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*Parliamentary Employment and
Staff Relations Act*



Before a panel of the Federal
Public Sector Labour Relations
and Employment Board

BETWEEN

DERRICK VOLPI AND JEAN-MICHEL PAUL

Grievors

and

PARLIAMENTARY PROTECTIVE SERVICE

Employer

Indexed as

Volpi v. Parliamentary Protective Service

In the matter of individual grievances referred to adjudication under section 63 of the
Parliamentary Employment and Staff Relations Act

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Grievors: Sylvain Beauchamp, counsel

For the Employer: George Vuicic, counsel

Heard at Ottawa, Ontario,
November 21 to 23, 2017, and April 4 and May 10 and 11, 2018.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] I am seized of two grievances that were referred to adjudication on November 13, 2015. The first grievance (466-HC-412), filed by Derrick Volpi, is about pay during meal times for constables, corporals, and sergeants at the House of Commons (“the members”) who work for the Parliamentary Protective Service (PPS or “the employer”). The second grievance (466-HC-413), filed by Jean-Michel Paul, is about pay for preparation time before and after overtime shifts. These are group grievances in that they cover all members of the bargaining unit represented by the House of Commons Security Services Employees Association (“the bargaining agent”), which signed a collective agreement with the House of Commons on October 30, 2012 (which expired on May 31, 2014) that applied when the grievances were filed. Under ss. 101(2) of the *Economic Action Plan 2015 Act, No. 1* (S.C. 2015, c. 36; the Act that created the PPS), the collective agreement from then on bound the PPS as the employer.

II. Legislative changes

[2] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent and amended the name of the Public Service Labour Relations and Employment Board and the title of the *Public Service Labour Relations and Employment Board Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”) and the *Federal Public Sector Labour Relations and Employment Board Act*.

III. Preliminary objection

[3] The hearing began with a preliminary objection by the employer to the Board’s jurisdiction to hear these grievances. The employer is of the view that the parties already resolved the issues raised in these grievances in 2014 as part of a memorandum of understanding resolving a group grievance filed in 2012.

[4] The group grievance from 2012 was related to the time required to put on and take off the uniform and equipment. In that grievance, the members asked to be paid at the start and at the end of their regular or overtime shifts.

[5] The members’ uniform and equipment includes a number of items that will be returned to in the evidence presentation. To help understand the agreement on which the employer based its preliminary objection, it suffices to say that in addition to the

required uniform of a shirt, pants, a belt, and boots, the additional equipment includes a bulletproof vest and restricted equipment, such as a retractable baton, an encrypted radio, and a firearm. That restricted equipment must be locked in a secure locker when an officer is not working. The bulletproof vest must be kept in a safe place. In the 2012 grievance, the members asked to be paid for the time needed to put on the equipment before their shifts and to take it off and put it away after their shifts. The group grievance read as follows:

I grieve that I am not being paid for all time incurred / worked as a result of my employer's requirement that I store my defensive baton and body armor [sic] in a location other than my duty post....

[6] The grievance included the following remedy:

I request that I be compensated at the appropriate rate of pay for all time incurred / worked in the performance of duties ... in a day, including the time it takes to satisfy my employer's requirement since may 2010 to store my body armor in a location other than my duty post. I request full redress in the following manner; 15 minutes prior and 15 minutes after every scheduled and/or overtime shift performed.

[Sic throughout]

[7] The agreement, which the House of Commons and the bargaining agent signed on November 14, 2014, includes the following provisions (I have reproduced only the provisions relevant to the employer's arguments in its preliminary objection):

WHEREAS *the employees of the bargaining unit are required to fully equip and prepare, including the storage of firearms, before and after their scheduled shifts;*

WHEREAS *the parties agree that it is the intention of the employer that all employees of the bargaining unit are to be firearms qualified;*

THE PARTIES AGREE:

1. The employer will pay an amount of \$300 per month to each employee as of November 1, 2014, except employees on unpaid leave.

...

5. Upon such ratification by the Board of Internal Economy, the bargaining agent will withdraw the instant grievances

forthwith.

6. The bargaining agent undertakes not to file any grievance with respect to the storage of firearms by members of the bargaining unit.

