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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

DARRYL ZELISKO AND LUIGI AUDIA

Grievors

and

TREASURY BOARD
(Citizenship and Immigration Canada)

Employer



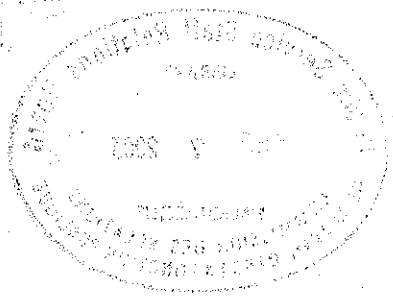
Before: D.R. Quigley, Board Member

For the Grievors: Chris Dann, Public Service Alliance of Canada

For the Employer: Rosalie A. Armstrong, Counsel

Heard at Calgary, Alberta,
March 4 and 5, 2003.

(Written submissions filed March 28, April 30 and May 9, 2003.)



DECISION

[1] This decision concerns the reference to adjudication pursuant to section 91 of the *Public Service Staff Relations Act (PSSRA)* of two grievances filed by Darryl Zelisko and Luigi Audia, who allege that the employer violated subclause 28.05(a) of the Program and Administration Services group collective agreement signed on December 29, 1998, by the Treasury Board and the Public Service Alliance of Canada (PSAC).

[2] Subclause 28.05(a) reads as follows:

28.05 Assignment of Overtime Work

(a) *Subject to the operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime on an equitable basis among readily available qualified employees.*

[3] The grievors' representative called three witnesses, including the grievors, and submitted 18 exhibits; counsel for the employer called one witness and submitted 17 exhibits.

[4] Both parties made brief opening statements. The grievances were heard as one and this decision applies to both grievances.

[5] Luigi Audia is a PM-04 and is the Supervisor of Inland Operations at Citizenship and Immigration Canada (CIC). He has worked at CIC for 19 years and has been in the Admissions Unit for the past 17 years.

[6] The key activity in Mr. Audia's work description is to "Supervise a unit of Immigration Counsellors and Assistants responsible for administering all aspects of the Citizenship and Immigration program." Mr. Audia does not supervise Enforcement Unit officers, only Admissions Unit officers.

[7] The "Detention and Release" section of the *Immigration and Refugee Protection Act* was filed as Exhibit G-3. Mr. Audia testified that it is from this Act that he derives authority to arrest and detain, within reasonable grounds, either a permanent resident or a foreign national. All officers have that delegated authority.

[8] Mr. Audia works seven and one-half hours per day, Monday to Friday. His workload is not service on demand; a refugee books an appointment and it is understood that the refugee will not receive service on the day he/she makes an appointment. The workload is structured ("managed inventories").

[9] Mr. Audia assigns cases to the Immigration officers under his supervision and in the past he has performed escort duties as well as performing his Admissions Unit duties. The decision of the employer is that escort duties are considered to be strictly a function of Enforcement Officers.

[10] The grievor testified that prior to a policy change implemented by the employer in October 2000, he performed escort duties, as he possessed the required training.

[11] Mr. Audia described his work unit at the Harry Hayes Building in Calgary as a stand-alone operation with a director and a satellite office in Lethbridge. Calgary International Airport also has a stand-alone office.

[12] The Harry Hayes Building houses six units - Admissions (five officers); Enforcement (13 officers); Hearing (three officers); Citizenship (two officers); Settlement (five officers); and Pre-Removal and Risk Assessment (four officers) - and these units could have cases that intertwine with each other.

[13] There are three PM-03 officers in Lethbridge whose work description (Exhibit G-4) states that they conduct activities such as removals/escorts. The grievor stated that he successfully completed, from June 7 to 25, 1993 (Exhibit G-5), the "Immigration Canada Peace Officer Training Plan" (POTP), in Regina, Saskatchewan. He also received correctional officer training in self-defence, riot situations, care and custody of firearms, transportation of prisoners, and first aid.

[14] Mr. Audia testified that during a 10-year period beginning in 1990, and up until the policy changed in October 2000, officers who completed the POTP or correctional officer training would be on a rotational list in a logbook to escort individuals to border crossings, overseas, or to points in the United States or Canada. Officers who were unavailable because of operational reasons or declined would remain at the top of the rotational list for the next time that escort duties became available.

[15] Mr. Audia stated that in this 10-year period he performed, on average, escort duties approximately every 18 months and always with a partner, an enforcement officer. They never carried side arms; however, they did use handcuffs and/or belly chains.

[16] Guidelines concerning "Authorization for Escorts" (Exhibit G-6) were in place from June 13, 1990 to October 2000. Paragraph B, "Ratio of Available Escort Officers", states:

The minimum staff complement to be left in the enforcement unit (excluding the supervisor) will be three officers in Calgary/Edmonton CICs. If staff complement is below this level, outside assistance will be arranged. This assistance will be arranged in the following priority:

- i) appropriate CIC staff from other units/offices;*
- ii) RCMP;*
- iii) other escorting agencies.*

[17] Mr. Audia emphasized that any CIC officer who possessed the appropriate training could perform escort duties regardless of his or her unit or classification.

[18] Exhibits G-7 to G-10 were identified by Mr. Audia as the rotational list schedules, which indicate the following escort duties that he was assigned:

- | | | |
|------|--------------------|----------------------------|
| (1) | October 29, 1990: | London, England |
| (2) | May 27, 1994: | Vancouver, B.C., Canada |
| (3) | January 15, 1996: | Coutts, B.C., Canada |
| (4) | April 1, 1996: | Frankfurt, Germany |
| (5) | December 24, 1996: | Seattle, Washington, U.S.A |
| (6) | October 20, 1997: | London, England |
| (7) | March 12, 1998: | Coutts, B.C., Canada |
| (8) | April 17, 1998: | Vancouver, B.C., Canada |
| (9) | May 10, 1999: | Frankfurt, Germany |
| (10) | June 10, 1999: | London, England |

[19] Mr. Audia testified that he received an e-mail from Rob Cullum, Regional Manager, Policy and Programs, Prairies and Northwest Territories Region (Exhibit G-11), outlining a new direction that they had discussed at a regional managers' meeting in Edmonton. The new direction was the Department's decision to change the managing of removal of individuals within the region, effective October 16, 2000.

[20] Exhibit G-12 is the "National Guidelines on the Use of Escorts for Removals and the Reporting Requirements of Escorting Officers". Section "A", the preamble, states:

For the purposes of the guidelines, an enforcement officer (or the escorting officer) is the officer responsible for the escort or accompaniment of a person subject to a removal order from Canada.

[21] Section "C", "Determining the Number of Enforcement Officers", states:

Enforcement officers may include immigration officers, RCMP officers, other police officers, or other suitable temporary assistants who have been designated as immigration officers and should be assigned in accordance with operational needs.

