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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

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

BETWEEN

BHUWANI PAUDEL, GALE BRAVENER, FRASER NEAVE, ALAN ROWLINSON, BARRY SCOTLAND, AND TONIA VANKEMPEN

Grievors

and

TREASURY BOARD
(Department of Fisheries and Oceans)

Employer

Indexed as
Paudel v. Treasury Board (Department of Fisheries and Oceans)

In the matter of individual grievances referred to adjudication

Before: Ian R. Mackenzie, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Sara Guillaument-Fitzgerald, representative

For the Employer: Amita Chandra, counsel

Decided on the basis of written submissions, filed October 8 and 29 and November 1, 2019.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] The grievors work at the Department of Fisheries and Ocean's (DFO) Sea Lamprey Control Centre (SLCC) in Sault Saint Marie, Ontario. Their grievances relate to overtime claimed in 2011. Two collective agreements between the Professional Institute of the Public Service of Canada ("the bargaining agent" or PIPSC) and Treasury Board ("the employer") are at issue in these grievances: the Architecture, Engineering and Land Survey (NR) Group agreement ("the NR agreement") for Bhuwani Paudel, and the Applied Science and Patent Examination (SP) Group agreement ("the SP agreement") for Gale Bravener, Fraser Neave, Alan Rowlinson, Barry Scotland, and Tonia VanKempen (together with Mr. Paudel, "the grievors").

[2] The grievances were referred to adjudication on December 13, 2013. An oral hearing was scheduled in 2019. The hearing was postponed due to discussions between the parties. The assigned Board Member subsequently determined that the grievances could proceed by way of written submissions. The written submissions process was completed on November 1, 2019.

[3] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40; *EAP*) also came into force (SI/2014-84). Pursuant to s. 393 of the *EAP*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *EAP*.

[4] 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, changing the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the

Federal Public Sector Labour Relations and Employment Board Act, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

II. The issue and the collective agreement provisions

[5] The issue in these grievances is whether the employer breached the SP and the NR collective agreements when it denied overtime pay for the grievors. The six grievances are fundamentally the same. Each differs in the number of days worked and the amount of overtime claimed. For ease of reference, Mr. Paudel's grievance reads in part as follows:

> *… I am compelled to grieve the employer's decision of approximately November 1, 2011 to deny my claim for overtime pay for work performed on weekends during the month of September 2011 … This decision is contrary to past practice and to Article 9.01 of the PIPSC NR Group Contract and all other applicable articles of the relevant collective agreement. This grievance is continuing.*

[6] The final-level reply to Mr. Paudel's grievance reads, in part, as follows:

> …
>
> *On February 25, 2011 you were advised by the Regional Director of Science that from now on you were deemed a shift worker throughout the field season. Articles 8.07 to 8.20 of your collective agreement govern the application of shift work. Based on your field schedules and timesheets for the dates mentioned in your grievance, I can only conclude that these provisions were respected.*
>
> *The dates you cite in your grievance were scheduled as days of work (regularly scheduled shifts) and therefore you are not entitled to overtime for these days. Overtime is defined in your collective agreement as "work required by the employer to be performed by the employee in excess of the employee's daily hours of work". As a shift worker you are not entitled to overtime compensation for normal hours of work on Saturdays and/or Sundays when these days are considered work days as part of a regular shift schedule. If you had worked in excess of your daily 7.5 hours or if you had worked on Saturdays and/or Sundays not part of a regular shift schedule, then you would have been compensated overtime at the appropriate rate. In addition, you may be entitled to shift and weekend premium pay as per article 8.19 and 8.20.*
>
> *While I acknowledge that there was a practice in place whereby overtime used to be paid in similar situations, I can only conclude that this practice was erroneous. As such, there was no other option for management but to correct this practice which was done*

> *on February 25, 2011. Furthermore, all employees were provided with reasonable notice of management's intent to correct the situation and comply with the provisions of the collective agreement.*
>
> *As a result of the foregoing, your grievance and corrective actions requested are denied.*
>
> *Please note that as stated above, articles 8.07 to 8.20 of your collective agreement govern the application of shift work. An analysis is currently being undertaken to assess if you were appropriately paid within the "shift work" provisions of your collective agreement. Regional Management will proceed with necessary corrections if applicable and you will be advised accordingly.*

[7] The "Hours of Work" article of the SP agreement (article 8) contains the following provisions relevant to these grievances:

> …
>
> *Clauses 8.01 through 8.06 shall not apply to employees on shift work.*
>
> *Clauses 8.07 through 8.20 shall apply only to employees on shift work.*
>
> ***General***
>
> ***8.01*** *For the purpose of this article, a week shall consist of seven (7) consecutive days beginning at 00:01 hours Monday and ending at 24:00 hours Sunday. The day is a twenty-four (24) hour period commencing at 00:01 hours.*
>
> ***Non Shift Work***
>
> ***8.02*** *The scheduled work week shall be thirty-seven decimal five (37.5) hours and the scheduled work day shall be seven decimal five (7.5) consecutive hours, exclusive of a meal period, between the hours of 06:00 and 18:00. The normal work week shall be Monday to Friday inclusive.*
>
> …
>
> ***Days of Rest***
>
> ***8.04*** *An employee shall be granted two (2) consecutive days of rest during each seven (7) day period unless operational requirements do not so permit.*
>
> …
>
> ***Shift Work***
>
> ***8.07*** *"Shift schedule" means the arrangement of shifts over a given period of time not exceeding two (2) consecutive months and, where practical, for a minimum period of twenty-eight (28) consecutive days.*