[Emphasis in the original]

[8] The employer's view is that the agreement resolves the grievances before me. It cites jurisprudence stating that the same grievance cannot be filed again after it has been withdrawn. Doing so would be contrary to the principle of finality inherent in the law.

[9] According to the employer, there is nothing ambiguous in the agreement's text, which provides a lump sum to resolve the members' demand to be paid for their preparation time. Consequently, no extrinsic evidence is needed to interpret the agreement or hence, for the hearing.

[10] The bargaining agent is not opposed to the principles cited from the jurisprudence, namely, that a grievance that has been resolved cannot be filed again, as that would go against the principles of finality and judicial economy. That said, it points out that the purpose of the grievances before me is not the same as the one resolved by the agreement, which did not address meal times; nor does the initial grievance. Overtime shifts are not addressed in the agreement.

[11] At the hearing, I decided to reserve my decision on the employer's objection, as it seemed to me that I needed all the evidence to determine whether the 2014 agreement in fact resolved the grievances before me. The bargaining agent had also argued that point. The decision on the preliminary objection is included in my reasons.

IV. Summary of the evidence

[12] The bargaining agent called to testify Roch Lapensée, a sergeant with the PPS and the bargaining agent's president, and Constable Eric LaCharity. The employer called to testify Guillaume Vandal, PPS Superintendent at the House of Commons, and Patrick McDonnell, Corporate Security Officer and Deputy Sergeant-at-Arms.

[13] Mr. Lapensée explained that the PPS includes three bargaining units represented by three different bargaining agents, which are detection specialists, represented by the Public Service Alliance of Canada; constables, corporals, and sergeants in the

Senate, represented by the Senate Protective Service Employees Association; and members who provide security in the House of Commons, represented by the bargaining agent, of which he is the president.

[14] The PPS was created on June 23, 2015, by the *Economic Action Plan 2015 Act, No. 1*, which amended the *Parliament of Canada Act* (R.S.C., 1985, c. P-1). On October 22, 2014, a man armed with a rifle entered the Centre Block of Parliament. He was brought down, but that incident led to questions about how Parliament was protected and in particular to creating the PPS.

[15] Mr. Lapensée began as an officer (now a constable) in 1987 with the House of Commons Protective Service, as it then was known. He became a corporal in 2005 and a sergeant in 2012. Constables (approximately 220), corporals (15 to 20), and sergeants (12) make up all the bargaining unit members. The superintendents who command them are not represented by a bargaining agent.

[16] Mr. Lapensée has been the bargaining agent's president since 2011. He was a party to all levels of the 2012 group grievance, and he signed the 2014 agreement. According to him, the agreement applied only to time before and after regular shifts but did not cover overtime shifts. In addition, the meal break is not covered, which led to these two grievances.

[17] Mr. Lapensée testified that between 2012 and 2015, the members' equipment changed considerably. Items were added. Members now carry on their service belts pepper spray, a firearm with a clip, two additional clips, an encrypted radio with an earpiece, a retractable baton, and handcuffs.

[18] The bargaining agent filed two documents as evidence, an operational directive entitled "[translation] Appropriate Regulatory Attire Directive", dated April 1, 2012, and the "[translation] Dress Code and Conduct Policy", which replaced the 2012 operational directive. Two versions of the policy were adduced, one dated November 20, 2015, and the other June 23, 2017. The second, which is more detailed, applies to the facts of this case. It sets out the directive that was in effect when the grievance was filed.

[19] Mr. Lapensée explained the specific problem posed by meal times.

[20] Members received a directive to wear their uniforms and all the equipment,

whether working or on break, when they are in the Parliamentary Precinct (Parliament Hill and some neighboring streets, from Elgin to Kent and to the north side of Queen Street). Therefore, they can take their meals on Sparks Street or Queen Street (the north side), while wearing the uniform and carrying the equipment. However, they cannot leave the Parliamentary Precinct with the restricted equipment (firearm and clips, baton, pepper spray, radio, and earpiece). It must be worn or placed in a secure locker. They also cannot wear part of the uniform — it is all or nothing.

