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Citation: 2003 PSSRB 71

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

PIERRE LACROIX, EDWIN V. BRUSDEILINS AND P. FRANK ROACH

Grievors

and

TREASURY BOARD (Fisheries and Oceans)

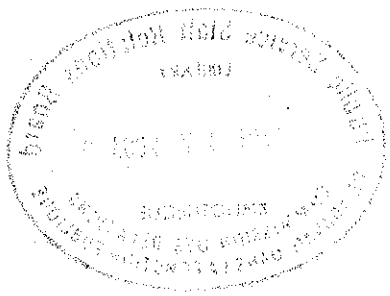
Employer

Before: Evelyne Henry, Board Member

For the Grievors: David Jewitt, Counsel, Canadian Merchant Service Guild

For the Employer: Jennifer Champagne, Counsel

Heard at Ottawa, Ontario,
July 28, 2003.



[1] Messrs. Lacroix, Brusdeilins and Roach are instructors at the Coast Guard College in Sydney, Nova Scotia, and are covered by Appendix "L" of the Ships' Officers group collective agreement. They grieved that the employer has required them to perform in excess of an average of 20 hours of instruction time per week contrary to Article 30(b) of Appendix "L" of their collective agreement.

[2] The parties submitted an "Agreed Statement of Facts" in two parts; the first (Exhibit U-1), which contains 13 points, is reproduced here as submitted:

> 1. *All of the grievors are employed with the Department of Fisheries and Oceans as Nautical Sciences Instructors at the Canadian Coastguard College located in Westmount, Nova Scotia, in one of the most modern and well equipped Marine Colleges in the world.*
>
> 2. *At all relevant times, the grievors were covered by the Agreement between the Treasury Board and the Canadian Merchant Service Guild, Group Ships Officers, with an expiry date of March 31, 2003.*
>
> 3. *In particular, the grievors as Instructors have specific terms and conditions of employment with respect to hours of work and overtime, which are set out in Appendix "L" – Instructors Sub-group, Article 30, found at page 135 of the Collective Agreement. These grievances deal with claims for overtime in relation to the specific hours of work set out in Appendix "L" for the Instructors which read as follows:*
>
> > *"Notwithstanding the provisions of the Ship's Officers Collective Agreement, the following shall apply:*
> >
> > ***Article 30 – Hours of Work and Overtime***
> >
> > ***Hours of Work***
> >
> > *(a) Hours of work shall be designated so that officers normally work an average of:*
> >
> > *(i) eight (8) hours per day, and*
> > *(ii) forty (40) hours per week, and*
> > *(iii) five (5) days per week, Monday through Friday.*
> >
> > *(b) Instructors shall not be required to provide classroom or similar instruction in excess of an average of twenty (20) hours per week averaged over a four (4) month period.*

General

Instructors will not normally be required to perform non-officer duties."

Facts of the Grievance

4. *On or about March 13, 2002, all three grievors filed grievances claiming that they were required to work in excess of an average of twenty (20) hours of instruction time per week averages over a four (4) month period.*

5. *The grievor, Pierre Lacroix, claimed in his grievance that he was required to work during two four (4) month periods, namely January 1st to April 30th, 2001, and May 1st to August 31st, 2001, in excess of twenty (20) hours. The remaining grievors, Mr. Briesdeilins and Mr. Roach, made their grievance claims with respect to the four (4) month period of May 1st to August 31st, 2001.*

6. *All grievors have submitted documentation supporting their grievances detailing the number of classroom instruction.*

7. *On or about April 23, 2002, Mr. Bernie Leonard, Canadian Coastguard College, replied at the first level with respect to these grievances.*

8. *On or about August 9, 2002, the Assistant Deputy Minister of Human Resources, Fisheries and Oceans, Mr. George Da Pont, provided the final level response to these grievances.*

9. *All of the documentation surrounding the grievances and the exchanges between the grievors and the Department that is relevant to the determination of these grievances, is attached and will be filed on consent, with the Board as a separate set of documents.*

Statement of Legal Issues in Dispute

10. *The central issue in dispute in these grievances concerns whether or not approved leave taken during the four (4) month timeframe established by Management should be included or excluded when considering the calculation of the average number of hours of classroom instruction or other similar instruction provided pursuant to the provisions of the Collective Agreement.*

11. The position of the Employer is that the calculation of classroom or other similar instruction over the four (4) month period is not reduced by any approved leave taken, while the position of the grievors is that the calculation of the average has to take into account any approved leave taken during the relevant timeframe.