> ***8.08*** *For employees engaged in shift work, the hours of work shall average thirty-seven decimal five (37.5) hours per week over the period of a shift schedule exclusive of meal periods.*
>
> ***8.09*** *An employee shall be granted at least two (2) consecutive and continuous days of rest during each eight (8) calendar day period unless operational requirements do not permit.*
>
> ***8.10*** *In computing the hours of work within a shift schedule, leave and other entitlements will be administered in accordance with the Memorandum of Agreement, Appendix "B"* [conversion of days to hours].
>
> …
>
> ***8.12*** *In the scheduling of shift work the Employer shall arrange shifts so that:*
>
> ***(a)*** *employees shall rotate through the various shifts in such a manner that the requirements for working night shifts, evening shifts and weekends will be shared on an equitable basis by all employees covered by the shift schedule, to the extent that operational requirements will permit;*
>
> ***(b)*** *an employee's shift shall not be scheduled to commence within fifteen (15) hours of the completion of the employee's previous shift;*
>
> *and*
>
> ***(c)*** *employees shall not be scheduled to work less than seven (7) hours nor more than nine (9) hours in any one (1) shift.*
>
> …
>
> ***8.14***
>
> ***(a)*** *In order to help in the consideration of the wishes of the employees concerned, a provisional shift schedule shall be prepared by the Employer and shall be posted at least two (2) months in advance.*
>
> ***(b)*** *Provisional and final shift schedules shall indicate the working hours for each shift. The final shift schedule shall be published at least three (3) weeks prior to the commencement of the said schedule and every effort shall be made by the Employer to ensure that scheduled days of rest are not changed.…*
>
> …
>
> ***8.19*** *An employee working a regularly scheduled shift will receive a shift premium of two dollars ($2) per hour for each hour worked, including overtime hours, between 1600 and 0800.*

[8] The NR agreement, also at article 8, has identical language to the SP agreement, except for clause 8.09, which provides for at least two consecutive and continuous

days of rest during each eight calendar-day period, unless operational requirements do not permit.

[9] A "day of rest" is defined in the SP and NR agreements as "… a day, other than a designated paid holiday, on which that employee is not ordinarily required to perform duties other than by reason of the employee being on leave …".

[10] The overtime provision in the SP agreement applies to both non-shift workers and shift workers, and reads as follows:

> …
>
> ***9.01*** *When an employee is required by the Employer to work overtime, the employee shall be compensated as follows:*
>
> ***(a)*** *on the employee's normal work day, at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours of overtime worked and at the rate of double (2) time for all hours of overtime in any contiguous period in excess of the first (1st) seven decimal five (7.5) hours;*
>
> ***(b)*** *on the employee's first (1st) day of rest, at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours of overtime worked and at the double (2) time rate for each contiguous hour thereafter;*
>
> ***(c)*** *on the employee's second (2nd) or subsequent day of rest,*
>
> ***(i)*** *at the basis of double (2) time for each hour of overtime worked. Second (2nd) or subsequent day of rest means the second (2nd) or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest;*
>
> ***(ii)*** *notwithstanding paragraph (b) and subparagraph (c)(i) above, if, in an unbroken series of consecutive and contiguous calendar days of rest, the Employer permits the employee to work the required overtime on a day of rest requested by the employee, then the compensation shall be at time and one half (1 1/2) for the first (1st) day worked.*
>
> …

[11] The NR agreement has identical language.

[12] The grievors request the following remedy:

- a declaration that the employer has violated the SP and the NR agreements by failing to pay the grievors overtime for work performed on days of rest; and
- an order that the employer pay the grievors for work completed on Saturdays and Sundays at the applicable overtime rates.

[13] In the alternative, the grievors request the following remedy:

- a declaration that the employer has violated the SP and the NR agreements by scheduling work in contravention of the terms of the collective agreement and by failing to pay the grievors overtime for work completed on their days of rest;
- an order that the employer pay the grievors covered by the SP agreement at the appropriate overtime rate for all work performed in excess of six days in an eight-day period; and
- an order that the employer pay the grievor covered by the NR agreement at the appropriate overtime rate for work performed when he worked more than five days in a row.

III. Summary of the evidence

[14] The parties prepared an agreed statement of facts and an agreed book of documents. In addition, they each provided additional facts and documents to support their submissions. I have summarized the relevant facts and documents in this section.

[15] The work of the SLCC is summarized as follows in the agreed statement of facts:

> …
>
> 6. *Sea Lampreys are primitive invasive fish native to the Atlantic Ocean. They are parasitic animals who attach themselves and feed on the blood and body fluids of other fish. They entered the Great Lakes from the Atlantic Ocean due to the construction of shipping canals. They were first observed in Lake Ontario in the 1830s. However, Niagara Falls acted as a natural barrier preventing them from moving into the other Great Lakes. In 1919, the Welland Canal was deepened, this resulted in the Sea Lampreys gaining access to the rest of the Great Lakes.*
> 7. *In the 1940s and 1950s, the uncontrolled Sea Lamprey populations in the Great Lakes devastated its commercial fishing industry. This resulted in the United States and Canadian governments undertaking control measures across the Great Lakes.*
> 8. *The Sea Lamprey Control Centre ("SLCC") was established in 1966. It is the Headquarter [sic] of the Sea Lamprey population control program in Canada. The control of Sea Lampreys is done primarily through the use of Lampricides; however, it is also done through barriers and traps.*
>
> …

[16] The grievors held different positions with the SLCC as of the grievances being filed. The agreed statement of facts sets out their general duties as follows:

- Mr. Bravener was in an aquatic science biologist BI-03 position. He oversaw the Adult Assessment Project, which assesses the adult sea lamprey population using traps. He was responsible for supervising a crew consisting of two full time EG-04 technicians and summer-student employees, and he oversaw the trap contractors hired by the department across Ontario.
- Mr. Neave was an aquatic science biologist BI-03 and supervised a crew consisting of two EG-04 technicians, two EG-03 technicians, and two or three summer students.
- Mr. Paudel was a barrier engineering coordinator ENG-04 and supervised one EG-04 employee.
- Mr. Rowlinson was in an aquatic science biologist BI-02 position and was a member of one of the treatment crews. He assisted with the functional supervision of the technicians classified EG-04 and EG-03 and the summer students.
- Mr. Scotland was in an aquatic science biologist BI-02 position and was a member of one of the treatment crews. He assisted with the functional supervision of the technicians classified EG-04 and EG-03 and the summer students.
- Ms. VanKempen was an aquatic science biologist BI-02 and supervised a crew of one technician classified EG-04 and one summer student.

[17] In its submissions, the employer states that these grievors supervise different crews and are responsible for developing the field schedules, assigning daily work, and managing the activities of their respective crews during the field season.