[21] Carrying a firearm (which began only in 2012) has considerably changed the members' reality. The following appears in the 2012 Directive:

[Translation]

1.2 Employees on duty shall wear only the prescribed uniform and equipment. When employees decide to leave the Parliamentary Precinct for lunch, they must do so with their full uniform and must not be in civilian clothing;

1.3 The prescribed uniform and equipment shall not be used outside work hours. They can be worn when travelling to and from work. Employees are responsible for securing their prescribed uniforms and equipment;

[22] Since 2015, wearing the uniform has been prohibited outside the Parliamentary Precinct. In particular, the 2017 policy states the following:

[Translation]

2.2

...

- *Members issued a uniform must wear it while on duty, unless PPS management exempts them or when their duties require civilian dress.*

- *Uniformed members must wear all uniform items in accordance with the prescribed attire described in Section 2.3 and in the circumstances it sets out.*

...

- *Officers and non-commissioned officers may at any time visually inspect the uniform and equipment of on-duty PPS members.*

- *When on duty, members may circulate freely within the Parliamentary Precinct, as defined in Appendix B.*

- *It is recommended to not wear the PPS operational uniform when travelling to or from work. If PPS members wish to wear their uniforms during such travel, the service belt must be removed, and all crests and insignia must be entirely covered by a personal coat (fall, winter, spring) or black sweater (summer). The uniform coat and the service belt may be carried in a PPS duffle bag.*
- *All restricted items (service revolvers, long guns, MP5s, ammunition, clips, encrypted radios, handcuffs, pepper spray, baton, and gas mask) shall be secured in approved storage cabinets at the end of each shift.*

...

[23] The secure lockers are in a change room in the second basement of a building on Wellington Street. Before storing the firearm, it must be unloaded; same for the clips. The weapon is unloaded into a specialized receptacle in the first basement of the building, containing the lockers. The clips are unloaded in the locker. The weapon is padlocked and then locked in a small locker that also holds the baton, the pepper spray, and the radio. The small locker is padlocked. Finally, the assigned locker in which the bulletproof vest is placed (horizontally) along with the uniform and non-restricted equipment is also locked. Members can put on a coat or a sweater to hide the shirt identifying them as PPS members rather than changing shirts.

[24] Mr. LaCharity appeared at the hearing in the members' full attire so that I could completely understand the mealtime locker issue. He was wearing his uniform (pants, shirt, boots, belt and suspenders, bulletproof vest, a service belt for his firearm, two clips, the encrypted radio, handcuffs, gloves, the retractable baton, a flashlight, and a first-aid kit). He did not have pepper spray as he had not yet received training. For the purposes of the hearing, the radio earpiece was not connected, but he would normally have it in his ear.

[25] Members have a 60-minute unpaid meal break. Mr. Lapensée measured the time to travel to the locker from the members' working position, to remove the service belt and vest, to unload the firearm and its clip, and to store the firearm and equipment according to the instructions. The time required varied from 20 to 30 minutes, depending on where a member is on duty.

[26] In other words, based on Mr. Lapensée's evidence, it is impossible for a member on a meal break to leave the Parliamentary Precinct and go to the Rideau Centre, for

example, which is a five-minute walk from Parliament Hill. The return trip, i.e., the time to get to the storage locker and to store and then later don the equipment after reloading the weapon and clips and to then return to post, takes on average 50 minutes.

[27] Thus, the meal break is spent in the Parliamentary Precinct while wearing the uniform and full equipment. According to Mr. Lapensée, this means that members remain at work, given the expectations of the people they encounter during that hour (parliamentarians, visitors, and employees) that they can provide assistance if needed or answer questions of any kind. The full uniform includes the earpiece in the ear, which stays switched on when worn. If an alert is given, the member is required to respond to it. It could be an evacuation, a medical incident, or an armed attack; the possibilities are numerous.

