Date: 20250515

File: 569-02-46823

Citation: 2025 FPSLREB 59

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

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Canada Border Services Agency)

Employer

Indexed as
Public Service Alliance of Canada v.
Treasury Board (Canada Border Services Agency)

In the matter of a policy grievance referred to adjudication

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Lydia Dobson, counsel

For the Employer: Peter Doherty, counsel

Decided on the basis of written submissions, filed November 22, 2024, and January 17 and 31, 2025.

REASONS FOR DECISION

I. Overview and outline of decision

[1] In May 2022, the Canada Border Services Agency (CBSA) prepared a plan to deal with an expected surge in international travel called the "2022 Summer Action Plan". This plan outlined a number of steps that managers could take to maintain service standards during the summer period.

[2] The Public Service Alliance of Canada (PSAC) filed a policy grievance against the 2022 Summer Action Plan. It alleges that the 2022 Summer Action Plan violated the collective agreement between it and the Treasury Board for the Border Services Group (expired June 20, 2022; "the collective agreement") in seven different ways, mainly to do with the rules about scheduling, overtime, and leave. It admits that it has no evidence of any actual adverse impact on its members as a result of the 2022 Summer Action Plan. Nevertheless, it maintains that the existence of the plan itself violates the collective agreement in seven ways.

[3] I have denied the grievance.

[4] I have reviewed each of the ways that PSAC argues that the 2022 Summer Action Plan violates the collective agreement. In each case, I have found that there is no inconsistency between the 2022 Summer Action Plan and the collective agreement.

[5] The outline of my decision is as follows. I will first provide a short overview of the context behind the 2022 Summer Action Plan and a procedural overview of this grievance. I will then go through each of PSAC's seven arguments in turn, in the order in which PSAC made them. I will explain why I have dismissed those seven arguments. Finally, I will conclude with some remarks about the role that alleged staffing shortages played in this decision and why I decided this grievance on its merits, despite there being no employee adversely affected by the 2022 Summer Action Plan.

II. Context about this grievance

A. The 2022 Summer Action Plan

[6] Since 2010, the CBSA has prepared annual summer action plans to identify operational pressures that take place from May to September each year, when travel volumes tend to increase. In 2022, the expected summer increase in travel was

particularly acute because of changes in travel patterns with the lifting of some restrictions caused by the COVID-19 pandemic. The CBSA was anticipating a return to roughly 80% of the 2019 volume of travel, while still having to manage some health measures and other issues that complicated international travel that year.

[7] The CBSA prepared the 2022 Summer Action Plan in May 2022. Unlike in previous years, it shared a copy with the Customs and Immigration Union (CIU), which is a component of PSAC. The CBSA briefed them on it on May 24, 2022, and invited further feedback. The CBSA sent a copy of the 2022 Summer Action Plan to its managers on May 27, 2022. It also sent a "Playbook for Managers", which contained some further guidance about the 2022 Summer Action Plan.

[8] Broadly speaking, the 2022 Summer Action Plan lists 18 ways for managers to increase operational readiness and capacity. They involve scheduling, overtime, managing employees' leave, and operational measures. The 2022 Summer Action Plan is too lengthy and detailed to list all 18 measures, so I will focus on those that PSAC addresses in this grievance.

[9] The CIU emailed a list of 10 questions to the CBSA on June 2, 2022. The CBSA answered those questions on June 8. It had another meeting with the CIU on June 20. PSAC was dissatisfied with the CBSA's answers and filed this policy grievance on June 24.

B. Process of resolving this grievance

[10] This policy grievance was originally scheduled to be heard in person from October 15 to 17, 2024. After a different panel of the Federal Public Sector Labour Relations and Employment Board ("the Board") held a pre-hearing conference with the parties, they all agreed that this grievance could be decided based on written submissions instead.

[11] The Board is empowered to decide a grievance on the basis of written submissions because of its power to decide "… any matter before it without holding an oral hearing", in accordance with s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365); see also *Walcott v. Public Service Alliance of Canada*, 2024 FCA 68. In light of the parties' agreement, the Board proceeded to decide this matter in writing.

III. The seven grounds of the grievance

[12] The grievance as initially filed alleged a breach of seven provisions of the collective agreement. In its written argument, PSAC did not pursue any arguments about one of those provisions — article 6 (managerial responsibilities). It organized its submissions into the seven reasons it alleged that the 2022 Summer Action Plan violated the collective agreement; some submissions addressed more than one collective agreement article.

[13] As a matter of general principle, the CBSA has the right to unilaterally impose workplace policies and rules. However, this exercise of management rights must be done reasonably and consistently with the collective agreement; see *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55 ("*AJC*") at paras. 18 to 20. The reasonableness of an employer's unilateral policy is determined by using a "balancing of interests" approach which considers the nature of the employer's interests, whether there were less-intrusive means available to address the employer's concerns, and the policy's impact on employees; see *AJC* at para. 24.