[18] In the winter months, the grievors' schedule is from 9 a.m. to 5 p.m., Monday to Friday, with weekends off. During these months, the employer considers them non shift workers. During the field season, typically between April 1 and October 31, the nature of the grievors' work requires them to travel for extended periods. Mr. Bravener's letter of offer set out the following:

> …
>
> - *Willingness to travel (often to remote locations) for extended periods with accommodations in motels (occasionally in tents).*
> - *While working in the field, there is frequent shift work, occasional overtime and work will be out-of-doors, may be strenuous and conducted under varying climatic conditions. There is [sic] occasional requirement to fly to remote work sites by helicopter.*
>
> …
>
> *… are conditions of employment that you are expected to continue to meet throughout your employment. By accepting this offer, you agree to comply with these conditions.*
>
> …

[19] The letters of offer of Mr. Rowlinson, Mr. Scotland, and Ms. VanKempen contain similar references to "frequent shift work". Those for Mr. Neave and Mr. Paudel do not contain any reference to shift work.

[20] In its submissions, the employer sets out the following process for establishing field schedules. The grievors did not dispute this description:

> …
>
> *29. Prior to each field season, the field supervisors (8 biologists, 1 engineer) of the seven operational units develop field schedules for their respective units that identify periods of work (start and end dates), days of rest, and statutory holidays.*
>
> *30. Draft schedules are* ***developed in advance*** *and presented to Management and Employee Representatives at the March* Local Union-Management Consultation Committee *meetings for review. These are also posted on the SLCC I: Drive for review by the employees. The PSAC and PIPSC representatives request their members to review the schedules and provide comments or concerns.…*
>
> *31. Any concerns are accepted and approved by both the employer and employee. Any subsequent revisions, made necessary by circumstances beyond the employers' or employees' control, are posted on the I:Drive for review and comment.*
>
> *32. Schedule changes are not done in an arbitrary/careless manner. The Supervisors, including the present Grievors, develop the schedules with meticulous care. For example Treatment Supervisors, use considerable thought, relying on their expertise and knowledge of the suite of streams on the treatment list. Their goal is to ensure that all steams proposed for treatment are effectively treated, while still being fiscally prudent.*
>
> *33. All changes are based on legitimate operational constraints. Management tries to give as much notice as possible, however, the reality is, in the field, changes to schedules are due to unpredictable weather changes, such as water flow changes, presence of sensitive species, landowner or First Nations concerns, all of which are genuine operational constraints.*
>
> …
>
> [Emphasis in the original]

[21] On February 25, 2011, Dr. Michelle Wheatley, Regional Director of Science for the DFO's Central and Arctic Region, emailed as follows all DFO employees working at the SLCC and covered by the SP and the NR agreements about their employment status during the field season:

> *For the upcoming and future field seasons (typically April 1 to October 31 but to be confirmed annually), DFO will be implementing a clarification for employees working at the Sea Lamprey Control Centre in Sault Ste. Marie, as noted below.*
>
> *SLCC employees working during the filed season have work schedules that resemble shift schedules, as they are variable and rotational in nature. In order to better reflect this operational reality, effective immediately, SLCC employees will be viewed as shift workers for the duration of the field season. Shift workers are entitled to shift premium pay and weekend premium pay, as per Article 8.19 and 8.20 of the Collective Agreement. Shift workers are not entitled to overtime compensation for their normal hours of work on Saturdays and/or Sundays if these days are considered work days as part of their regular shift schedule.*
>
> *PIPSC has been made aware of management's intent to take this step as part of ensuring consistent and appropriate implementation of SLCC employees' work schedules during the field season.*
>
> …

IV. Summary of the arguments

[22] I have reviewed the parties' submissions and have set out a condensed version of them in this section.

A. For the grievors

[23] Whether the grievors are shift workers or non shift workers is a question of fact. They take the position that the facts in this case do not support the employer's position that they are shift workers.

[24] Collective agreement interpretation requires that the agreement be read as a whole. Therefore, in determining whether an employee is truly a shift worker, rather than a non shift worker, it is important to compare how employees are scheduled to work in light of the applicable terms of the collective agreement.

[25] Both the SP and the NR agreements contemplate employees working days and employees working shifts (non shift and shift). Although there is no definition of "shift", clause 8.12 of both agreements addresses the arrangement of shifts. It provides that employees are to rotate through the shifts in such a manner that the requirements for working night shifts, evening shifts, and weekends will be shared equitably by all the employees covered by the shift schedule.

[26] Moreover, clause 8.12 provides that shifts are not to be less than 7 or more than 9 hours. Although the word "shift" is not defined in either collective agreement, it is clear that the parties intended that the shift-work provisions were to apply to employees working on a rotating basis.

[27] This interpretation of "shift work" is supported by the decision in *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at paras. 63 and 64. Similar to the collective agreement in question in that decision, the SP and NR agreements contemplate the existence of more than one period of work during a 24-hour cycle, as they provide for a premium for shifts worked between 4 p.m. and 8 a.m.

[28] The work performed by the grievors during the field season, even during field trips, does not have to be completed over periods that require the 24-hour cycle to be filled by 2 or more employees. Nothing in the grievors' schedules resembles "shift work" as it is defined in the relevant collective agreements. None of the grievors work evenings or nights on a rotating basis. No one relieves them from their shifts after 7.5 hours of work.

[29] In addition, the employer did not adhere to the other shift-work provisions of the SP and NR agreements. Specifically, it did not provide shift schedules in accordance with clause 8.07 of both agreements as it did not provide arrangements of shifts for a given period not exceeding two consecutive months. Rather, shift schedules were created for the whole seven months of the field season.

[30] The employer also failed to grant at least two consecutive and continuous days of rest during each eight-calendar-day period to the grievors as required by clause 8.12 of the SP agreement, and it failed to grant at least two consecutive and continuous days of rest during each seven-calendar-day period as required by clause 8.12 of the NR agreement.

[31] The employer also failed to provide provisional and final shift schedules indicating the working hours for each shift as required by clause 8.14(b) of the NR agreement. The schedules that were provided did not provide the start time and end times of the shifts being worked. The employer further failed to provide the final shift schedule three weeks before the commencement of the shift schedules as required by clause 8.14(b) of both agreements. Therefore, even by its actions, the employer has not treated the grievors as shift workers.

