Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Date: 2018-08-28
Case Nos.: 2014-23
2014-24
2014-25
2014-26

Between:

Scott Stayer, Jack Bakker, Shawn Dougan,
Hawley Moulton and Clinton Gillespie, Appellants

and

Correctional Service of Canada, Respondent

Indexed as: *Stayer v. Correctional Service of Canada*

REDACTED VERSION

Matters:	Appeals under subsection 129(7) of the *Canada Labour Code* of decisions rendered by Health and Safety Officer Jenkins
Decision:	The decisions that a danger does not exist are confirmed
Decision rendered by:	Mr. Peter Strahlendorf, Appeals Officer
Language of decision:	English
For the appellants:	Mr. Mathieu Huchette, Counsel, UCCO-SACC-CSN
For the respondent:	Mr. Joel Stelpstra, Counsel, Treasury Board Legal Services, Department of Justice
Citation:	2018 OHSTC 8

REASONS

[1] This concerns appeals brought under subsection 129(7) of the *Canada Labour Code* (the *Code*) of decisions rendered by Health and Safety Officer (HSO), Mr. Lewis Jenkins, on June 16 and 17, 2014.

Background

[2] Prior to April 1, 2014, Correctional Service of Canada (CSC) had a number of locations across Canada where a medium security institution and a minimum security institution were located next to each other. On April 1, 2014, CSC implemented a new policy whereby such medium and minimum institutions would be "clustered", which meant that they were to be integrated administratively to some degree. In these matters, we are concerned only with two locations – Beaver Creek/Fenbrook (now Beaver Creek) and Frontenac/Collins Bay (now Collins Bay).

[3] [Text redacted].

[4] [Text redacted].

[5] In response to the perceived danger created by the elimination of the CM position, there were a number of work refusals at the two locations. HSO Jenkins investigated the first work refusal at Beaver Creek and made a decision on April 28, 2014 that there was a danger. In response, the employer produced a mitigation strategy on May 7, 2014. HSO Jenkins accepted the mitigation strategy and determined that there was no longer a danger.

[6] However, some COs did not believe that the employer's mitigation strategy eliminated the danger and so engaged in further work refusals. In total there were five work refusals by five COs, four at Beaver Creek and one at Collins Bay. HSO Jenkins investigated the circumstances of the five new work refusals and decided that there was "no danger" in all five. The dates of the work refusals, the COs involved and the dates of the corresponding decisions by HSO Jenkins are set out below:

1. Work refusal on May 27, 2014. Beaver Creek. CO Shawn Dougan and CO Hawley Moulton. Decision of "no danger" rendered on June 17, 2014.
2. Work refusal on May 28, 2014. Beaver Creek. CO Scott Stayer and CO Clinton Gillespie. Decision of "no danger" rendered on June 16, 2014.
3. Work refusal on May 30, 2014. Collins Bay. CO Jack Bakker. Decision of "no danger" rendered on June 16, 2014.

[7] HSO Jenkins' decisions of "no danger" were appealed by the five COs, structured as four appeals, as follows:

1. Scott Stayer - Beaver Creek - Case 2014-23
2. Jack Bakker - Collins Bay - Case 2014-24

3. Shawn Dougan and Hawley Moulton - Beaver Creek - Case 2014-25
4. Clinton Gillespie - Beaver Creek - Case 2014-26

[8] The appellants appealed HSO Jenkins' decisions on June 21, 2014.

[9] As the issues raised in these 4 appeals are fundamentally the same, they were joined and heard together. On May 8, 2017, I attended Beaver Creek, along with representatives of the employees and the employer, to view the physical layout of the institution. The situation at Collins Bay was said by the parties to be similar.

[10] The appeals were heard in Toronto on May 9 to May 12, 2017.

Preliminary Issue – Mootness

[11] The respondent raised a preliminary issue regarding mootness. The respondent's position is that this Tribunal should decline to decide whether there was a danger because any such decision will not have the effect of resolving a controversy between the parties. The mootness issue arises because the *Code* was amended, changing the definition of "danger". This Tribunal must apply the definition of "danger" that existed at the time of the work refusals. The work refusals occurred in May of 2014. The definition of danger in the *Code* was amended on October 31, 2014. The respondent says that the Tribunal cannot use the current definition of "danger" to determine if a danger existed at the time of the appeal hearing. All that can be achieved is a declaration that a danger *would have* existed under the previous version of the *Code* [respondent's emphasis]. There would be no practical effect of such a declaration.