12. A second question which arises between the parties can be stated as follows:

> *"What compensation, i.e. overtime or straight time, is to be paid to the grievors in the event their interpretation of the Collective Agreement is upheld?"*

13. A final and third related question is:

> *"For what number of hours is compensation to be paid where an Instructor is required to work in excess of the average of twenty (20) hours per week stipulated in the Collective Agreement over the relevant four (4) month time frame?"*

[3] The second part (Exhibit U-2) has paragraphs numbered 4 to 11 and is reproduced here:

4. Appended to this Agreed Statement of Facts, are a number of pages printed from the Canadian Coastguard College website outlining the curriculum and courses offered with particular emphasis on the four (4) year Officer Cadet Training Program (OCTP) which, at its conclusion, provides certification and recognized university degrees in either Marine Navigation or Engineering.

5. There are approximately twenty-three to twenty-five (23-25) nautical instructors who are covered by the terms of Appendix "L", and the grievors are three (3) of approximately seventeen (17) Nautical Science Instructors providing classroom and "hands on" instruction to cadets in training who are pursuing Marine Navigation degrees and certification or Marine Engineering degrees and certification.

6. In the material appended from the Canadian Coastguard College website, specific examples of the various training programs and samples of courses offered by the instructors in both official languages are outlined.

7. At the conclusion of the OCTP (the Officer Cadet Training Program), a graduating cadet receives a

Bachelor of Technology Nautical Sciences from the University College of Cape Breton in association with the Canadian Coastguard College, a diploma of Natural Sciences either in navigation or engineering from the Canadian Coastguard College itself, together with a Transport Canada certification known as a Watch Keeping Certificate (C) for those involved in the navigation component or a fourth class Motor Marine certificate for those involved in the engineering component of the program.

8. *These degrees, diplomas and certificates provide the necessary certification so that an Officer is permitted to direct a watch at sea either as an Officer, or as an Engineer, and qualifies the Officer or Engineer for advanced standing in further certifications towards their Master Mariner Certificate or their First Class Engineering Certificate, as the case may be.*

9. *The four (4) year OCTP program is a combination of four (4) academic years, with certain periods of time spent at sea, with the majority of the time spent in classroom or other similar instruction at the Canadian Coastguard College.*

10. *All instructors, engaged at the Canadian Coast Guard College are highly qualified and experienced Officers employed in the Canadian Coast Guard who will have achieved as minimum qualifications, their Master Mariner Certification or their First Class Engineering Certification which are granted only after significant amounts of experience at sea and successful completion of exams offered by Transport Canada in both Advanced Navigation and Marine Engineering, all of which are recognized by international standards. Educational Teaching Qualifications and experience are considered a desirable qualification for the job.*

11. *All instructors are required to also complete specific Training Instructor courses offered by the Canadian Coastguard College itself to ensure proper instruction methods, course objectives, and lesson plans are followed to deliver the highest quality instruction to the Officer Cadets enrolled in the various programs.*

[4] In addition, the bargaining agent has tendered, on consent, 13 documents. Exhibits U-3 and U-4 are the replies given to Mr. Lacroix's grievance by the employer.

[5] Exhibits U-5 to U-9 are documents submitted by Mr. Lacroix in support of his overtime claim and are referred to in paragraphs 5, 6 and 9 of Exhibit U-1, the "Agreed Statement of Facts".

[6] On January 11, 2002, pursuant to the grievors having submitted overtime claims based on a variety of four-month periods, the employer issued a policy (Exhibit U-10) which determines that:

> *For the sake of averaging, the four month periods shall be:*
>
> *(1) First four month period* *01 January to 30 April*
> *(2) Second four month period* *01 May to 31 August*
> *(3) Third four month period* *01 September to 31 December*

The employer stated that the four-month periods selected reflect the three semesters of the normal school year.