[22] The grievor stated it was not the "National Guidelines" (Exhibit G-12) that ended his ability to perform escort duties but rather the "Prairies and Northern Territories Escort Guidelines" (Exhibit G-13). These guidelines state:

...

WHO IS AUTHORISED TO PERFORM ESCORT DUTIES

The escort of subjects under removal order will normally be performed by Enforcement Officers. The escorting of subjects under removal order falls within the job description of Enforcement Officers and the training provided to Enforcement Officers reflects this responsibility. Supervisors of Enforcement Units are expected to occasionally escort deportees for monitoring purposes. If it is determined, after a risk assessment, that a person is considered dangerous or violent, assistance from the RCMP will be sought. In very rare circumstances an officer, other than an enforcement officer, may be asked to escort an individual. The use of persons other than enforcement officers will only be approved in exceptional circumstances. All CIC personnel performing escort duties will have completed Pressure Point Control Tactics training or the Peace Officer Training Program.

...

[23] The grievor testified that he has not been asked to perform escort duties since the release of these guidelines, and he has not been offered POTP or training in "Pressure Point Control Tactics" (PPCT). Hence, he filed this grievance on November 14, 2000.

[24] In cross-examination, the grievor admitted he has not had PPCT training and after his work description changed effective October 16, 2000, he did not file a job content or classification grievance.

[25] The grievor also agreed with counsel for the employer that he did not have authority under the "Detention and Release" section of the *Immigration and Refugee Protection Act* (Exhibit G-3) to determine whether a warrant should be issued, and he would need authority to perform arrests. The persons who have that authority are identified in Module 10 as follows:

MODULE 10 - DETENTION AND RELEASE

71.	A55(1)	Regional Manager Duty Manager Site Manager Operations Manager Manager Manager Detention Operations Zone Manager Deputy Director PIA Director Operations
72.	A55(1)	Citizenship and Immigration Counsellor Citizenship and Immigration Officer Enforcement Officer Enforcement Officer - POE Investigator Enforcement Detentions Officer Senior Immigration Examining Officer Hearings Officer Program Specialist

[26] Mr. Audia stated that his wish is to have all officers qualified. In cross-examination, he explained that he has worked in the Lethbridge office and agreed that operations there are multi-tasked and officers conceivably perform other officers' duties.

[27] Mr. Audia was very straightforward in his response to questions concerning the number of times he performed escort duties (Exhibits G-7 to G-10); he stated: "It's money." He also stated that the Department should provide Immigration officers with training in PPCT and POTP and have them properly immunized. In reply, the grievor acknowledged that Exhibit G-5, his certificate of achievement for POTP, had no expiry date.

[28] Darryl Zelisko has been with CIC since May 1993 and began working in the Admissions Unit on November 1, 1998, as a PM-03.

[29] Mr. Zelisko testified that he provided escort duties on four different occasions, all within Canada, from November 1998 to October 2000.

[30] Mr. Zelisko also works a seven and one-half hour day, from Monday to Friday, and reports to Mr. Audia. He testified he received his PPCT training certificate on November 5, 1999, but it expired in November 2001.

[31] The grievor stated he discovered about the loss of his opportunity for overtime to perform escort duties through Exhibit G-13 and not through his supervisor. Hence, he filed the instant grievance on November 14, 2000 (Exhibit G-18).

[32] In cross-examination, the grievor stated: "I could provide escort duties like the escort officers or the officers in Lethbridge but I am no longer allowed to". The grievor asked to be put back on the rotational escort list, as "the money is nice to have". His intentions and aspirations are to become an enforcement officer. He concluded by stating, "I am professional. I wish to be considered for escort duty opportunities, as I believe it is only fair."

[33] Richard Huntley has worked for CIC for the past 20 years and currently supervises 13 enforcement officers (PM-03s) and two clerical staff. The witness testified that with the use of the rotational list, it was more open to officers in other units to perform escort duties. When asked why the policy was changed to exclude Immigration Officers from the Admissions Unit from performing escort duties, he stated that he had not been consulted. He stated as well that the focus of the policy was to perhaps have officers in specific areas doing specific types of work, as well as persons having the appropriate training perform these duties.

[34] The witness testified he is short-staffed in all areas, not only with respect to escort duties. As far as having the grievors working for him performing escort duties, the witness stated the only conditions he would demand is that they obtain PPCT training and have their supervisor's approval. Since the existence of Exhibit G-13, he has not used Immigration Officers from the Admissions Unit to supplement any deficiencies he has had in staff for escort duties.

[35] In cross-examination, the witness stated that there are approximately 1,200 removals performed per year and of that number, approximately 100 are physically escorted removals.

[36] Although all those individuals required to be removed are removed, often other duties slide. The witness testified everyone wants to perform escort duties but it is dangerous work and PPCT is mandatory. Also, escort officers need a green passport (which identifies the officer as an employee of the federal government), appropriate immunization, and first aid and CPR training because of the use of pepper spray as a control device.

[37] In reply, the witness stated that to receive a green passport an officer just has to apply for one, immunization is available at any clinic, the first aid course is two days and if you include the CPR training, a total of three days is all that is needed to be certified.

[38] The employer's sole witness, Robert Ferguson, has spent 24 years with the Department in various capacities and is currently Director of Operations in Calgary (EX-03). Exhibits E-4 and E-5 demonstrate that he had Mr. Audia as a direct report from September 28, 2000 to February 19, 2003.

[39] The CIC Calgary office is a full-service operation broken down into five broad program areas:

- (1) Admissions Unit: Deal with applications for visitor status, temporary workers' applications for landed immigration status, walk-in refugee claims, persons wishing to marry Canadian citizens.
- (2) Enforcement Unit: Primary responsibility is to investigate violations of the *Immigration and Refugee Protection Act*, escort persons to hearings and arrange for their removal if necessary. Some of their activities may include on-street investigations and interviewing and arresting persons.
- (3) Settlement Unit: Administer programs such as refugee assistance, integrated settlement, social and financial assistance, and language instruction.
- (4) Citizenship Unit: Process applications of permanent residents who apply for Canadian citizenship.

- (5) Hearing Unit: Prepare cases for representative at the Immigration and Refugee Board; represent the Minister.

[40] The witness stated that the Admissions Unit deals with applications; they contact applicants and then interviews are scheduled between the hours of 9:00 a.m. and 3:00 p.m. The Admissions Unit officers do not conduct on-the-street investigations; they might receive anonymous tips regarding an applicant's motive for marriage or his/her prior criminal record while in or outside Canada. These officers are processing applicants who wish to become Canadian citizens.

