislation specifying that

endangered species need to be protected while alive. Thus, the need to respond quickly for the survival of the endangered species as well as the necessity to comply with numerous operational requirements of the enforcement officers' responsibilities.

3. Can the grievor still be allowed to handle his standby obligations from his family residence in Tobermory?

[46] Counsel for the employer argued that the employer has numerous responsibilities and obligations that result from both federal laws in Canada and several international treaties and conventions to which Canada is a signatory. Those international treaties have resulted in several partnerships in which the employer, the CBSA and the CFIA work together to ensure that Canada does its part to comply with federal wildlife legislation and the *CITES*. Not only does the employer (through the WED) have to respect health and safety legislation and all related regulations, it also has introduced and implemented SOPs for the detention of the *CITES* protected wildlife.

[47] Counsel for the employer emphasized that all calls received from the CBSA and the CFIA during business hours or via pager after hours are the responsibility of the on-call DO. The grievor is regularly scheduled as the on-call DO in rotation with the other officers. The DO must respond appropriately, to the instructions in the SOPs. In many cases, the DO is required to respond on site at the location of an incident. A quick and immediate response may be necessary because an endangered species might be in distress and need special attention to survive. In those circumstances, and depending on the nature of the incident, the DO may require the assistance of another enforcement officer. If a CBSA employee calls seeking assistance and intervention from an enforcement officer, the employee may be in a situation that prevents him or her from performing his or her normal duties if the enforcement officer does not respond quickly. If the DO fails to respond promptly, the long-term relationship with the CBSA and the CFIA could be harmed.

[48] Over time, southern Ontario has become the major focal point for the illegal and legal export and import of endangered animals, reptiles and plants in Canada. Since more than half (and still increasing) of those imports and exports take place in the GTA, Burlington has become the headquarters for southern Ontario. This high level of activity at Headquarters has necessitated greater operational efficiency for the GTA and the PIA.

[49] While on standby, the DOs will encounter, in the normal course of their duties, certain extreme situations, for which they have been trained. Counsel for the employer emphasized that the DOs are not intentionally placed in such situations. However, when they occur, the DOs know how to react. They are trained to consider the health and safety of all involved personnel and to protect endangered species, which is a *CITES* objective. When a DO on standby receives a call, he or she must respond. At the instant of the call, it is not possible for him or her to contact one of the other four officers to cover. He or she must respond immediately. However, when an officer receives the standby list or list of standby assignment weeks in advance, he or she may at that time seek to exchange his or her assignment with another officer and seek supervisory approval for that change in advance. The DO on standby cannot delegate that authority to another officer at the last minute. Any substitution with another officer must be done in advance and with the supervisor's knowledge and approval. The employer has to control the operational efficiency of the organization within a normal range of flexibility.

[50] If the grievor is at his work residence in Mississauga during his one-week standby assignment every fifth week, the grievor is 43.6 km (approximately 30 minutes) away from Headquarters. If the grievor is at his family residence in Tobermory during his one-week standby assignment every fifth week, the grievor is 298 km (approximately four hours) away from Headquarters (Exhibit E-1, tab 8). Covering the distance from Tobermory to Headquarters requires a long drive under normal circumstances that gets longer in specific winter conditions or due to other events, often unforeseen. Consequently, it is unreasonable for the grievor to request to perform his standby duties from his family residence in Tobermory.

[51] According to counsel for the employer, the grievor could not rely on a past practice of responding to standby calls from his family residence in Tobermory to claim estoppel. Any such practice does not amount to a promise made to the grievor by the employer that the practice would continue indefinitely. Counsel for the employer underlined the grievor's testimony that he could not relocate his family from Tobermory because of a real estate dispute regarding that property that took several years to settle after he began working for the employer. Counsel for the employer referred me to *Pronovost v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 93.

