

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

LYNN M. BAKER, BARBARA JO-ANNE BEAN, TOM BENNETT,
GUY P. BOURRÉ, P.N. BOWLES, JOHN C. BRAGA, B.H. BROWN,
DEBBIE CHASE, JOSEPH CRAUSEN, LINDA M. CROSS,
KENNETH CUNNINGHAM, STEVE EMMONS, HAROLD HIGGS,
WAYNE MCCREA, KEITH S. MCDONNELL, ROBERT MCQUEEN,
ALLAN MULLINS, TOBIAS ROLO, IRENE SANDS, ROBERT F. SCOTT,
YVONNE TAUGHER, ROY TREMBLAY, DERRICK TURNER,
JOHN A. VAN LUVEN, JOHN F. WATSON, LEE ANN BEER

Grievors

and

TREASURY BOARD
(Solicitor General Canada - Correctional Service)

Employer

Before: Ian Deans, Adjudicator

For the Grievors: Derek Dagger, Counsel, Public Service Alliance of Canada

For the Employer: Keith Willis

Heard at Kingston, Ontario,
June 26, 1996; September 5 and 6, 1996.

DECISION

The grievors, correctional officers employed by the Correctional Service at Joyceville and Pittsburgh institutions, have each essentially grieved as follows:

I grieve that I am being denied commuting allowance contrary to the National Joint Council agreement (Vol. 2) directive on commuting assistance (1990) and any other relevant policies or articles.

They requested the following corrective action:

Re-instatement of commuting assistance.

I commenced hearing these grievances in June 1996. Pursuant to subsection 13(2) of the Public Service Staff Relations Act, I continued to hear and determine them after the expiry of my term as Chairperson of the Public Service Staff Relations Board at the end of August 1996.

These grievances arose from a decision taken by the employer to discontinue commuting allowance which had been in force for employees at these institutions since the 1960's and which had been reviewed by the employer for the first time in 1993.

In accordance with the provisions of clause M-37.03 (10) of the Master Agreement between Treasury Board of Canada and the Public Service Alliance of Canada, the Commuting Assistance Directive forms part of the collective agreement and is subject to the grievance procedure as set out in clause M-38.01. The grievances were dealt with at a meeting of the National Joint Council, Government Travel Committee, held on January 30th, 1995. The grievances were denied.

With the exception of Mr. James M. Stevenson who authored the document entitled "Supplement to the Commuting Allowance Review", no testimony was presented. Mr. Stevenson explained his methodology, and in particular how he had calculated how much of Kingston to include within the 16 kilometer catchment area as set out in subsection 19 (3) of the Commuting Assistance Directive. He explained that he had measured 16 kilometers from the entrance to the correctional institutions; then using that point he had drawn a circle the radius of which was measured from the 16 kilometer point back to the city limits. He then included this entire area within the city as being within 16 kilometers for the purpose of calculating "suitable

residential community" as defined in subsection 2 (1) of the Directive. I, together with the representatives of the parties, undertook a view of the north-east quadrant of the city of Kingston and new subdivisions in Pittsburgh Township in order to acquaint myself with these significant and relevant areas.

The documents entered in evidence by consent upon which my decision will be based are listed below:

- Exhibit 1 - Commuting Assistance Directive
- Exhibit 2 - Minutes 322nd Meeting of Government Travel Committee
- Exhibit 3 - Map of Kingston
- Exhibit 4 - Factum - Public Service Alliance of Canada
- Exhibit 5 - Commuting Allowance Review (Employer)
- Exhibit 6 - Supplement to Commuting Allowance Review (Employer)

The facts are not in dispute. 1) The employer, having undertaken the first ever review of the Commuting Assistance Directive since its inception in the early 1960's, advised the bargaining agent that it would no longer be paying commuting assistance effective July 1993. 2) Commuting assistance is available for employees who qualify in accordance with the Commuting Assistance Directive (Exhibit E-1).

The relevant provisions of the Commuting Assistance Directive are the following:

2. (1) In this Directive,

***commuting assistance** means the assistance provided to an employee pursuant to this Directive;*

***majority of the employees** means 50% or more of the employees at a worksite, excluding those occupying Crown-owned or Crown-leased accommodation that is located at the worksite;*

suitable residential community means a location at which, in the opinion of the deputy head,

- (a) the majority of the employees could reside having regard to the vacancy rate,*
- (b) adequate utilities and educational and commercial facilities are available, and*
- (c) there are adequate road connections to the worksite.*

6. *It is the policy of the employer that employees shall report for work at their own expense, and that commuting assistance may be authorized only when:*

- (a) adequate public transportation is not available between a suitable residential community and the worksite; and*
- (b) no suitable residential community is located within a direct road distance of 16 kilometers from the worksite.*

The calculation of commuting assistance is done in accordance with sections 17 and 18 of the Commuting Assistance Directive (Exhibit 1). Exceptions to payment are covered by subsection 19 (3).

Submissions of the Parties

Mr. Willis for the employer and Mr. Dagger, counsel for the grievors, argued as follows.