[14] This grievance is largely about whether any part of the 2022 Summer Action Plan is inconsistent with the collective agreement.

[15] Both PSAC and the CBSA made submissions about whether the 2022 Summer Action Plan "violated" the collective agreement. That is not the threshold used when assessing an employer's policy. The threshold is consistency, not violation. As pointed out in *United Steelworkers, Local 2010 v. Queen's University (Central Heating Plant Vacation Scheduling Grievance)*, 2017 O.L.A.A. No. 151 (QL) at para. 13: "I do not agree with the Employer [that] the rule may only be struck down if it is in 'violation' of or 'prohibited' by the collective agreement. Rather the question is whether it is 'inconsistent' with the collective agreement …". This is also the approach applied by the Board in *Public Service Alliance of Canada v. Treasury Board*, 2008 PSLRB 84 at para. 55 where it stated that policy grievances are about the "… compliance or consistency with the collective agreement."

[16] Rather than go clause-by-clause through the collective agreement or the 2022 Summer Action Plan, it is easier to understand the grievance if I go through PSAC's seven arguments in order.

[17] I want to point out at the outset that PSAC has provided no evidence of any actual breach of the collective agreement. Its case is that the 2022 Summer Action Plan violates the collective agreement because it spells out measures that if used, would violate the collective agreement. Therefore, when I am addressing the specific arguments that PSAC makes, I am doing so in the abstract and without a single example of an actual breach. PSAC admits that it has no evidence of an improper shift change, mandatory overtime, or an employee who was improperly denied leave. I will return to this difficulty several times in these reasons.

A. The seven arguments

1. Argument one: schedule of day workers

[18] For context, the collective agreement distinguishes between employees who work regular hours (what the parties call "day workers") and those who work shifts. Most employees at CBSA work shifts.

[19] Clause 25.06 of the collective agreement provides that the normal workweek for day workers is 37.5 hours from Monday to Friday inclusive and that the normal workday is 7.5 consecutive hours, exclusive of lunch, between 7 a.m. and 6 p.m. PSAC alleges that the 2022 Summer Action Plan violates that provision of the collective agreement. Clause 25.11(b) also requires consultation before changes to the hours of work of dayworkers.

[20] However, the CBSA correctly points out in its response that the 2022 Summer Action Plan talks only about changing shifts. Since day workers do not work shifts, the 2022 Summer Action Plan has nothing to do with their schedules.

[21] Since the 2022 Summer Action Plan does not touch the schedule worked by day workers, it cannot be inconsistent with clauses 25.06 or 25.11(b) of the collective agreement.

2. Argument two: obligation to consult about changes to the standard shift schedule

[22] Clause 25.18 sets out a "standard shift schedule" of midnight to 8 a.m., 8 a.m. to 4 p.m., and 4 p.m. to midnight or, alternatively, 11 p.m. to 7 a.m., 7 a.m. to 3 p.m., and 3 p.m. to 11 p.m. Clause 25.23 then says as follows:

25.23 *…*	***25.23*** […]
b. Where shifts are to be changed so that they are different from those specified in clause 25.18, the Employer, except in cases of emergency, will consult in advance with the Alliance on such hours of work and, in such consultation, will establish that such hours are required to meet the needs of the public and/or the efficient operation of the service.	*b. Si les postes doivent être modifiés de sorte qu'ils diffèrent de ceux qui sont indiqués au paragraphe 25.18, l'employeur, sauf dans les cas d'urgence, doit consulter au préalable l'Alliance à ce sujet et établir, lors des consultations, que ces postes sont nécessaires pour répondre aux besoins du public ou assurer le bon fonctionnement du service.*
…	[…]

[23] Clause 25.23(c) goes on to state that the parties must notify each other of their representatives for consultation purposes within five days of receiving notice of the need for consultation.

[24] As one of the ways to increase operational readiness and capacity, the 2022 Summer Action Plan lists that managers can use mandatory shift changes. The Playbook for Managers goes on to ask that managers conduct a "[r]egular review of schedules more than seven days in advance to identify gaps and choose measures to address …", including using a "… mandatory shift change notification to fill schedule gaps in shifts as resort of last meaures [*sic*]."

[25] PSAC argues that by asking managers to consider mandatory shift changes without expressly stating that such changes must take place only after a consultation with it, the CBSA has violated clause 25.23(b) of the collective agreement.

[26] The CBSA argues that the consultation requirement in clause 25.23(b) is triggered by changes to the standard shift schedule as a whole and not to changes to a shift worker's individual shift schedule. The CBSA states that it is permitted to change an employee's individual shift so long as the change is discrete and temporary, and the employee is returned to the standard shift schedule.

[27] I agree with the CBSA because its argument is more consistent with clause 25.21 of the collective agreement. That clause requires the employer to give an employee at least 7 days' notice in advance of being "… required to change his or her scheduled shift …"; otherwise, the employee is paid time-and-a-half for the first 7.5 hours worked

on the first changed shift and double time after that for that first changed shift. The clause goes on to state that the employer must make every reasonable effort to return the employee to his or her original shift schedule for the duration of the master shift schedule.