[7] The bargaining agent admits that the employer has the right to specify what the four-month periods would be so that everybody would be "in the same boat".

[8] Exhibit U-12 is an "Analysis of Hours Worked" by the three grievors. It represents the employer's calculation for each grievor and a different calculation by each grievor. The employer admits that the actual hours of instruction submitted by all grievors are correct. The notes on Exhibit U-12 are no longer applicable. Even in using the hours of instruction submitted by Mr. Lacroix of 293 hours, the employer's calculation would bring the average amounts to 18.31 weekly over the four-month period from May 1 to August 31, 2001.

[9] In the case of Mr. Lacroix, the employer's calculation shows averaged weekly hours of instruction over four months as 18.14 for the first period and 18.31 for the second period. Mr. Lacroix calculates his average in the first period as 21.67 for the first period and 22.54 for the second. For this reason, he claims he has performed 24 hours of instruction in excess of the maximum permitted by the collective agreement in the first period and 33 in the second. In Mr. Lacroix's calculation, these hours are to be doubled to include the preparation time, which he claims is required for each hour of instruction.

[10] Mr. Brusdeilins' overtime request calculation and summary of hours worked were submitted as Exhibits U-12 and U-14. The same information for Mr. Roach is included in Exhibits U-12 and U-15.

[11] Website information of a general nature on the Canadian Coast Guard College was introduced as Exhibit U-13. It is referred to in the "Agreed Statement of Facts" in points 4 to 11 of Exhibit U-2.

[12] The parties agree that Article 30 in Appendix "L" existed in the previous collective agreement and that the present grievances are the first ones on this issue.

[13] There were no testimonies and the parties argued on the basis of the "Agreed Statement of Facts" and documentary evidence submitted.

Arguments

For the Grievors

[14] Counsel for the grievors reviewed some of the material from the Coast Guard College website and noted that recognized degrees are given by this College such as the Bachelor of Technology Nautical Sciences. The instruction given by the grievors requires high qualification and significant amounts of experience.

[15] Counsel for the grievors reviewed the documents submitted, in particular Exhibits U-12, U-7 and U-9. He notes that the employer's calculation includes certain statutory holidays, the time frames for mandatory requirement to supervise and/or mark "exams", which is not considered as instruction time by the employer, and leave.

[16] As can be seen in Exhibit U-9 during the period from January to April 2001, there were "exams" for one week, followed by markings of "exams" for four days, and five statutory holidays. According to Mr. Lacroix's document, during that period there were 72 teaching days, 20 in January, 20 in February, 22 in March and 10 in April for a total of 72. This represents 576 hours of teaching. During that period, Mr. Lacroix provided instruction for 312 hours. This represents 24 hours of extra teaching. Mr. Lacroix's document excludes "exams" and the "marking of exams", as well as statutory holidays from the number of days available for teaching.

[17] In Mr. Lacroix's schedule (Exhibit U-7) which covers the period from May 1 to August 31, there are two holidays, four days of "exams", seven days of acting as an instructor two and 10 days of leave. Mr. Lacroix submitted that there were 65 teaching days or 520 hours available for teaching. A maximum average of 20 hours of instruction per week represents 260 hours. Mr. Lacroix worked a total of 293 hours during that period. Counsel for the grievors submits that 33 hours of extra instruction was required of Mr. Lacroix.

[18] In the case of Mr. Brusdeilins, he provided 323 hours of instruction during the period from May 1 to August 31, 2001. Exhibit U-14 shows that Mr. Brusdeilins took 128 hours of sick, compensatory and vacation leave during the period. Mr. Brusdeilins subtracts these hours from calculation of the average hours of instruction and claims that he provided 33 extra hours of instruction during that period.

[19] Counsel for the grievors submits that the language of the collective agreement does not specify the four months that are to be used for the calculation of the average. The language of the collective agreement does stipulate that for straight time pay an instructor may be assigned up to 20 hours on average. The clause provides a lot of flexibility for the employer to assign hours of instruction. In any given week or day, an instructor may be assigned up to eight hours of instruction in a day or in a week up to 40 hours without extra compensatory payment.