[28] In cross-examination, Mr. Lapensée agreed that the members' duty to ensure the security of people and property applies only to Parliament Hill (the buildings of Parliament), not to the entire Parliamentary Precinct. On Wellington, Sparks, and Queen streets, for example, it is the Ottawa Police Service's responsibility. He also acknowledged that to his knowledge, no disciplinary measures have been imposed on members for turning off their earpieces while not at work. However, he stated that the members' professional discipline leads them to listen to their radios when carrying them. He emphasized the fact that a member in uniform must be vigilant, which includes keeping the earpiece active.

[29] Not all members wear the uniform and equipment. A limited number are assigned duties for which they are dressed in civilian attire (including intelligence services, protecting the Prime Minister or foreign dignitaries, and planning major events). Mr. Lapensée testified that members are assigned to a service but that they can be transferred between services.

[30] Mr. Vandal testified that secure lockers are available in all buildings where PPS members work, meaning that instead, only two minutes are needed to store the equipment. I was given a USB key that had a video showing Mr. Vandal giving a demonstration. He enters a room containing a large number of secure lockers and a firearm unloading station. He unloads the firearm, secures the ammunition, places the restricted equipment in the secure locker and locks it, and places his bulletproof vest on a shelf. Finally, he puts on a sweater to cover his crest and, in two minutes, he is

able to leave the Parliamentary Precinct.

[31] Mr. Vandal confirmed that members in uniform are members on duty. They may not be working during their breaks, but they are considered on duty and therefore required to wear the full uniform unless they leave the Parliamentary Precinct.

[32] Mr. Lapensée testified a second time in rebuttal. He stated that he learned for the first time that secure lockers exist and are available to PPS members in the Centre Block. I was given another USB key with another video. This time, a member leaves his work post to go to the secure lockers room. The video was recorded early in the morning, so the corridors are almost empty of people, which would not be the case at mealtime, according to the witness. The Centre Block has two secure rooms. One is accessible via a key obtained from a break room, and the other must be opened by a security officer, who must be called. The rooms contain a certain number of secure lockers, but not all of them are available as some are reserved. The room has limited space, so that several members cannot change at the same time, for safety reasons, as doing so involves unloading a firearm. Based on that video, 12 to 15 minutes would be needed for a member to store the equipment from the time of being relieved of his or her work post. If several members were there at the same time, more time would be needed.

[33] To be sure, I asked whether the two parties agreed on a specific point, which was that the reality is that the vast majority of members do not remove the equipment during their meal breaks but remain in uniform, with all the equipment. They have break rooms and access to Parliament Hill cafeterias, and they can go to Sparks and Queen streets from Elgin to Kent streets to eat, shop, bank, etc. They cannot go outside the Parliamentary Precinct in uniform, which excludes the Rideau Centre, the ByWard Market, and the rest of the city.

[34] Mr. McDonell testified about his understanding of the agreement signed in 2014. He was the signatory for the employer, and he negotiated it with Mr. Lapensée. He said that he was surprised by the grievances in this case because, according to him, the agreement clearly stated that there could be no more grievances about storing firearms.

[35] In cross-examination, Mr. McDonell acknowledged that the meal break was not mentioned in the discussions that led to the agreement. Nor did he remember whether

overtime shifts were discussed at that time. He stated that the discussions were primarily about the time to be paid to allow members to put on and remove their equipment, to reach the lump-sum compromise.

V. Summary of the arguments

[36] The parties agreed that the bargaining agent would present its arguments first, even though the arguments began with the employer's objection to the adjudicability of the grievance.

A. For the grievors

1. Preliminary objection

[37] The bargaining agent pointed out that despite the employer's argument that the 2014 agreement covers these grievances, Mr. McDonnell agreed that the problem the agreement resolved was the time spent before and after regular shifts donning and removing the uniform and equipment. The discussions about the grievances, particularly on the responses at the different levels of the grievance process, did not address overtime. It is clear that the agreement simply does not address this issue.

[38] As for the meal-break grievance, the 2015 directive resulted in a change to members' working conditions, as seen in the November 2015 policy. Unlike the older policy, members cannot leave the Parliamentary Precinct in uniform. Therefore, they must spend time donning and then removing the equipment if they want to leave the Parliamentary Precinct during a meal break, which the 2012 grievances and, therefore, the 2014 agreement did not consider.