[32] Moreover, all the grievors who were hired before the change in status were not hired as shift workers but rather as day workers. The evidence does not support the DFO's position that the grievors are shift workers during the field season. Rather, the evidence supports that they are non shift workers who have been asked to work weekends by their employer due to the need to complete more work during certain periods of the field season.

[33] It is not an appropriate use of management rights to change employees' employment status throughout the year, to circumvent their entitlements under the collective agreement.

[34] In the alternative, if the employer could deem the grievors shift workers for the field season, then it violated the applicable collective agreements by failing to give them days of rest or to pay them overtime for work performed on those days, as required by the terms of the collective agreement.

[35] The employer attempted to change the normal schedule of the grievors by scheduling them for up to 19 days of work without a day of rest. A number of cases have held that an employer cannot simply schedule employees and ignore their normal hours of work as set out in the relevant collective agreement; see *Printing Specialties and Paper Products Union, Local 466 v. Interchem Canada Ltd.* (1969), 21 L.A.C. 46, *St. Clair Chemical Ltd. v. Oil, Chemical and Atomic Workers, Local 9-14*, [1973] O.L.A.A. No. 164 (QL), *Ottawa Citizen v. Ottawa Newspaper Guild, Local 205* (1978), 17 L.A.C. (2d) 342, and *Babb v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2000 PSSRB 54.

[36] In *Babb*, the collective agreement provided that an employee "shall not" be scheduled to work more than 52.5 hours without at least 2 consecutive days of rest. However, the employer implemented a shift schedule of 7 days of work with 3 days of rest, and then 7 days of work with 4 days of rest. The adjudicator found that the collective agreement provision was "clear and mandatory". To waive the requirement set out in the collective agreement, specific language in that agreement was required.

[37] The underlining principle of the overtime provision in the collective agreement is intended to discourage the employer from scheduling employees to work on their days of rest and to allow employees to enjoy at least some of them. This is done by penalizing the employer through premium payments when it requires employees to

work on their rest days. Therefore, if the employees are required to work on their days of rest, they should be compensated according to the overtime provisions of the applicable collective agreement.

[38] Unlike the grievors in *Keen v. Treasury Board (Department of Fisheries and Oceans)*, 2019 FPSLREB 81, those in this case are subject to the same collective agreement language. If the employer wanted employees under the SP and NR agreements to be governed by the provisions set out in Appendix "I" of the Engineering and Scientific Support Group collective agreement, then it should have bargained for such language during collective bargaining.

B. For the employer

[39] The employer submitted that SLCC employees do not fit within the definition of "non-shift" workers as that term is defined in the applicable collective agreements, given that field operations are variable and rotational in nature. Departmental management consulted with corporate labour relations and the Treasury Board Secretariat and was advised that SLCC employees cannot receive the pay provisions of both "non-shift" workers (day workers) and "shift" workers. In short, they could not receive overtime pay for their hours worked on weekends as well as shift premium pay and weekend premium pay.

[40] The employer referred me to *Keen* for a description of the challenges in scheduling during the field season (at paragraphs 7 to 9) as follows:

> *[7] Factors influencing crew deployment include weather conditions (especially temperature, since the lampricide is less effective at temperatures of less than 5 degrees Celsius), facility of access to treatment sites, current flow, and geographical distance from Sault Ste. Marie (which is the headquarters for these operations). Two days of travel (one way) are usually needed to reach the furthest field sites, located in upstate New York.*
>
> *[8] It is readily apparent that as much as one would like to draft a precise and comprehensive schedule covering the entire field season, conditions can change in the blink of an eye, and flexibility is necessary. A draft schedule is drawn up in late February or early March for review by both management and employees. Concerns are usually minor, and the necessary changes are reviewed, consented to by both sides, and implemented before the final plan is put forward in March.*

> *[9] For the crews, the winter schedule of Monday to Friday, 9 to 5, turns upside down when fieldwork commences in April. As many as 19 or 20 consecutive workdays are scheduled to allow for travel, setup, construction or maintenance, and perhaps treatment and monitoring. This is followed by as many as 8 to 10 days of rest, depending upon the circumstances. Unpredictable weather frequently varies the durations. The periods are often extended, for example, to complete a work session in a remote location so as to avoid having to return there later. Flexibility is an important characteristic of working in the field.*

[41] During the field season, the grievors' shifts are variable and rotational. There are at least two shifts that cannot be covered by one employee working. Also, the grievors are required to be away from headquarters and remain on site for the duration of the field season. As a result, their work schedules fall outside the definition of "non-shift" workers as set out in clause 8.02 of each collective agreement.

[42] The Board's jurisdiction is subject to s. 229 of the *Act*. That section provides that a Board decision "… may not have the effect of requiring the amendment of a collective agreement …". The Board's jurisdiction is limited to the interpretation and application of the collective agreement.

[43] The right to assign work and the decision to designate employees as shift workers is entirely within the scope of the employer's management rights. It need not consult or reach agreement to do it; see *Hodgson v. Canada (Attorney General)*, 2006 FC 428.

[44] The employer's decision to designate the grievors as "shift workers" in 2011 was not arbitrary. It carefully considered and conducted a thorough analysis of the type of work, issues, and application of several collective agreements.

[45] Principles of collective agreement interpretation require the words to be read in their entire context, in their plain and ordinary sense, and harmoniously with the scheme of the agreement, its purpose, and the intention of the parties; see Brown & Beatty, *Canadian Labour Arbitration*, 5th Edition, at paragraph 4:2110.

[46] Both collective agreement provisions refer to "non-shift work" as essentially comprising a 37.5-hour week and a 7.5-hour workday, and the mandatory days are Monday to Friday, with Saturday and Sunday as days of rest. Clauses 8.07 to 8.20 set the framework for "shift work". While there is no definition of "shift work", the

framework is found at clause 8.12. Furthermore, it is subject to legitimate operational requirements. A purposive review of the framework reflects the deliberate intent of the parties to provide a working mechanism that is fair to both of them, practical, and adaptable to different work paradigms.