[28] I agree with the CBSA that this clause expressly contemplates the employer ordering an employee to work a different shift and expressly contemplates doing so with less than 7 days' notice. Clause 25.23(c) allows a party to wait 5 days to even begin the consultation process. This means, in practice, that changes would likely not be made within 7 days since consultation must be meaningful, and I find it difficult to contemplate that meaningful consultation could occur in such a short time if it took all 5 days to name a representative. If clause 25.23 applied to all individual shift changes, the extra pay for changes to individual shifts with less than 7 days' notice would be meaningless because these shift changes would require consultation that lasted more than 7 days.

[29] PSAC argues that when individual shifts are amended as part of a broader scheduling strategy, the amendments are no longer to individual schedules and are subject to clause 25.23(b). However, in support of that proposition, PSAC cites a single decision that is distinguishable from this case.

[30] PSAC cites *Mosaic Potash Colonsay ULC v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 7656*, 2016 SKQB 195. In that case, the employer had a 12-hour shift schedule for mine workers and a 10-hour shift schedule for tradespeople in the mill service department. This meant that the mill was without maintenance coverage for 2 hours in the evenings and on weekends. The employer in that case decided that it needed more regular trade coverage. Therefore, it modified the shift schedule of a tradesperson from a 10-hour to a 12-hour shift while it posted the position and tried to fill it. It took over 2 years to fill the position, so the tradesperson worked this 12-hour shift for over 2 years (with a 7-month gap in the middle when the employer found someone else to take over). The arbitrator hearing a grievance about that case found that the employer failed to consult the union before making that shift change.

[31] On judicial review, the employer argued that the shift change was an individual, not departmental, change; therefore, it did not trigger the obligation to consult. The Court rejected that argument for two reasons. First, the employer did not make the argument to the arbitrator, so the Court refused to consider it for the first time on judicial review. Second, the Court went on to consider the question in case of an appeal. It found that this was not an individual shift change but, instead, "an embodiment or vanguard" (see paragraph 49) of an "… overall strategy to implement a 12-hour rotating shift for mill maintenance workers. This was not a one-off management issue" (see paragraph 50).

[32] Unlike in that case, in this case any mandatory shift changes are not a vanguard of a broader strategy to permanently change shift schedules. The Playbook said explicitly that managers could use a mandatory shift change only as a last measure.

[33] For these reasons, I agree with the CBSA that the collective agreement does not require that it consult PSAC in advance of making an individual shift change. Additionally, there is no evidence that the 2022 Summer Action Plan contemplated anything other than one-off shift changes to fill gaps in a schedule as a last resort. This is precisely why clause 25.21 of the collective agreement exists — to deal with individual shift changes made at the last minute.

3. Argument three: consultation about VSSAs

[34] Clause 25.24 of the collective agreement permits the CBSA and PSAC to agree to a variable shift schedule arrangement (VSSA) at the local level. This means that a particular port of entry can have its own shift schedule instead of the standard schedule set out in clause 25.18. Appendix B of the collective agreement is a memorandum of understanding setting out the rules for negotiating a VSSA and how the CBSA will choose which employees will populate which group of shifts (called a "line").

[35] In essence, PSAC and the CBSA make the same arguments about clause 25.24 and Appendix B of the collective agreement as with the previous argument. PSAC argues that by permitting mandatory shift changes, the CBSA has bypassed the process for amending a VSSA set out in Appendix B.

[36] I dismiss the argument for the same reason as the previous argument. The 2022 Summer Action Plan does not contemplate amending any VSSA. It contemplates managers making one-off mandatory shift changes as a last resort. The possibility of a mandatory shift change for an employee is not an amendment of a VSSA requiring consultation with or the agreement of PSAC.

[37] The two cases cited by PSAC in support of its argument are distinguishable.

[38] In *Windsor Police Services Board v. WPA (12-Hour Shift Change)* (2020), 322 L.A.C. (4th) 167, the employer negotiated a 12-hour schedule with the union for some employees and then unilaterally cancelled that schedule 3 years later. The arbitrator in that case relied on the specific wording of the collective agreement to conclude that the parties had agreed to maintain the 12-hour schedule and that it was no longer a pilot project given that it had lasted for over 3 years. That case was about a change to the overall schedule, not individual shifts like this one.

[39] In *Alberni School District No. 70 v. C.U.P.E., Local 727* (1981), 29 L.A.C. (2d) 129, the parties negotiated a collective agreement that specified that teachers' aides worked six hours a day. The employer wanted to hire part-time teachers' aides for three hours a day. The majority of the arbitration panel in that case concluded that the collective agreement meant what it said — teachers' aides were employed for six hours a day, not three (although the union was estopped from enforcing that right for part of the relevant period). That case is not similar to this grievance, as it had nothing to do with changes in hours of work, and the collective agreement language is different.