2. The meal-break grievance

[39] The bargaining agent referred me to a decision rendered on a grievance between the House of Commons and detection employees represented by the Public Service Alliance of Canada. The grievance was about the time needed to remove and store a protective vest. The decision maker at the final level of the grievance process found in the employees' favour as follows: "[translation] ... the time spent meeting the employer's requirements during a time when the employee is not working should be included in the services rendered and should be paid accordingly." I note that no remedy is proposed; it is left to the parties' discretion.

[40] The bargaining agent's main argument is that the members remain captive

during their meal breaks. Given the time required to change, they remain in full uniform, with their earpieces connected; therefore, they are constantly vigilant. In fact, their usual work is vigilance, which continues during their meal breaks. As they are in uniform, visitors and parliamentarians see them as resources that can be called on as needed.

[41] Additionally, according to the employer's uniform policy, any officer can visually inspect members' uniforms. Once again, therefore, they are under the employer's control during their meal breaks.

[42] The bargaining agent cited the provision of the *Criminal Code* that states that a public officer may possess a firearm "... for the purpose of the public officer's duties or employment ...". Consequently, if members carry their firearms during their meal breaks, they remain on duty.

[43] The employer's arguments are not valid. It claims that members can use break rooms, where they will not be disturbed. They can go to neighbouring restaurants. Finally, they can use secure lockers to store their restricted equipment.

[44] According to the bargaining agent, each of those solutions confirms that members' mealtime is not their own. In the break room, they are near the workplace. They remain vigilant in case they are called on to intervene. If they go to a restaurant, they are visible as peace officers, with the resulting expectations from the public. If they use the security lockers, the time required to properly store the equipment is not theirs but the employer's, as the storage measures are its requirement.

B. For the employer

1. Preliminary objection

[45] The employer claims that the grievances were already resolved by the 2014 settlement agreement. The overtime grievance was withdrawn following an express provision in the agreement.

[46] The meal-break grievance is also covered by that agreement, as the main issue is the secure storage of firearms. However, the 2014 agreement clearly states that the bargaining agent shall not file any more grievances about firearms storage.

2. The meal-break grievance

[47] According to the employer, the argument that members are “captive” during the meal break is based on four things, as follows: they must wear their uniforms and equipment or take the time to change, their radio earpieces must remain connected, they remain available during their meal breaks, and they are required to perform duties (answer questions) during their breaks.

[48] In fact, the employer claims that members are not “captive” during their meal breaks. Yes, they must remain in full uniform or remove it during meal breaks. Even in uniform, they are free to move about and are not under the employer’s management or control.

[49] The bargaining agent claims that because the uniform can be inspected during a meal break, members remain under the employer’s control and therefore are entitled to be paid. According to the employer, wearing the uniform appropriately is its normal expectation. That requirement relates to its reputation. Similarly, employees cannot say just anything on social media about their employer, even outside working hours, under the penalty of disciplinary sanctions. Outside time is not paid, but nonetheless, employees remain somewhat responsible to their employer.

[50] Members must make a choice with respect to their meal breaks. Either they move about freely within the Parliamentary Precinct, wearing their full uniforms, or they take it off to leave the Parliamentary Precinct. The Precinct covers a fairly large area with many commercial, food, and sports establishment. If they choose to leave it, members have several rooms where the equipment can be securely stored.

[51] As for the earpiece that must be connected, the evidence showed that the employer does not impose any such obligation or any threat of disciplinary sanctions if it is not connected. There is no operational need or expectation about it. There is no expectation that members remain available during their meal breaks.

[52] Finally, as for any imposition by the public or parliamentarians, the witnesses referred to very short conversations and to the possibility for an interrupted member to refer a person to a member who is working.

[53] According to the employer, the collective agreement, which is the main source of the employees’ and employer’s rights and obligations, does not support the members’ claims. Clause 20.07 states that the meal break is not paid unless the

employee must remain at his or her workplace.

VI. Reasons

A. Preliminary objection

[54] The bargaining agent cited *Alberta Union of Provincial Employees v. Alberta Health Services*, [2017] A.G.A.A. No. 39 (QL), to show that extrinsic evidence can be accepted to help interpret an agreement. According to that reasoning, the fact that the discussions around concluding the 2014 agreement never dealt with overtime or mealtime makes both grievances in this case admissible.