[20] Counsel for the grievors submits that in order to receive straight time pay, instructors must provide on average up to 20 hours of instruction per week; thus, there is a ratio of two to one for straight time pay. Counsel for the grievors argues that to instruct 20 hours, instructors require 20 hours of preparation time. Essentially, parties have recognized that point in the ratio contained in Article 30, subparagraph (b) of Appendix "L".

[21] Leave provisions and statutory holidays are provided in the collective agreement. Management approves leave and has reserved the right to schedule and assign the classroom course load for the College to the instructors. Management also reserved the right to staff instructors at the level it determines to meet the requirement to deliver courses offered by the College. The operational needs are met and so the instructors' leave needs have to be met. Those requirements are set in the collective agreement and are no more extraordinary than for any other employees under the collective agreement.

[22] If management wants to avoid the consequences where it requires the group of instructors it has staffed to work an excess of 20 hours of instruction average over four months, it has many ways to avoid going over the 20 hours average and fully respect the instructors' right to leave.

[23] Counsel for the grievors submits this clause must be read so that it is consistent and in harmony with other rights of the instructors to statutory holidays, leave and reasonable workload set out by the parties.

[24] It is a principle of interpretation that the intent of the parties is to achieve reasonableness of interpretation and that there is a preference for an interpretation that does not lead to unreasonable result.

[25] In this case, for the specific subgroup, the parties negotiated teaching load requirements out of necessity. They did so because that is their function. In the Education (ED) group collective agreement, the employer has much less flexibility in setting the teaching load requirements and the number of hours per day over the standard work days. In the Ships' Officers' group collective agreement, the parties have adopted similar limitations but ones with much greater flexibility and time frames before triggering consequences.

[26] It is the grievors' position that the clause cannot be interpreted to say the parties intended no reduction over the four-month period for the time where an instructor could not, by reason of holiday or approved leave, be assigned classroom instruction. The fundamental basis of the clause, as rough as it may be, is to ensure a reasonable workload for the instructors.

[27] The intent of the parties, by adopting a formula, was not to permit the employer to assign more than 20 hours of classroom or similar instruction on average per week over a four-month period. It was never meant to be turned on its head and used if a person is away for two months to provide four months of instruction in two months. When the employer says it takes no account of any leave and that it uses a blind four months, the unreasonable result above is possible and defeats the intent of the clause, which is to protect instructors from being assigned an excessive workload.

[28] Counsel for the grievors submits that leave periods ought to be excluded when determining whether employees are overworking or under-working according to the limit set in Article 30(b) of Appendix "L".

[29] It is apparent in Exhibit U-12 that there are two different formulas used to calculate workload maximum. The issue of leave is at the nub of the question. Regardless of working conditions, it was never intended that the instructors work 80 hours a week in order to take leave.

[30] Counsel for the grievors submits the *Anderson* decision (Board files 166-2-21320, 21323) in support of his argument that the grievors, by being required to perform extra instruction hours were working outside their scheduled hours. Counsel for the grievors draws a parallel with the grievors in *Anderson* required to work during their meal break and the grievors required to instruct in excess of the average 20 hours per week. They are working outside of their hours of work by exceeding the permissible average and also through the preparation time of one hour for each hour of instruction implied in the hours of instruction. When the employer is exceeding the 20 hours of instruction, it is exceeding the preparation time and therefore exceeding the 40 hours a week.

[31] Counsel for the grievors refers to the *David* decision (Board files 166-2-17250 to 17257). Where the employer goes beyond an average there must be consequences. In that decision, the adjudicator finds a linkage between preparation time and teaching time.

[32] There has to be a consequence where an instructor is required to instruct in excess of the maximum; at the very least, he should be paid overtime for the hours of instruction. The other consequence would be that instructors stop instructing when they hit the maximum number of hours of instruction.

[33] Counsel for the grievors also refers to two other cases for the principle of implicit overtime authorization when work is required by the employer. He cited the decisions *Boucher* (Board file 166-2-230) and *Rauzon* (Board file 166-2-5164).