[41] The Admissions Unit officers' overtime is related to travel outside their normal hours of work for such things as training outside Calgary or speaking engagements. Enforcement officers work Monday to Friday, from 8:00 a.m. to 4:00 p.m., and their primary function is to conduct investigations of violations of the *Immigration and Refugee Protection Act*. The officers receive information from many sources, which may initiate an investigation of a person; the investigation to locate that person may last one day or one month. To remove a person, a number of documents need to be prepared by the enforcement officers, such as a removal order, a deportation order, or an exclusion order, to name a few. It is safe to say that of approximately 100 removal orders, less than 25 percent need escorts. As a rule of thumb, there are usually two enforcement officers involved with a removal.

[42] In reference to Exhibit G-12, the witness explained that in the preamble the use of the words "escorting officer" means a person whose duties are only escort duties. These escorting officers are more apt to be seen in major centres such as Vancouver, Toronto and Montreal. These are national guidelines from headquarters and apply to all regions. The witness stated: "In today's circumstances I feel that even though I could send a trained Immigration officer on escort duty, I feel we do not need to use them. However, we would use the RCMP. In my opinion, escort duties are enforcement work and the guidelines clarify the officers' roles and responsibilities. There were escort duties in the past done by other officers but this was the exception."

[43] The witness described Exhibit E-9 as the "Prairies and Northern Territories Regional Removal Trial - Final Report" dated February 11, 2002. The essence of this report was that it was no longer feasible to have regional enforcement officers escort persons to the Central Removing Unit (CRU) in larger centres (Vancouver, Toronto, Montreal), where those persons were in turn escorted out of the country by the

escorting officers of those large centres. The new plan was to have persons escorted out of the country by one officer for the duration of the whole trip. The result was twofold: it saved the region dollars on removals, airfares and hotels, and provided a faster and more humane service to the person being removed. Secondly, the change had an impact on operations, as there was an increase in longer international escorts and the length of time away from the office would be much longer. Also, in certain removals the escorting officers would be given time off to recover from jet lag in accordance with the National Joint Council (NJC) Travel Directive.

[44] The witness confirmed through Exhibit E-14 that since July 5, 1996, officers who are involved with removals must have completed PPCT training. Exhibit E-3 was introduced as the work description for enforcement officers and it states, in part, under "Client-Service Results": "Detection, investigation, arrest and removal of persons determined to be in contravention of immigration legislation..." He also stated that Mr. Audia's POTP was not appropriate training for an enforcement officer, and Mr. Zelisko's training in PPCT had expired.

[45] In closing, the witness concluded that escort duties are clearly enforcement officers' work. It is the most efficient expenditure of finances and planning and scheduling within the unit. Admissions Unit officers are not on a standby list but enforcement officers are. Each unit has its own expertise and is trained to perform specialized work. The enforcement officers do the day-to-day investigations, the grunt work; it is their work and they should see the case to its conclusion, which could mean a removal. If enforcement officers performed all these tasks and were then required to let an Immigration Officer from the Admissions Unit proceed with the removal, it would create a morale problem within the Enforcement Unit. Removals are approximately 50 percent of an enforcement officer's regular job duties. This is not a perk but serious complicated work involving the person being removed as well as the public, aircrafts, and the officers themselves. The enforcement officers are away in some cases for three to four days. In the grievors' case, they would be away from their place of employment and their duties. This would create problems, as positions cannot be filled temporarily, but only in instances of long-term absences. Admissions Unit officers can apply for enforcement officers' positions; in fact, Mr. Zelisko has, but Mr. Audia has not. Mr. Audia has claimed overtime as the supervisor of the Admissions Unit.

[46] During cross-examination, the witness agreed that enforcement officers receive a substantial number of overtime hours compared to Admissions Unit officers. However, he stated: "Overtime is not a perk for doing work outside normal working hours. It is not the number of escorts that is draining the workload but the other duties of an enforcement officer."

[47] It was agreed that in section C ("Determining the Number of Enforcement Officers") of the "National Guidelines" (Exhibit G-12) the first sentence states: "Enforcement officers may include immigration officers, RCMP officers, other police officers...." (Emphasis added)

[48] The witness confirmed that after the implementation of Exhibits G-12 and G-13, he received no additional funds for his regional deportation and detention budget, yet overtime costs increased.

[49] When questioned by the grievors' representative, the witness confirmed that if an Admissions Unit officer was dealing with a person who was truly upset and was causing a scene, an enforcement officer would be called in to arrest that person.

[50] With respect to the officers in Lethbridge, they do back one another up, which is not the case in Calgary or at least not to the same extent as in Lethbridge. There are only three officers in Lethbridge and their escorts, five to 10 maximum per year, would only be to Calgary, and overtime is highly unlikely. Exhibit E-16 references the number of escorts performed by the officers at Lethbridge and since 2000, there has only been one international trip and no escorts to a CRU.

Arguments

[51] The parties filed written arguments and they are reproduced below.

For the Grievors

[52] *Mr. Audia and Mr. Zelisko filed their grievances on November 14, 2000 (Exhibit G14 and G17). Two years and four months have passed since the grievances were filed. If these grievances had been addressed more promptly, the grievors would have been in a more advantageous position. As it is, they are in a position where they are contesting a system that has been in place for a long time and their training is also being questioned. For these reasons it is important to take the time factor into account when dealing with the grievances.*

[53] The article of the collective agreement being grieved is Article 28.05(a) of the Program and Administrative (sic) Collective Agreement signed on December 29, 1998 by the representatives of the Treasury Board and the Public Service Alliance. Article 28.05(a) reads as follows:

"Subject to the operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees."

[54] There are a number of factors that have to be taken into account before the terms of Article 28.05(a) can be satisfied. These factors are: 'operational requirements', 'reasonable effort' (on the part of the Employer), 'an equitable basis', 'readily available' and 'qualified employees'.

[55] I will address each of these factors at the date the grievances were filed.

1. Operational Requirements

[56] Did the operational requirements prevent Mr. Zelisko and Mr. Audia from performing escort duties?

[57] The operational requirement that resulted in these grievances was a change in staffing policy. This change came about as a result of the initiation of a twelve month 'removals' trial that lasted from October 2000 to September 2001 (Exhibit E9).

[58] In October of 2000 Mr. Rob Cullum, Regional Manger, Policy and Programs Prairies and Northwest Territories Region, sent a letter to his managers regarding the managing of removals in the region. This letter was sent with a number of attached documents. One of the documents was "National Guidelines on the use of Escorts for Removals and the Reporting Requirements of Escorting Officers". This was a national document and was dated January 12, 2000 (Exhibit G12).