[12] The appellants do not believe the matter is moot. The appellants state that the appeal raises important questions that are not hypothetical or abstract. Even though the definition of "danger" in the *Code* has changed since the time of the work refusals, the same problem of increased response time continues to exist.

[13] Many of the cases where a matter has been determined to be moot are situations where the employee who had engaged in the work refusal is no longer present or the hazard or the workplace no longer exists. In the case at hand, the employees are still present in the workplace. What the appellants are referring to as a danger – the reduction in staffing causing a delay in response time where there is an emergency – is still present. As far as the appellants are concerned, the absence of a Duty CM on the minimum side is still a matter of disagreement. It is the legal definition of "danger" that has changed – nothing substantial in the workplace has changed.

[14] It is true that the current definition of "danger" cannot be used when making a decision about a matter that arose before the definition was changed. It is also true that whether there is currently a danger in the workplace would depend on whether the circumstances today met the current definition. However, the determination of certain facts in this case would be quite relevant to an analysis using the current definition. If an employee should be considering whether to engage in a work refusal on the same issue today, a finding I may make on the likelihood of a situation arising where the lack of a CM would affect risk may influence that

employee's decision. It may also affect the handling of the issue should it come before the local health and safety committee or should there be a complaint under section 127.1 of the *Code*. Under the new procedures for handling work refusals, the Minister may consider previous decisions when deciding whether to investigate further. The findings in this decision may be relevant to the Minister's decision.

[15] In my view, the issue is not moot. There is still a live issue between the parties regarding staffing and emergency response times. A decision in this case, primarily in terms of factual determinations about the factors underlying an assessment of risk, would not be an exercise in futility.

Preliminary Issue – Sealing Order

[16] At the commencement of the hearing, the respondent requested a sealing order on the documentary evidence so as to protect confidential information related to security operations of federal correctional institutions. The appellants consent to the respondent's request.

[17] While proceedings before the Tribunal are presumed to be open to the public, an appeals officer has the power to issue a sealing order, or confidentiality order. A sealing order is not automatic, even when the parties agree, and reasons must be provided, *Maritime Employers Association v. Longshoremen's Union, CUPE Local 375*, 2016 OHSTC 14 at para.6.

[18] The respondent referred to the "Dagenais/Mentuck test", set out by the Supreme Court of Canada (SCC), as the basis for balancing the public interest in open hearings and the privacy interests of the parties. In *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 at para. 26, the SCC restated the relevant principles in its previous decisions, *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835 and *R. v. Mentuck*, [2001] 3 SCR 442:

> ... a publication ban should only be ordered when:
>
> (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[19] The public's interest in ensuring that disputes under the *Code* are adjudicated properly and fairly would be only marginally impaired by sealing of exhibits and redaction of identifying information from the published version of this decision. The exhibits provide considerable information about staffing, security measures and the physical layouts of the institutions. This information, if public and in the wrong hands, could compromise the safety and security of the employees of the institutions. It could also compromise the safety and security of the public at large. It is clear that the need for confidentiality outweighs the public's right to know in this case.

[20] The respondent's request for a sealing order covering all of the exhibits produced at the hearing is granted.

Issues

[21] I have to determine the following issues:

1) Did the elimination of the position of Duty CM on the morning shift on the minimum side of the clustered institution create a danger to the COs working on the minimum side?

2) Did the elimination of the position of Duty CM on the morning shift on the minimum side of the clustered institution create a danger to the COs working on the medium side?

3) If a danger existed, was the danger was a normal condition of employment so as to preclude the appellants from exercising their right to refuse work under the *Code*?

Submissions of the parties

[22] The appellants' position is that the answers to the above questions are "yes" to the first two and "no" to the third question. Therefore, HSO Jenkins' decisions of "no danger" should be rescinded.

[23] The respondent's position is that there was no danger on either side of the institutions, but if there was, the danger was a normal condition of employment, and so HSO Jenkins' decisions of "no danger" should be affirmed.