[47] Alternatively, any ambiguity with respect to the shift-work paradigm or its specific application to SLCC employees is now a moot point. The clarification in *Chafe* was recently affirmed in *Keen*, in which the Board Member, considering the same work location (at paragraphs 65 to 69), decided as follows:

> *[65] From approximately November to approximately April every year, by anyone's definition, the grievors are day workers and not shift workers. They lead a 9-to-5, weekends-off existence. The purpose of their work during the winter months is to come up with a battle plan to combat the evil and ubiquitous sea lamprey during the field season. Everyone on both sides of the table, management and employees, knows how important a flexible field schedule is to the effective accomplishment of this important task. Appendix I is an essential tool, and one that is mutually acceptable to both management and employees in effectively planning and implementing a sea lamprey control program.*
>
> *[66] For a day worker, Saturday and Sunday are the normal days of rest. If a day worker is obliged to work on a Saturday or a Sunday, the collective agreement explicitly spells out the overtime that is payable.*
>
> *[67] Shift workers are not day workers. In that respect, counsel for the employer supplied the decision in* Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112. A useful definition of "shift work" appears as follows at paragraph 61:*
>
> > [61] … the Canadian Oxford Dictionary (Toronto, 1998) defines "shift work" as "work conducted in often variable periods independent of a standard work day, usually at night (tired after a month of shift work)". The website for the Sloan Work and Family Research Network of Boston College provides the following definitions of "shift work":
> >
> > > *Shift work refers to a job schedule in which employees work hours other than the standard hours of 8 a.m. to 5 p.m. or a schedule other than the standard workweek – Monday through Friday in the United States (Grosswald, 2004, p.414).*
> > >
> > > *In general, the term 'shift work' is quite vague and includes any organization of working hours that differ from the traditional diurnal work period; sometimes it is a (sic) synonymous of irregular or odd working hours (Costa, 2003, p 264).*

> *…most studies on shiftwork classify shift workers as anyone working outside regular daytime hours (i.e. between approximately 7 a.m. and 6 p.m., Monday through Friday). Under these definitions, shift workers include all people working evening shift, night shift, rotating shifts, split shifts, or irregular or on-call schedules both during the week and on weekends (Institute for Work & Health, n.d.).*
>
> *Shiftwork is defined as work outside day hours, Monday to Friday. It includes weekend work, and jobs which start substantially before 7 am and finish at 7 p.m. or later (Wallace, n.d.).*
>
> *The standard workday unfolds during an 8-5 timeframe. We consider shift workers to be individuals who work nonstandard hours." (Root, 2004).*
>
> *[Sic throughout]*

The above definitions apply with 100% accuracy to the grievors during the field season, when they perform fieldwork away from the Sault Ste. Marie headquarters. I find that I quite agree with Dr. Wheatley when she states as follows in her February 16, 2011, email:

> SLCU [Sea Lamprey Control Unit] employees working during the field season have work schedules that resemble shift schedules, as they are variable and rotational in nature. In order to better reflect this operational reality, effective immediately, SLCU employees covered by Appendix I will be viewed as shift workers for the duration of the field season.…
>
> …

For shift workers who work as many as 18, 19, or 20 days in a row (or perhaps even more), these consecutive days of work are followed by a number of consecutive days of rest. It is logical, and self-evident, to state that for shift workers, Saturdays and Sundays are no longer the normal days of rest. Sometimes they do happen to be days of rest, depending upon how the field schedule works out, but as often as not, they are workdays.

[48] The email sent by Dr. Wheatley and referenced in *Keen* was sent to the grievors on the same day, without the reference to Appendix I.

[49] In an era of fiscal prudence, the employer was balancing competing priorities to abide by the correct interpretation of the collective agreements, while continuing to remain fiscally responsible with public taxpayers' funds and transparent with the bargaining agent.

[50] The authorities relied upon by the grievors are fact-specific, and none addresses the operational realities that make work at the SLCC important and distinct. In *Babb*, it was noted that there was no evidence to show that operational requirements required scheduling employees for seven days consecutively. *Keen* has now confirmed that this was an incorrect application of the collective agreement and rightfully determined why this was not an issue, until now. At paragraphs 63 and 64, the Board notes this:

> *[63] I am also not surprised that the mechanism ultimately implemented (to be clear, the mechanism for paying overtime for Saturdays and Sundays) did not make its way into the collective agreement in explicit language, because it all seems a bit contrived; an ad-hoc approach to a perceived workplace inequity. An approach which worked well, up until the Treasury Board caught wind of it.*
>
> *[64] This is because the approach is not consistent with the plain wording of the collective agreement (Appendix I). One cannot be a day worker and a shift worker at the same time.*

[51] Over the last decade, local concessions opted for the more lucrative benefits of overtime as "non-shift" workers rather than the lesser amount of premiums (shift and weekend premiums) attached to being "shift" workers.

[52] Employees are paid in accordance with the collective agreement. The real issue in this case is that the grievors disagree with the employer's decision. In the alternative, they want the right to avail themselves of the more lucrative overtime pay provisions on weekends attached to continuing their designation as "non-shift" workers during the field season.

[53] The Board's decision in *Keen* should be the starting and the end points. The Board Member rendered his reasons, through tested evidence, on precisely the same issue. The only difference is that that case involved a different bargaining agent , the Public Service Alliance of Canada (PSAC).

[54] The employer's decision was within its rights to assign work and to designate its employees as shift workers. Unlike in the past, the grievors do not have the right to be both "non-shift" workers and "shift" workers. While they note that they do not have an Appendix I, it does not give them a "right of passage" to reap the benefits of both pay provisions or their preference to obtain the more-lucrative pay provision.

[55] That the grievors selectively grieved isolated periods to support their claim of remaining "non-shift" workers during the field season is understandable. It was a long-time practice and one they had come to rely on and benefit from. However, they are obligated to respect the employer's decision, which was based on a sound and rational analysis considering, in addition to operational requirements, adherence to the principles of fairness and transparency, fiscal prudence, and the related Treasury Board policies.

[56] The shift provisions in both collective agreements serve as a healthy "framework" that even if modified genuinely are justified due the SLCC's unique legitimate operational requirements. The process of preparing and scheduling begins well in advance of the field season. It is a collaborative effort and is developed on consent, with both union and management. The shift "framework" is undefined, and rightly so. There is a no "one size fits all" for operations running 24/7. The framework does provide criteria to protect employees and employer by allowing modifications subject to operational requirements. It correctly addresses the SLCC's unique operations, thus allowing them to protect everyone from the menacing sea lamprey and fulfilling Canadian international commitments.