[34] Counsel for the grievors asks that I remain seized for the calculation of the compensation if the grievances are allowed. The grievors requested that overtime be paid for double the number of extra hours of instruction. In case preparation time is

not established, they should be paid overtime for the instruction hours. If overtime payment is not applicable, some directions should be given to give some meaning to the clause that would permit that instruction not be given when the maximum average of hours of instruction is reached.

For the Employer

[35] The employer submits that there can be consequences only if the employees work more than 40 hours a week; they are then paid overtime.

[36] Overtime is defined in the collective agreement in clause 30.06 on page 54. Article 30 on "Hours of Work" and "Overtime" applies to instructors. Appendix "L" does not remove the application of Article 30 to the instructors.

[37] The employer disputes the grievors' assertion that instructors need one hour of preparation for every hour of instruction. Not all instruction is classroom instruction. Some instruction may involve more "hands on", while some may require more preparation. There is not a cap of 20 hours of instruction per week, but an average over four months has to be respected. There is nothing in the collective agreement that deals with preparation time.

[38] It is the employer's position that it has never happened that the average of 20 hours over four months was exceeded. The evidence of this can be found in Exhibit U-12 where, even when using the grievors' number, the average over four months is still below the 20 hours' average.

[39] The collective agreement does not state that leave time must be excluded in the calculation of average time of instruction. The language has to be taken for what it says: "a four month period".

[40] This is not new language. It came in the previous agreement; before the hours of instruction used to be averaged out per year, leave was included.

[41] In Exhibits U-7 and U-9, the grievors refer to days available for teaching. There is nothing in the collective agreement that refers to days available for teaching. Nowhere is it to be found, not even in the leave definition.

[42] If it had been the parties' intention to deal with days available for teaching, it would have been placed in the collective agreement. If leave were to be excluded from the calculation, it would have been stated there. There is no reason to believe that the parties had anything in mind other than the ordinary meaning of things.

[43] Here there is a reference to a "four month period" in the same provision where there is a reference to "day" or "week". There is nothing in this general article that indicates that "day" or "week" refers to anything but a calendar day or calendar week; therefore, "month" must also refer to a calendar month. There is nothing in the collective agreement that indicates that the parties had in mind anything but an ordinary month.

[44] It was open to the parties to use wording that refers to preparation time or to come up with calculation that excludes leave, but they did not do that. It must be that they did not intend to take "exam" days or leave or acting assignments out of the calculation as the grievors are proposing.

[45] The four-month periods coincide with the semesters of the college. There is nothing in the collective agreement that implies that the term "month" should be given a meaning other than its ordinary meaning.

[46] The employer refers to a decision of the Federal Court in *Doyon v. Public Service Staff Relations Board and The Queen*, [1978] 1 F.C 31, for the principle that when language is clear, the adjudicator cannot consider extrinsic evidence to interpret a collective agreement. In the instant case, the ordinary meaning of month is a calendar month. The employer is averaging the same way over four months as it did over one year.

[47] The employer referred to the Federal Court decision in *Légaré v. Canada (Treasury Board)* (F.C.A.), [1987] F.C.J. No. 304, for the principle that if wording is clear, it is not open to the adjudicator to imply anything but the true meaning of words. The parties can negotiate other words if they intend another meaning.

[48] The employer also referred to *Regina v. Barber et al Ex parte Warehousemen and Miscellaneous Drivers' Union Local 419*, 68 D.L.R. (2d) 682. The employer cited the last sentence of the fifth paragraph:

> [...] *Where a writing is unambiguous, such evidence, although received, cannot be used to construe it. It is true that at least in some* ***[page 683)*** *respects a collective agreement is different from an ordinary commercial agreement, but the principle that requires the intention of the parties to be derived from their plain written words rather than from extrinsic evidence is one applicable to all writings defining rights between parties.*
>
> [...]

The employer stated that the above principle can also be found on page six of the decision.

[49] The employer submits that the case law submitted by the grievors is distinguishable from the instant case. We are not dealing here with a standard case of overtime. There is no provision that provides that the employees get overtime as soon as they exceed the average hours of instruction per four months.

[50] The instructors have worked their eight hours of work daily, nothing more. There is nothing in the collective agreement about preparation time of "one on one" hour for each hour of instruction.