4. Argument four: fluctuation in hours

[40] Clause 25.14(b) of the collective agreement states that the employer will make "… every reasonable effort … to avoid excessive fluctuation in hours of work." PSAC argues that informing managers of their ability to unilaterally order shift changes and overtime will lead to a fluctuation in hours of work. PSAC further argues that the 2022 Summer Action Plan is silent on management's obligation to make every reasonable effort to avoid such fluctuations.

[41] As the CBSA points out, PSAC has provided no evidence of any fluctuations in employee hours, let alone excessive fluctuations. As a matter of logic, I fail to see how informing managers of their ability to change individual shift schedules or impose

overtime will necessarily lead to a fluctuation in hours of work, let alone an excessive fluctuation. Informing someone that they can do something does not mean that they will do that thing excessively.

[42] In *Essar Steel Algoma Inc. v. United Steelworkers, Local 2251*, [2009] O.L.A.A. No. 280 (QL) ("*Algoma Steel*") an arbitrator dismissed a similar argument to that made by PSAC. In *Algoma Steel*, the employer decided that it wanted to reduce the amount of overtime worked by its employees and enacted a policy to accomplish that. The policy stated that work schedules might need to be adjusted to reduce overtime. The union argued that by granting a manager the discretion to adjust work schedules, the policy violated a provision in the collective agreement prohibiting working back-to-back shifts after a shift change. The arbitrator disagreed, stating this at paragraphs 29 and 30:

> ***29*** *The union's submission pre-supposes [sic] that the L4 manager will use his discretion to adjust work schedules to require an employee to work back to back shifts in contravention of article 5.04.20. However, the policy does not require or even authorize the manager to do so. The discretion granted must obviously be exercised so as not to contravene the collective agreement. If a particular adjustment of the work schedule results in the violation of article 15.04.20, or for that matter any other provision of the collective agreement, it may be grieved. The granting of a general discretion to adjust the work schedule as per operational requirements, by itself does not conflict with the collective agreement.*
>
> ***30*** *… The policy on its face does not purport to authorize violations of the collective agreement. Therefore, the policy itself does not become invalid, in anticipation that it will be interpreted and applied in [sic] so as to contravene the collective agreement.*

[43] Similarly, in this case, the 2022 Summer Action Plan does not purport to authorize excessive fluctuations in hours, and it does not become invalid in anticipation that it will be applied to create excessive fluctuations.

5. Argument five: obligation to return employees to a regular schedule

[44] As I stated earlier, clause 25.21(a) of the collective agreement provides that an employee given less than seven days' notice of a change in a scheduled shift is paid extra for the first changed shift. Clause 25.21(b) goes on to state that the employer must make every reasonable effort to return such an employee to his or her original shift schedule for the duration of the master shift schedule.

[45] PSAC argues that the 2022 Summer Action Plan violates this requirement in two ways.

[46] First, PSAC argues that this clause assumes that an employee will not be subjected to more than one shift change over the course of one master schedule. It has cited no authority for that proposition, and I see nothing in the plain wording or context of clause 25.21(b) that would transform an obligation to make reasonable efforts to return someone to the master shift schedule as a prohibition against making more than one shift change.

[47] Second, PSAC argues that the 2022 Summer Action Plan does not mention the obligation to make reasonable efforts to return someone to the master shift schedule, and therefore, it violates the collective agreement. At first glance, I shared PSAC's concern about the 2022 Summer Action Plan. It is silent about returning employees to their master shift schedules, while the collective agreement requires the CBSA to make reasonable efforts to return employees to the master shift schedule. This is, on its face, inconsistent with the collective agreement.

[48] However, the 2022 Summer Action Plan was released to managers alongside the Playbook. The Playbook mentions mandatory shift changes but states as follows:

> *…*
>
> □ ***Regular review of schedules more than seven days in advance*** *to identify gaps and choose measures to address, including:*
>
> o *Encourage* ***voluntary shift changes*** *where feasible and/or use a* ***mandatory shift change*** *notification to fill schedule gaps in shifts as resort of last meaures* [*sic*]*.*
>
> *…*
>
> [Emphasis in the original]

[49] While not part of the bolded passages in the quote just cited, managers were directed to use mandatory shift changes to "fill schedule gaps in shifts". On the face of the Playbook, mandatory shift changes were one-off events to fill a schedule gap as a last resort. This means that on the face of the Playbook, employees would be returned to their regular shifts after filling that one-off schedule gap.

[50] PSAC has not alleged that any employee was actually subjected to a mandatory shift change and was not returned to their regular shift schedule. Therefore, no

employee was actually harmed by the 2022 Summer Action Plan in the way alleged by PSAC. The Playbook helps explain why.