[55] For its part, the employer presented jurisprudence that showed that generally, when grievances are withdrawn following a settlement, they cannot be filed again. In *Fournier v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 65, the adjudicator wrote the following:

...

[22] Once withdrawn from adjudication, a grievance cannot be revived; nor can another grievance about the same matter be filed. As stated, as follows, in C.U.P.E., Local 207 v. City of Sudbury (1965), 15 L.A.C. 403 at 403 and 404:

... The authorities are legion that a board of arbitration has no jurisdiction to consider or, alternatively, that the grievor and his or her union representatives are barred and estopped from processing a grievance which is identical to a former grievance filed by the grievor and either withdrawn, abandoned or settled, or determined by a board of arbitration. Some of these cases proceed on the basis of estoppel and others on the principle of *res judicata*, but regardless of the approach taken, the authorities are overwhelming that a board of arbitration has no jurisdiction to entertain such a second grievance (see *Re United Electrical Workers, Local 525, and Ferranti-Packard Electric Ltd.* (1962), 12 L.A.C. 216, and *Re United Steelworkers, Local 2251 and Algoma Steel Corp. Ltd.* (1964), 14 L.A.C. 315). There is also substantial authority to support the proposition that an arbitration board has no jurisdiction to determine a grievance which, though not identical in wording and form to a former grievance lodged by the same grievor, is identical in substance (see *U.A.W., Local 456 and Mueller, Ltd.* (1961), 12 L.A.C. 131 (noted only) and *Re U. A. W. , Local 1285, and American Motors (Canada) Ltd.* (1964) 14 L.A.C. 422)....

[23] Although arbitrators have expressed different opinions

over the years as to the reasons for the non-arbitrability of a grievance identical to one already settled, decided or withdrawn, the fundamental principle described in C.U.P.E., Local 207 has been adopted and affirmed in recent cases (see, for example, Re Cuddy Food Products and United Food and Commercial Workers International Union, Locals 175 & 633 (2003), 121 L.A.C. (4th) 56, and Apex Metals Inc. v. Canadian Auto Workers, Local 1524 (1997), 64 L.A.C. (4th) 289.)

[24] In my view, regardless of whether the principle is ascribed to the operation of estoppel or res judicata, its effect is critical. The objective of the grievance process is the final resolution of disputes. That objective cannot be achieved if a matter is litigated and relitigated, a settled grievance is refiled or a withdrawn grievance is revived. In labour relations, the parties have an ongoing relationship that necessitates predictability and finality in the grievance process for effective decision-making [sic]. There can be no certainty to the process without finality.

...

[56] I think that it is appropriate to distinguish between the two grievances. The grievance on the time to don and take off equipment before and after overtime shifts was filed in 2012. The parties chose to not deal with it directly in their 2014 agreement but instead to provide for a payment of a lump sum, regardless of the time required or the type of shift. The agreement's "Whereas" refers to "scheduled shifts", but the directive of February 26, 2015, issued jointly by Mr. McDonnell and Mr. Lapensée, refers to "[translation] ... time required, before and after shifts ..." without specifying further the nature of the shifts. The agreement clearly states that the underlying grievances shall be withdrawn once the agreement is signed. I find it well established that a grievance resolved by a settlement (which states that the grievance shall be withdrawn) cannot be filed again.

[57] I find that the employer is correct in stating that the grievance on the time needed to put on and take off equipment before and after overtime shifts is not adjudicable.

[58] However, the grievance involving the uniform issue during meal breaks is not covered by the 2014 agreement. The issue was not the subject of a grievance and was not considered in that agreement as it arose from a new rule set out by the employer, namely, that members cannot leave the Parliamentary Precinct in uniform with their equipment, which they must store securely. Therefore, the merits of this grievance

must be determined.

B. The meal-break grievance

[59] The bargaining agent cited jurisprudence in support of its claim that members are captive, mobilized, or tied to their duties by the employer, which labour arbitrators have acknowledged as time that must be paid.

