

IN THE MATTER OF THE *POLICE SERVICES ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE NORTH BAY POLICE SERVICES BOARD

- The Employer

and

THE NORTH BAY POLICE ASSOCIATION

- The Union

AND IN THE MATTER OF a grievance of Aline Major

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer

Michael B. Burke	- Counsel
Paul Cook	- Chief of Police
Chuck Seguin	- Quality Assurance
Charlene Smith	- Communications Manager
Shelley Hampel	- Human Resources Coordinator
Terry Cant	- Board Member

On behalf of the Union

Richard Houston	- Spokesperson
Mike Tarini	- President, Police Association
Dave Boland	- Civilian Director, Police Association
Aline Major	- Grievor

Intervener

Mary Bonenfant

Hearing held October 22, 2004, in North Bay, Ontario.

AWARD

I. INTRODUCTION

In this case the grievor was denied a move to a dispatcher position with the police service. The parties disagreed about several issues:

- was a move from clerk to dispatcher a promotion?
- which article of the collective agreement applied? and,
- assuming it was a promotion, what “preference” should be given to the senior applicant?

II. THE EVIDENCE

Aline Major, the grievor, is a clerk with the North Bay Police Service, the Employer. January 2004 the Employer announced that there was an opening for a dispatcher. The grievor applied for the dispatcher position, was the senior applicant but was not awarded the position.

The parties presented a statement of agreed facts which was supplemented by oral evidence. Among the agreed facts were the following:

4. There were four applicants for the position, two part-time and two full-time employees as follows:

		Seniority	
Aline Major	full time clerk	August 23, 1989	
Dave Boland	part time then full time	June 7, 1994	
Mary Bonefant	part time dispatcher	December 7, 1998	7,160.25 hrs.
Kelsie Dufresne	part time dispatcher	November 20, 2000	3,990.25 hrs.

5. On January 21, 2004 the grievor and the other applicants filled out a “Proficiency Check List” as part of the application process. The Proficiency check list was based on the attached Communications training guide prepared in February 2003 and approved by the Policing Service Division of the Ministry of Public Service and Safety on June 17, 2003.
 - 5.1 The communication Training Guide was based on the obligation to have adequacy

and effectiveness rules pursuant to the Police Services Act, Section 4(2) and the Ontario Regulation 3/99.

- 5.2 The communications Training Guide was prepared on the Core Competencies for Communicators/Dispatchers and the Ministry Accredited Standards, both issued by the Ontario Ministry of the Solicitor General July 20, 2002.
6. On January 28, 2004 the grievor received a memorandum from Human Resources Coordinator, Shelly Hampel, that advised she was not qualified for the position and that another civilian member had been offered the position.
7. The successful candidate for the full time dispatcher position was Mary Bonenfant. Ms Bonenfant received all her training after being hired as a part-time dispatcher with the North Bay Police Service.

The grievor testified about her work for the Employer. She worked primarily as a switch board clerk answering calls and dealing with those people who came into the station. She took reports and decided who needed to speak with a police officer. She also assisted the officers with paper work.

The grievor was trained in several other positions including traffic clerk, classification clerk, and court clerk and filled in as needed in those jobs when the regular employees were absent. In addition, she was active on a number of Employer committees and is the current Union Secretary.

The grievor testified that she applied for the dispatch position as it was as close as she could come to front line police work and that the dispatchers served as the officers' "life line". She said that she saw the dispatch position as a promotion. She said that although the base dispatcher pay was lower than her clerk pay, the top dispatcher pay rate was substantially higher than the top clerk rate. As well, she noted that the dispatch shift schedule was simpler and more consistent. In summary, she viewed the dispatcher position as a more prestigious, higher paid and generally more desirable position.

The dispatcher position description included as "desirable qualifications" the following:

Proven effective communications skills

Knowledge of computer systems including CPIC, OMPPAC, and ACTion, and CAD
Knowledge of radio systems
Knowledge of Service policies and procedures
Knowledge of Emergency services and dispatching procedures
Knowledge of the geography and jurisdictional boundaries of all agencies served by the Communications Centre and adjacent agencies

The grievor testified that she was familiar with CPIC, the Canadian Police Information Centre data base, and with ACTion, a program used to make telephone calls, as well as with Niche RMS a data base program which had replaced OMPPAC.

After applying for the dispatcher position, the grievor and the other applicants were asked to review a checklist of skills needed in the position and to indicate those they could perform (see the agreed facts, paragraph 5, above). Two part time dispatchers were able to perform 100% of the skills. The grievor was rated fourth in her ability to perform these skills - she was able to perform 19% of the skills required in the dispatcher position.

After reviewing the checklist of skills, the Employer decided that the two part time dispatchers were qualified for the position but the other two applicants were not. The Employer notified the grievor that she was not qualified.

At the hearing the Employer reviewed with the grievor the list of the 19 principal tasks included in the position description for the dispatcher and the grievor indicated whether she was familiar with each task. She was unfamiliar with 12 of the 19 tasks.