[59] Another attached document was "Prairies & Northern Territories Escort Guidelines". This document was a regional document and applied to cities located in the Prairie Region (Exhibit G13). The change in policy that resulted in the grievances being filed is found under the heading "Who is Authorised to Perform Escort Duties" (Exhibit G13). This section states, in part:

"The escort of subjects under removal order will normally [be] performed by Enforcement Officers. The escorting of subjects under removal order falls within the job description of Enforcement Officers and the training provided to Enforcement Officers reflects this responsibility ... In very rare circumstances an officer, other than an enforcement officer, may be asked to escort an individual. The use of persons other than enforcement officers will only be approved in exceptional circumstances."

[60] Neither of the grievors were assigned to escort duties after this document was circulated.

[61] There is no dispute regarding the Employer's right to assign duties. Section 7 of the Public Service Staff Relations Act is indisputably clear:

"Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein."

[62] The issue is whether the policy enunciated in "Prairies & Northern Territories Guidelines" (Exhibit G13) is being correctly interpreted.

[63] Mr. Robert Ferguson, Director, Citizenship and Immigration, Calgary, testified that he was familiar with Exhibit G12 although he did not write the document. When he was asked whether the term "enforcement officer" in the preamble of Exhibit G12 was a specific or a general term he answered that it could mean either. He pointed out that non-specific enforcement officers handled escorts well after the document was circulated. When he was asked about references in the first paragraph, Item C, of Exhibit G12, he replied I believe this is a general statement. It could include immigration officers. When asked whether he could order some officer other than an Enforcement Officer to do escorts he replied, "Yes, it is possible but the circumstances would be rare".

[64] Mr. Ferguson was asked how he interpreted "...the use of persons other than enforcement officers..." from Exhibit G13. His response was that he believed that "persons other than enforcement officers" referred to the use of RCMP and medical officers. Mr. Ferguson did not write the policy. This was his interpretation.

[65] The Union's position is that the guidelines found in Exhibit G13 under "Who is Authorised to Perform Escort Duties" do not exclude the grievors. The guidelines state that the escort of subjects under removal order will normally be performed by Enforcement Officers. There is no change here. As the testimony confirmed, normally escort duties were performed by Enforcement Officers. The second guideline that applies is that the use of persons other than enforcement officers will only be approved in exceptional circumstances. This sentence does not preclude the use of other immigration officers as the following sentence refers to "All CIC personnel performing escort duties...". The policy does not change past practice. The grievors were only used to perform escorts in exceptional circumstances.

[66] There is nothing in the National Policy (Exhibit G12) that prevents other CIC officers from performing escort duties. On the contrary Item C, page 3, (Exhibit G12) states:

"Enforcement officers may include immigration officers, RCMP officers, other police officers, or other suitable temporary assistants who have been designated as immigration officers and should be assigned in accordance with operational needs."

[67] There is nothing in Exhibit G13 that changes past practice. The document merely clarified an existing practice. Operational requirements as defined in Exhibit G13 do not act as a bar for the two grievors to perform escort duties as they did in the past.

2. Reasonable Effort

[68] *Did the Employer make a reasonable effort to assign escort duties to the grievors?*

[69] *After Exhibit G11 and the accompanying documents, G12 and G13, were circulated the grievors were not given any escort duties and were prevented from earning the overtime that they had previously enjoyed.*

[70] *When asked why only Enforcement Officers were now doing escorts Mr. Ferguson gave three reasons. These reasons were:*

- *Escorts are clearly Enforcement work.*
- *This is most efficient and less disruptive in the office.*
- *Don't have Admissions Officers on the Standby/Escort list.*

[71] *The evidence is that these reasons are not sufficient to show that the Employer made a reasonable effort to assign escort duties (overtime) to the two grievors.*

[72] *It is correct that escort duty is Enforcement work. This fact, however, does not exclude other CIC officers such as the grievors from being assigned escort duties. Mr. Ferguson, when asked in cross-examination whether someone other than an Enforcement Officer could perform escort duties, replied "Yes, it is possible".*

[73] *Mr. Ferguson's second reason was that the use of Enforcement Officers exclusively to do escorts was most efficient and less disruptive in the office. There was no evidence to substantiate these statements. Evidence of past-practice prior to the change of policy does not show that the use of the grievors in performing escort duty resulted in any inefficiency or was disruptive in the office.*

[74] *Mr. Ferguson's third reason was that the grievor's names were not on the Escort List. This problem could be easily remedied by adding their names to the list as was done in the past.*

[75] *Not only did the Employer not make a reasonable effort to assign escort duties to the grievors the Employer made no effort at all.*

3. Equitable Basis

[76] *Was the overtime work offered on an equitable basis?*

[77] *The term 'equitable' in the context of Article 28.05(a) is an elusive term. The number of awards dealing with 'equitability' are legion. Brown & Beatty Canadian Labour Arbitration (3rd Edition), Chapter 5:3222*

[78] *We have heard in testimony that neither Mr. Audia nor Mr. Zelisko performed much escort duty, certainly not as much as the Enforcement Officers. Mr. Audia did his first escort assignment in 1985 and his last in the year 2000. In his testimony Mr. Audia estimated that since 1990 he averaged one escort trip every eighteen months. Exhibits G7, G8, G9 and G10 show that between October 29, 1990 and October 5, 1999 Mr. Audia had 12 escort trips including two border runs to Coutts, Alberta, two trips to Vancouver and one to Montreal.*

[79] Mr. Zelisko did not begin working in the Calgary CIC office until November of 1998. He testified that between this period and the year 2000 he had four escort duty assignments; two to Vancouver, one to Toronto and one to the border at Coutts.

[80] Would the Employer, under the terms of Article 28.05(a), have to give similar amounts of overtime to the grievors as they give to the Enforcement Officers in order to meet the 'equitability' standard?

[81] The answer to this question is no. Equitable does not mean equal to everyone else. It means averaged out according to the circumstances. One of the circumstances as far as the grievors are concerned is availability. Both Mr. Audia and Mr. Zelisko have other duties in Admissions to perform. They would not be available as often as Enforcement Officers but they would be available. Equitability would be measured in terms of the availability.

4. Availability

[82] Are the grievors available?

[83] Both grievors work for the Admissions Unit. They both work out of the same office as the Enforcement Officers. The grievors testified that they would be available to handle escort duties. Mr. Audia testified that in his unit only Mr. Zelisko and himself had any interest in performing escort duties. He also testified that work in the Admissions unit was very structured. Interviews with clients are scheduled in advance. Although there is always work to be done in the Unit it could be reassigned so that escort duties could be performed. The work is manageable. Escort duty is usually planned in advance. The names of escorting officers appear on a rotation list. Mr. Audia testified that if he or Mr. Zelisko were not available their names would be reallocated on the rotation list.