C. Reply for the grievors

[57] The issue before the Board in this case is not whether the employer can designate employees as shift workers (as suggested by the employer) but rather whether the grievors are shift workers in light of the shift-work provisions of the SP and NR agreements. Moreover, beyond whether or not they are shift workers or day workers is the question of the collective agreements being violated by failing to pay them overtime for work performed on what should have been their first or second day of rest. This question was part of the grievance process and is addressed in the employer's final-level reply.

[58] Whether or not the grievors are shift workers, they are entitled to two days of rest within a seven- or eight-day period. If they work on days of rest, they are entitled to compensation according to the overtime provisions of the applicable collective agreements. The employer failed to compensate them properly for work performed on what should have been their first and second days of rest. This is the central issue of these grievances.

[59] The employer relied on *Keen* as being determinative of these grievances. The application of Appendix I in the PSAC collective agreement is at the centre of that decision. The language of Appendix I is entirely and substantively different from the language in the SP and NR agreements (even with respect to shift work). Throughout the grievance process and its submissions to the Board, the employer continued to import Appendix I into the SP and NR agreements. For example, it refers to the concept of "… accumulated days of rest earned during their field period", which does not exist in the SP and NR agreements but is derived from Appendix I.

[60] If the grievors are day workers, then under clause 8.04, they shall receive two consecutive and continuous days of rest in every seven-day period. If they are shift workers, then under clause 8.09, they shall receive two consecutive and continuous days of rest in every seven-day period (under the NR agreement) or every eight-day period (under the SP agreement). If the employer cannot provide days of rest as per the collective agreements due to operational requirements, then the employees must be compensated at the applicable overtime rate for work performed on what should have been days of rest.

[61] Throughout its submissions, the employer makes policy arguments for modifying the shift-work framework in the SP and NR collective agreements. It argues that the nature of the work conducted by employees at the SLCC, the need to be fiscally responsible, and fairness and transparency justified its actions. However, s. 229 of the *Act* states, "… the Board's decision may not have the effect of requiring the amendment of a collective agreement …". Adjudication is not the forum at which to add words to or to delete words from a collective agreement.

[62] Although the grievors perform the work as required by their employer, they do not agree that they should be compensated for work performed on days of rest in a way that is outside the terms of their collective agreements. That is the essence of these grievances.

V. Reasons

[63] For the reasons set out in this section, the grievances are allowed.

A. The issues

[64] The threshold issue in these grievances is whether the grievors are shift workers or non-shift workers under the hours-of-work article (article 8) of the SP and NR agreements. If they are non-shift workers, then the grievances must be allowed. If they are shift workers, the issue is whether the employer complied with the provisions in the collective agreements for shift workers.

[65] I find that the grievors are non-shift workers, for the reasons set out in this section.

1. Are the grievors "non-shift" workers or "shift" workers under article 8?

[66] The grievors do not dispute the employer's right to schedule them on a different work schedule during the field season. The field season has been in place for decades, and there is no dispute that the work cannot be done on a Monday-to-Friday, 9 a.m. to 5 p.m. schedule. The issue in these grievances is narrower — do the grievors fall under the "non-shift" or "shift" worker provisions in the SP and NR agreements? In some Board decisions (including *Keen*), "non-shift" workers are called "day" workers. I will use that term in these reasons.

[67] The employer argued that the decision in *Keen* settled any question that the grievors are shift workers or made it "moot". *Keen* interpreted different collective agreement language than the language that applies to these grievances. Appendix I of the agreement between the PSAC and the Treasury Board for the Technical Services (TC) Group (which expired on June 21, 2011) reads in part as follows:

> …
>
> *Notwithstanding the provisions of Article 25, Hours of Work, and Article 28, Overtime, the following provisions shall apply to employees of the Sea Lamprey Control Unit of the Department of Fisheries and Oceans who are required to perform work away from their headquarters area during the "field season" and it is impractical or impossible for them to return to their headquarters area on weekends.*
>
> *It is agreed that representatives of local management and duly authorized local representatives of employees may jointly devise and decide on a mutually acceptable work schedule program, which shall include a specified number of consecutive calendar days of work in the field followed by a combination of days of rest and compensatory leave earned during the period of field duty. The schedule will not contain the hours of work on each day and*

> *the starting and quitting times shall be determined according to operational requirements on a daily basis except that the normal daily hours of work shall be consecutive, with the exception of a lunch break, and not in excess of seven decimal five (7.5) hours and, accordingly, clause 25.08* [Hours of Work] *shall not apply.*
>
> *Such a work schedule shall normally not exceed a combination of twenty (20) consecutive calendar days of work and eight (8) days of rest and compensatory leave. Should local management decide that operational requirements require an extension of the twenty (20) calendar days of work [up to a maximum of seven (7) calendar days] in order to preclude another trip to the area, the appropriate number of additional days shall be worked and the days of rest and compensatory leave extended as required.*
>
> *Overtime shall be compensated in accordance with this Collective Agreement and shall be taken as compensatory leave immediately following the period in the field or at the discretion of the Employer.*
>
> …

[68] None of that collective agreement language is found in those that I must interpret — the SP and NR agreements. Although I have considered *Keen* in these reasons, given that the grievances before me involve different parties and different collective agreement language, it is not binding on me. It is also important to note that the bargaining agent in *Keen* did not dispute that the grievors were shift workers. Part of *Keen* involved a policy grievance alleging a breach of an article requiring notice of a schedule change for shift workers.

[69] When interpreting collective agreements, the parties are assumed to have intended what they said. In addition, the meaning of the collective agreement is to be found in its express provisions (see Brown and Beatty at paragraph 4:2100, "The Object of Construction: Intention of the Parties").

[70] The collective agreements at issue in these grievances set out the hours of work for day workers and for shift workers. I agree that an employee cannot be a day worker and a shift worker at the same time. The question is determining the category in the collective agreements that is the best fit for the employees during the field season.

