



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 & Solicitors

**FOR THE  
EMPLOYER**

David Strang  
Counsel  
Legal Services Branch  
Management Board Secretariat

**HEARING**

July 8, 1999  
March 28, 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 surplusting 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 issue before me is whether Appendix 13 “Relocation of an Operation Beyond a 40km Radius” applies to the three closures. If I find it does apply, I am to remain seized to address the issue of remedy.

The union’s position is that the operation or work of the three jails was moved to other locations and therefore Appendix 13 applies. Appendix 13 provides employees with the right to move with the operation or reject the move and take the rights and provisions under Article 20. The issue at the core of the case is what is “an operation’s headquarters?” Is it the work or is it the facility?

The employer’s position is that Appendix 13 does not apply because “operation’s headquarters” does not mean jobs and functions or the language of the Article would provide this. Appendix 13 only applies when a “functioning or cohesive unit” is moved to another location, according to the employer.

The three institutions which were closed were jails and as such were used as remand facilities for particular courts. Once inmates are sentenced they are generally transferred to other institutions, depending on the individual’s classification. Remand facilities are also used to house inmates sentenced up to 90 days and those serving intermittent sentences, for example on the weekends. These services are provided locally throughout the province.

After closing the jails, the services provided by the three institutions were moved to other locations. The work still has to be done. The employer acknowledged that there has been no drop in the crime rate for the catchment area originally served by the three jails.

The Peterborough and Lindsay Jails now serve the courts originally served by the Cobourg Jail. North Bay Jail serves the courts originally served by Haileybury Jail, and Ottawa Carleton Detention Centre now serves the courts L'Original Jail served previously.

Documentary evidence showed that the inmate population in July 1998 was transferred to various institutions. There was also evidence of where staff ended up after the closures, which for reasons that will be noted later in the decision, was not of assistance to me in deciding the matter.

The evidence of transfers of inmates was put into the record to show that the work is still being done. The employer simply moved where the work is being done. Since the employer agreed that the work was still being done – the courts were still being served and there was no reduction in crime – I have not summarized the detailed evidence put before me of where each inmate was transferred.

Mr. David Wright argued for the union that Appendix 13 should have applied to the closure of the three jails. He submitted that when the employer decides there is no more work then Article 20 applies. If the employer decides to divest the work then Appendix 9 applies. If the employer moves the location of work then Appendix 13 applies. 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 operation'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.

Mr. Wright argued that Appendix 13 gave affected employees the choice to move with the work or be declared surplus. He noted that Appendix 13 was negotiated at the same time as the parties agreed to Appendix 9, which has come to be called the "Reasonable Efforts" provision. Counsel submitted that it does not make sense that employees whose work continues, but is moved beyond 40km, have fewer rights than employees whose work is divested. That would be the case if the board accepted the employer's argument that Appendix 13 does not apply here, in his view.

Counsel for the union also noted that Appendix 13 anticipates the possibility of fewer positions after the transfer of the work. He argued that the fact that the operation has not been moved precisely as it was in the old location does not matter. He urged me to find that it is the work that matters, not some concept of an operation as physical plant.

Since this is a case of first instance, counsel provided definitions from Webster's New Riverside University Dictionary and Black's Law Dictionary of the word "operation." Headquarters has been interpreted, but not for Appendix 13. Counsel cited OPSEU (Laurin/Joly and Ministry of Tourism and Recreation, 1759/90 (Verity) for the proposition that "headquarters" refers to where an employee works.

In conclusion, counsel urged me to find that Appendix 13 applies to the closure of Cobourg, Haileybury and L'Original Jails.

Counsel for the employer, Mr. David Strang, argued that Appendix 13 does not apply to the closing of the three jails. It only applies when a functioning unit is moved to another location. Counsel noted that there was no correlation between where the inmates from the closed jails were placed and where the employees transferred. He disagreed with the union's position that the operation was moved when inmates went one way and the employees went another. The only correlation with inmates and employees was the transfer of inmates and employees to the Ottawa Carleton Detention Centre from L'Original Jail.

Counsel argued that the union was asking for a massive change in interpreting the collective agreement. He urged me not to read Appendix 13 as separate to Article 20, rather he submitted Appendix 13 should be interpreted as part of Article 20. Thus the question to ask in counsel's submission is if the employees have been declared surplus because there is no more work or because the work has moved. He argued that Appendix 13 shifts rights as much as it grants rights. He argued by way of example that the employer could decide to transfer workers from Whitby to Kingston. Even if the workers in Whitby were junior to Kingston workers they would get the jobs and relocation expenses. He was also of the view that if the employer wanted to move certain work from Toronto to Kingston, it could layoff all the workers in Toronto and hire new employees in Kingston. In counsel's submission, the rights under Appendix 13 are rights of the employer. If the employer decides to transfer an operation, then it has to pay relocation expenses.

Counsel argued further that other references in the collective agreement to headquarters are to an employee's headquarters, as in Article 11. Mr. Strang cited OPSEU (MacIntosh) and The Ministry of Natural Resources, 2587/96 (Gray) to support the argument that an employee's headquarters does not change unless the employer changes it. He also relied on OPSEU (Union Grievance) and The Ministry of Correctional Services, 2417/92 (Kaplan). The union in this case argued that the work of the jobbing shop at Millbrook Correctional Centre was transferred to Guelph Correctional Centre. The board found that the jobbing shop was downsized and closed.