[84] Mr. Audia and Mr. Zelisko testified that they could be available for escort duty. No evidence was led to contradict their testimony. In the past they had been available. Mr. Audia had performed escort duty for over ten years without any problems.

5. Qualified

[85] Were Mr. Audia and Mr. Zelisko qualified to carry out escort duties?

[86] At the time their grievances were filed both Mr. Audia and Mr. Zelisko met the necessary training criteria. Exhibit G13 gives the criteria "All CIC personnel performing escort duties will have completed Pressure Point Control Tactics training or the Peace Officer Training Program".

[87] Mr. Audia has his Peace Officer Training Program certificate (Exhibit G5). He took this training at the RCMP Depot in Regina. The training included; self defence, restraining and transport of prisoners. There is no evidence that at the time his grievance was filed this training was considered to be invalid.

[88] Mr. Zelisko, at the time of his grievance, was fully qualified. He had been trained in PPCT defensive tactics (Exhibit G17).

[89] Both grievors were qualified at the time they filed their grievances. Since that time Mr. Zelisko's PPCT training has expired. According to Mr. Ferguson Mr. Audia's Peace Officer Training is not considered valid. Both grievors have requested more training. The grievors were previously qualified. They could easily become qualified again.

[90] At the time their grievances were submitted both grievors met the required criteria of Article 28.05(a) of the collective agreement. The grievances should be upheld.

Alternate Argument

[91] Article 28.05(a) contains an ambiguity. That ambiguity is found in the phrase "...on an equitable basis ...". This term cannot be pinned down. It has been discussed in a number of awards. For example, see: A. P. Johnston et al (166-2-17488 to 166-2-17490); C. Chappell (166-2-17464); S. Boujikian (166-2-27738); S. Bretzel et al (166-2-10385 to 166-2-10387) and J. W. Leighton (166-2-17211).

[92] The term allows for a flexibility of interpretation. The interpretation usually varies with each specific circumstance.

[93] In C. D. MacAdams (166-2-26601) the issue was standby pay. The article of the collective agreement that was the subject of the grievance contained the term "...the equitable distribution ...".

[94] Previously the Employer had established a standby list composed of qualified civilian and military technicians. The standby duties were assigned on a rotational basis. The Employer then changed the standby list so that the civilian employees were dropped from the list and received no standby.

[95] The Employer argued that it had the right to assign whoever it chose to the standby list by virtue of "Employer rights". The adjudicator disagreed. He stated that the management rights clause was fettered by the rights and responsibilities covered in the collective agreement.

[96] The adjudicator also went on to state that by virtue of the Employer's preceding practice for a number of years there had been an understanding between them that for three years both groups would be placed on the standby list. He found that the article in the collective agreement was ambiguous and he gave meaning to the words as per past practice.

[97] The Employer made an application for a judicial review to set aside the C. D. MacAdams decision. The application was dismissed. The judge's comment was:

"A fundamental object in construing the terms of a collective agreement is to discover the intention of the parties. A decision which reflects an appreciation for the dynamics of the workplace is precisely the kind of decision which merits a high degree of curial deference. The [adjudicator's] decision, in this case, was reasonably supported by the evidence, and, as such, there is no scope for judicial interference."

[98] *In the case of the present grievances, the same argument applies. The ambiguity of the language in Article 28.05(a) is such that an interpretation can only be found in past practice. Brown & Beatty Canadian Labour Arbitration (3rd Edition), Chapter 3:4430*

"...Frequently, one party may seek to obtain a favourable decision on the basis of a practice rather than on the actual wording of the collective agreement. The use of evidence describing such a practice as an aid to interpretation has been described as follows:

If a provision in an agreement, as applied to a labour relations problem is ambiguous in its requirements, the arbitrator may utilize the conduct of the parties as an aid to clarifying the ambiguity. The theory requires that there be conduct of either one of the parties, as an aid to clarifying the ambiguity. The theory requires that there be conduct of either one of the parties, which explicitly involved the interpretation of the agreement according to one meaning, and that this conduct (and, inferentially, this interpretation) be acquiesced in by the other party. If these facts obtain, the arbitrator is justified in attributing this particular meaning to the ambiguous provision ...".

[99] *Past practice for years prior to the submission of the grievances allowed the grievors to perform escort duties. This fact should be relied upon to clarify the ambiguity in article 28.05(a) and the grievors should be put back in their former circumstances with the right to earn overtime on escort duty.*

Redress:

[100] *As stated in the grievances;*

1. *The regional escort policy be amended to read, "Enforcement Officers includes other qualified officers", without referring to job description.*
2. *Escorts be offered on a rotational basis to qualified officers.*

[101] *Case Law:*

- *Brown & Beatty Canadian Labour Arbitration (3rd Edition), (Canadian Labour Law Library - Volume 1 Arbitration Release #18), Chapter 5:3222*
- *Brown & Beatty Canadian Labour Arbitration (3rd Edition), (Canadian Labour Law Library - Volume 1 Arbitration Release #18), Chapter 3:4430*
- *D. J. Sumamik v. Treasury Board (Ministry of Transport), File No. 166-2-395*
- *A. P. Johnston et al v. Treasury Board (Employment and Immigration), File No. 166-2-17488 to 166-2-17490*

- C. Chappell v. Treasury Board (Revenue Canada, Customs and Excise), File No. 166-2-17464
- S. Boujikian v. Treasury Board (Citizenship and Immigration Canada), File No. 166-2-27738
- S. Bretzel et al v. Treasury Board (Employment and Immigration), File No. 166-2-10385 to 166-2-10387
- J. W. Leighton v. Treasury Board (Agriculture Canada), File No. 166-2-17211
- C. D. MacAdams v. Treasury Board (National Defence), File No. 166-2-26601
- Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43, 13 L.A.C. (3d) 58 (Teplitsky, Tate, Slater)
- Marystown Shipyard Ltd. and Industrial Union of Marine & General Workers, Local 20, 39 L.A.C. (4th) 276 (Browne)

For the Employer

[102] *The Employer takes the position that the union has not met its burden in establishing that the Employer violated Article 28.05(a) of the Program and Administrative collective agreement, signed by the representatives of the Treasury Board and Public Service Alliance of Canada on December 29, 1998.*

[103] *Article 28.05 of the collective agreement states:*

Subject to operational requirements the employer shall make every reasonable effort to avoid excessive overtime and to offer overtime on an equitable basis among readily available qualified employees.

