LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION AWARD

HEALTH SERVICES AND SUPPORT FACILITIES
ASSOCIATION OF UNIONS
(HEU, BCGEU, IUOE, CSWU, IBEW, USWA, BCNU, UNCJAP&P, IUPAT)
UNION

HEALTH EMPLOYERS' ASSOCIATION OF BRITISH COLUMBIA
EMPLOYER

(Re: Clarification - Implementing Collective Agreement Imposed by Bill 37-2004)

Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	Chris J. Allnutt Patrick Dickie Jess Hadley
Representing the Employer:	Nazeer T. Mitha Page E. Kendall
Date of Hearing:	July 22, 2004
Date of Decision:	July 23, 2004

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1. Question Referred for Clarification

On July 15, 2004 I issued a decision on differences over the implementation of the collective agreement imposed by the *Health Sector (Facilities Subsector) Collective Agreement Act*, SBC 2004, Chapter 19, referred to as Bill 37, which was given Royal Assent and came into effect on April 29, 2004. I retained and reserved jurisdiction "to clarify my decisions and to deal with any matter related to the implementation of these decisions" (*Health Employers' Association of British Columbia*, unreported, July 15, 2002 (Dorsey), p. 33).

That day the Association of Unions wrote to HEABC "to confirm that October 27, 2004 is now the implementation date of the 37.5 hours work week." The next day, HEABC relied that it did not agree:

> Although HEABC may decide to appeal this decision, we interpret Mr. Dorsey's decision as providing for the implementation of the 37.5 hour work week effective the start of the first pay period not later than 90 calendar days after July 29, 2004. Consequently, some Employers may proceed to implement the work week as early as July 30, 2004, others may implement at some later date within the 90-day period following July 29, 2004.

On July 16, 2004, the Association of Unions applied for a clarification and a hearing was held on July 22nd. The question to be answered is: when may employers implement the longer work week under Article 20.02(a)? The relevant paragraph, with emphasis added, states:

> **20.02 Hours of Work**
>
> (a) The hours of work for each regular full-time employee covered by this agreement exclusive of meal times shall be 36 hours per week or an equivalent. **Effective the start of the first pay period not later than**

> **ninety (90) calendar days after ratification**, the work week shall be an average of thirty-seven and one half (37.5) hours per week.

2. 1993 Approach to Implementing Change in Work Week

This is not the first time the work hours per week have changed for tens of thousands of employees and hundreds of employers in health care facilities across the province. In March 1993 there was a Tentative Framework Agreement (TFA) in the health sector that provided that "Effective July 1, 1993 the work week is reduced to 36 hours" (¶ 3) from 37.5 hours. [The full text of the TFA is part of the HEU and HEABC 19991-1996 collective agreement.] Previously, the work week had been reduced from 40 hours to 37.5 hours and some of the collective agreements in effect in 1993 had provisions that were a legacy from that change.

In 1993 a group with the task to identify principles and resolve issues to enable implementation by July 1, 1993 was unable to resolve differences that arose between the unions and Health Labour Relations Association (HLRA). They agreed to have Vince Ready arbitrate their differences. One difference was when the TFA became effective. The unions argued for March 12, 1993, the date of the TFA. HLRA argued for the date the employers ratified the TFA. On May 28, 1993 Arbitrator Ready decide it was the final date of ratification by all parties (1991-1996 collective agreement, p. 167).

One of HLRA's later submissions to Arbitrator Ready was to delay implementation nine months to April 1, 1994. Arbitrator Ready reported HLRA submitted:

> … that the implementation of the 36 hour work week for 50,000 employee scattered throughout the province working all different schedules, requires tremendous lead time to implement. Schedules have to be developed, approved, sought and computers reprogrammed. This is a mammoth undertaking. In this alternative position HLRA believes that the period from ratification date to April 1, 1994, provides that administrative time to implement the 36 hour work week. (*Health Labour Relations Association*, unreported, June 16, 1993 (Ready), p. 18)

In this mid-June decision, Arbitrator Ready delayed the implementation

date to September 30, 1993 - "Shift schedules shall be implemented by September 30, 1993." Shift schedule disputes were to be submitted to expedited Final Offer Selection arbitration "prior to September 15, 1993 or within three working days of the dispute arising" (p. 28). The scheme was a fixed date for implementation and submission of schedule disputes to expedited arbitration fifteen days before that date.

