

IN THE MATTER OF AN HOURS OF WORK DISPUTE

BETWEEN:

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL  
VANCOUVER ISLAND REGIONAL CORRECTIONAL CENTRE (VIRCC)

(the “Employer”)

AND:

BRITISH COLUMBIA GOVERNMENT EMPLOYEES UNION

(the “Union”)

Hours of Work Umpire Decision

HOURS OF WORK UMPIRE:

Nicholas Glass

COUNSEL:

Rob VaterLechner  
for the employer

Dean Purdy  
for the Union

DATES OF HEARING:

September 13, 30, November 26, 2004

PLACE OF HEARING:

Victoria, BC

DATE OF DECISION:

December 20 2004.

## I. Background

The union filed an hours of work umpire request on the June 23 2004, for a different shift pattern for certain employees in the adult custody division at Vancouver Island Regional Correctional Centre. The number of employees in the work unit at the time when the application was made was 121 regular and 40 auxiliary. The application was to change from a 4 and 2 to a 4 and 4 shift pattern for the majority of the staff, with some posts remaining on 4 and 2 and 5 and 2.

The original application included the SCO III's and the SCO I's, but after some representations by the employer, these staff members were dropped from the application, details of which had been put in writing back in September 2003. The application was formally amended to reflect this and a few other changes were made, on the first day of hearing (September 13, 2004). Informal notice of the major change had been given earlier to leave out the SCO III's and SCO I's. Although this process did not accord strictly with the hours of work procedure set out in the Article 14 of the Master Agreement, the employer accepted that it was in order for me to proceed as Umpire and adjudicate the union's proposal as amended, on September 13, 2004.

## II. Detailed Union Proposal

Because the proposal is quite complex, and was subject to revisions at the commencement of the first day of hearing, it is appropriate to set out the contents of the union's proposal as amended, as a starting point. I have inserted in italics in square brackets some explanatory points which are not part of the text of the proposal itself.

September, 2003

Mr. R. Phalen, Director,  
V.I.R.C.C.  
4216 Wilkinson Road  
Victoria, BC

For your consideration the proposal for a 4 and 4 shift pattern for staff at V.I.R.C.C. is attached, as discussed at the last 3.2 meeting. The first step taken prior to this submission being brought forward was a survey of staff to see how much interest there was in such a pattern. The attempt was made to contact as many staff as possible. Some staff were not contacted as they were not at work and could not be contacted at their residences or did not return calls, however most staff were contacted. The final survey results were 86% in favor of a longer shift resulting in a 4 and 4 pattern. With this large majority it seemed appropriate to proceed in putting the following presentation forward for your consideration. *[There was no breakdown provided as to how the removal of the SCOIII's and SCOI's from the survey results would affect the percentage in favour of the union's 4 and 4 proposal. However, I do not think it is unreasonable to conclude that even without the SCOI and SCOIII, there was still a strong majority in favour of the proposal.]*

#### **4&4 Shift Proposal for V.I.R.C.C. (BCGEU Local 101)**

This shift proposal was chosen as it contains the following characteristics:

- Decreases cost to the employer;
- Meets the operational needs of the employer;
- Maintains a fair pattern with the employee's preferences in consideration;
- Allows for some 4 & 2 and 5 & 2 posts for staff that would prefer this;
- Allows for a more consistent gradual rotation forward through shifts for workers which must do night shifts, resulting in better adjustment of circadian rhythms as outlined by the Canadian Centre for Occupational Health and Safety;
- Increased recovery time after a block of shifts, especially night shifts resulting in a much more refreshed employee;
- Decreased cost to employees in less travel time to and from work;
- Decreased work related stress by decreasing the number of opportunities for work related stress with a decrease in number of shifts (with stress the number of changes into higher stress levels are more important than the length of the stress in shifts); and
- Increased socialization opportunities (with twice as many weekends off) for employees to socialize outside of the workplace with friends and family resulting in a happier and more productive worker.

Following this you will find a breakdown of the shift patterns used for each group along with the defined hours of each shift.



(just enough) time to adjust your sleeping pattern) and then suddenly changing back again. This pattern without nights allows staff to have a fairly regular sleeping pattern with only a possibly minor adjustment when switching from days to afternoons and back thus with little disruption to their circadian rhythms. This may also make this pattern much more appealing to some staff, especially the 14% who did not want elongated shifts.