Operational requirements

[104] *According to the Article, overtime is granted "subject to operational requirements."*

[105] *My friend has spent little time discussing the actual operational requirements of admissions and enforcement work. He has also not clarified which set of operational requirements must be considered in this case, nor has he addressed the impact of recent policy changes on operational requirements.*

[106] *First of all, the operational requirements of the admissions unit must first be considered. As admissions officers, the grievors are required to work 8am to 4pm or a 7am to 4pm workday. They meet with clients throughout the day, and perform other functions. There was no dispute in testimony that admissions duties generally take place within this time frame.*

[107] *Second of all, one must consider the operational requirements of escort duties. The Employer takes the position that these duties are incompatible with the duties of an admissions officer. Escort duties begin during the workday. International escorts can require extended absence from the office. In addition to the travel time of the flight, government travel directives also establish that the Employer is required to give escort officers additional time off when they have been on an escort (E10 to E14).*

[108] *The combined effect of actual flight time and Employer's duty to grant rest periods means that escorting officers can be gone for several days. If the Employer made it a practice of having admissions officers doing escorts, it would be pressed to meet the operational requirements in the admissions unit.*

[109] *There is no dispute that at one time the operational requirements allowed for the grievors to do a few escorts, as my friend has identified. However, some policy changes modified the way business was done.*

[110] *After considering the implications of the National Policy (G-12), the Prairies and Northern Region of CIC conducted a removal trial (E-9).*

[111] *After this removal trial, it published the Prairies and Northern Region Escort Guidelines (G-13). It was no longer considered feasible to have regional immigration personnel escorting people to central removal units in large centres, where they were in turn escorted out of the country by escorting officers in larger centres. The new plan was to have a person escorted out of the country by one person for the duration of the whole trip.*

[112] *This change in policy had an impact on operational requirements. There was an increase in longer, international escorts, which would mean that escort officers would be away for longer periods of time. The result of this was that this type of extended duty was now not available to people like the grievors, who were working during the day at their own jobs.*

[113] *It is clear from E-17 that even though there was a marked increase in international trips, all shorter run trips were not eliminated. However, this did not mean that the Employer was under any duty to have the grievors perform these shorter trips. The Employer takes the position that even short escort trips could still take away from the performance of the duties in the admissions unit.*

[114] *The Employer's position is that overtime must be performed in the context of the employer's legitimate need to meet its own operational requirements. The Employer did not need the grievors to work overtime to meet the operational requirements of the enforcement unit. In fact, the operational requirements of the enforcement unit had changed. They could not rely on other employees to perform these escorts because of the time now involved in the function.*

[115] *The new National policy (G-13) allows for the use of non-enforcement officers in "exceptional circumstances." The grievors have not demonstrated that exceptional circumstances ever arose that would have justified them doing an escort.*

Reasonable Effort, Equitable Distribution

[116] *The Employer submits that it retains the right to determine the pool of persons entitled to receive certain types of overtime.*

[117] In terms of "reasonable effort," it is the Employer's position that it is under no obligation under the collective agreement to make a "reasonable effort" to distribute escort work in an "equitable" fashion to the grievors, who work in another unit.

[118] It is obliged to distribute escort work equitably among the enforcement officers, who regularly perform escort duties, and who have always been the people who have primarily performed escort duties.

[119] The Employer is under no obligation to add the grievors to the escort list under this Article of the collective agreement. Whether they were on the list in the past to receive a few escort runs is irrelevant. The Employer has now determined that the pool of people who participate in escort overtime are those that regularly do the work and are specialized in the work.

[120] The Employer takes the position that it does not have to experience actual inefficiencies to make the point that having people performing overtime who are really not available to do the work is not a good use of its resources. The Employer has the right to plan the work to ensure that the work of all units is done and that public service is maintained.

Readily available

[121] The grievors are asking you to make a ruling that the Employer violates the collective agreement if it does not excuse the grievors from their regular admissions duties, to allow them to do escorts and get the overtime that naturally arises from doing them. With respect, their request is clearly unreasonable.

[122] The determination of whether or not the grievors could be made available to do escorts or not is a management decision that must be made in the context of the whole operation. This includes the Employer's legitimate need to have a pool of employees available to perform certain functions—in this case, admissions functions.

[123] The definition of overtime must be borne in mind. Article 2.01 of the collective agreement defines it. For a full-time employee, overtime is "authorized work in excess of the employee's scheduled hours of work." Apart from the definition in the collective agreement, it is commonly understood that overtime occurs outside of normal working hours. Overtime by its very definition is not intended to be worked during normal working hours.

[124] The Article in the collective agreement in question in this case states that the overtime is to be distributed among "readily available" employees. The grievors are not readily available to do escorts. Enforcement work is designed so that work can be done outside of the normal 7 am or 8am-4pm day.

[125] My friend has argued that Mr. Audia performed escort duties for 10 years "without any problems." It cannot be forgotten that it is only as of 2000 that the nature of escort duties have changed to include greater numbers of international escorts. It cannot be said that he would also be able to perform these duties "without any problems" under the current situation.

Qualifications

[126] *It is the Employer's position that it is under no obligation to train the grievors, or update the training they already have, to do escort duty. (G-17).*

[127] *Mr. Audia suggested in cross-examination that the Employer's obligation to equitably distribute overtime means that the employer must train "everyone who is interested." Nowhere in the collective agreement does it state that the employer must train employees to do overtime, nor does it have to "cross train" employees.*

[128] *Escort duty is work for which the enforcement officers are specially trained. There is no doubt that the grievors—if given the opportunity—could be trained, or, given refresher courses, and successfully pass the required courses. However, the Employer has made a decision to train and to maintain the training only of the enforcement officers to do escort work. The grievors have not grieved the denial of training, now or in the past.*

[129] *The Employer takes the position that escort duties are not a perk or bonus. It is very serious work that involves risk to the officer, the escortee, the transportation community and the travelling public.*

[130] *Because of these important public factors, the Employer wants to ensure that those doing the work are experienced and do it regularly. It is not just a matter of having people "trained." The Employer takes the position that "qualified" also goes beyond the principle of having the chance to take regular courses—it means doing the work with sufficient regularity that one develops a comfort with it.*

Career Development

[131] *The Employer respectfully submits that if the grievors want to do escort work--and get the associated overtime--they should apply for jobs as enforcement officers.*

[132] *It was clear from the testimony at the hearing that the grievors want to do escort duties and get the associated overtime. In fact, we heard evidence from Mr. Zelisko and Mr. Ferguson that in fact Mr. Zelisko has sought opportunities to work as an enforcement officer. Mr. Huntley testify (sic) that he, as supervisor of the enforcement unit, would be pleased to accept either of the grievors as escorting officers if they had the appropriate training. Mr. Ferguson testified that there was no barrier to the grievors becoming enforcement officers, and that they could apply for jobs in that unit.*

[133] *The Employer respectfully submits that this grievance is not the proper forum for the grievors to alter their employment.*

Addressing the union's "alternate argument"

[134] *I confess to not entirely understanding why the section that contains an analysis of the jurisprudence has been characterized by my friend Mr. Dann as an "alternate argument." Nevertheless I will address the points raised in that section, and the cases he has raised.*

[135] My friend has suggested that there is ambiguity as to what "on equitable basis" means in the collective agreement, and cites some jurisprudence. The Employer takes the position that the cases cited can be distinguished from the facts herein. To rely on these cases to argue that there is ambiguity about what the phrase "on an equitable basis" means is in the Employer's view not helpful.