A) Appellants' submissions

[24] The appellants' witnesses were:

1) CO Scott Stayer;
2) CO Clinton Gillespie;
3) CO Shawn Dougan;
4) CO Hawley Moulton;
5) CO Jack Bakker, employee co-chair of the Collins Bay Joint Occupational Safety and Health (JOSH) Committee; and
6) CO Kerri Ludlow, employee co-chair of the Beaver Creek JOSH Committee.

[25] The appellants' position is that the elimination of the position of Duty CM on the minimum side of the institution created a danger. [Text redacted].

[26] [Text redacted].

[27] At the Collins Bay Institution, [Text redacted]. The employer's witness, Sanford Hatch, corroborated CO Bakker's evidence.

[28] The appellants' witnesses described various scenarios which would be emergency situations: assault on a CO; assault on a fellow inmate or visitor; a medical condition of an inmate or CO; or a fire. In each of these scenarios, [Text redacted].

[29] One of the appellants' arguments was that the clustering that occurred in April of 2014 was not in compliance with the employer's own policy, specifically Commissioner's Directive CD-004 of 2009. The appellants stated that there were two problems with the employer's application of CD-004. First, the policy was based on a Threat Risk Assessment which evaluated risks to COs. The staffing levels set out in CD-004 reflected that risk assessment. For the employer to reduce staffing below what is set out in CD-004 is *prima facie* to increase risk to COs. Second, the employer purported to change CD-004 so as to support its staffing changes, but it did not follow the proper procedure for changing CD-004.

[30] Regarding the appellants' first objection to the employer's application of CD-004, the [Text redacted]. The appellants believe that the elimination of the Duty CM position was not a simple and legitimate exception to Annex B, but one that increased the risk to COs.

[31] Regarding the appellants' second objection, the appellants do not believe that CD-004 can be modified with a simple memorandum, which the employer's witness, Mr. Velichka, said had been done on a number of occasions. Any such memoranda do not follow the proper procedure for amending a CD. Any documents submitted by the employer that purport to amend or clarify CD-004 should not be considered in this appeal. It is only the 2009 version of CD-004 that is relevant to the appeal and the employer's decision to eliminate the position of Duty CM in April of 2014, set out in a "policy clarification" in March 2014, was not in compliance with CD-004.

[32] [Text redacted].

B) Respondent's submissions

[33] The respondent's witnesses were:

1) Mr. Lane Duern, Fire and Life Safety Officer;
2) Mr. Mike Velichka, Deputy Director of Security Operations, CSC National Headquarters;
3) Mr. Scott Tempest, Warden of Beaver Creek Institution at the time of the work refusals;
4) Mr. Sanford Hatch, Assistant Warden Operations, Collins Bay Institution;
5) Mr. Wayne Buller, Assistant Warden Management Services, and employer co-chair of the JOSH Committee at Collins Bay Institution; and
6) Ms. Launa Smith, Assistant Warden Operations, Beaver Creek Institution.

[34] The respondent's position is that HSO Jenkins reviewed the employer's mitigation strategy that was a response to HSO Jenkins' earlier decision of danger and found that there was no longer a danger. The mitigation strategy consisted of training, communication protocols and contingency plans. The HSO determined that at the time of the work refusals there was no

emergency or any other unusual situation. A CM can direct an emergency response from anywhere in the combined institution. The decision to cluster and to reduce the number of CMs was a policy decision by the employer; the employees are using the work refusal procedure to challenge a policy decision.

[35] The respondent set out the factors considered when determining whether an inmate is classified as minimum or medium security – referred to as "inmate security level". Minimum security inmates have a lower probability of escape and require a lower degree of supervision than medium security inmates. "Institutional security level" is not the same thing as "inmate security level". The respondent set out the differences between a minimum and a medium security institution. For example, a minimum security institution does not have a perimeter fence and inmates have a great deal of freedom moving about the institution. Firearms are not retained in minimum security institution. COs do not normally carry OC spray and handcuffs. It is otherwise in a medium security institution. The risk of an employee being injured by an inmate is considered to be very low compared with the risk in a medium institution.

[36] Staffing levels are governed by the *National Standards for the Deployment of Correctional Officers* (CD-004), a policy document issued in 2009. The standards take into account risks to staff.