[51] In a way, this case is the mirror image of *Northwest Territories v. Union of Northern Workers, Public Service Alliance of Canada*, [2013] N.W.T.L.A.A. No. 4 (QL). In that case, the employer implemented a policy stating that only one corrections officer or corrections supervisor could be granted leave from the same shift at a given time. The collective agreement required the employer to make every reasonable effort to grant employees their vacation leave preference. The arbitrator concluded that the policy was inconsistent with the collective agreement because the obligation to make every reasonable effort requires a case-by-case assessment and not a firm rule. More to the point, the policy in that case provided management the discretion to grant more than one leave for the same shift. However, the evidence in that case was that this discretion was never exercised. The arbitrator concluded that the existence of discretion in the policy did not save it because that discretion was never being exercised, stating this at paragraph 56: "… the discretion available in the leave policy is not being exercised and accordingly I conclude that the Employer is failing to make every reasonable effort to honour the preferences of individual employees." In that case, the policy could have facially complied with the collective agreement by leaving managers the discretion to consider employee preferences on a case by case basis, but the way it was implemented showed that this discretion was ephemeral making the policy inconsistent with the collective agreement.

[52] This case is the mirror image of that one. In this case, PSAC has provided no evidence that the policy is being used in any way other than to fill one-off gaps in shifts. This implies that employees are being returned to their regular shifts immediately after filling in that one-off gap, which is consistent with how I read the Playbook. Therefore, the 2022 Summer Action Plan, when read alongside the Playbook, is not inconsistent with the collective agreement because there is no indication that employees were not returned to their original schedule.

6. Argument six: mandatory overtime

[53] The 2022 Summer Action Plan states that managers may consider requiring employees to work overtime — what it calls "mandatory overtime". The 2022 Summer Action Plan also says that managers must "… make every reasonable effort to avoid excessive overtime", that "[o]vertime must be offered on an equitable basis", and that

they are to consider mandatory overtime only "… when all other efforts have been exhausted" by considering shift changes and limiting discretionary leave first.

[54] PSAC argues that these instructions violate clause 28.03(a) of the collective agreement, which reads as follows:

28.03 Assignment of overtime work	***28.03 Attribution du travail supplémentaire***
a. Subject to operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.	*a. Sous réserve des nécessités du service, l'employeur s'efforce autant que possible de ne pas prescrire un nombre excessif d'heures supplémentaires et d'offrir le travail supplémentaire de façon équitable entre les employé-e-s qualifiés qui sont facilement disponibles.*

[55] The CBSA states that managers never used mandatory overtime in the summer of 2022, and PSAC does not allege otherwise. Therefore, PSAC's argument is that publishing a direction to managers that even mentions mandatory overtime is a breach of the collective agreement, even if there was no mandatory overtime in practice.

[56] PSAC makes two arguments in support of that proposition.

a. Mandatory overtime argument one: allegation of understaffing

[57] First, PSAC argues that mandatory overtime violates clause 28.03(a) when the reason for ordering mandatory overtime is chronic understaffing. PSAC's argument suffers from two problems.

[58] The first problem is that it has not presented evidence to support its claim that mandatory overtime was the result of chronic understaffing. I say this for two reasons.

[59] First, and at the risk of repeating myself, there was no mandatory overtime. PSAC is arguing that A is caused by B, despite the fact that A never happened.

[60] Second, PSAC's so-called evidence of chronic understaffing is underwhelming. It filed an affidavit by a labour relations officer of the CIU. The affidavit is unsworn, but the employer does not allege that this makes it invalid and so I will not strike it on that

ground. However, it is still too uncertain to demonstrate the existence of chronic understaffing.

[61] The affidavit states this: "In my capacity as Labour Relations Officer for the CIU, in May and June of 2022, I collected data on staffing levels from CIU locals across Canada." This data is represented in a document entitled "CIU Staffing Levels 2022". The data is a list of provinces, the locations of different ports of entry in those provinces, and then a percentage. The affidavit has no information about how the labour relations officer went about collecting this data. Also, the affidavit does not explain what the data is supposed to mean. For example, when the labour relations officer says that Gander, Newfoundland, is operating at 60% staff, does that mean that 40% of positions are unfilled, 40% of shifts are unfilled, 40% of positions are unfilled by indeterminate employees (i.e., does this exclude casuals?), 40% of positions are not filled full-time, or something else?

[62] PSAC also filed a copy of its brief before a Public Interest Commission in 2024. This is obviously a self-serving document, as it is trying to explain to the Public Interest Commission why there are recruitment and retention problems at the CBSA that justify wage increases and other terms and conditions of employment that PSAC is trying to negotiate. That is not a criticism — briefs filed with a Public Interest Commission are supposed to be self-serving. But they are not evidence. The specific pages in the brief list five press releases issued by the CIU in which it attributes several shortfalls of the CBSA to understaffing. Again, a press release is advocacy, not evidence. The brief quotes from a March 2023 report of the House of Commons Standing Committee on International Trade in which that Parliamentary committee recommends that the CBSA improve processing times at ports of entry by "… **considering** the recruitment of additional Canada Border Services Agency officers …" [emphasis added]. The brief quotes from the Department of Public Safety and Emergency Preparedness's response to that recommendation, in which the department says that it has prioritized the recruitment of border services officers.