[60] The facts must be distinguished. I agree that employees who are required to remain available to meet the employer's needs outside their work hours are entitled to some compensation (*Association of Justice Counsel v. Treasury Board (Department of Justice)*, 2015 PSLREB 31; affirmed in *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55). Similarly, being on standby and being required to be able to react immediately provides entitlement to compensation (*Olynyk v. Treasury Board (Solicitor General)*, PSSRB File No. 166-02-14668 (19850501), [1985] C.P.S.S.R.B. No. 122 (QL)). For those working aboard ships or for whom their work keeps them far from home, the jurisprudence is contradictory (*Canada (Attorney General) v. Paton*, [1990] 1 F.C. 351 (C.A.); *Hutchison v. Treasury Board (Department of National Defence)*, 2015 PSLREB 32; *Martin v. Canada (Treasury Board)*, [1990] F.C.J. No. 939 (C.A.)(QL)), and I note that the collective agreement wording is paramount. Finally, the bargaining agent cited *Steinberg Inc. v. United Food and Commercial Workers International Union, Local 486*, [1985] O.L.A.A. No. 5 (QL), in which the arbitrator found that a video presented outside work hours provided entitlement to compensation because it amounted to overtime.

[61] For its part, the employer submitted jurisprudence showing that overtime pay is paid only when the employer expects overtime. The provisions of the relevant collective agreement must be consulted. In *Annapolis Valley District Health Authority v. Nova Scotia Government and General Employees Union*, 177 L.A.C. (4th) 218 (NSLRB), nurses had to remain in their workplace during their break times in case they were needed. The collective agreement stated that they would be paid only if they worked. The bargaining agent claimed that their required presence entitled them to compensation. The arbitrator found for the employer. That decision somewhat contradicted *Olynyk*, in which being available provided entitlement to compensation.

[62] I believe that it is appropriate to distinguish between working hours, which include meal breaks, and hours outside work. Employees who cannot enjoy time

outside work because they must be ready to report on standby are entitled to certain compensation. However, employees who may be called upon to work during their meal breaks have, in certain cases, been recognized as being entitled to compensation (*Olynyk*), but not always (*Annapolis Valley, Elizabeth Centre v. Ontario Nurses' Association*, [2009] O.L.A.A. No. 107 (QL)).

[63] In *Nova Scotia (Attorney General) v. P.A.N.S.*, [1993] N.S.L.A.A. No. 8 (QL), 32 L.A.C. (4th) 47, an arbitration board drew the following principles from the jurisprudence. If an employer directs an employee to perform an activity, the employee is at work and is to be paid at the appropriate rate. If an employer gives an employee the opportunity to perform an activity, compensation will depend on the circumstances. Finally, an employee may voluntarily perform an activity. In such cases, compensation is not guaranteed, again, depending on the circumstances.

[64] The jurisprudence cited emphasizes the importance of the collective agreement's terms in settling the compensation debate. The collective agreement in this case states that members who cannot leave their workplaces during their meal breaks shall be paid. The issue is whether being able to use their time as they wish, but in uniform, is time that belongs more to the employer or the employee.

[65] I must say that the evidence about the time needed to take off and put on the uniform during the lunch break was somewhat contradictory. Depending on the circumstances, changing and securely storing restricted equipment took 25, 2, or 12 minutes.

[66] Based on all that I have seen and heard, I draw the following factual conclusions. Putting on or taking off the equipment takes a certain amount of time. Some things require special handling; the firearms and clips must be unloaded and stored in a secure locker with the baton, pepper spray, and radio. Those secure lockers are in designated rooms, access to which takes a certain amount of time. The rest of the uniform (bulletproof vest, handcuffs, flashlight, and gloves) must be stored in a safe place.

[67] I do not think that it takes 25 minutes unless the building on Wellington Street is used. I do not think that 2 minutes is enough. I think that it probably takes at least 10 minutes to take off the uniform and at least another 10 minutes to put it back on, meaning that at least 20 minutes of mealtime are lost. The parties agreed that

members generally choose to keep their uniforms on during their meal breaks.

