

Arbitration Award Summary

06-G—00142 – Statutory Holiday Banked Hours

Case Outline:

This grievance falls under the Collective Agreement expiring March 31, 2009.

The Union filed this grievance specifically for corrections staff who were denied the ability to bank hours worked on a statutory holiday contrary to Article 16.05 of the Collective Agreement. Under section 609 of the human resource manual, the Employer enforced a cap on banked lieu time of 75 hours. This bank includes both statutory and non-statutory overtime. The banking of non-statutory overtime was not addressed in this grievance.

Employer's Argument:

The Employer asserted that the policy directive applying a cap to the lieu time bank was within management's rights under Article 7 of the collective agreement. Prior to applying the cap, they were faced with scheduling problems and budgeting issues related to the lieu time. All corrections staff have two banks; one for statutory holiday time as per Appendix 2 and a second bank for both statutory and non-statutory overtime.

Union's Argument:

The Union argued that the policy directive under 609 in the human resources manual in fact violated Article 16.05 of the collective agreement. Council compared the language of Article 16.05 (Designated Statutory Holidays) and Article 23.05 (b) (Overtime). Where in 16.05 the language is mandatory using "shall", the language of 23.05 (b) indicates that the Employer "may agree to grant equivalent leave with pay..." Therefore, the Employer's action of capping the lieu time bank and denying staff the option of banking lieu time on hours worked on a statutory holiday is a "unilateral refusal to allow employees to exercise that option". This amounts to a change in the structure of compensation for working on a statutory holiday.

Arbitrator's Decision:

The arbitrator allowed the grievance.

In her decision, she indicated that Article 7 (Managerial Responsibilities) is not unrestricted when the collective agreement provides a specific option. Both parties agreed that Article 16.05 applied to the corrections staff and therefore the option of banking lieu hours should be open to them. The policy directive of capping the lieu bank at 75 hour is therefore contrary to

the collective agreement by restricting the employees' option under 16.05. However, she did note by her interpretation, that although the time can be banked, "no roll over is permitted of any banked time in lieu of pay for working statutory holidays..."

The arbitrator made no finding in regards to the banking of non-statutory holiday overtime as the issue was not before her.