[63] I have concluded that this is not evidence of understaffing, let alone understaffing that necessitated mandatory overtime.

[64] The second problem is that even if it had presented evidence of understaffing, that would not necessarily mean that the 2022 Summer Action Plan is inconsistent

with clause 28.03 of the collective agreement. In making this argument, PSAC is relying almost exclusively on *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 22 ("*Kent Institution*"). In that case, the Board allowed a policy grievance filed against a practice of mandatory overtime for correctional officers at the Correctional Service of Canada's Kent Institution. The collective agreement in that case is similar in some ways to the one in this case, including that overtime must be allocated "… on an equitable basis among readily available qualified employees …". The Board's decision was both lengthy and thorough. It concluded that staffing shortages did not justify the consistent use of mandatory overtime and that such use contravened the collective agreement.

[65] With that said, *Kent Institution* does not assist PSAC as much as it submits. As I have said, the Board's decision was both lengthy and thorough. It based its decision not just on the requirement that overtime must be allocated "… on an equitable basis among readily available qualified employees …" but also on a myriad of other provisions of the collective agreement in that case, many of which are missing from this collective agreement. Further, the employer in that case admitted from the outset that it was using mandatory overtime to deal with staffing shortages (see paragraphs 46 and 52). It did so unreasonably (see paragraph 171) for a period of at least two years.

[66] The Board concluded as follows at paragraph 170:

> *[170] Considering all this analysis, I conclude that the sustained and chronic use of involuntary overtime to address staff shortages is a violation of the collective agreement. Clearly, the agreement allows for involuntary overtime to be ordered in emergency situations or to ensure the completion of security duties, such as securing evidence.* ***It may also legitimately be used to address short-term or unforeseen staff shortages*** *when other alternatives for filling mandatory posts do not exist, which was in fact reflected in the employer's reply to this policy grievance. However, the way involuntary overtime is being used at Kent crosses the line into a mechanism for filling vacant shifts on a sustained and chronic basis. By doing so, considering the wording of both the overtime language at clauses 21.10 to 21.16 and the hours-of-work language at clause 21.02, article 34, and Appendix K, I have to conclude that its practice is a violation of the collective agreement.*
>
> [Emphasis added]

[67] At the risk of boiling down a lengthy and nuanced decision too much, the Board said that mandatory overtime may be used to address short-term **or** unforeseen staff shortages. Unlike in *Kent Institution*, this case does not involve a two-year pattern of using mandatory overtime to cover staff shortages. In this case, mandatory overtime was not used at all. Even if it had been, on its face, the 2022 Summer Action Plan was in place for only just over three months. If it had happened, it would have been short-term, consistent with the Board's decision in *Kent Institution*.

[68] I said earlier that PSAC's argument is that the 2022 Summer Action Plan violates the collective agreement, and I have assessed whether it is inconsistent with the collective agreement. However, its argument on this ground is more like the other part of the *AJC* test — that the policy must reasonably balance the interests of the employer and the impact on employees. Its argument is really that it is unreasonable to use mandatory overtime (and to adjust schedules) in the face of staffing shortages. As I have explained, it has not proven the existence of staffing shortages, and there was no mandatory overtime.

[69] In any event, the 2022 Summer Action Plan included a provision for increased staffing. One of the 18 action items was a direction to hire former students and retirees as casual employees, to perform roles commensurate with their experience and expertise. The CBSA did not ignore staffing as a possibility to address the anticipated surge in travel that summer. I do not accept the premise of PSAC's argument that there was mandatory overtime caused by staffing shortages. Even if I did, the policy addresses the alleged staffing shortage by permitting managers to hire more casual employees. That is a reasonable balancing of the interests of the CBSA and PSAC and the employees it represents in these circumstances.

[70] For these reasons, the mandatory overtime provisions are consistent with the collective agreement and reasonable.

b. Mandatory overtime argument two: providing guidance on what to do first

[71] PSAC argues that the 2022 Summer Action Plan states that mandatory overtime may be ordered once a manager has done four things: exhausted overtime offering lists, reviewed for potential shift switches, considered denying preapproved leave, and considered the impact on health and safety. PSAC argues that these four things are not "every reasonable effort" to avoid mandatory overtime.

[72] I reject that submission for two reasons.

[73] First, the collective agreement does not require the employer to make every reasonable effort to avoid mandatory overtime. It requires the employer to make every reasonable effort to avoid **excessive** overtime and to offer overtime work on an equitable basis. The collective agreement does not contain any express rules about mandatory overtime, and mandatory overtime is not automatically excessive or inequitable.