One of the disputes that arose was whether days banked for sick and special leave should be reduced from 7.5 to 7.2 hours. HLRA had submitted to Arbitrator Ready that these days should be reduced (p. 23). Arbitrator Ready did not decide the issue and it came to expedited arbitration before Colin Taylor in the first week of September 1993. HLRA submitted that the dollar value of existing banked days and the maximum size of banks after September 30th should be reduced to reflect the shorter work week.

Arbitrator Taylor observed that the value of banks had not been reduced when there were past wage increases and one collective agreement had language that dealt with a similar occurrence in the past. He decided that, regardless whether an existing bank was expressed in hours or days, none of the existing banks was to be reduced. "With effect from September 30, 1993, the base day will be 7.2 hours for the purpose of calculating the accrued credit hours" (*Health Labour Relations Association*, unreported, September 6, 1993 (Taylor), p. 4).

As a practical and administrative matter, the hours of a work week and the wages and benefits for a work week are tied to pay periods. Like the current collective agreement, the 1991-1996 collective agreement does not have a definition of a pay period. Employment standards legislation addresses wage payment and record keeping and regulates hours of work, working days, pay periods and payroll record keeping. The current *Employment Standards Act* RSBC, Chapter 1996, as amended, defines "pay period" as "a period of up to 16 consecutive days" (s. 1(1)). It provides that, except for vacation pay and banked

overtime, "At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee all wages earned by the employees in a pay period" (s. 17). Because employees are to be paid at least semimonthly, a pay period can be as many as 16 days or as few as 14 days in February. If employees are paid every two weeks, then a pay period will be 14 days.

Under this common approach to paying wages employees and employers know the start and end of pay periods and how many days after a pay period is the pay day for that pay period. It is common for shift scheduling changes and payroll and benefit administration changes to become effective at the start of a pay period.

The current collective agreement provides that employees are to be paid "every second Friday" (Article 48.06 (Pay Days)). This was the provision in Article 51.01 of the 1991-1996 collective agreement. Article 48.07 of the current collective agreement addresses the effective date of new wages and benefits and non-compensation changes. [On February 14, 2004 HEABC made a proposal to amend Article 48.07 that was not implemented by Bill 37 and not introduced as part of this arbitration.]

Because pay days are every second Friday, a pay period under this collective agreement is 14 days. A pay period will not include the day that is pay day for that pay period. Under the *Employment Standards Act* an employer may pay employees any time up to eight days after the end of a pay period for all wages earned during the pay period. If an employer waits eight days, a payment on a Friday pay day will be for a pay period that starts on the Friday three weeks before pay day and ends the Thursday eight days previous to pay day.

Health care is a continuous operation and Article 20.01 (Continuous Operation) states: "The work week shall provide for continuous operation Sunday through Saturday." No reference was made to any provision of the collective agreement that ties pay periods to work weeks. There was no evidence in this arbitration whether all, or most, employers have pay periods organized on the

basis of the work week or another basis or whether Friday pay days are the eighth or fewer days after the last day for which payment is made.

These payroll administration concepts can be illustrated using September 1993 and assuming the 14 day pay period starts on a Friday and ends on the Thursday in the week prior to the pay day. If Friday October 1st is a pay day, then the pay period for that pay day is September 10th to 23rd. And the next pay period for pay day Friday, October 15th is September 24th to October 7th.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
September 1993			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	**30**	**Oct. 1**	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23

If Friday, October 8th is a pay day, then the pay period for that pay day is September 17th to 30th. On these assumptions, Thursday, September 30th is either the end or middle of a pay period, not the start of a pay period.