The positions placed on this pattern in this proposal are not fast and firm, but more of an example and can be changed quite readily depending on any concerns or preferences by the management. The positions placed on this pattern for the purpose of this proposal are LA, LB, LC, LG/H, LI, Prowl 4, Segregation and Visit Officer's positions with all units manned that would be 24 CO's on this pattern which is approximately 24% of the staff with all units staffed. The lack of nights on this pattern may also make this pattern more appealing to a number of staff.

The **second** shift pattern is number 10 in our Component Agreement which is a 5 on 2 off Monday to Friday shift pattern with Statutory Holidays off. This pattern is required in some areas due to the nature of the work and the Center's program. The staff placed on this shift pattern in this proposal are the 3 Gang CO's, the 4 CORE Program CO's, and 1 Records CO. These staff are currently on this shift pattern. This pattern for all 8 CO's will still appeal to the staff that enjoy evenings and weekends off (parents or people who socialize with friends who are not shift workers).

#	Days Per Cycle	Hours Per Shift	Paid/ Unpaid (P/U)	Shifts per Cycle	Pattern Worked	Total Hours/ Cycle	Cycles per Year	Total Annual Hours	Shift Overage	Stat Holiday Hours
10	7	7.00	U	5	5 on 2 off	35.00	52.14	1825.00	0	Not Worked -Non Shift

The shift worked by these day workers is Monday to Friday 08:0 to 16:00 hours (06:30 – 14:00 for Rcds CO) with a one hour lunch break (0.5 for Rcds CO) except on Statutory Holidays which are not worked.

The **third** shift pattern for CO's in this proposal is shift number 12 in our Component Agreement. This is a 4 on 4 off shift pattern with 9.58 hours worked per day. The staff on this pattern are the Runner and Reception Officer which are currently on this pattern thus there is no change with these two posts. This shift pattern from our Component Agreement is as follows:

#	Days Per Cycle	Hours Per Shift	Paid/ Unpaid (P/U)	Shifts per Cycle	Pattern Worked	Total Hours/ Cycle	Cycles per Year	Total Annual Hours	Shift Overage	Stat Holiday Hours
12	8	9.58	U+P	4	4 on 4 off	38.32	45.63	1748.35	-1.65	0

The two Runners work from 08:00 – 16:00 each day 4 on 4 off back to back. The Reception Officers currently work 08:00 – 18:05 each day 4 on 4 off back to back. The Reception Officer may return to 08:00 – 18:00 once no longer required to sign in construction contractors at 07:30 and/or upon direction from the employer.

The **fourth** and final shift pattern for CO's in this proposal is shift number 24 in our Component Agreement. There are two different rotations used with this pattern. The Records and Change Rooms CO's stay as they are. The second rotation is for the remaining Unit, Control and Prowl staff. This pattern is a 4 on 4 off pattern with 7.5 hour, 11 hour and 11.5 hour shifts as follows in the shift schedule and rotations:

#	Days Per Cycle	Hours Per Shift	Paid/Unpaid (P/U)	Shifts per Cycle	Pattern Worked	Total Hours/Cycle	Cycles per Year	Total Annual Hours	Shift Overage	Stat Holiday Hours
34	24	7.50 11.00 11.50	U U P	12	4(7.5)on 4 off 4(11) on 4 off 4(11.5)on 4 off	120.00	15.21	1825.00	-2	77.00

**Records and Change Room Officers remain on the same shift rotation.**

**Second Rotation: Remaining Unit, Prowl and Control Officers**

Rotation:

dddd oooo DDDD oooo DDDD oooo aaa oooo AAAA oooo AAAA oooo

Legend:

<u>Symbol</u>	<u>Shift</u>	<u>Hours</u>
<b>d</b>	7.5 hour day	06:30 – 14:30 hours;
<b>D</b>	11 hour day	06:30 – 18:30 hours;
<b>a</b>	7.5 hour afternoon	14:30 – 22:30 hours;
<b>A</b>	11.5 hour night	18:30 – 06:30; and
<b>o</b>	day of rest.	

This 4 and 4 pattern has a gradual rotation through the shifts from short days (d) to long days (D) to short afternoons (a) to long afternoons or nights (A) and back to days. This gradual rotation through the shifts allows a gradual adjustment in sleep time which produces a good circadian rhythm leading to less stress on the body and mind, thus a healthier, more relaxed and productive employee. The current pattern includes a shift to nights suddenly from days or afternoons for five blocks and having to switch back just as you begin to become comfortable with nights which is obviously poor for your circadian rhythms.