[37] In a minimum security institution, CD-004 requires a minimum staff of:

1) [Text redacted];
2) [Text redacted]; and
3) [Text redacted].

[38] In March of 2014, the respondent stated that it issued a policy clarification that a single CM (the Duty CM) could be shared between a minimum and a medium institution at a clustered location. This policy clarification came into effect on April 1, 2014.

[39] [Text redacted].

[40] The respondent says that the appellants were Correctional Officers (either level I or II) and that, as such, were aware that the potential for violence from inmates is an inherent part of the job.

[41] The respondent believes that the appellants' work refusals on March 31, 2014 were in anticipation of the change in staffing to come into effect on April 1, 2014 – one CM to be shared by both the minimum and medium institutions, with the CM to be located routinely on the medium side of the now clustered institution. The March 31st work refusals were not the work refusals the current case is concerned with.

[42] At the time of the March 31st work refusals, there were no disturbances, no particular tensions and no threats made to staff. The respondent's investigation of the work refusals found no danger. The Duty CM could respond appropriately to emergency situations in either the

minimum or medium locations. The position was that a shared Duty CM did not represent a change in policy as set out in CD-004.

[43] HSO Jenkins investigated the March 31st work refusals and determined that a "danger" did exist. [Text redacted]. As well, the COs do not carry OC spray or handcuffs and [Text redacted].

[44] In response, the respondent submitted a mitigation strategy to HSO Jenkins on May 7, 2014. Very importantly, the mitigation strategy stated that [Text redacted]. Therefore, there would not be the delay in response that the appellants were concerned about. HSO Jenkins reviewed and accepted the mitigation strategy and determined there was no longer a danger.

[45] The respondent provided some data on the frequency of incidents that might count as emergencies threatening the safety of employees in minimum security institutions. For 2012-2013, there was only one assault-related incident in all Canadian minimum security institutions. For a five year period, 2012-2017, for Beaver Creek and Collins Bay institutions, there was no reported incident that suggested a threat against or risk to an employee, either for the medium or minimum side of the institutions.

C) Reply

[46] In reply, the appellants emphasized that the employer had violated its own policy in removing the position of Duty CM from the minimum side, and that a memorandum stating that the CM is a shared resource for both the medium and minimum locations was not a clarification of policy (thus permissible) but a modification of policy. The proper process for modifying a policy was not taken and so a change was made without accounting for how the change would increase risk by increasing response time by the CM during an emergency.

[47] The appellants agree that the CM is not a first responder during an emergency, but that [Text redacted].

[48] The appellants state that the evidence [Text redacted], and that the employer does not dispute this change, but does not see the change as creating a danger.

[49] The appellants said that the emergency scenarios they presented were hypothetical but, should one occur, then it could reasonably be expected that injuries would result due to the increase in response time.

Analysis

[50] The appellants engaged in work refusals pursuant to subsection 128(1) of the *Code*:

> **Refusal to work if danger**
>
> **128. (1)** Subject to this section, an employee may refuse to use or operate

> a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that
>
> **(a)** the use or operation of the machine or thing constitutes a danger to the employee or to another employee;
>
> **(b)** a condition exists in the place that constitutes a danger to the employee; or
>
> **(c)** the performance of the activity constitutes a danger to the employee or to another employee.

[51] The old definition of "danger" in subsection 122(1) of the *Code*, prior to the 2014 amendments, in force at the time of the work refusals was the following:

> ***danger*** means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system;

[52] An employee is not entitled to engage in a work refusal if the "danger" is a normal condition of employment, as set out in subsection 128(2):

> **128(2)** An employee may not, under this section, refuse to use or operate a machine or thing, to work in a place or to perform an activity if
>
> **(a)** the refusal puts the life, health or safety of another person directly in danger; or
>
> **(b)** the danger referred to in subsection (1) is a normal condition of employment.

[53] On June 16 and 17, 2014, HSO Jenkins determined, pursuant to subsection 129(4) of the *Code*, that a "danger" did not exist:

> **Decision of health and safety officer**
>
> **129(4)** A health and safety officer shall, on completion of an investigation made under subsection (1), decide whether the danger exists and shall immediately give written notification of the decision to the employer and the employee.