If a pay period starts on Thursday, rather than Friday as assumed, Thursday, September 30, 1993 could be the first day or start of a fourteen day pay period ending October 13th. In that case, the pay day Friday October 22nd would be the ninth day after the pay period September 30th to October 13th.

Implementing a work week change on any date in a continuous operation will create planning, scheduling and education issues. It will generate additional work for payroll and collective agreement administration. Making changes contemporaneous with the start of a pay period will ease some of the burden, reduce some of the complexity and likely reduce the incidents of errors, inquiries and conflicts.

Because the work week was reduced in 1993 several articles of the 1991-1994 collective agreement were amended in the extended 1991-1996 collective agreement. Article 20.02 (Hours of Work) was amended. It stated, in part, with emphasis added and the new language highlighted with borders, as follows:

> The hours of work for each regular full-time employee covered by this Agreement, exclusive of meal times, shall be thirty-seven and one-half (37-½) hours per week or an equivalent mutually agreed to by the Employer and the Union.
>
> **Effective September 30, 1993**, the hours of work for each regular full-time employee covered by this Agreement, exclusive of meal times, shall be thirty-six (36) hours per week or an equivalent mutually agreed to by the Employer and the Union.
>
> **Effective the first pay period prior to September 30, 1993**, for hours worked prior to that pay period, the base day will be seven point two (7.2) hours for the purpose of calculating the accrued credit bank.

In this amended article, different effective dates were used for different purposes. September 30th was the date at which the hours of work were reduced. The change to using a base day of 7.2 hours for calculating accrued credit bank was effective on another date to be determined for each employer by reference to the "first pay period prior to September 30, 1993." This appears to be a modification of Arbitrator Taylor's decision for practical and pragmatic considerations.

There is a legacy of the changes in the 1991-1996 collective agreement in the language of the "former collective agreement" under Bill 37, which is a component of the current collective agreement in effect until 2006. Various articles speak of credits "earned before the first pay period prior" or "as of the first pay period prior" or "worked after the first pay period prior" or "effective the first pay period prior."

- Article 28.01 (c) (Vacation Entitlement) - "The accumulated balance of an employee's vacation credits **earned before the first pay period prior** to September 30, 1993 …."
- Article 30.01 (Special Leave) - "Notwithstanding the foregoing, employees with accumulated special leave credits in excess of 180 hours **as of the first pay period prior** to September 30, 1993 …."
- Article 43.03(b)(1) (Calculation of Severance Allowance Monies) - "…

effective September 30, 1993, for hours **worked after the first pay period prior** to September 30, 1993 …."

- Article 31.14 (Part-Time Employees) - "**Effective the first pay period prior** to September 30, 1993 …"

3. Employer Proposal #20-A (February 14, 2004)

The Employer Proposal #20-A to increase the work week back to 37.5 hours as tabled on February 14, 2004 was imposed by section 3(1)(b) of Bill 37 and effective July 29, 2004. With new language underlined and deleted language stuck through, the proposal states:

HEABC / Facilities Subsector Collective Bargaining 2004

Employer Proposal #20-A

Article 20.02

Implementation of the 37.5 Hour Work Week

Proposal:

Revise Article 20.02 as follows:

Note that consequential amendments will be required to other Articles of the Collective Agreement to reflect the longer work week (e.g., Article 21, Memorandum of Understanding Re: Schedules with Work Days Greater than 7.2 Hours and Up to and Including 8 Hours per Day).

20.02 Hours of Work

(a) The hours of work for each regular full-time employee covered by this agreement exclusive of meal times shall be 36 hours per week or an equivalent. Effective the start of the first pay period not later than ninety (90) calendar days after ratification, the work week shall be an average of thirty-seven and one half (37.5) hours per week. The longer work week will not result in an increase in the monthly rate of pay for regular full-time employees (i.e., the monthly wage rate will not change as a result of the implementation of the longer work week); however, the hourly wage rate will be reduced by four percent (4%).

