



ONTARIO
CROWN EMPLOYEES

EMPLOYÉS DE LA COURONNE
DE L'ONTARIO

GRIEVANCE
SETTLEMENT
BOARD

COMMISSION DE
RÈGLEMENT
DES GRIEFS

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GSB#1154/98
OPSEU#98U086

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Union Grievance)

Grievor

- and -

The Crown in Right of Ontario
(Ministry of the Solicitor General and Correctional Services)

Employer

BEFORE

Deborah J.D. Leighton Vice Chair

**FOR THE
GRIEVOR**

David Wright, Counsel
Ryder, Wright, Blair & Doyle
Barristers and Solicitors

**FOR THE
EMPLOYER**

Len Marvy, Senior Counsel
Legal Services Branch
Management Board Secretariat

HEARING

October 24, 2000.

On July 10, 1998 OPSEU filed a union grievance alleging that the employer had violated the redeployment provisions of the collective agreement, including Appendix 13, in its surplussing and assignment of staff after the closing of three jails – Cobourg Jail, Haileybury Jail and L’Original Jail. The jails were closed in July 1998. The parties agreed to proceed to oral argument after the introduction of documentary evidence only. The first issue placed before me on March 28, 2000 was whether Appendix 13 “Relocation of an Operation Beyond a 40km Radius” applies to the three closures. I concluded in the first decision that:

Appendix 13 applies to bargaining unit employees whose work or services remains in the Ontario Public Service, but is moved to a location over 40kms. This was the case for bargaining unit members when the facilities at Cobourg Jail, Haileybury Jail and L’Original Jail were closed and work was transferred to other existing facilities.

I remained seized to address the issue of remedy, as required by the parties.

The issue of what remedy, if any, flows from the decision that Appendix 13 applies to the closure of the three jails was put before me on October 24, 2000. Again, the parties proceeded with oral argument and documentary evidence only. The parties stipulated that the capacity of each receiving jail and the number of positions is currently about the same in each jail as it was in 1998.

It was the union’s position that with the transfer of inmates to the six receiving jails, the amount of work increased and correspondingly, the number of full time equivalents (FTE), and therefore officers from the three closing jails are entitled to these

positions. The union asked for a declaration as to how many FTE's were increased at the receiving jails.

The employer's position was that while the work had moved it has moved to jails that were not operating efficiently. Mr. Marvy submitted that Article 13 recognises that when an operation is moved, it may not be necessary for the employer to move all the workers in the unit. It may not be necessary to move any workers since the capacity of the receiving jails was not increased, no new positions were necessary in counsel's submission.

The evidence before the board is that at Ottawa-Carleton Detention Centre (OCDC) before the transfer of inmates from L'Original, the average FTE complement was 85.37. After July 1998 the average was 92.04. For unclassified the average was 32.1 before July 1998, and 35 after. Mr Wright argued for the union that if the jail was operating at 80% capacity before July 98, it was functioning at 90% after the transfer. Mr. Wright acknowledged that there was no increase in capacity – that is there was no need to add beds or new posts. But the increase in work lead to a need for more staff, and therefore the corrections officers from L'Original are entitled to those positions. The difference between pre-transfer FTE and post-transfer is 9.7 or 9 FTEs.

Union counsel made the same calculations for each closing and receiving jail. Inmates from Haileybury were transferred to Monteith Correctional Centre and North Bay Jail. The difference in Monteith amounts to a 3.78 increase or three positions, in North Bay the increase was 2.06 or two positions. Inmates from Cobourg were transferred to Peterborough Jail, Quinte Detention Centre and Lindsay Jail. In

Peterborough the transfers lead to a 2.78 increase in FTE or two full time positions. In Quinte the increase was from 82.61 to 89.98, a difference of 7.37 or seven full time positions. In Lindsay the total change in average FTE's was 1.66 or one full time position.

It is the union's position that while the employer did not need to create new positions, existing positions previously not filled were required. The transfer of inmates required in counsel's words "more bodies" to do the transferred work.