[52] Finally, the grievor insisted that he and his family suffered hardship from his standby duties. However, in his testimony, he stated that, not only was he always available for work, but that he volunteered for overtime on his days of rest. According to counsel for the employer, the grievor cannot now argue that responding to standby calls from his family residence in Tobermory caused him hardship.

[53] In cross-examination, Mr. Brunet was asked why the grievor was subjected to a residency requirement in the GTA or the Headquarters area. Mr. Brunet responded that the employer did not have a residency requirement for the grievor but instead a requirement for the DO on standby to be able to respond to a call to report to work as quickly as possible. The same requirement applied to all five enforcement officers at Headquarters. Mr. Brunet explained that carrying the DO pager is not voluntary for the designated officer but rather is part of the enforcement officer's duties. Also, Mr. Brunet stated that the grievor was not asked to reside in the Headquarters area because since 2004 he had already had his work residence in Mississauga. Mr. Brunet added that the grievor maintains a residence in Mississauga as the result of the grievor's personal decision and of his own free choice.

[54] Counsel for the employer commented on the grievor's representative's reliance on *Kamsack (Town)* and *Dahl*. According to counsel, both cases are completely different from this case.

[55] Counsel for the employer argued that the employer administered the standby clause in compliance with all of article 30 of the collective agreement. According to counsel for the employer, the collective agreement had not been breached, particularly the standby clause. Article 30 imposes the following two duties on the employer: to equitably distribute standby duties and to pay the designated standby amount when an employee is called to report to work. The grievor has neither advanced nor proven a breach of those duties by the employer.

IV. Reasons

A. Objection to the prematurity of the grievance

[56] First, I will address the issue of the alleged prematurity of the grievance. Counsel for the employer objected at the hearing before me, for the first time, that the grievor was not yet personally aggrieved under paragraph 208(1)(a) of the *PSLRA* when

he filed his grievance. Counsel for the employer asked me to find that, when it was filed, the grievance was of a prospective nature only.

[57] I have difficulty understanding counsel for the employer's objection, in light of the record before me. First, the employer denied the grievance for lateness at the first and second levels of the grievance process. This hardly reconciles with an argument of prematurity. Second, the employer nevertheless recognized and specifically addressed within the departmental grievance process the grievor's dispute with its interpretation of the "as quickly as possible" requirement in the standby clause. This indicates that the employer did consider that the issue was alive at the time, as opposed to premature. Third, although the grievance was referred to adjudication on December 19, 2006, it took almost three years to raise the issue of prematurity, for the first time, at the hearing before me.

[58] In earlier decisions, adjudicators have deemed waived objections that had not been raised at the first opportunity. For example, *Kettle v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-21941 (19920413), *Sauvé v. Treasury Board (Public Works and Government Services Canada)*, PSSRB File No. 166-02-26974 (19981130), *Beers v. Treasury Board (Department of National Defence)*, 2000 PSSRB 2, *McMahon v. Senate of Canada*, 2003 PSSRB 50, and *Doiron v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 77, have denied on that basis objections to timeliness raised for the first time at the adjudication hearing. I fail to see how, in this case, the employer could not have mentioned its prematurity concern within the grievance process, if it truly considered that the grievance was of a prospective nature only.

[59] I find that, in the specific circumstances of this case, counsel for the employer's objection to the prematurity of the grievance is disingenuous, to say the least. By failing to raise this concern at the first opportunity, the employer has waived its right to do so.

B. Estoppel

[60] The grievor relied on the fact that, for approximately four years before the grievance, beginning in May 2006, he travelled to Headquarters from his family residence in Tobermory. Thus, he contends that reporting to work from his family residence in Tobermory is a long-standing practice that the employer is estopped from changing. Counsel for the employer relies on *Pronovost* to argue that such past

practice did not amount to a promise made by the employer to the grievor that, in the future, he could continue responding to standby calls from his family residence in Tobermory. I agree.