This shift pattern would also allow staff on long days an extra 20 minute lock down to complete tasks such as getting items from records for inmates, completing unit

progress or unit log entries without interruption or loss of observation of inmate activities if there is a belief of a possible problems arising in the unit. The 11.5 hour night shift allows the short afternoon staff to watch the units after 21:50 night time lock down to proceed on an unpaid 30 minute meal period during which they can leave the center to pick up any required items. After that their would be a 30 minute paid meal break later for which staff would not be able to leave and possible can be taken at the post after retrieving their items from the Staff Room. This would ensure the proper manning of posts and number of officer's at the center. Also if a staff member is required to do a hospital escort beyond 22:30 the exterior or interior prowl could be used with no requirement to back fill. See the attached Appendix B for a graphical illustration of the Records and Change Room coverage. *[Appendix B was not included in evidence, because under the amended proposal there was no change to the rotations for the Records and Change Room Officers.]*

The four and four pattern makes staff available more often on days of rest to cover any required overtime shifts during the prime vacation time while still have a few days off to recuperate. When doing overtime on the current 4 on 2 off pattern you either loose half your days of rest leaving only one day to recuperate or only have 8 hours after an overtime shift to get home, make meals etc., and return for the next shift without proper rest. At least two days of rest in the work schedule for family, friends, and/or recuperation for the next block of work to make a happy, healthy, and well adjusted worker.

## **GENERAL INFORMATION**

This proposal leaves the SCO III's on their current 4 on 2 off pattern, other than the Work Program Supervisor which will remain on the current 5 on 2 off day worker schedule. The SCO I's on the current 5 on 2 off will remain on this pattern, the Classification SCO I's will remain on their current 4 on 4 off schedule. The CO's will have approximately 23% on a 4 on 2 off shift pattern without any nights, approximately 7% on a 5 on 2 off shift pattern for weekly day workers, and approximately 70% on a 4 on 4 off shift pattern.

## **IMPACT ON INMATES**

The impact on inmates will not be much if any. The staff may be spending many longer days in the unit giving more consistency to the running of the unit, and more continuity in the manner of which situations are being dealt with on a daily basis. The Center Program/Daily Schedule will remain the same to ensure no impact on programs and contractors at the Center. See attached Daily Schedule at Appendix E and Program Schedule at Appendix F which includes the time schedule for the Center and all daily programs including recreation, healthcare, CORE, and contracted programs. Note that there are still some adjustments to be made for the program on weekends and Statutory Holidays which are being revised at this time and the change

in shift pattern should not affect this whatsoever. *[The adjustments here referred to will be management adjustments as required and are not Union adjustments.]*

## **SHIFT SCHEDULING**

With scheduling of the new 4 on 4 off program the shifts would be filled in the following order as they come up:

A -	11.5 hour shift	starts at 18:30 hours the night prior;
D -	11 hour shift	starts at 06:30 hours;
d -	7.5 hour shift	also starts at 06:30 hours
D -	9.58 hour shift	starts at 07:30 or 08:00 hours;
d -	7 hour shift	starts at 08:00 hours (mon.-fri.); and
a -	7.5 hour shift	starts at 14:30 hours.

The arrangement allows the longest shift to be filled first, which is 11.5 hours. This will allow the most senior auxiliary the opportunity to get the longest shift. The second shift, which is 11 hours long, then allows the next more senior auxiliary employee's to receive the next longest shift. The 7.5 hour day shift is next, followed by the 9.58 hour shift which is normally only backfilled 7.5 hours and if required longer the last two hours could be given out to the next auxiliary employee on the seniority list. Should a longer afternoon shift become available after this it would be prior to this shift and the auxiliary employee with this shift could take the afternoon shift and allows this shift to move down the seniority list if it is still required. The impact on shift scheduling would make the job generally easier to ensure the more senior auxiliaries get the longer hours and thus get more hours than auxiliaries which are junior to them.

Should a unit close down, the three bottom regularly scheduled staff would move onto the call board as regulars without a schedule. If the unit closed is on a 4 on 2 off schedule it can just be marked as closed on the call board. If it is a unit with a 4 on 4 off schedule a 4 on 2 off scheduled unit can move into the 4 on 4 off position on the board and the closed unit in the 4 on 2 off position until the night shift compliment needs to be reduced. This can be done by closing a 4 on 4 off scheduled unit. Any unfilled night shifts posts not covered by the 4 on 4 off can be covered with a 7.5 hour night shift backfilled by an auxiliary \*or unscheduled regular staff) on the callboard.