[74] Second, PSAC has mischaracterized the 2022 Summer Action Plan. I will reproduce the section about mandatory overtime in its entirety. As can be seen, a manager must do more than four things before ordering mandatory overtime, as follows:

> 4. ***Mandatory OT*** *when all other efforts have been exhausted*
>
> *For more information on mandatory overtime (OT,) please refer to* Guidance Regarding Mandatory Overtime for the Border Services Group *from the Human Resources Branch sent on May 27, 2022*
>
> - *As usual, operations should continue to plan ahead and must make every reasonable effort to avoid excessive overtime. Overtime must be offered on an equitable basis.*
> - *In order to ensure management can reach officers in a timely manner, it is recommended that every effort be made to conduct advanced offerings of overtime in person when officers are on shift.*
> - *This allows for timely responses to overtime offers and meaningful dialogue about operational needs and employee personal circumstances.*
> - *Shift changes and limiting discretionary leave should be considered first.*
> - *If applicable, exhaust the overtime offering list for employees who* ***meet the conditions of employment*** *(e.g. Inland Officers, Intelligence Officers and Instructors with designations/authorities/tools), but may not be substantively in the job that normally performs the overtime duties to be performed.*
> - *Regular OT offerings should occur at the port and district level (where regionally feasible) in both commercial and traveller streams before imposing mandatory OT.*
> - *The delegation to impose mandatory OT rests at the Superintendent level and above.*

> - *Management should ensure the union is notified when mandatory OT is required.*
> - *In the event an employee **refuses management's direction** to work mandatory overtime, supervisors and/or managers should contact their regional Labour Relations Advisor to discuss the situation in order to determine if corrective measures are appropriate.*
> - *If overtime is accepted and then cancelled due to leave (e.g. illness, family related, etc.) the overtime is considered cancelled.*
> - *Management should avoid call backs or scheduling OT for individuals who are on approved vacation - out of town. Exceptional cases will need to be managed on a case-by-case basis in consultation with labour Relations.*
> - *In all instances, the following must be respected:*
>   - *Terms of the employee's collective agreement provisions;*
>   - *The CBSA Overtime Offering Principles and Guidelines;*
>   - *Reasonable rationale(s) provided by employees for not being available to work the mandatory overtime; and*
>   - *The occupational health and safety of employees, particularly with respect to appropriate rest period(s) between scheduled hours of work.*
>
> *Note: It is recommended that where operationally feasible, employees be provided with a **minimum of four (4) hours advance notice** of a **requirement** to work overtime.*
>
> [Emphasis in the original]

[75] The 2022 Summer Action Plan starts by reaffirming the collective agreement rule that a manager must make every reasonable effort to avoid excessive overtime and then offer it on an equitable basis. It then places a number of conditions on using mandatory overtime, including three of the four identified by PSAC. It has other conditions that PSAC did not mention — that the manager inform PSAC and obtain approval from higher-level management (the superintendent or higher).

[76] To quote again from *Algoma Steel*: "The policy on its face does not purport to authorize violations of the collective agreement. Therefore, the policy itself does not become invalid, in anticipation that it will be interpreted and applied in [*sic*] so as to contravene the collective agreement." The policy does not state that it is exhaustive, and simply listing some of the things managers must consider before ordering mandatory overtime does not mean that the policy ensures that management will not take all reasonable steps to avoid excessive overtime.

[77] To the extent that PSAC's argument is more that the 2022 Summer Action Plan does not strike a reasonable balance, one factor for that assessment is whether there are any less intrusive means available to address the employer's concerns. In this case, the 2022 Summer Action Plan identifies a whole series of less intrusive means that managers must apply first. In that way, it strikes a reasonable balance between the interests of the employer and of PSAC and the employees it represents.

[78] In conclusion, the provisions about mandatory overtime are not inconsistent with the collective agreement and strike a reasonable balance between the interests of the employer and employees.

7. Argument seven: vacation leave and religious observance

[79] PSAC argues that the 2022 Summer Action Plan violates the collective agreement rules about time off for religious observations, recall from or cancelling vacation, and the notice provision about approving, denying, altering, or cancelling vacation leave. PSAC argues that the collective agreement requires the employer to make every reasonable effort to avoid those steps, yet the 2022 Summer Action Plan does not contain that requirement.

[80] Again, PSAC has overstated both the collective agreement and the 2022 Summer Action Plan.

[81] The 2022 Summer Action Plan does not say anything about cancelling discretionary leave. Item 5 of that policy is about "[r]educing the level of discretionary leave approval outside of contractual obligations …". It does not say anything about cancelling leave that was already approved. Instead, it instructs managers to "deny discretionary leave requests" for certain periods.