Where an Employer has an existing Local Agreement providing for a thirty-seven and one-half (37.5) hour work week as of March 31, 2004, such an arrangement will continue and Article 21 shall not apply for the difference between a thirty-six (36) hour work week and a thirty-seven and one-half (37.5) hour work week.

(b) The Employer will determine and implement the new work schedules for the longer work week. The new work schedules shall be supplied to the Union fifteen (15) calendar days prior to implementation. The right to grieve the new work schedules is limited to alleged violations of Article 19 and 20. ~~Where the Employer intends to introduce a work~~

~~schedule of less than 7.5 hours per day, the new work schedule, whenever possible, shall be determined by mutual agreement between the Employer and the employees at the local level.~~

(c) Effective the first pay period prior to September 30, 1993, for hours worked after that pay period, the base day will be seven point two (7.2) hours for the purpose of calculating the accrued credit banks. Effective no later than the start of the first pay period ninety (90) calendar days after ratification, for hours worked after that pay period, the base day will be seven and one-half (7.5) hours for the purpose of calculating the accrued credit banks.

Schedules with work days greater than seven and one-half (7.5) ~~that seven point two (7.2)~~ hours per day and up to and including eight (8) hours per day are further clarified in the Memorandum of Understanding Re: Schedules.

The hours of work for each regular full-time employee is to remain at 36 hours per week, but "Effective the start of the first pay period not later than ninety (90) calendar days after ratification …." the work week increases to an average of 37.5 hours per week. The base day changes to 7.5 hours "no later than the start of the first pay period prior to ninety calendar days after ratification." The new work schedules are to be determined by the employer - not agreed to with the union. The employer supplies the new schedules to the union 15 calendar days prior to implementation and the union's right to grieve is limited to alleged violations of Articles 19 and 20.

The description of the time at which the hours of work increase is a word formula familiar from 1993 and other articles of the current collective agreement. However, rather than referring to "the first pay period prior to September 30, 1993" the language is "the first pay period not later than" a date that is not fixed but determinable, namely the date that is "ninety (90) calendar days after ratification."

The position of HEABC after the enactment of Bill 37 on April 29, 2004 was that "the start of the first pay period not later than ninety (90) calendar days after ratification" was not start dates for pay periods in May 2004, but Thursday, July 29, 2004, exactly 90 days after enactment, without reference to whether that date or that Thursday was "the start" of a pay period for an employee. In effect it

said implementation was "in" or "on" ninety days after ratification. It advised employers to supply new schedules to the Association of Unions not later than July 14, 2004, fifteen calendar days prior to July 29th.

The approach was to treat "not later than" similar to the often used statutory phrase "not less than" or a somewhat outdated and awkward way of saying precisely a certain time or amount. That is "not less than and not more than" or "not later than and not sooner than." This is captured by characterization of the implementation date as a "drop dead date." In effect, HEABC was reading out the words "the start of the first pay period not later than" and reading the sentence as if it were written "Effective ninety calendar days after ratification …."

4. Early Implementation Date Advocated by HEABC

In light of my decision that the ratification date is July 29, 2004 and ninety days after ratification is October 27, 2004, HEABC submits that "not later than ninety (90) calendar days" means any time within ninety calendar days. It focuses on the words "the start of the first pay period."

HEABC submits Employer Proposal #20-A is not longer its drafted and proposed language, but a legislative enactment. Consequently, the interpretative approach taken must treat the words as words of the legislature and not language drafted by the employer. Therefore, principles of statutory interpretation, not contractual interpretation, are to be applied.