[51] There is no evidence to support the proposition that the four-month period does not include leave, be it sick leave or vacation leave. The language is clear; it refers to a four-month lapse of time. The language must be given its clear meaning.

Grievors' Reply

[52] The grievors submit that the adjudicator cannot rely on the old agreement because there were some restrictions on whether leave was included. There is no past practice evidence submitted in this case.

[53] The language referring to four months was new language and must exclude leave because it refers to the words "be required to provide classroom or similar instruction". Employees cannot be required to provide classroom work during a statutory holiday or during paid leave. The only reasonable view when looking at the four months is to look at four months when instructors are available to teach.

[54] No four months were designated until the grievors submitted overtime claims.

[55] On the argument that the grievors have not worked over 40 hours a week, there is disagreement. Clearly, they had to work overtime because of the preparation time involved. There is no necessity to schedule more than 20 hours of instruction when there is a sufficient staff of instructors.

Reasons for Decision

[56] The parties have submitted two issues to be resolved by this decision: the first pertains to the calculation of the "average of twenty (20) hours per week, averaged over a four (4) month period" of instruction time; and the second, the consequences should employees be required to provide classroom or similar instruction in excess of the permissible hours of instruction.

[57] The articles of the collective agreement that are pertinent to this case are Article 30 - "Hours of Work and Overtime", Appendix "L" and the definition clause 2.01. For ease of reference, I have reproduced here the clauses I find most relevant:

> ***APPENDIX "L"***
>
> ***INSTRUCTORS SUB-GROUP***
>
> *This is to confirm the understanding reached between the Employer and the Canadian Merchant Service Guild with respect to the Instructor Sub-Group.*
>
> *Notwithstanding the provisions of the Ship's Officers Collective Agreement, the following shall apply:*
>
> ***Article 30 - Hours of Work and Overtime***
>
> ***Hours of Work***
>
> *(a) Hours of work shall be designated so that officers normally work an average of:*
>
> *(i) eight (8) hours per day, and*
>
> *(ii) forty (40) hours per week, and*
>
> *(iii) five (5) days per week, Monday through Friday.*
>
> *(b) Instructors shall not be required to provide classroom or similar instruction in excess of an average of twenty (20) hours per week, averaged over a four (4) month period.*

General

Instructors will not normally be required to perform non-officer duties.

Pedagogical Break – Canadian Coast Guard College

Instructors shall be granted a pedagogical break which will include all calendar days between December 25 and January 2, inclusively. During this period, instructors are entitled to four (4) days of leave with pay, in addition to three (3) designated paid holidays, as provided for under clause 21.01 of this Agreement.

Should January 2 coincide with an instructor's day of rest or with a day to which a designated paid holiday has been moved, this day shall be moved to the instructors first (1st) scheduled working day following the pedagogical break.

If an instructor performs authorized work during the pedagogical break on a day other than a designated paid holiday or a normal day of rest, the instructor shall receive compensation based on his or her normal daily rate of pay, in addition to his or her usual pay for the day.

ARTICLE 30

HOURS OF WORK AND OVERTIME

Hours of Work

30.01 *Except as otherwise provided in Appendices "H", "I", "J" and "K", hours of work shall be designated so that officers:*

(a) work eight (8) hours per day,

and

(b) work an average of forty (40) hours and five (5) days per week.

[...]

Overtime

30.06 *In this Article:*

*(a) **"overtime"** means time worked by an officer in excess of his/her designated hours of work;*

*(b) **"straight time"** means the hourly rate of pay;*

(c) ***"time and one-half"*** *means one and one-half (1 1/2) times the straight time rate;*

(d) ***"double time"*** *means twice (2) the straight-time rate.*

[...]

ARTICLE 2

INTERPRETATION AND DEFINITIONS

2.01 *For the purpose of this Agreement:*

[...]