[54] The employees have a right to appeal a decision of "no danger" made by an HSO, according to subsection 129(7):

> **Appeal**
>
> **129(7)** If a health and safety officer decides that the danger does not exist,

> the employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing, work in that place or perform that activity, but the employee, or a person designated by the employee for the purpose, may appeal the decision, in writing, to an appeals officer within ten days after receiving notice of the decision.

[55] An appeals officer has all the powers of an HSO:

> **145.1(1)** The Minister may designate as an appeals officer for the purposes of this Part any person who is qualified to perform the duties of such an officer.
>
> **Status**
>
> **(2)** For the purposes of sections 146 to 146.5, an appeals officer has all of the powers, duties and immunity of a health and safety officer.

[56] Following the appeals officer's inquiry, the appeals officer may, under subsection 146.1(1) vary, rescind or confirm the "no danger" decision of the HSO:

> **146.1(1)** If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may
>
> **(a)** vary, rescind or confirm the decision or direction; and
>
> **(b)** issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1).

[57] The test for "danger" under the *Code*, as set out by the Federal Court of Appeal in *Canada Post Corporation v Pollard*, 2008 FCA 305, at para 16, affirming 2007 FC 1362 (*Pollard*) is:

> 1) The existing or potential hazard or condition, or the current or future activity in question will likely present itself;
> 2) An employee will be exposed to the hazard, condition, or activity when it presents itself;
> 3) Exposure to the hazard, condition or activity is capable of causing injury or illness to the employee at any time, but not necessarily every time; and
> 4) The injury or illness will likely occur before the hazard or condition can be corrected or the activity altered.

[58] In *Verville v Canada (CSC)*, 2004 FC 767, at paras 36 and 60, the Federal Court stated that the definition of "danger" requires evidence that "such circumstances will occur in the future, not as a mere possibility but as a reasonable one."

[59] The probability of a certain event occurring in the future can be estimated in large part by the frequency of the event occurring in the past. Historical frequency is even more reliable if there is no reason to believe that anything significant is expected to happen that would affect the

conditions that gave rise to that historical frequency. In the case at hand, the appellants are not arguing that the probability of an emergency situation arising would increase because of the clustering of the sites. They are arguing that if an emergency situation arose, the increase in response time is what would increase the probability of harm. The statistics provided by the respondent indicate that the frequency of an emergency incident occurring on the minimum side was very low. The appellants did not challenge the employer's statistics. All else being equal, the probability of an emergency situation occurring in the foreseeable future at the time of the work refusals was therefore also very low. There was no dispute that on the days of the work refusals there was nothing unusual happening that would suggest an emergency situation was more likely to occur than in the past.

[60] To be quite clear about it, the increase in response time does not affect the probability of an emergency situation arising. The increase in response time affects the probability of harm given that an emergency situation has arisen. The increase in response time would also increase the probability that harm would be more severe than otherwise.

[61] Was there a significant increase in response time? [Text redacted]. The key issue then is [Text redacted]. The respondent [Text redacted]. The appellants disagree. HSO Jenkins originally determined that there was a danger because there was [Text redacted]. The respondent then provided HSO Jenkins with a mitigation plan which included [Text redacted]. HSO Jenkins determined that the mitigation plan eliminated the danger. The appellants then engaged in their work refusals that are subject of this inquiry. The appellants are challenging [Text redacted].

[62] What is the basis of the appellants' belief that the respondent [Text redacted]. The appellants rely on CD-004, which is a policy document setting out the standards for deployment of personnel. The CD-004 [Text redacted] adjustable". Hence, the respondent cannot [Text redacted]. The appellants agree that the respondent can change CD-004, but that there is a formal procedure that must be followed when making changes, and the respondent did not follow that procedure when it issued its memorandum stating [Text redacted].

[63] The respondent is not saying that it created the authority [Text redacted]. The respondent is saying that the [Text redacted]. The respondent's position is that a decision [Text redacted]. The memorandum expressly allowing [Text redacted] was not a change in policy, it was a clarification of policy. Since it was not a change in policy, the respondent says that it did not have to follow the formal procedure for amending CD-004.