In this clarification proceeding, HEABC treats the date of ratification as July 29, 2004, as I determined. With a focus on the clause "not later than ninety (90) calendar days after ratification" HEABC submits the longer work week can take effect in the first pay period after July 29, 2004 and at "any time within ninety days after that first pay period" that an employer chooses. (*BP Exploration Canada Ltd. v. Hagerman* [1978] A.J. No. 573 (QL)); *Valin v. Langlois* (1879) 3 SCR 90)

HEABC submits the longer work week can be implemented within, at the commencement of or at the end of the ninety day period up to and including October 27, 2004. New schedules can be supplied to the union fifteen days prior to the ratification date (July 14th) and the union will have limited rights to grieve. The fact they are supplied prior to July 29th does not affect the implementation date. HEABC submits that:

> For some employers, the start of the first pay period after July 29, 2004 is July 30, 2004. In other cases, the start of the first pay period is later than July 30, 2004. However, it is submitted that as long as employers have determined the new work schedules and given those new work schedules to the Union fifteen days prior to the start of the first pay period, an employer is entitled to implement the longer work schedule at the commencement of the first pay period after July 29, 2004.
>
> For example, assuming the first pay period is July 30, 2004, if an employer has determined and given the new work schedules to the Union by July 15, 2004, the employer will be entitled to implement the new work schedule on July 30, 2004.
>
> The fact that the Union is entitled to grieve the new work schedule has no bearing or effect upon the date that the employer can implement the new work schedule. The reference to the grievance in clause 20.02(b) is simply for the purpose of circumscribing the Union's right to grieve the new work schedules.
>
> In summary, clause 20.02(b) does not, on its face, state when the employer is to determine the new work schedules, nor does it state when the employer is required to provide copies of the new work schedules to the Union. It simply requires that the Union be entitled to copies of the work schedules fifteen days prior to such being implemented. At the end of the day, the fact that the Union receives the work schedules fifteen days in advance does not give the Union any right to alter or change that work schedule; nor does it impose any obligation on the employer to do anything other than to ensure that the Union receives the new work schedules fifteen days prior to implementation. Therefore, clause 20.02(b) does not speak, in any way, to the date of implementation.
>
> **********
>
> The clear interpretation of the statute and Collective Agreement entitle the employer to implement the longer work week schedule effective the first pay period after July 29, 2004 and up to October 27, 2004. The employer could choose to but does not have to wait until October 27, 2004, before implementing the longer work-week schedule.

HEABC submits the language of Article 20.02(a) cannot be read as meaning "no earlier than ninety calendar days" or "in ninety calendar days."

5. Later implementation Date Advocated by Association of Unions

The Association of Unions relies on stricter construction of the language of Employer Proposal #20-A to advocate for an implementation date toward the end of the ninety calendar days following July 29, 2004.

The Association of Unions submits that there is a certain date to which pay periods are tied "to allow for the variable pay periods at different facilities." The applicable pay period in any workplace is the pay period immediately prior to, but not including, October 27, 2004.

The Association of Unions submits there is a single certain pay period because the language speaks of "the" first, not "a" or "any", pay period. "The" and "a" cannot be read interchangeable. One is definite and one is indefinite. They cannot be read or treated haphazardly. (*Black' s Law Dictionary* (5th ed 1979), definition of "the"; *85956 Holdings Ltd. v Fayerman Brothers Ltd.* [1987] S.J. No. 245 (QL)(QB); *Saskatchewan Wheat Pool v. Grain Services Union (I.L.W.U. - Canadian Area)* [1997] S.J. No. 429 (QL)(QB) affirmed [1998] S.J. No. 154 (QL)(CA))

The Association of Unions submits that under this language, at a workplace, there are only two possible pay periods - either the first pay period after July 29th or the first pay period before October 27th. If it is the former, then the language "not later than ninety (90) calendar days" is superfluous. Article 20.02(a) could simple state "Effective the start of the first pay period after ratification", but it does not. The additional words "not later than ninety (90) calendar days" have to be given meaning because it must be presumed that all words used are intended to have some meaning.

The Association of Unions submits that both the phrases "the first pay period prior to" September 30, 1993 and "the first pay period not later than" October 27, 2004 are anchored on a certain determinable date. The difference between them is that the former includes September 30, 1993 in the pay period,

while the later does not include October 27, 2004. Because the pay period is "not later than" October 27th, the pay period must not include October 27th.