(f) ***"day"*** *in relation to an officer means the twenty-four (24) hour period during which that officer is normally required to perform the duties of his/her position and commence at 00:00 hour;*

(g) ***"day of rest"*** *in relation to an officer means the twenty-four (24) hour period during which that officer is not ordinarily required to perform the duties of his/her position other than by reason of the officer being on leave, absent from duty without permission or by reason of that day being a holiday, and commences at 00:00 hour;*

(h) ***"designated holiday"*** *means:*

(i) *in the case of a watch that does not commence and end on the same day, the twenty-four (24) hour period commencing from the time at which the watch commenced on a day designated as a holiday in this Agreement.*

(ii) *in any other case, the twenty-four (24) hour period commencing at 00:00 hour of a day designated as a holiday in this Agreement;*

[...]

(n) ***"leave"*** *means authorized absence from duty by an officer during the officer's regular or normal hours of work;*

ARTICLE 18

GRIEVANCE PROCEDURE

18.04 *In this procedure:*

(e) ***"days"*** *referred to in this procedure are calendar days excluding Saturdays, Sundays and holidays.*

[58] Appendix "L", clause 30(b) is part of the "Hours of Work" Article and is preceded by the daily and weekly maximum hours of work prescribed in clause 30(a). It is therefore to be read in the context of work scheduling for instructors. It is obvious that Appendix "L" provides a greater flexibility in the scheduling of instructors' work than is provided in the main "Hours of Work and Overtime" clause 30.01.

[59] I do not accept that "day" in paragraph 30.01(a) refers to a calendar day. It refers to the word that is defined in paragraph 2.01(f) and it "means the twenty-four (24) hour period during which that officer is normally required to perform the duties of his/her position."

[60] I do not accept that "week" refers to a calendar week; it refers to the "work" week from "Monday through Friday."

[61] If paragraph 30.01(a) is referring to the "work day" and the "work week", one can only assume that "month" in paragraph 30.01(b) is referring to a "work month".

[62] The collective agreement as a whole must be read in order to understand what is included in a workweek or a work month and this may vary with different categories of employees. Common elements that are normally excluded from the workweek are "days of rest" which are normally Saturday and Sunday, except when specified otherwise, and designated holidays. Designated holidays are excluded by their nature. A holiday is a day of festivity or recreation when no work is done. Severe penalties are provided in the collective agreement if work is done on a designated holiday.

[63] A reading of paragraph 18.04(e), which is part of the grievance procedure that applies to all categories of employees under this collective agreement, including instructors, indicates that "days" excluded holidays in that procedure.

[64] I take it that the parties, when they used the term "four (4) month period", intended four consecutive months that excludes Saturday, Sunday and holidays or four work months.

[65] Does a work month include "leave"? A reading of the definition of leave implies that it does, since it is authorized absence "during the officer's regular or normal hours of work". Leave varies from one employee to the next depending on seniority, health and other personal conditions. To exclude leave from the average calculation in

a work month would require specific language to that effect in the collective agreement. None can be found.

[66] In Appendix "L", the parties have provided for a pedagogical break, which indicates that the drafters of the agreement were well apprised of the instructors' working conditions. Had the drafters intended to exclude leave from the calculation of the averaged 20 hours of instruction per week over a four-month period, they would have said so.

[67] No evidence was provided to show what subjects were taught by the grievors, how and when they provided instruction and what preparation they required. The only evidence submitted pertains to the hours of instruction provided by the grievors. I have no evidence to the effect that the basis for the restriction to an average of 20 hours per week relates to the preparation time required for instruction. The restriction to an average of 20 hours per week over four months exists in and of itself in the language of the collective agreement.

[68] The parties have not specified what would be the consequence should this limit be exceeded. If, in fact, there is a relation between the hours of instruction and the preparation time, an instructor required to teach an excessive number of hours would be in a position to show that he worked in excess of his average eight hours a day/40 hours a week. The alternative is that he/she would have provided unprepared instruction. In each case, an adjudicator has to assess the evidence. There is no evidence for a finding that overtime was worked and may be warranted. Is a declaration that the collective agreement was contravened appropriate? This requires evidence that more than an average 20 hours of instruction was required.

[69] In the period from January 1 to April 30, 2001 there were 81 working days. In the period from May 1 to August 31, 2001, there were 86 working days. In neither period did the grievors instruct more than the averaged 20 hours per week. Therefore, there is no violation of the collective agreement and all the grievances are dismissed.

Evelyne Henry,
Board Member

OTTAWA, August 25, 2003.