[71] It is noteworthy that the employer recognized the need to negotiate a framework for the field season schedule for one group of employees (the TC Group; their Appendix I) but not the supervisors of that group (the SP and NR Groups). As noted in *Keen*, "Appendix I is an essential tool, and one that is mutually acceptable to

both management and employees in effectively planning and implementing a sea lamprey control program."

[72] I note that the SP agreement does contain special provisions for Meteorology Group (MT) shift workers, mostly related to pay on designated holidays and vacation leave. In the MTs' situation, the parties directed their minds to the differences in scheduling and hours of work between shift work and day work.

[73] The SP and NR agreements do not have a comprehensive framework for "effectively planning and implementing" the field work schedule. For years, the employer and its employees muddled through by compensating employees during the field season as if they were day workers. In February 2011, the employer decided to change tack and treat all employees as shift workers. In implementing this change, management did not look closely at the SP and NR agreements' language.

[74] There is no definition of "shift work" in the SP and NR agreements. During the field season, the grievors do not fit perfectly into either the day worker or the shift-worker provisions set out in the agreements. However, I find that the best fit is the day worker category. I reached this conclusion by examining the non-shift work and shift work provisions in the collective agreements.

[75] For day workers, the "normal work week" is Monday to Friday, and the scheduled workday is between 6:00 a.m. and 4:00 p.m. In field season, the days of work include weekends. Although the scheduled workday during field season is not necessarily during the 6:00 a.m. to 4:00 p.m. time frame, the regular hours of work remain 7.5 hours, so overtime is paid for any day longer than that. A day worker is provided 2 consecutive days of rest during each 7-day period unless operational requirements do not allow for it. In this case, the field season schedule (an operational requirement) does not allow for this schedule of days of rest.

[76] As noted, the SP and NR agreements do not contain a definition of "shift work". However, the following examination of the collective agreement provisions gives an idea of what the parties meant by shift work:

- A "shift schedule" is the arrangement of shifts over a period not exceeding 2 consecutive months and, when practical, for a minimum period of 28 consecutive days (clause 8.07).

- The hours of work shall average 37.5 per week over the period of a shift schedule (clause 8.08).
- An employee shall be granted at least 2 consecutive and continuous days of rest during each 8-day period unless operational requirements do not permit it (clause 8.09). The NR agreement provides for 2 days of rest during each 7-day period.
- When an employee's shift does not commence and end on the same day, there is a process for determining on which day it was worked (clause 8.11).
- Shifts must be arranged so that employees "shall rotate" through night shifts, evening shifts, and weekends on an equitable basis, to the extent that operational requirements permit (clause 8.12).
- An employee's shift shall not be scheduled to commence within 15 hours of the completion of the employee's previous shift, and employees shall not be scheduled to work less than 7 or more than 9 hours in any one shift (clause 8.12).
- The employer is required to make "every reasonable effort" to consider the wishes of the employees when arranging shifts within a shift schedule. If at least two-thirds of the employees affected request a different shift schedule, and the employer agrees, shift schedules that vary from those set out in clause 8.12 can be established (clause 8.13).
- A provisional shift schedule must be prepared and posted at least 2 months in advance. The final shift schedule shall be published at least 3 weeks before the commencement of the schedule (clause 8.14).
- Employees at the same office can exchange shifts if there will be no additional costs to the employer and if the employer agrees (clause 8.15).
- An employee working a regularly scheduled shift receives a shift premium of $2 per hour for each hour worked (including overtime hours), between 16:00 and 08:00 (clause 8.19).

[77] There is no mention of the field season in these provisions or anywhere else in the NR or SP agreement. Read in their entirety, the shift-worker provisions suggest rotating night shifts, evening shifts, and weekends. This is not only because of the express requirement for the equitable distribution of shifts but also due to provisions relating to which day the shift is on when it goes over two days. The article also provides for shift exchanges, as well as for a process for determining the arrangement of shifts within a shift schedule. The provision also provides for a premium for night shifts. The article also requires a shift schedule of not more than two months, which is not applicable to the field season schedule.

[78] There are also provisions in the SP agreement that exclude those on shift work in the MT Group. For example, the overtime provision for working on a designated holiday (clause 9.02) is stated to not apply to MT shift workers. Clearly, the parties directed their minds to overtime compensation for shift workers in this collective agreement and neglected to include those working at the SLCC.

[79] The decision in *Chafe* is not of any assistance to the employer. In that decision, the adjudicator found that the grievors were not shift workers. He based that on a definition of "shift" that was limited to when normal operations during a 24-hour cycle were broken into 2 or 3 work periods, each representing a full day of work for an employee (at paragraph 63), as follows:

> *63 … whatever the cycle, it is long enough that it cannot ordinarily and routinely be filled by one employee; it must be split into "shifts," with each shift being filled by a (normally) different employee. Hence to work "on shift" means that there would be at least two, if not three, work periods during the 24-hour cycle that would be filled by two (or three, as the case may be) employees.*

[80] The adjudicator found that the phrase "working on shift" in the collective agreement at issue in that grievance applied to situations of at least two regular "shifts" in a 24-hour cycle. The adjudicator noted that a day worker does not become a shift worker merely because he or she performs some overtime, which is so in this case — although the field season requires a great deal of overtime.

[81] In *Vaillancourt v. Canadian Food Inspection Agency*, 2004 PSSRB 44, the adjudicator relied on Gérard Dion, *Dictionnaire canadien des relations du travail*, second edition, which defines "shift schedule" as follows:

> …
>
> *[Translation]*
>
> *1. Arrangement of hours and work periods in which the work is divided into two or three successive time periods during a twenty-four-hour day.*
>
> *2. Board on which the names of the workers and the shifts to which they are assigned are posted in advance.*
>
> …

[82] In the case before me, the shift-worker provisions in the SP and NR agreements are like those defined in *Chafe* and *Vaillancourt* — at least 2 or 3 work periods during a 24-hour cycle.

[83] In its submissions, the employer states, "There are at least two (2) shifts that cannot be covered by one employee working." However, a review of the time sheets provided in the agreed book of documents mostly showed core hours of work between 8:00 a.m. and 4:00 p.m., plus overtime on some of those days. A couple of grievors had

a few days of work starting at 3:00 p.m. or 4:00 p.m., but there is no regular pattern of different work start times. In addition, the decision in *Keen* sets out the working conditions of the field season (although for different employees) and does not mention dual shifts.