In the alternative, the Association of Unions submits the ambiguity in Employer Proposal #20-A must be resolved by applying the common law rule of contractual interpretation that when one party has drafted ambiguous language, without an opportunity for the other party to modify the wording, the language is to be construed against the party who drafted the language - "any ambiguity in a term in a contract must be resolved against the author if the choice is between him and the other party to the contract who did not participate in its drafting." (*Hillis Oil & Sales Ltd. v. Wynn's Canada Ltd.* (1986), 25 DLR (4th) 649 (SCC) at p. 657; *Slocan Group* (2002), 109 LAC (4th) 133 (McPhillips); *Calona Wines* [2002] BCCAAA No. 327 (QL) (McPhillips); *Medis Health and Pharmaceutical Services Ltd.* (2000), 93 LAC (4th) 118 (Armstrong); *British Columbia Sugar Refining Company* (1987), BCIRC No. C35/87))

The often quoted rationale for this approach is that "a person who puts forward the wording of a proposed agreement may be assumed to have looked after his own interests so that if the words leave room for doubt about whether he is intended to have a particular benefit there is reason to suppose that he is not" (*Chitty on Contracts* (4th ed 1979) ¶ 12,081). The Association of Unions submits it is self-evident that Employer Proposal #20-A was proposed by HEABC for the benefit of its employer members and:

> It is difficult to imagine a more appropriate case for the application of the *contra proferentem* rule than the present case. If the Employer wanted the provision to mean what the Employer now says it means, it could easily have chosen language which unambiguously accomplished its goal. The Employer failed to do so. The Employer was solely responsible for the wording of Employer Proposal #20-A. The Employer drafted it and the legislature imposed it unmodified. The Unions had no opportunity whatsoever to modify its wording.

6. Analysis and Decision

Interpreting a document to the detriment of the party who drafted it, when the other party had no opportunity to modify it prevents drafting parties from

taking an advantage because they were not clear and unambiguous. There are few circumstances in interpreting a collective agreement arrived at through collective bargaining when it is appropriate to invoke this rule, as a last resort, to interpret ambiguous language.

Under most imposed collective agreements, neither party would have a reasonable basis on which to rely on the rule. In this situation, the Association of Unions relies on the express reference in Bill 37 to Employer Proposal #20-A and the imposition of the employer's language. HEABC does not submit the Association of Unions had an opportunity to modify the language through the May 2, 2004 Accord that modified some implementation aspects of Bill 37. It submits this aid to interpretation does not apply to the interpretation of statutes and Employer Proposal 20-A as an amendment to Article 20.02 is now a creature of statute, regardless who drafted it. In addition, at the time Bill 37 was introduced and enacted there was no opportunity for any party to amend the February 14th proposal that was to come into effect in a manner not originally contemplated by HEABC.

I have concluded that it would be an inappropriate application and use of this interpretive approach to treat the legislated language in Article 20.02 as if HEABC is entirely responsible for the manner and time in which this change to the collective agreement came into effect.

This difference over the meaning of Article 20.02 is a remnant of unsuccessful collective bargaining and longstanding competing interests about the length of the work week. Today, implementation of a longer work week is inevitable and the difference has migrated to whether the longer work week will be implemented earlier, rather than later with a ninety day period. As will be seen, the difference between HEABC and the Association of Unions is really two months, July 30th to September 29th.

My role is not to choose between these competing interests, but to ascertain the intention of the legislature in Bill 37 as expressed through section

3(1)(b) and the wording of Article 20.02. Generalized statements of the Minister on the introduction of Bill 37 are unhelpful. The only reliable source of the intention is the language in Article 20.02.

The Association of Unions correctly underscores that the sixteen word disputed phrase in Article 20.02(a) contains four references to time that point in different directions - "Effective the **start** of the **first** pay period **not later than** ninety (90) calendar days **after** ratification." Even in the absence of compulsory imposition of this language, there is expansive room for disagreement about the meaning of these conflicting words and concepts.