Mr. Dagger reviewed the Commuting Assistance Directive. He pointed out that the term used in the Directive is "suitable residential community" and not "suitable residential accommodation". He submitted that in order to qualify as a community, all the conditions as set out in the definition in subsection 2 (1) of the Directive must be met. He further argued that vacant land whether serviced or not does not meet the test of suitable residential community. He proposed that, even taking into account the north-east quadrant of Kingston and in considering whether this was a location at which "the majority of the employees could reside having regard to vacancy rate" as set out in paragraph (a) of the definition of "suitable residential community", the adjudicator had to consider employee income and home prices. He argued that during our view taking it was apparent that there were insufficient affordable homes for sale to meet the demand of 164 Correctional Service families to meet the requirement of

paragraph (a) of the definition. He pointed out that there were in excess of 330 employees at the sites in question. He further suggested that the "Supplement to the Commuting Allowance Review" (Exhibit 6) was fundamentally flawed in that the majority of the residences which were located within the north-east quadrant of Kingston were located outside the 16 kilometer radius. He submitted that the Directive clearly requires that a "community" as contemplated has to be substantially within the 16 kilometer radius of the worksite and simply reaching the extreme north-east boundary of Kingston did not allow the inclusion of Kingston's amenities in the consideration. He referred me to the document prepared by the bargaining agent (Exhibit 4) and in particular to page 2 - Section 3 (b) Vacancy Rate which showed that of 82 homes listed in Pittsburgh Township only 26 were listed under \$200,000. He asked that the grievances be upheld.

Mr. Willis for the employer argued that the inclusion of the north-east quadrant of Kingston in the calculation of a suitable "vacancy rate" was appropriate. He submitted that Kingston provides all of the amenities necessary to meet the requirements of the Directive. He reviewed the various pieces of documentary evidence and concluded that it was proper to include the Kingston amenities once the 16 kilometer radius included a part of the municipality. He further argued that the employer's inclusion of vacant serviced land when taken together with the number of homes for sale and rent in the total area, including the north-east quadrant of Kingston, provided more than sufficient opportunities for a majority of the employees to reside in a suitable community within 16 kilometers of the worksite. He asked that the grievances be denied.

Reasons for Decision

There are two issues that arise in determining how the calculation above should be undertaken.

- a) What is intended by the use of the word "within" when used in paragraph 6 (b) of the Directive?
- b) Is it reasonable to include serviced building lots in the calculation of the vacancy rate?

I have carefully reviewed all of the exhibits and in particular the relevant clauses of the Commuting Assistance Directive, (Exhibit 1).

Let me first deal with the employer's "Supplement to the Commuting Allowance Review" (Exhibit 6). In determining that the north-east quadrant of Kingston could be included in the calculation of "suitable residential community" within 16 kilometers of the worksite, the employer made what in my judgment was a fundamental error. The area comprising the north-east quadrant that fell within a 16 kilometer radius of the worksite was small and in fact comprised all or part of only 10 streets. It would not be reasonable, as the employer suggested, to establish the 16 kilometer point on Montreal street and then using this as the central point, establish an area within a circle the radius of which stretched from the central point to the city limits, an area three or four times the actual area within 16 kilometers. I therefore reject the proposal to include this part of the city of Kingston for the purpose of establishing a "suitable residential community" as defined in subsection 2 (1) of the Directive.

The next issue that must be addressed is can the employer include vacant serviced lots in order to meet the requirements of the Commuting Assistance Directive. It is clear that vacant lots do not provide for a suitable location at which the majority of employees could reside where there are adequate utilities, educational and commercial facilities. Using only the information contained in the employer's submission to the N.J.C. committee (Exhibit 2) "120 single family dwellings and approximately 600 serviced and ready to build lots have been identified for sale within the designated residential areas of Pittsburgh Township and the north-east quadrant of Kingston", and taking into account my view regarding the north-east quadrant which I referred to above, I am satisfied that 166 families could not be housed within the 16 kilometer radius from the worksite. While no clear evidence was put before me on the price of available homes, I toured the area in question with the representatives of the parties, and I am satisfied that a significant number of those houses being offered for sale were outside the price range of the average correctional officer.

What then is intended by the use of the word "within" in paragraph 6 (b) of the Directive which specifies that "commuting assistance may only be authorized when:

(b) no suitable residential community is located within a direct road distance of 16 kilometers from the worksite."

I have already established that in order to comply with the term "suitable residential community" the definition as set out in the Directive must be applied. The community must meet the following criteria as specified in subsection 2 (1) of the Directive:

Suitable residential community means a location at which, in the opinion of the deputy head,

- (a) the majority of the employees could reside having regard to the vacancy rate,
- (b) adequate utilities and educational and commercial facilities are available, and
- (c) there are adequate road connections to the worksite.

It flows naturally that, in order to meet the criteria, the community must be within, not bordering on, a 16 kilometer radius of the worksite.

This is not to suggest that every inch of the community must be within 16 kilometers. It is however necessary that the community, having met all other requirements, be substantially within the 16 kilometer radius. I recognize that to leave it at this juncture would require further interpretation. I have looked carefully at the Commuting Assistance Directive, and turned to Article 18 under the general heading "Calculation of Commuting Assistance" for guidance. The calculation of the assistance is precise; the basis for the calculation is the geographic center of the suitable residential community as set out below:

18.2) Subject to subsection 19 (4), the amount of commuting assistance to which an employee is entitled for each working day shall be calculated by multiplying the rate referred to in subsection (1):

- (a) in respect of an employee who resides in a designated suitable residential community, by the shortest return road distance between the worksite and the geographical centre of that designated suitable residential community less 32 kilometers;

Having determined that the geographic center of a suitable residential community is appropriate for the calculation of benefit, I accept that it also forms a suitable point for the determination of the 16 kilometer radius requirement.

I am therefore satisfied that the employer did not comply with the Commuting Assistance Directive when it stopped payment in July 1993, and find that a suitable residential community with a sufficient vacancy rate to accommodate 50 % of the employees at Joyceville and Pittsburgh Institutions does not exist within 16 kilometers of the worksite.

I further direct that the calculation of 16 kilometers from the worksite for clarity and consistency be to the geographic center of a residential community deemed suitable and meeting all other criteria.

Accordingly, for all these reasons the grievances are upheld.

**Ian Deans,
Adjudicator**

OTTAWA, December 20, 1996.