Counsel for the union relied on OPSEU (Kerhanovich, Behrsin) and the Ministry of Transportation (2000) 2776/96 (Gray), a decision of the board which decided that Appendix 13 applied to the transfer of the work of the two purchasing agents, whose work had been moved beyond 40 kilometres. This decision also addressed remedy and found that the work that moved resulted in one full-time purchasing agent position. The board held that this position had to be offered to the grievors whose work was transferred in accordance with their seniority, under Article 13.

The employer counsel argued that the board could not infer that the increase in FTE's at the receiving jails was because of the transfer of inmates from the closing jails. Mr. Marvy argued that the capacity of the jails had not been increased and the number of posts remained the same. He argued that there could be many reasons why the number of FTE's increased after the transfer of inmates. The employer could have filled vacancies.

Counsel for the employer asked the board to consider the evidence on inmate population and conclude that the work had been absorbed into inefficient jails, and therefore while Appendix 13 may apply, there are no damages.

Decision

If the employer decides to transfer the location of work beyond 40 kilometres Appendix 13 provides affected employees with the choice to move with the work or be declared surplus. Appendix 13 provides:

The Employer and the Union herewith agree that, when a ministry decides to change an operation's headquarters to a location outside a forty (40) kilometre radius of that operation's current headquarters, the following terms and conditions will apply:

- (1) affected employees will be notified, in writing, of the ministry's decision to change the operations's headquarters location and the date when such change will take place;
- (2) (a) employees may accept the change in headquarters location, in which case they will be eligible for reimbursement of relocation costs in accordance with the Employer's relocation policy; or
(b) employees may reject the change in headquarters location, in which case they will be given six (6) months' notice of lay-off pursuant to Article 20.2.1 (Notice and Pay in Lieu) and have full access to the provisions of Article 20 (Employment Stability) and Appendix 9 (Employment Stability) of the Collective Agreement.
- (3) if several employees hold the same position and fewer of their positions are required in the new headquarters location, the employees with the greatest seniority will be given the opportunity to go to the new headquarters location first.
- (4) it is understood that when an employee accepts the change in headquarters location in accordance with this Memorandum of Agreement, the provisions of Article 6 (Posting and Filing of Vacancies or New Positions) shall not apply.

The appendix specifically addresses the possibility that fewer positions would be required in the new headquarters and provides that jobs be offered on the basis of seniority.

The issue before me is whether the transfer of inmates from three closing jails to the receiving jails meant that more work was being done in the "new headquarters" so as to entitle affected employees to that work on the basis of seniority.

Having carefully considered the submissions of the parties, I am satisfied that the union has met its onus in showing that more people were required to work in the

receiving institutions after the transfer of inmates in July 1998. The union proved through evidence of average FTE's in each institution an increase in workers after the transfer of inmates to the receiving jails.

The employer did not dispute the union's calculations of full time positions at the receiving institutions. The employer's argument was that many things might lead to an increase in average FTE's in an institution. However, the board was not provided with any evidence to support this argument. And thus I must conclude that the increase in people working at the receiving institutions is as a direct result of the transfer of work from the three closing jails to the receiving institutions.

While I agree that it is theoretically possible for the employer to transfer work to an inefficient operation, therefore requiring no additional workers, in this case the evidence is clear that additional people were needed in the receiving jails. It is not necessary for the union to show that new posts were created by the transfer of work or that additional beds were needed. It is enough to show that additional "bodies" were needed to do the extra work after the work was transferred. For all these reasons I hereby declare that pursuant to Article 13, the affected correctional officers from the closing jails are entitled to be offered positions on the basis of seniority in the receiving institutions as follows:

1. L'Original correctional officers are entitled to: nine (9) FTE positions at OCDC.
2. Haileybury correctional officers are entitled to: three (3) FTE positions at Monteith, and two (2) FTE positions at North Bay.
3. Cobourg correctional officers are entitled to: two (2) FTE positions at Peterborough, one (1) FTE position at Lindsay, and seven (7) FTE positions at Quinte.

I shall remain seized to address any issues arising out of the implementation of this decision.

Dated at Toronto this 24th day of January 2001.

A handwritten signature in black ink, appearing to read "D.J.D. Leighton". The signature is written in a cursive style with a large, stylized initial "D".

D.J.D. Leighton, Vice-Chair.