It is agreed the effective date of the new Article 20.02 is July 29, 2004 and the effective date for an increased work week will be between July 29th and October 27, 2004. It is clear from the history and context of this difference that the exercise is not one of determining a fixed date that has universal application. That happened in 1993 and this language reacts to that experience. The language ties the effective date in the many and diverse workplaces to the start of a pay period for obvious administrative and other reasons.

The longer work week becomes effective the "start of the first pay period." By the ordinary and normal usage of language there is only one "first." This is reinforced by definitely referring to "the first", not a number of firsts. It is not ordinary usage nor normal or reasonable to read "the first" as if it were "any first", as submitted by HEABC. "Any" first pay period makes no sense in the context of a limited number of pay periods within ninety days.

If it was intended that the effective date was the start of the first pay period immediately after ratification, it would be unambiguous and direct to say "Effective the start of the first pay period after ratification." Depending when ratification was, the start of the first pay period would be the next day or any of the days in the fourteen days following ratification.

As a practical matter, unless ratification is delayed, implementation would

have to happen with little opportunity to prepare and more hastily than in 1993, when the original date was July 1st, three and one-half months after the agreement, and the delayed date was September 30th, six and one-half months after the initial agreement. The import of this is that organizational, workplace and practical circumstances and the nature of the task being undertaken instruct that immediacy of implementation is not contemplated. A reasonable delay to enable organizations to plan, schedule and prepare is contemplated.

This difference arises because Bill 37 delayed the effective date of Employer Proposal #20-A by ninety calendar days, but did not revise Employer Proposal #20-A to delete the reference within Article 20.02 to ninety calendar days. If the legislative intent was to make the longer work week effective the start of the first pay period after ninety days after enacting Bill 37, then the language to achieve that objective could have been easily included in the Scheduled to Bill 37, as was done with amendments to other articles, or in the body of Bill 37. It was not. Some meaning must be given to the words "not later than ninety (90) calendar days" that are part of Article 20.02.

There will be several pay periods within the ninety calendar days after ratification. For an employee, there will be six to eight fourteen day pay periods that fall entirely or partially within the ninety days. The start of the first pay period after ratification will be within fourteen days of ratification. If this is the intended pay period, then there is no practical meaning to the phrase "not later than ninety (90) calendar days" and it is superfluous.

On the other hand, if the date "not later than ninety (90) calendar days" is a future reference point from which the start of a pay period is to be determined, the phrase has meaning. It is agreed that the effective date is not intended to be "the start of the first pay period" that comes "after" ninety calendar (90) days. And it is not intended to be only pay periods that start on the ninetieth calendar day.

Therefore, I find that the effective date is intended to be the start of the

first pay period before or "not later than" the ninetieth calendar day. It might have been clearer to have said "before" or "prior to" or "immediately prior to." Or it might not have been because, on close scrutiny, these and other phrases contain their own ambiguities.

The Association of Unions submits the effective date is the start of the first pay period that is entirely completed no later than, and does not include, October 27th. For fourteen day pay periods, this enables a range of effective dates that start a pay period from September 30, 2004 to October 13, 2004, inclusive. There are cogent arguments that the "first pay period prior" to October 27th means the pay period must begin and end by October 26th and that "the start of the first pay period not later than" could begin as late as October 27th. However, on this point I accept the approach of the Association of Unions which advances, rather than delays, implementation of the increased work week.

In conclusion, an employer bound by the collective agreement can make the longer 37.5 hour work week effective at the start of a fourteen day pay period that commences on any of the days from September 30th to October 13, 2004, inclusive.

Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
September 30 - October 30, 2004				**30**	**1**	**2**
3	**4**	**5**	**6**	**7**	**8**	**9**
10	**11**	**12**	**13**	14	15	16
17	18	19	20	21	22	23
24	25	26	**27**	28	29	30

JULY 23, 2004, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey