



UNION INFO – Feb. 2011

Acting pay decision

On February 1st, 2011, UCCO-SACC-CSN obtained an important precedent that upheld the grievances of 42 correctional officers claiming acting pay for acting as instructors. (article 49.07 of the collective agreement)

The ruling by Michele A. Pineau, vice-chairperson of the Public Service Labour Relations Board, allows correctional officers the benefit of acting pay at article 49.07 of the collective labour agreement as well as the instructor allowance at article 43.05, when they act as instructors.

The decision known as *Timson and others* (citation: 2011 PSLRB 8) involved correctional officers acting as instructors in SCBA, weapons, chemical agents, First Aid and ERT, amongst others.

In every one of the 42 cases, the employer violated the collective labour agreement. In every case, the employer argued that it had reviewed the job description of instructors which had a certain number of key activities (eight for example) and that the correctional officer had only performed on key activity, that is, the instructor activity. You don't have to be a rocket scientist to understand that instructors don't perform all of the key activities of their job description on any given day. When they perform weapons training on a range for a full day, for example, they perform but one of the key activities of their job description, as did the 42 grievors.

UCCO-SACC-CSN had obtained a favorable decision on the same issue in October 2009 in *Lavigne and others*. (citation: 2009 PSLRB 117) *Lavigne and others* involved weapons instructors who were denied acting pay. The employer had made the same argument as in *Timson and others* cited above.

In *Timson and others*, the union asked that the *Lavigne* precedent be followed. Adjudicator Michele A. Pineau agreed and allowed the 42 grievances. As in *Lavigne and others*, the employer argued that the introduction of the instructor allowance (article 43.05) into the collective labour agreement signed in June 2006, meant that correctional officers had lost their entitlement to acting pay. Adjudicator Michele A. Pineau rejects this argument as follows:

"[26] I have not been convinced by the argument that clause 43.05 of the 2006 collective agreement, providing for an instructor's allowance, changes the plain and ordinary meaning of clause 49.07. The addition of an instructor's allowance does not lead to an absurdity or inconsistency with other provisions of the collective agreement. The instructor's allowance is listed along with the other allowances, such as those for employees who agree to be emergency response team members, the dog handler's allowance and the responsibility allowance, without the stated intent that none of these allowances replace the provision for acting pay in clause 49.07."

Correctional officers in every institution should note that acting as an instructor for at least eight (8) hours entitles them to the instructor allowance (43.05) and acting pay (49.07). If the employer refuses the benefit of acting pay in the future, correctional officers will have no choice but to grieve. Even if the employer chooses to apply to the Federal Court for a judicial review of the *Timson and others* decision, grievances are still in order. We believe that the employer ought to simply respect the ruling and pay acting pay to correctional officers acting as instructors.