[64] The appellants say that the staffing levels in CD-004 were the result of a risk assessment done by the respondent. To reduce staffing is to increase risk. The respondent says that risk is controlled by many methods and that staffing levels are primarily about workload, not risk. During an emergency, a CM has authority to exercise discretion to deal with the particular risk arising from the emergency. [Text redacted]. It might be thought that employees would welcome the discretion of the CM to do whatever is necessary to deal with risk during an emergency. The reallocation of resources by the CM during an emergency does not fall within the meaning of an "operational adjustment".

[65] Applying the test in *Pollard*, the hazardous situation of concern to the appellants was not likely to present itself on the days of the work refusals or in the foreseeable future. The situation did not fall within the definition of "danger".

[66] In any event, the case at hand is a dispute about the employer's policy, namely, a staffing policy. As a general rule, the employer's policies are not the proper subject for a work refusal. Except in the narrow circumstances where it could be said that insufficient staff, *per se*, results in a danger for an employee (e.g. an employee is asked to perform a task that is a two-person task), staffing decisions are not a direct cause of danger.

[67] It is clear from the language of section 125 and sections 134.1 and 135 of the *Code* that the health and safety policy committee and the workplace health and safety committee are the proper fora for debating the merits of the employer's policies and programs. The *Code* also provides a method by which employees can have their concerns addressed through a section 127.1 complaint.

[68] The work refusal provisions in section 128 are for emergency situations, *Stone v Canada (CSC)*, [2002] OHSTC, Decision 02-019, para 51. They are for high risk situations where decisions have to be made in circumstances where employees cannot wait for committee meetings and complaint procedures. Such situations are normally referred to as emergencies. To reiterate, there was no emergency, or anything like it, on the days of the work refusals and there were no foreseeable threats on the horizon.

[69] The appellants also made the point that [Text redacted] would increase risk in the event that there was a second emergency. It has already been decided that the probability of an emergency on the minimum side on any given day is very low. The probability of two low probability events occurring simultaneously is much, much lower, particularly when the second emergency [Text redacted]. It is possible for two emergencies to arise simultaneously, but it was not in the realm of the reasonably foreseeable on the days of the work refusals. Accordingly, the elimination of the position of Duty CM on the morning shift on the minimum side of the clustered institution did not result in a danger to the COs working on the minimum side.

[70] The appellants also raised a second hazard, namely, the issue of risk to employees on the medium security side of the institution if the CM is traveling from the medium side to the minimum side. If an emergency occurred on the medium side, the CM would not be present to deal with the situation. In my view, the above analysis applies to this issue as well and, therefore, there is insufficient evidence to conclude that the elimination of the position of Duty CM on the minimum side of the clustered institution results in a danger to the COs working on the medium side .

[71] In summary, all parties agree the CM is not a first responder. The CM is to manage crises at a distance from the actual scene. This allows the CM to keep the "big picture" in view. It allows the CM to deal with more than one situation in the unlikely event that simultaneous emergencies arise. The CM does not have to be physically present at the scene of an emergency on the medium side any more than the CM has to be physically present at the scene of an

emergency on the minimum side. The appellants are not suggesting that the CM has to be physically present at the scene of emergencies. They recognize [Text redacted], would be directing the emergency response from a distance. The decision by the respondent to have one CM for both sides of the institution does not create a danger on the medium side.

[72] The ability of the institution's employees to deal with emergencies [Text redacted]. The difficulties remain largely the same pre-clustering and post-clustering. The difficulties did not raise risk to the level of danger on the days of the work refusals.

[73] The evidence during the hearing was primarily directed towards the situation at the Beaver Creek institution. The parties were in agreement that the situation at the Frontenac institution in Kingston was similar. Regardless of that agreement, the above reasoning applies to both locations. There was no danger on the days of the work refusals at either location.

[74] Based on all of the above, I conclude that the appellants were not exposed to a danger as this term is defined in the *Code* on the days on which they exercised their rights to refuse to work. Given my conclusion on the danger issue, I do not need to consider whether the dangers constituted a normal condition of employment.

Decision

[75] For these reasons, I confirm the decisions rendered by Mr. Lewis Jenkins, HSO, on June 16 and 17, 2014.

Peter Strahlendorf
Appeals Officer