[82] The only mention of cancelling discretionary leave is buried in the Playbook and reads as follows:

> …
>
> □ *Consider **cancellation of approved discretionary leave** when all other mitigation options have been exhausted:*
>
> o *This should be a **last resort measure** due to the potential impacts on staff, and only applied in exigent circumstances and in consultation with Labour Relations.*

- *POE management should give employees as much notice as is practicable and provide the reason for the cancellation **in writing**, upon request from the employee.*
- *This measure is outlined in the collective agreement under article 34.06.*

…

[Emphasis in the original]

[83] The relevant provisions of the collective agreement about vacation leave are clauses 34.05(c) and 34.06, which read as follows:

34.05 *…*	***34.05*** […]
c. Subject to the following subparagraphs, the Employer reserves the right to schedule an employee's vacation leave but shall make every reasonable effort:	*c. Sous réserve des sous-alinéas suivants, l'employeur se réserve le droit de fixer le congé annuel de l'employé-e mais doit faire tout effort raisonnable pour :*
i. to provide an employee's vacation leave in an amount and at such time as the employee may request;	*i. lui accorder le congé annuel dont la durée et le moment sont conformes à la demande de l'employé-e;*
ii. not to recall an employee to duty after the employee has proceeded on vacation leave;	*ii. ne pas rappeler l'employé-e au travail après son départ en congé annuel;*
iii. not to cancel or alter a period of vacation leave or furlough leave which has been previously approved in writing.	*iii. ne pas annuler ni modifier une période de congé annuel ou de congé d'ancienneté qu'il a précédemment approuvée par écrit.*
34.06 *The Employer shall give an employee as much notice as is practicable and reasonable of approval, denial, alteration or cancellation of a request for vacation or furlough leave. In the case of denial, alteration or cancellation of such leave, the Employer shall give the reason therefore in writing, upon written request from the employee.*	***34.06*** *L'employeur, aussitôt qu'il lui est pratique et raisonnable de le faire, prévient l'employé-e de sa décision d'approuver, de refuser, de modifier ou d'annuler une demande de congé annuel ou de congé d'ancienneté. S'il refuse, modifie ou annule un tel congé, l'employeur doit en donner la raison par écrit si l'employé-e le demande par écrit.*

[84] Read together, clauses 34.05(c) and 34.06 mean that the employer must make every reasonable effort not to cancel vacation leave once granted, and to give as much notice as is practicable of a decision altering or cancelling vacation leave.

[85] The Playbook clearly complies with the notice requirement.

[86] The Playbook does not state that a manager must make every reasonable effort not to cancel vacation leave. However, it does say that cancelling vacation leave is a last resort and is to be used only in exigent circumstances. I am not persuaded that there is a material difference between making every reasonable effort not to cancel vacation leave and doing so only as a last resort, in exigent circumstances. This is another example of where individual examples would be important — but, as PSAC admits, there is no indication that any employee had their vacation cancelled during that summer.

[87] As for religious leave, it is not clear to me whether this is a form of "discretionary leave", as that term is used in the 2022 Summer Action Plan or the Playbook. The Playbook refers specifically to clause 34.06, which is only about vacation leave. If it does apply to religious leave, then I reach the same conclusion as for vacation leave. Clause 31.01 of the collective agreement requires the employer to "make every reasonable effort" to accommodate a request for leave to fulfil a religious obligation. I am not persuaded that there is a material difference between making every reasonable effort to grant leave and cancelling it only as a last resort, in exigent circumstances.

[88] For these reasons, I have concluded that the 2022 Summer Action Plan is not inconsistent with the collective agreement.

IV. Employer's jurisdiction argument

[89] The CBSA argues that PSAC's submissions about alleged staffing shortages fall outside the jurisdiction of the Board in a grievance referred to adjudication. However, PSAC is not making a direct attack on the employer's prerogative to choose its staffing levels and it is not seeking any relief related to the alleged staffing shortages. In any event, as I have already said, PSAC has not led sufficient evidence to prove the existence of a staffing shortage. Therefore, it is unnecessary to address the CBSA's argument in detail.

V. Other matters

[90] Throughout this decision, I have referred repeatedly to the fact that PSAC has admitted that no employee was adversely affected by the 2022 Summer Action Plan — nobody worked mandatory overtime, nobody complained about a shift change, and nobody had their vacation or religious leave cancelled. In light of that, I considered asking the parties for submissions about whether I should dismiss this grievance as moot or as serving no labour relations purpose.

[91] I did not do so, for three reasons. First, policy grievances often have a level of abstraction by their nature. Bargaining agents often just seek a declaration about the interpretation of the collective agreement, meaning there can sometimes be little practical impact from a policy grievance. Second, this policy grievance is about a policy that was in place during the summer of 2022. These short-lived policies would be evasive of timely adjudication, as it is unlikely that the parties would complete the departmental grievance process before the policy expires at the end of the summer. This is often a factor in a tribunal exercising its residual discretion to hear a matter despite there no longer being a live controversy. Third, the CBSA did not argue that this grievance is moot or that it serves no labour relations purpose. I read into that silence a joint desire by PSAC and the CBSA for guidance from the Board on this issue. I chose to respect that rather than solicit submissions on mootness.

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

(The Order appears on the next page)

VI. Order

[93] The grievance is denied.

May 15, 2025.

Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board