[84] Dr. Wheatley appears to have recognized that the field season schedule was not a true shift schedule when she stated that the field season schedules "resemble shift schedules". In other words, she agreed that the field season schedule was not a true shift schedule.

[85] There is also a differentiation in the SP and NR agreements between "shifts" and "work days". In article 8, day workers have a "scheduled work day", and shift workers have a "shift". In the acting-pay article in the SP agreement, for example, clause 46.08 refers "consecutive working days or shifts". Dr. Wheatley mixed the two terms in her message to the grievors. She did not refer to the grievors' schedule as "shifts" but used the term "work days" when she stated that Saturdays and Sundays were to be considered as "… work days as part of their regular shift schedule". Although it could be simply a question of sloppy drafting, it does highlight the fact that the grievors did not easily fit into the category of shift workers.

[86] There is a slight difference in the days of rest to be provided to shift workers in the SP agreement: two consecutive and continuous days of rest during each eight-day period unless operational requirements do not permit it. The NR agreement has the same days-of-rest provision for both day workers and shift workers (two days for each seven-day period). For both day workers and shift workers, the scheduled days of rest can be changed because of operational requirements. Therefore, there is no difference in the treatment of days of rest for either day workers or shift workers. In passing, I would note that the employer appears to have been selectively applying the provisions of article 8 during the field season, as it was required under the collective agreement to provide overtime compensation for two days of rest after each seven-day or eight-day period.

[87] I agree with the Board Member in *Keen* that the field-season work schedule requires a set of collective agreement provisions to effectively plan and implement the sea lamprey control program. The collective agreements in these grievances do not have such a set of provisions. I also agree with that Board Member that the mechanism

for effectively planning and implementing this important program requires a tool that "… is mutually acceptable to both management and employees …" — in other words, contained in the collective agreement or a memorandum of understanding.

[88] The framework set out in Appendix I of the PSAC agreement better reflects the realities of field work. The framework is as follows:

- The appendix applies, despite the "Hours of Work" and "Overtime" articles of the collective agreement.
- It applies to SLCC employees who are required to perform work away from their headquarters area during the field season and when it is "… impractical or impossible for them to return to their headquarters area on weekends."
- Representatives of local management and local representatives of employees may jointly devise and decide on a mutually acceptable work schedule program.
- The work schedule shall include a specified number of consecutive calendar days of work in the field followed by a combination of days of rest and compensatory leave earned during the period of field duty.
- The work schedule will not contain the hours of work on each day, and starting and quitting times are to be determined according to operational requirements on a daily basis, except that the normal daily hours of work shall be consecutive, with the exception of a lunch break, and not in excess of 7.5 hours.
- The work schedule shall normally not exceed a combination of 20 consecutive calendar days of work and 8 days of rest and compensatory leave.
- Overtime is to be compensated in accordance with the collective agreement and shall be taken as compensatory leave immediately following the period in the field or at the employer's discretion.

[89] As noted earlier in these reasons, the bargaining agent for the TC Group conceded that the grievors, when working during the field season, were shift workers. The Board Member in *Keen* agreed with the bargaining agent. Since the bargaining agent in *Keen* conceded the point, the Board Member did not need to explain why he agreed that the grievors were shift workers. As I have also already noted, he interpreted different collective agreement language than the language in the grievances before me. Therefore, I find that the interpretation in *Keen* is not applicable.

[90] However, I will comment briefly on the approach in *Keen*. The Board Member relied on definitions of "shift work" set out in *Chafe* that did not include the definition of "working on shift" accepted by the adjudicator in that decision. As set out earlier, in *Chafe*, the adjudicator determined that to work "on shift" means that there would be at least 2, if not 3, work periods during a 24-hour cycle that would be filled by 2 or more employees. This interpretation was also accepted in *Vaillancourt*. I find the

decisions in *Chafe* and *Vaillancourt* more persuasive in determining what is or is not "shift work", since the interpretations in those decisions were necessary for determining the grievances and were not, as in *Keen*, merely an aside (or *obiter*).

[91] In the absence of similar provisions to Appendix I in the SP and NR collective agreements, the grievors are best characterized as day workers who work overtime during the field season. Accordingly, they are entitled to overtime for work done on their days of rest — Saturday and Sunday.

[92] In my view, the employer would have had significant operational issues had it been successful in its argument that the grievors were shift workers. It is clear that the employer would not be able to schedule the full field season, as it would be restricted to a schedule not exceeding 2 consecutive months. I assume that it would be operationally cumbersome to have 1 field schedule for the TC Group and another for the employees who supervise them. In addition, overtime pay is required if an employee receives less than 120 hours of notice of a change to the shift schedule. There is a suggestion in *Keen* that shift schedules need to be very flexible to accommodate weather and other conditions. These challenges were clearly recognized when the employer negotiated Appendix I in the TC Group agreement.

[93] In its submissions, the employer noted that the grievors could not receive entitlements as both day workers and shift workers. I agree with this position. In this case, I have decided that the grievors are day workers. The grievances relate only to the payment of overtime on days of rest. Therefore, I do not have jurisdiction to make any determination on other entitlements under the collective agreement that the grievors might have received in error.

2. Conclusion

[94] These grievances are allowed.

[95] I agree that controlling the sea lamprey population is an important public program. As noted in *Keen*, "Everyone on both sides of the table, management and employees, knows how important a flexible field schedule is to the effective accomplishment of this important task." However, it is also important that collective agreements be respected and that any changes to accommodate special circumstances, such as the field season, are mutually acceptable to both management and employees.

Again from *Keen*, the appropriate venue for the development of an "… essential tool … in effectively planning and implementing a sea lamprey control program" is at the collective bargaining table and not through unilateral action of the employer.

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

(The Order appears on the next page)

VI. Order

[97] The grievances are allowed.

[98] The employer is required to pay the grievors for work completed on Saturdays and Sundays at the applicable overtime rates.

[99] I will remain seized for a period of 120 days for the sole purpose of resolving any issues that arise in the calculation of the amounts owing.

June 29, 2021.

Ian R. Mackenzie,
a panel of the Federal Public Sector
Labour Relations and Employment Board