[136] I wish first to address the Boujikian case. This case is distinct from the within matter, as the employees in question in that case were performing the same duties in the same bargaining unit but were working in two different locations. The grievors in these different locations were not receiving the same amount of overtime.

[137] This can be distinguished from the within grievance. Messrs Zelisko and Audia do not perform the same duties as enforcement officers as was the case with the grievors in the Boujikian case. They and the enforcement officers have separate job descriptions, and work in different units.

[138] I wish also to address the Chappell case. This was an instance of the Employer diverting from its own system of assigning overtime. It had created a list for overtime, and then overlooked a person on the list whose shift was not contiguous to the overtime shift. This is also inapplicable to the present case.

[139] Like in the Boujikian case, in Chappell the Employer conceded at third level in Chappell that they had failed to make every effort to distribute overtime. Because of this concession by the Employer in Chappell, the adjudicator went on directly to fashion a remedy without considering the merits. Had the adjudicator dealt with substantive issues related to the equitable distribution of overtime, particularly on the point regarding the operational convenience of assigning overtime to certain employees, it could have been applicable to this case. However, it does not offer much assistance, nor does it offer any assistance on the phrase "...on an equitable basis."

[140] I also wish to address the Johnston case cited by my friend, which assists his case somewhat more than the other cases he has cited. The case stands for the proposition that the Employer is to share "premium work" as far as possible "within reason." It is the Employer's view that "within reason" means that there is a limit to the general principle set out in the case.

[141] The enforcement officers conducting escort duties are dealing with violent and potentially dangerous individuals. They are escorted using public transportation. The Employer is entitled to have persons who regularly perform these duties, and the public is also entitled to rely on the fact that the people performing escort work do it on a regular basis and have up to date training.

[142] The Employer cannot be placed in a situation where it has to, as a general proposition, offer escort overtime "...on an equitable basis" to people in other units and potentially endanger the public in the course of doing so. This would be an unreasonable stretch of the Johnston case. In Johnston, the workers were performing data entry and clerical duties. The importance of such duties to the government service are not to be diminished. As important as they may be, clerical and data entry duties cannot be said to have the same potential risk on public security as the work performed by escort officers.

[143] *The Employer has reviewed the arguments submitted by the union on stand-by and takes the position that they are inapplicable to the present case. This grievance pertains to the overtime provisions of the collective agreement.*

[144] *The Employer also has reviewed the arguments raised by my friend, asserting that "past practice" can "clarify the ambiguity" in the collective agreement as to equitable distribution. In the Employer's view, such arguments are not of assistance. "Past practice" arguments cannot surmount the fact that the grievors are not readily available to do the overtime work of another unit. While they may have been able to do this work in the past, the reality of the operation has changed. They are no longer "readily available" to do this work without being unavailable to do their own jobs for several days at a time.*

[145] *The Employer relies on Jutras (Board file: 166-2-20534). That case stands for the proposition that when a person is included in a unit, he is entitled to participate in the overtime of that group on an "equitable basis". However, once that person no longer forms part of a specific group, there is an end point after which there is no longer any entitlement for a person to participate in the overtime of another group. This confirms the Employer's position that overtime must be offered equitably only to those who are performing the duties within the unit.*

[146] *In conclusion, the Employer takes the position that the union has not met the burden in this case, and asks that this case be dismissed.*

Reply

[147] *The Union's position is that it has addressed the violations of Article 28.05(a) in its submission and has met the burden of proof.*

[148] *In response to the Employer's submission, the Union argument was that "operational requirements" applies to the grievors. The grievors work in the Admissions Unit not the Enforcement Unit. The issue is do operational requirements allow the grievors to perform escort duties on an occasional basis? As stated in the Union's submission, the grievors operational requirements are such that they are available to perform escort duties.*

[149] *The Employer takes the position that it is under no obligation to distribute escort duties to the grievors because they work in another unit. The Union's position is that neither policy nor unit allocation in this case are sufficient reasons to exclude the grievors from their contractual entitlements.*

[150] *In regard to qualifications, both of the grievors would need more training. This is not the fault of the grievors. Both were qualified. Both are willing to receive the necessary training. As was pointed out in the Union submission at the time the grievances were filed, both grievors were qualified.*

[151] *The Union maintains it has addressed the issue that was grieved, the violation of Article 28.05(a), and that the redress requested by the grievors should be granted.*

Reasons for the Decision

[152] The onus in this case is on the bargaining agent to meet the burden of proof to establish that the employer has violated subclause 28.05(a) of the Program and Administration Services group collective agreement signed by the Treasury Board and the PSAC. Subclause 28.05 states:

28.05 Assignment of Overtime Work

(a) Subject to the operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime on an equitable basis among readily available qualified employees.

[153] The grievors work seven and one-half hours per day, Monday to Friday, in the Admissions Unit, at the Harry Hayes Building in Calgary.

[154] Mr. Audia testified he performed 10 escort duties from October 29, 1990 to June 10, 1999 (Exhibit G-7 to G-10), to various locations within Canada, the United States and Europe. Mr. Zelisko's uncontested testimony was that he performed escort duties on four different occasions, from November 1998 to October 2000, all within Canada. Prior to October 2000, both grievors were on a rotational list of qualified candidates with the relevant and essential training. At various times, the grievors assisted enforcement officers in performing escort duties. Subject to operational requirements and their availability, the grievors would either assist in a removal or if they were unavailable, would remain at the top of the list for the next time an escort was required, again subject to operational requirements and their availability. When an enforcement or admissions officer performed an escort, it was duly noted in a logbook.

[155] Exhibit E-14 is an "Operations Memorandum", dated July 5, 1996, that set the new criteria for enforcement officers on what was considered by the Department to be relevant and essential mandatory training in order to perform escort duties. The acceptable training course for enforcement officer is "tactical training" based on PPCT.

[156] Mr. Audia successfully completed POTP in June 1993 (Exhibit G-5); however, according to Mr. Ferguson's testimony, this type of training is unacceptable. Mr. Zelisko completed his PPCT in November 5, 1999; however, it expired in November 2001.

[157] In October 2000, Rob Cullum, Regional Manager, Policy and Programs, Prairies and Northwest Territories, sent a letter to his managers, including Mr. Audia, with regard to removals in the region. The letter included two attachments. The first (Exhibit G-12) was the "National Guidelines on the Use of Escorts for Removals and the Reporting Requirements of Escorting Officer", and is dated January 12, 2000. In section C, it states:

DETERMINING THE NUMBER OF ENFORCEMENT OFFICERS

Enforcement officers may include immigration officers, RCMP officers, other police officers or other suitable temporary assistants who have been designated as immigration officers and should be assigned in accordance with operational needs.

(Emphasis added)

[158] The second attachment (Exhibit G-13) was the "Prairies and Northern Territories Escort Guidelines". In these guidelines, it states, in part:

WHO IS AUTHORISED TO PERFORM ESCORT DUTIES

The escort of subjects under removal order will normally [be] performed by Enforcement Officers. The escorting of subjects under removal order falls within the job description of Enforcement Officers and the training provided to Enforcement Officers reflects this responsibility... In very rare circumstances an officer, other than an enforcement officer, may be asked to escort an individual. The use of persons other than enforcement officers will only be approved in exceptional circumstances....

[Emphasis added]

[159] As a result of the changes to the guidelines, neither of the grievors was assigned escort duties after the documents were promulgated and the grievances filed. The changes to the guidelines clarified whom would perform escorts duties, as stated in the work description of the enforcement officers, dated August 30, 2002 (Exhibit E-3). As well, the concept of regional Immigration officers escorting persons to the CRU in large centres, where removals were turned over to a different escort officer, was abolished. The new plan was that the escorting officer of the home office would escort the person being removed by an enforcement officer to whichever destination.

[160] It is my belief that these changes by the employer, which determine that the officers in the Admissions Unit and the officers in the Enforcement Unit will have separate duties, are well within the employer's rights. Section 7 of the PSSRA states:

Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein.

[161] The removals requiring escorts are the result of investigations, arrests and/or further to the filling out of documents by officers in the Enforcement Unit. These escort duties may start or extend beyond normal working hours. It is also possible that these escort duties may extend for up to three days, thus requiring additional time away from the office according to the provisions of the NJC Travel Directive. The decision on whether the grievors are available for an assignment to perform escort duties rests with the employer. However, the employer's own argument reveals that, while escort duties mostly begin during working hours, this is not always the case. In the employer's written submissions (paragraph 107 above), it states: "Escort duties begin during the workday." I have not been shown or convinced that this is always the case. It is clear that there has been a marked increase in international escorts (Exhibit E-17); however, not all the shorter escort trips have been eliminated. While the grievors might not be readily available due to operational requirements during the weekday, what about Friday evenings or weekends? Surely the employer cannot argue that operational requirements would prevent the grievors in those situations from being offered overtime. While determining operational requirements is management's prerogative, such authority cannot be exercised in a manner that is arbitrary, discriminatory or in bad faith. To allege that all officers working in the Admissions Unit are unavailable at all times to perform escort duties simply because they work from Monday to Friday seems to me to be somewhat arbitrary.

[162] Counsel for the employer argued that the grievors are unavailable and pointed to the increase in the number of international escorts that require long absences from the work unit. I agree with counsel that the grievors might not be readily available in such circumstances. However, until the employer determines the facts surrounding a particular escort, it cannot reasonably assess whether or not the grievors are available or whether operational requirements would suffer by performing escort duties in other circumstances (i.e. weekends, evenings).

[163] The collective agreement does not only apply to the Enforcement Officers in the work unit, but applies to all members of the bargaining unit, which indeed includes the Immigration Officers in the Admissions Unit. The collective agreement is clear in stating that the employer is required to distribute overtime, in an equitable manner, to all employees who are readily available and qualified. I find that the grievors, at the time they filed their grievances, were available and qualified to perform escort duties

[164] The corrective action requested by the grievors is as follows:

- 1) *The Regional Escort Policy be amended to read "Enforcement Officers" includes other qualified officers, without reference to job description.*
- 2) *And escorts be offered on a rotational basis to qualified officers.*

[165] In reference to an amendment to the "Regional Escort Policy", as an adjudicator I have no jurisdiction under the PSSRA to amend an employer policy. With regard to the second point requested in the corrective action, again I have no jurisdiction to order the employer to offer escorts on a "rotational basis". The method in which the employer determines how escorts are advanced is within its own scope. However, I can determine if the employer, in the assignment of escorts, has made a reasonable effort to offer overtime to readily qualified officers on an equitable basis for the period of time in issue.

[166] The evidence, however, shows that the Prairies Northwest Territories region commenced effecting its own full removal for a one-year trial basis from October 16, 2000 to September 2001 (Exhibit E-9).

[167] As stated in the employer's submission, "After considering the implications of the National Policy (G-12), the Prairies and Northern Region of CIC conducted a removal trial (Et E-9). After this removal trial, it published the Prairies and Northern Region Escort Guidelines (G-13)..."

[168] Mr. Audia had been performing escort duties since 1990, until the "Prairies and Northern Territories Escort Guidelines" (Exhibit G-13) effectively prohibited him from doing so, effective October 2000. Mr. Ferguson testified that since the "Operations Memorandum" on the use of force and disengagement (Exhibit E-14) came into effect on July 5, 1996, officers are not permitted to perform escort duties unless they

possess PPCT training. However, Exhibits G-7 to G-10 demonstrate that Mr. Audia continued to perform escort duties until June 10, 1999. Mr. Zelisko, who had what the employer considered the appropriate training, performed escort duties from November 1998 to October 2000, until the change in the guidelines.

[169] The grievors do not possess the qualifications, specifically PPCT training which is now a requirement for enforcement duties; thus, the employer is no longer in violation of clause 25.08 of the collective agreement.

[170] However, I conclude that the employer could have used the services of Messrs. Audia and Zelisko until the final report and guidelines were officially authorized on February 11, 2002 (Exhibit G-13), subject to operational requirements and the obtaining of green passports, the required immunization, CPR and first-aid training, and by renewing Mr. Zelisko's PPCT, which were all within the employer's capability and not financially burdensome.

[171] I leave it up to the parties to determine the amount of overtime the grievors could have worked performing escort duties, based on the escort duties Mr. Audia performed between October 29, 1990 and June 10, 1999, and the escort duties Mr. Zelisko performed between November 1998 and October 2000. I offer the assistance of the Board's Dispute Resolution Services, if desired.

[172] That amount of money will be paid by the employer to both grievors as soon as possible. I retain jurisdiction should the parties fail to agree on the amount of money owed.

[173] Accordingly, these grievances are allowed in part.

**D.R. Quigley,
Board Member**

OTTAWA, August 5, 2003.