## **COST SAVINGS**

In these days of fiscal restraint and budget mandates a cost savings is very important, and of course any proposal including an increased cost to the employer would be unacceptable. This proposal contains a savings estimated at 38,393.73 as outlined in the attached Appendix C. *[This figure was later conceded by the union to be estimated at \$22,160.43.]*

## SUMMARY

A copy of the proposed shift schedule is attached as Appendix D with January, February, and March 2004; a copy of the centres Daily Schedule as Appendix E; and a copy of the Programs Schedule at Appendix F. In summation I hope this proposal meets your needs as the employer and will give staff an acceptable pattern which will be healthier for many of the employees and VIRCC. This proposal includes:

A shift pattern for SCO III's which rotates across the shifts to maintain consistency between the shifts; *[no longer so in light of the amended application]*  
A shift pattern for the Deputy Shift Supervisors which assigns them to a specific group of the same staff working under them; *[also no longer the case under the amended application]*  
Ensures that hours paid for are worked;  
Has no impact on the schedule or inmates;  
Includes as many work groups as possible;  
Gives each position advantages to working it on the given schedule; and  
Has built in savings for the employer.

All of which were discussed at the previous 3.2 meeting as desirable aspects for management in a shift pattern.

*[The balance of the text is not part of the amended application considered at the hearing]*

For Your Consideration,  
On Behalf of Your Employees,

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M.T. Fowler  
1<sup>st</sup> Vice Chair  
BCGEU Lcl 101

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D. Purdy  
Local Chair  
BCGEU Lcl 101

There were a number of appendices included with the original proposal. However Appendices A and B were not included in the amended proposal, because Appendix A referred to the proposal for SCO I's which was dropped and Appendix B referred to Change Room and Records Officers, whose rotations did not change pursuant to the amended proposal.

Some of these appendices were extremely detailed and I do not intend to reproduce them in full here but I will provide a description of them.

Appendix C sets out the estimated cost savings in the union proposal. The headings are shift exchange savings; shift premium savings; and FTE savings. These total as indicated above an estimated \$22,160.43.

Appendix D is a detailed schedule for the months of January, February, and March 2004, which of course is somewhat out of date now but which is intended to be illustrative of the workings of the union's proposal. There have been changes and cutbacks to staff since this document was prepared, but it is sufficient to provide an illustration of how the revised shift patterns will operate.

Appendix E consists of three detailed folio size pages describing the daily routine at the correctional center commencing with 05:35 hours "wake up kitchen crew" down to 22:30 hours shift change formal count and commencement of night shift routine. The third page provides a variant of the routine for Saturday and Sunday morning.

Appendix F provides details of the weekly Program schedule Monday through Sunday.

Appendix G sets out FTE requirements as between the current pattern and the proposed pattern. According to this appendix the proposed shift pattern would save 1/6 of a FTE, with most of these savings apparently coming from a reduction in the night shift staffing requirement. This is included in the total savings claimed by the union for its proposed shift pattern with an estimated savings of \$6,945.65. At one point in the hearing, the employer was alleging that the union's proposal would require 5.26 FTE's above the current expenditure, but towards the end of the hearing Mr. VaterLechner for the employer advised that he would not be aggressively pursuing this point as it had been based on earlier staffing levels. Once current levels of staffing were compared to what is in the amended application, this allegation was effectively dropped by the employer.

III. Positions of the parties with respect to the proposal, and my comments.

Mr. Purdy provided a statement regarding the union's view of some of the benefits of a 4 & 4 pattern versus the 4 & 2 pattern. It is helpful to quote it, as it crystallizes many of the reasons advanced by the union for making the proposal in the first place:

**Benefits of the 4&4 Shift Pattern**

Some of the benefits of the 4&4 pattern versus the 4&2 are as follows:

- You have to commute to work approximately 65 fewer times a year on the 4&4 pattern as apposed to the 4&2 pattern.
- There are more days of rest and more days off on the weekends, which provides more quality time and sociable hours with the family.
- You use less gas commuting to and from work on the 4&4 pattern which is actually like a raise in pay considering the price of gas these days. It is also better for the environment resulting in less harmful emissions from your vehicle.
- It promotes consistent childcare scheduling/coverage and reduces cost to the employee.
- On the 4&4 pattern the odds are greater that if you get sick it will be on your day of rest. You have a 50% chance it will be on your days of rest, as apposed to a 33% chance on the 4&2 pattern.
- The 4&4 pattern provides a constant rhythmic shift rotation and offers a far more gradual change and adjustment of circadian rhythms over a 48 day period as apposed to two days on the 4&2 pattern. It provides the least adjustment to your body clock which allows your biological rhythm to stay in daytime orientation.
- It makes it easier to maintain regular eating habits and minimizing health pitfalls associated with inconsistent shift patterns.
- There have been 21 staff assaults at VIRCC since the staff to inmate ratios rose above the previous rule of a 20:1 inmate to staff ratio. This pattern gives more recuperation time after dealing with a more confrontational and aggressive inmate.
- It establishes consistency with other centres in the bargaining unit.

- It offers a decreased cost to the employer.
- It meets the operational requirement at VIRCC.
- It provides a consistent healthy shift pattern that decreases the amount of time spent on dark shifts (afternoons & nights).
- It provides the ability to maintain domestic demands and social factors.
- It provides the employee a chance to further education by reducing the amount of time spent on dark shifts.

Mr. VaterLechner for the employer stated that the application was opposed on a number of grounds. He pointed out that Article 14 of the Master Agreement and in particular Article 14.2 (f) (2) provides that “work schedule changes, within existing hours of operation, must not result in increased costs to the employer and where possible should result in decreased costs to the employer and/or improved efficiency and/or improved service to the public...”. His primary point was that the union’s proposal would significantly increase benefit and salary costs, although the amount involved was downplayed towards the end of the hearing.

The employer pointed out that the adult custody division has been subject to budget cuts of more than 30% in the last 2 to 3 years, with 9 jails being closed and 550 employees having lost their jobs. Tolerance for any increased costs had reached zero.

I will here set out the specific points made in opposition to the union’s application. I will also set out the union’s response as well as my view of the merits of these points as they are reviewed rather than at the end as this is easier to follow.

1. The union’s proposal would have an adverse impact on services to inmates

The employer pointed out that inmates are locked down at night and also during employee rest and meal periods. The component agreement requires “meal periods to be scheduled near the middle of shifts wherever possible”. By introducing an additional lengthier shift pattern the union’s proposal would introduce an additional, longer meal break at a different

time than the two existing shorter meal breaks. This would require inmates to be locked down longer and more often, and the center's ability to provide core programs, health care and recreational opportunities for inmates would be impacted.

The union's response was that the words "wherever possible" with reference to meal periods is key to an understanding of the component agreement. In practice the employer does not follow this to the letter. While it is admitted that there would be some impact, there is flexibility in the collective agreement and it should not be a reason to reject the union's proposal. Mr. Purdy for the union also stated that union members would, as a condition of their proposal being accepted, take 2 half hour breaks at the same time as other staff not on elongated shifts, rather than one full hour break at a different time which would otherwise result in 2 shorter lockdowns and 1 longer lockdown as the employer contended. Mr. VaterLechner pointed out that accepting this condition would not conform to the requirements of Article 6 of the component agreement and would not fit any of the 53 patterns set out in the component agreement. Mr. Purdy for the union replied that flexibility was inherent in the meal break provisions and that this arrangement as proposed by the union was in operation at all the other locations in British Columbia where a 4&4 shift is in place for CO's.

My conclusion with respect to this point is that I am not inclined to treat it as a reason to reject the application. If employees affected take the two shorter lunch breaks as they have stated they are willing to do, the periods of lock down for inmates will not change as compared with the current periods of lock down. I also note that component agreement appendix C which sets out the permitted shift schedules, does not in any case specify when the meal breaks are to be taken, but only the total length of the meal period. It is only the discretionary or "wherever possible" provision in Article 6.1 (b) (1) which is applicable to meal periods, which does suggest some flexibility over meal breaks is appropriate. Further there is no evidence before me that this arrangement in other correctional centres adversely impacts services to inmates.

2. The union's proposal would disrupt rotation through the work groups

The employer is here highlighting the fact that most staff work on a three year rotation with one-third of them rotating into a different work group each year. As the employer says “this system benefits employees and management alike. Employees learn a variety of skills and are able to advance their careers. Management has a well trained staff capable of working multiple posts and responding to any situation.”

It appears that the employer has interpreted the union’s proposal as allowing employees to choose their post based on the shift pattern that they prefer. This is based on the language of the proposal which says for example with respect to shift pattern number 1 that it would be “much more appealing to some staff, especially the 14% who do not want elongated shifts”, and with respect to shift pattern number 10 it will “still appeal to the staff that enjoy evenings and weekends off (parents or people who socialize with friends who are not shift workers)”.

If the consequence of implementing the union proposal was to fetter management’s right to allocate staff to different positions to an extent beyond what is already contained in the collective agreement, then it would have to be rejected. However, it appears that the employer has misunderstood this aspect of the proposal, because as Mr. Purdy clarified in his reply, the language used such as above quoted, recognizes only that there are staff preferences, but this was in no way intended to alter the existing process for allocating staff to different positions or reduce the rights of management in any way.

The present process is that all posts are discussed annually at a meeting in late September or early October, and the decision at that meeting about which staff are rotated and which stay, is one which is ultimately made by management, and there is no intention or suggestion on the part of the union that management’s prerogative in this matter is to be fettered or removed.

Accordingly, I do not find that the union’s proposal will have the effect claimed by the employer.

3. The union's proposal would dismantle the three platoon system

The VIRCC staff is currently divided into three platoons. The union's original proposal as the employer says, recognized the value of maintaining the integrity of the platoons, and was designed so that the SCO I's would be on the same rotation as the work group, and so their shift in each case would be the same shift as the CO's working under them. The union abandoned this aspect of the application, so that under the present proposal, most CO's, when working the longer shifts implicit in the 4 on 4 off rotation will be subject to a change of supervisor or SCO I, during the shift.

The employer alleges that "if CO's are supervised by a number of different supervisors, inadequate and inconsistent communication will result". The employer goes on to say:

A jail cannot function with inadequate or inconsistent communication. In a correctional facility, poor communication with staff leads to labour relation conflicts. Poor communication with inmates leads to disturbances and jeopardizes staff, inmate, and public safety.

The union's response to this concern is that a change of supervisor mid shift need not result in inadequate or inconsistent communication. In the present regime, SCO's email each other regularly. For example they currently do appraisals for auxiliary staff and exchange information about them through emails. Also SCO III's are rotated through each shift as a matter of policy by the employer, which is an indication that absolute continuity is not necessarily required. SCO III's currently work three months a year with each shift. In addition information is shared and continuity is ensured by a variety of means. These include daily shift musters; living unit shift reports; living unit log books; daily shift information exchange meetings between staff; high risk lists and monitoring the inmate profile; computer progress logs for inmates; extensive use of information on emails; extensive information available on the VIRCC home page.

None of these responses by the union really address the central point made by the employer that there will be a lack of continuity as between the supervisor and the staff on shift,

occasioned by the fact that supervisors will be working a different length of shift in many cases. This means that a new supervisor will come on duty mid shift. The difficulty I am in is that management asserts that this will have an adverse operational impact and the union asserts that it will not. Certainly Article 14 states that “where possible [the application] shall result in decreased cost to the employer and/or improved efficiency and/or improved service to the public.” In the end however, I do not feel that I am armed with sufficient information to accept the employer’s contention that the mere fact of changing supervisors mid shift will be operationally inefficient and/or jeopardize safety. There is nothing in the component agreement or elsewhere which prohibits CO’s from operating on shift patterns which are not identical to those of their supervisors at any one time.

The employer made a further point about the disruption of the platoon system: When a supervisor is absent from work under the three platoon system, management knows who will be back filling the position. A memorandum was put in evidence, updated on the 20<sup>th</sup> of August 2004, which set out the acting supervisors list for different shifts, programs and sentence management. In fact says the employer such factors are taken into consideration when platoons are formed. But under the union’s proposal someone from A platoon could supervise B platoon for the first part of a shift, only to be replaced after a few hours by someone more senior from C platoon. Thus when opportunities for substitution arise, management may not know who is running the jail or for how long.

The union’s response is to refer to the employer’s memorandum at exhibit 15 which lists different individuals who can substitute as supervisors, both second in command and first in command. These individuals are from A, B, and C shifts. The memo states “All staff on this list can work 2 I/C *at any time* and work day shift I/C Monday through Friday (except statutory holidays) and on *any night shift* opportunities. The fact is that it is not possible to know ahead of time when substitution may be necessary so for a limited period perhaps management may be unaware of exactly which person on the list has become acting supervisor. This obviously depends upon availability which is not always known ahead of time.

This is the aspect of the proposal which is the most difficult to assess. There are clearly advantages to the platoon system which even the union recognises. Do these advantages outweigh the strong employee preference for the proposal and the other positive features of it? In the end, this is not a point which in my view should dictate the success or failure of this application. Further, the actual operational impact of the new proposal is not known at this time.

4. Decrease or increase to benefit costs?

The employer next addressed the union's claim that its proposal would decrease benefit costs. This was set out in exhibit 3 previously quoted, at the 5<sup>th</sup> paragraph. The union's point was that on a 4 & 4 pattern "the odds are greater that if you get sick it will be on your day of rest. You have a 50% chance it will be on your days of rest as opposed to a 33% chance on the 4 & 2 pattern."

The employer replied firstly that this logic is flawed because a 4 & 4 employee who misses fewer shifts would nevertheless be missing longer shifts, which adds up to missing longer hours of work. This would result in equal not lesser STIIP costs. However, the employer goes further and refers to some statistics collected from nine correctional centres including Vancouver Island, for the year 2003. Without entering into a great deal of detail, it is fair to say that when looking at other regional correctional centre numbers for 2003, where 4 & 4 shifts are employed, the amount of STIIP absences per person is higher than found at VIRCC which had mostly 4 and 2 shifts, at least in 2003. The employer also says that the data for 2003 when looked at across the board suggests that regardless of the number of shifts or the number of work days in the year, correctional officers across the province tend to call in sick about 10 to 12 times per year. If this is a correct interpretation of the data, then, says the employer, correctional officers working 4 & 2 shift at VIRCC averaged 8.48 shifts per person for STIIP and 1.2 shifts per person for special leave for a total of 9.75 shifts per year per person. If this statistic, which was the statistic for 2003, were applied to the union's proposed shift pattern, the number of hours lost would be about 1/3 longer, because

the length of the shift on average would be about 1/3 longer. This would mean that the STIIP and special leave costs would be 1/3 higher, if the same number of shifts are missed.

The union's reply to this is that one year is not even close to being a sufficient database to draw any conclusions about shifts missed because of STIIP or special leave. On this point I have to agree with the union. The first problem is that one years sampling is insufficient to draw any conclusions in terms of a pattern of shifts missed for STIIP. The second problem is that the statistics for each centre, looking at shifts having the highest concentration of hours in each case, indicate a variation between a high of 28.36 missed shifts per year, (for the 4 & 2 shift at Fraser Regional Correctional Center), to a low of 7.68 absences (for the 4 & 4 – 9.83 hours shifts at Nanaimo). This is insufficient to reach any conclusion at all about what may happen when and if VIRCC goes on a 4 & 4 pattern in future years. The employer's projection is based on the notion that all centres regardless of length of shift, have STIIP absences of about 10 to 12 a year, and this is not born out by the numbers. Even if it was however the key problem is the use of the term "per year". An annual average can only be ascertained by reference to a series of years. It is not fair or appropriate to look at one year, i.e. 2003, and use it to establish an annual average of "10 to 12 times per year".

There was some discussion about the impact of a policy which allegedly was implemented in 2003 whereby more than a certain number of days of STIIP would trigger an employer request for an STO2 form to be filled out, requiring a doctor's signature. There was a certain amount of discussion at the hearing about this and there was no agreement about the extent of the policy or the exact nature of the policy so I am not factoring this in any assessment of the statistical information provided.

In short, I find insufficient evidence from which to conclude that the number of absences for STIIP will remain the same as 2003, after the introduction of the 4 & 4 shift pattern at VIRCC. Without this, there is no basis to conclude that the union's proposal will significantly increase benefit costs, or indeed that it will increase benefit costs at all.

5. Health consequences of longer shifts.

Both sides referred to different studies about the impact on health of switching to longer shifts. The union referred to the American College of Emergency Physicians Policy Resource and Education paper entitled “Circadian Rhythms and Shift Work” dated or rather revised August 2003. The union claimed that some of the conclusions in this paper suggest that the 4 & 4 union proposal would be beneficial on the whole for staff, compared to the current 4 & 2 with random night shifts. The employer referred to a paper from the U.S. Department of Health and Human Services, Centres for Disease, Control and Prevention, National Institution for Occupational Safety and Health, entitled “Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviours”. This paper notes a pattern of deteriorating performance on psychophysiological tests as well as injuries while working long hours, particularly very long shifts, where 12 hours shifts combined with more than 40 hours of work a week.

The employer referred to this paper as suggesting that the longer hours included in the 4 & 4 union proposal would have an adverse effect on health and performance which in turn could result in increased benefit costs being paid out.

On this aspect on the dispute, I do not feel that I have received sufficient information from either side, to conclude that there will be any health risk or benefit cost increase resulting from staff working 11 hour shifts under the 4 & 4 pattern proposed by the employer.

6. Additional points against the application.

The employer’s original argument included an allegation that the union’s proposal would vary staffing levels by adding some positions and eliminating others, but since the union’s proposal was originally filed, there have been a number of staff cuts which appear to have had the result that the union’s proposal does not in fact change the status quo as of the date of hearing, in terms of staffing levels.

The employer also at the hearing raised a concern about how posts would be reduced if a unit was closed. The answer given was that the same process would be used under the union's proposal as is currently used. In the first place the junior auxiliary or auxiliaries would be sent home and a regular employee would be moved into that post. If a regular employee was affected by a closure, they would bump the most junior regular employee where possible. This involves no change whatsoever to the existing process which occurs when closures happen.

There were some further comments by the employer which included pointing out that the union's proposal would result in 30 changes of shift per year whereas the current system allows for a gradual adjustment from days to afternoons to splits with only 12 shift changes a year. The union's response about the increased number of shift changes was that for the purposes of making adjustments it is the starting and stopping times which is the key factor in affecting circadian rhythms, and not the number of times this happens in a year. As far as night shift is concerned the current system as pointed out by the employer is scheduled a year in advance and is only required 1 to 3 times a year. Nevertheless as the union points out, the occasions when these night shifts are required are quite random in terms of when they occur in the year.

As for shift changes, the employer accepted that a reduction in the number of shift exchanges would save some money. However, the savings according to the employer would be \$5,550.43 rather than \$14,575.59 alleged by the union. There was some detailed review of the reason for the differences between these two figures but for the purposes of this hearing I do not find it useful to spend a lot of time on this. The bottom line is that some savings are admitted to by the employer resulting from a reduction in the number of shift exchanges.

With respect to the extensive level of support for the change the employer pointed out that there was some individuals who voted who had been on LTD but these turned out to be only 5 out of 160 who voted. The employer also raised the point that the vote occurred before the possibility of layoffs resulting from the new proposal had been put to the

membership. However, Mr. Purdy replied that this possibility was raised with the membership before the vote. The employer pointed out that the SCOI's and SCOIII's who were later removed from the proposal voted on the proposal, but Mr Purdy asked me to note that they tended to be older members of the staff who are less likely to support any elongated 4&4 shift, so without them voting, the percentage of support would likely have been higher than it was.

There were a number of other points raised by the union and also some by the employer, which I will not review. However I wish to assure the parties that all their arguments have been considered.

#### IV. Summary and Conclusion

I was referred by the union to the hours of work decision of umpire Ben Vanderwoerd dated July 3, 2001 referring to the North Fraser Pre-trial Center in Port Coquitlam. I have already noted that one of the union's arguments was that a 4 & 4 shift pattern is worked by some or most staff at most other correctional centres in B.C. In that connection the words of umpire Vanderwoerd at the bottom of page 4 of his decision are apt:

This shift pattern proposed by the supervisors is the same one as has been agreed upon between the employer and supervisors in five of seven other remand centres, 3 of which are in the same region. No information was presented by the employer to show how in these other centres operational requirements have been adversely affected by this shift pattern to an extent to make it unworkable here.

While the supervisors shift proposal was for a 4 on 6 off pattern (number 17 in the component agreement) rather than a 4 on and 4 off as proposed here, the same reasoning applies in my view with regard to the 4 & 4 patterns worked at other correctional centres. There was no evidence or indication from the employer that these centres are suffering operationally by the implementation of 4 & 4 shift patterns, and there is therefore no basis for assuming that there would be operational problems at the VIRCC.

I was also referred to a decision of umpire Vanderwoerd's dated May 16, 2000, involved the Regional Correctional Centre in Chilliwack B.C. At page 7, where the umpire is reviewing the merits of the shorter or longer shift for the shift supervisors at that centre he said as follows:

After reviewing all the facts and arguments I have not been convinced that the short shift is necessarily the only way the mandate can be met. When taking together with the obvious impact a short shift has on shift supervisors and their families the balance in my view is tipped in favour of the longer shifts. Since the changes at the center are still evolving over the next several years, the parties will have ample opportunity to evaluate how this longer shift arrangement is working out. Any discussions between them can then be based facts as opposed to beliefs.

I am inclined to agree with the reasoning of umpire Vanderwoerd, with regard to the operational concerns expressed by the employer in this case, which are based on beliefs as opposed to facts at this stage.

I am grateful to both counsel for their very full and helpful submissions addressing quite a complicated set of circumstances. In the end, when all the competing considerations are weighed, I have not been persuaded that there are any sufficiently compelling reasons to ignore the very strong employee preference for the longer shift.

Accordingly the application of the union is successful. Revised shift patterns in accordance with the application, should be in place within one month from the date of this decision, or such other time as the parties agree based on the operational requirements of the center.

Dated at Vancouver British Columbia this 20th day of December 2004.

*"Nicholas Glass"*

Nicholas Glass

Hours of Work Umpire