[68] I note that the employer issued a directive in 2015 requiring that members wear their uniforms in full or not at all and that they are not to leave the Parliamentary Precinct when wearing it.

[69] The issue to decide is whether that means that members are entitled to be paid during the meal breaks or to receive a bonus for the time needed to don and remove their equipment.

[70] The unpaid meal break is part of the collective agreement. To succeed, the bargaining agent must convince me that by requiring employees to wear their full uniform and to securely store it when leaving the Parliamentary Precinct, the employer violated the collective agreement. Otherwise, I do not see under what authority I can order the employer to pay compensation that is not provided in the collective agreement or in any other agreement between the parties (see *Maple Leaf Fresh Foods Brandon v. United Food and Commercial Workers, Local 832*, [2010] M.G.A.D. No. 30 (QL), 196 L.A.C. (4th) 336).

[71] The collective agreement states the following with respect to the meal break:

...

20.07 When, because of operational requirements, an employee is required to remain at their place of work during their full shift, the employee will be paid for one (1) hour meal period because the employee is unable to leave their work place. The meal period will be subject to the applicable overtime provisions.

(a) An employee's meal period may be staggered at different times during the workday.

(b) A meal period shall be provided as close to the mid-point of the shift as possible.

...

[72] The bargaining agent's main argument is that working conditions changed with the 2015 directive. It is true that the employer requires that the uniform be worn in full unless the restricted equipment is securely stored. It is also true that wearing the full uniform prevents leaving the Parliamentary Precinct. But have working conditions changed?

[73] When members leave their posts on break, they are not working. They can turn off their earpieces. They can be alone in a break room, browse social media, play video games, talk to friends, or go to a bank. In short, their time is their own; it is not the employer's.

[74] The bargaining agent tried to show that wearing the uniform means that that time is now the employer's. The uniform is being worn; therefore, the public and parliamentarians have performance expectations, the employee is captive within the Parliamentary Precinct, and action must be taken if there is an emergency.

[75] Mr. Vandal testified about the employer's expectations about the dress and behaviour of employees during their meal breaks. The uniform must be worn in full within the Parliamentary Precinct, and even on a meal break, an officer may visually inspect it. However, there is no obligation to turn on the earpiece and thus react in the event of an emergency. If a member intervenes in an emergency, he or she will be paid as though he or she is at work.

[76] The collective agreement states that the meal break shall be paid if employees are unable to leave their workplace. To find in the bargaining agent's favour, I would need to consider the entire Parliamentary Precinct as the "workplace". However, given the context, it is clear that the workplace must be seen as the post at which a member is working. Members do not carry out their duties throughout the Parliamentary Precinct but only in the spaces of Parliament Hill, where the members of the House of Commons are present. Consequently, unless they are in the service of the House of Commons, they leave their workplaces when they go to Sparks or Queen streets. They are no longer working if they turn off their earpieces and sit in a break room. I agree with the employer that wearing the uniform does not give them additional duties during the meal break. If they are asked a question, the response can be brief and quick, such as a referral to a member at work.

[77] Members cannot use their mealtimes entirely as they wish, due to the uniform. However, their break time is not the employer's time. The collective agreement states that the meal break is within the shift and is not paid. In general, employees governed by a collective agreement are relatively captive. A half-hour break does not allow them to go far, but it is not paid.

[78] Members have a one-hour break during which they are not working. Once again,

they can use the time as they wish. They must continue to wear the uniform, but the uniform is part of their reality. All employees must comply with the dress code for their workplace, which applies during the meal break. It is true that the PPS uniform is particularly heavy and cumbersome, which is why the employer signed the agreement for the lump sum to cover preparations before and after shifts. As I find that the members are in control of their time during the meal break, I am not prepared to order the payment of an additional amount.

[79] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VII. Order

[80] The employer's preliminary objection is allowed in part. I do not have jurisdiction to address the time needed to put on and take off the uniform and equipment before and after overtime shifts. I have jurisdiction to hear the grievance in file 466-HC-412, about meal breaks.

[81] Grievance 466-HC-413 is dismissed for lack of jurisdiction.

[82] Grievance 466-HC-412 is dismissed.

August 14, 2018.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**