[61] Further, I have no evidence from the grievor that he relied on a promise, made either implicitly or explicitly, from the employer to substantiate his claim of estoppel. On the contrary, the evidence is that the employer had five enforcement officers at Headquarters and that all five shared one-week standby assignments per a five-week cycle. That rotational standby schedule required all enforcement officers to report to Headquarters within 45 minutes of being called to report to work.

C. Alleged residency requirement

[62] The grievor's representative argued that the employer made a material change to the grievor's working conditions that negatively affected the grievor's personal and family life. The grievor feels that the employer treated him unfairly by not accommodating him when he offered three options. The grievor's representative also claimed that no residency requirements apply to the grievor in the GTA or the Headquarters area. Finally, the grievor's representative stated that it is reasonable for the grievor to have his family residence in Tobermory and still perform his standby duties from there, although in some exceptional circumstances, it may take him several hours to report to Headquarters.

[63] With respect to the grievor's three options, the employer responded after careful consideration that the grievor could not have been accommodated as he requested without creating special considerations that would have violated the collective agreement. In addition, the other four enforcement officers' standby schedule, the employer's operations requirements and the collective agreement requirement to equitably distribute standby duties would have been violated (Exhibit U-7).

[64] Finally, Mr. Brunet's uncontradicted evidence made it clear that the employer does not have a residency requirement in the GTA or the Headquarters area. The grievor and the other four enforcement officers are required to respond to a standby call and to report to work as quickly as possible. That requirement is clearly encapsulated in the work description (Exhibit U-5), as follows:

...

Interruptions while doing inspections and minor investigations, and awareness and training programming, or while on-call, are a regular feature of the officer's work life. The officer carries a duty officer pager, in a rotating schedule with other inspectors, that provides 24-hour service response to other Environment Canada officers, and to officers of other government departments. These interruptions occur on a daily basis (evenings and weekends while on call), and are unpredictable in numbers, duration, and timing. Frequent interruptions at the enforcement office from other staff and from the public increases the multiple demands placed on the officer and results in occasional levels of high stress.

...

[Emphasis added]

[65] In any event, it is clear from the employer's uncontradicted evidence that since 2004 the grievor had a residential work address in Mississauga within a 45-minute commute from Headquarters.

D. Employer's interpretation of the standby clause

[66] The grievor's representative insisted that, despite the grievor's work residence in Mississauga it is reasonable for the grievor to respond to standby calls from his family residence in Tobermory.

[67] I find that responding to standby calls from the grievor's work residence in Mississauga, within 45 minutes of Headquarters, is more reasonable than responding to them from his family residence 298 km away. Requiring more than four hours to report to work under normal conditions is unreasonable. Travelling to Headquarters from Tobermory is a long drive under normal road conditions that just gets longer under abnormal road conditions. It should also be noted that Tobermory is in a snow belt area.

[68] On the issue of the phrase "as quickly as possible," as stated in the standby clause, after examining the jurisprudence submitted by both parties and after applying the principle of the balance of probabilities, the employer's evidence prevails. In the context and circumstance of this case, specifying 45 minutes to report to the work when on standby is reasonable when one examines not only the health and safety operational requirements but also the raison d'être of the *CITES*, which is to protect

both live animals and live plants. Responding quickly is paramount. That is reinforced when the SOPs are examined.

[69] Finally, article 30 in the collective agreement imposes two duties on the employer, first to equitably distribute standby duties, and second, to remit the designated standby payment if an officer is called and reports to work. The grievor has neither advanced nor proven a breach of any of those duties by the employer.

[70] In conclusion, the employer's interpretation of the phrase "as quickly as possible" and its specification of 45 minutes to report to work are reasonable and fall squarely within the employer's management rights and within the provisions of the collective agreement.

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

(The Order appears on the next page)

V. Order

[72] The objection to the prematurity of the grievance is denied.

[73] The grievance is dismissed.

April 12, 2011.

**Roger Beaulieu,
adjudicator**