Counsel submitted that the surplus provisions in the Red Book (collective agreement, January 1, 1994 to December 31, 1998) fundamentally changed the Green Book, the previous collective agreement. Appendices 9 and 13 are the successors of Article 24.17 of the Green Book. Counsel asked me to compare the language of Appendix 9 to Appendix 13. Appendix 9 provides:

1(a) The Employer will make reasonable efforts to ensure that, where there is a disposition or any other transfer of bargaining unit functions or jobs to the private or broader public sectors ...

In his submission, if the parties had intended that Appendix 13 apply to the transfer of functions and jobs beyond 40kms then they would have used such language in Appendix 13. This difference in language is sufficient to conclude that the intention of the parties was different in each Appendix. There is a difference between functions and work and "operations." He cited Parnell Foods Ltd., a decision of the Labour Relations Board in support of the argument that Appendix 9 was being agreed to in the wake of Parnell, which decided the union had no successor rights and rejected the union's functional analysis argument.

Counsel submitted further that operation means more than work and is different to the facility. In counsel's submission it is a group of employees that is a cohesive unit. There is a difference between moving a cohesive unit and, as in the case before the board, moving employees and inmates for example from L'Original to Ottawa Carleton Detention Centre where there was no change in the operation of O.C.D.C. Counsel concluded that the grievance should be dismissed.

Counsel for the union argued in reply that the issue before me is whether or not the employees of the three jails get the rights provided under Appendix 13. He argued that whether the employer chooses to say the headquarters are transferred or how the employer labels what has been done does not matter. He agreed with Mr. Strang that Appendices 9 and 13 are the successors of Article 24.17 of the Green Book. Article 24.17 also provided rights to employees where an operation was relocated. He submitted that while Appendix 9 addressed issues of contracting out, Appendix 13 dealt with the relocation of an operation. And the language of Appendix 13 is almost identical to Article 24.17 on relocation of an operation. Therefore, the argument that Appendix 13 should have referred to jobs and functions is without merit.

Mr. Wright argued that the Union Grievance (Kaplan) was helpful because the board finds that work is the operation; there was just no evidence that the work was transferred. Here the work has been transferred. It doesn't matter that there was no need for a new facility. The reason there is no correlation between where inmates and staff were sent was because the employer did not follow Appendix 13.

## DECISION

Appendix 13 was first negotiated into the collective agreement dated January 1, 1994 to December 31, 1998. The parties disagree as to its meaning and have asked the board for an interpretation. No extrinsic evidence as to the intention of the parties was introduced. I am being asked to interpret the provision in the context of the whole collective agreement, using the plain language of the appendix and certain policy considerations.

At the core of the case is the meaning of “an operation’s headquarters.” The parties agree and it is well established that headquarters refers to the place or location where an employee works. The parties strongly disagree as to what an “operation” means. The dictionary definitions are helpful in this regard. Webster’s notes that operation is originally derived from Latin operari, which means to work. The definition provides:

1. An act, process, or way of operating.
2. The condition of being operative or functioning (in full operation).
3. A process or series of acts aimed at producing a desired result or effect (the operation of cleaning the house for the party).
4. A method or process of productive activity. (emphasis added)

Counsel for the employer also provided a useful definition from The Dictionary of Canadian Law:

[Operation] "may be given two distinct meanings – a wider meaning when used figuratively (as where a person operates a fleet of vehicles by organizing a system of activity, without necessarily driving any of the vehicles himself), and a more narrow meaning restricted to the physical acts or omissions of the operator of a vehicle while it is being driven." (emphasis added)

The ‘operation’ of the three jails fits best under the first part of the definition cited by the employer, or the fourth noted by the union. ‘Operation’ in this case includes the idea of an organised system of activity or a process of productive activity. Productive activity certainly

suggests the idea of work. Putting the two ideas together I am persuaded that an “operation’s headquarters” is best understood as the location for productive activity.

I am not persuaded that “an operation’s headquarters” refers only to a cohesive and distinct unit or particular people. Nothing in the definitions suggests this interpretation. The employer agreed that operation did not mean “facility.”

The operation or productive activity of Cobourg, Haileybury and L’Original Jails was to provide remand services to certain particular courts, serving a particular catchment area. The evidence is clear that this productive activity or work has not disappeared – the employer conceded that there had been no drop in the crime rate for these areas and the work was still being done. The evidence is clear that the work has simply been moved. The union acknowledged that this was within the employer’s rights. However, once the employer moves the operation’s headquarters to locations beyond 40 kms, the employer is bound by the plain language of Appendix 13. Affected employees have the choice to move with the work or be declared surplus. Moving the work of one headquarters in its entirety to a larger institution, or splitting it between several new or old institutions does not extinguish the rights under the Appendix. Further, the operation of Appendix 13 cannot depend on whether the employer decides to transfer employees to the new location or not. As acknowledged by the union in moving an operation’s headquarters, there may well be fewer jobs. There may well be differences in how the work is carried out.

This conclusion is consistent with other provisions in the collective agreement. If there is no more work then Article 20 and all its rights are triggered. If the employer decides to divest the work then Appendix 9 applies. And if the employer decides to move where the work will be

done beyond 40kms then the rights under Appendix 13 must apply. It would not make sense that employees whose work is divested have greater rights than those whose work is moved beyond 40 kms.

In conclusion, having carefully reviewed and considered the submissions of the parties, I have concluded 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 the bargaining unit members when the facilities at Cobourg Jail, Haileybury Jail and L'Original Jail were closed and the work was transferred to other existing facilities. I, therefore, make the declaration that Appendix 13 applies to the bargaining unit members of the three jails. I shall remain seized of the grievance to address the issue of remedy, as may be required by the parties.

Dated at Toronto this 18<sup>th</sup> day of May, 2000.

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

D.J.D. Leighton, Vice-Chair