1. Receive and process the telephone calls for police, fire, or ambulance service in accordance with Service policy and procedures and 9-1-1 rules and regulations. The grievor said she was not familiar with this task.
2. Monitor status of incidents and notify the Platoon Commander or designate of all delayed, emergency or serious calls for service. The grievor said she was not familiar with this task.
3. Dispatch police and/or fire personnel and maintain radio communications as required. The grievor said she was not familiar with this task.

4. Monitor availability and location of police and fire field personnel. The grievor said she was not familiar with this task.
5. Maintain effective coverage of patrol zones by selective deployment or dispatching or [sic] personnel. The grievor said she was not familiar with this task.
6. Respond to requests for support services from field personnel (i.e. dispatch ambulances, tow trucks, etc.) The grievor said this task was one with which she was familiar.
7. Perform record queries using available resources when required. The grievor said she also familiar with this task.
8. Disseminate all pertinent date [sic] (i.e. Zone Alerts, missing persons alerts, etc.) to personnel as required. The grievor again said she familiar with this task.
9. Seize, trace and relay 9-1-1 calls to other agencies as required. The grievor said she was not familiar with this task.
10. Forward all T.D.D. (Telephone Device for Deaf) calls for police, fire and ambulance to downstream agencies for dispatch. The grievor said she was not familiar with this task.
11. Monitor security garage area by video and notify Platoon Commander or designate or any problems. The grievor said she was familiar with this task and that she used to monitor the cells holding females.
12. Monitor business establishment monitors and arrange appropriate response to situations (Code 20 and 21). The grievor said she was not familiar with this task.
13. Use ACTION system for call-out of Fire Department, North Bay General Hospital and police personnel when required. The grievor said she was not familiar with this task.
14. Maintain a "key holder" directory and Fire Department Computer Aided Dispatch (C.A.D.) System. The grievor said she was not familiar with this task.
15. Maintain records and Fire Department logs as required. The grievor said she was not familiar with this task.
16. Monitor and report any equipment malfunctions. The grievor said she was able to do this task, although she said she had never done it with dispatch equipment.
17. Monitor radio communications and report breaches of communications policy as required. The grievor said she was not familiar with this task.
18. Take additional training as required. The grievor said she was able to do this task.
19. Perform additional duties as assigned. The grievor said she was able to do this also.

The grievor acknowledged that she would need training to act as a dispatcher and that the normal training period lasted one year. However, she said that because of her work for the Employer she would need less training than would a person who was hired with no prior police experience.

Chuck Seguin is a sergeant with the Employer and is the Quality Assurance Officer. He testified about Ontario's Adequacy and Effectiveness regulations for police services and about the efforts the Employer made in implementing those requirements (see the agreed facts, paragraph 5, above). Those regulations require that there be a communications centre and that the staff in the centre be trained. To that end, the Ministry of the Solicitor General issued both "Core Competencies" and "Ministry Accredited Standards" for the dispatch staff. The Employer then developed its own training program for the dispatch position and that training program was approved by the province. To ensure that dispatchers met the Ministry standard, the dispatchers were required to complete the checklist of tasks and that completed checklist was included in their personnel files. He said the checklist was a fair reflection of the Ministry Standards. He acknowledged that it would be impossible for a person to be competent in each item on the checklist unless that person had been trained as a dispatcher.

Sue Cousineau is the office manager and the grievor's supervisor. Ms Cousineau testified that the grievor was hard working, efficient, easy to train, able to multi-task, a quick learner on computers, good at working either independently or in a team, intelligent, active, and loyal. Ms Cousineau said that she believed the grievor would make a good dispatcher and she felt a move to dispatcher would be a promotion for the grievor. However, Ms Cousineau acknowledged that the grievor would not be able to work as a dispatcher without training.

Mike Tarini is a sergeant with the Employer and is President of the Union. He testified that he has known the grievor since she was hired by the Employer and that she was an excellent employee, highly skilled and motivated. He testified that he viewed the dispatcher position as a promotion from a clerk position and said there was a large increase in pay. He also testified that if he were on the road and the grievor was his dispatcher he would be confident that the grievor was qualified to do the work.

As for the provisions of the collective agreement, Mr. Tarini said he viewed the promotion article as a sufficient ability provision such that the senior person with the minimum qualifications was entitled to be promoted.

Charlene Smith is the Employer's Communications Manager. She testified that prior to 1991 the dispatch function had involved only the police. In 1991 the dispatchers assumed responsibility for the emergency 9-1-1 service. Soon thereafter the police dispatchers also became responsible for fire dispatch. She testified that since 1991 all new full time dispatchers have been hired from among the part time dispatchers. In 1999 there had been a posting for a full time dispatcher and, as in this instance, full time employees from outside dispatch had applied. The Employer concluded at that time that the full time employees were not qualified and the position was awarded to a part time dispatcher.

Ms Smith also testified about the Employer's approved dispatcher training program. She said that it is a one year program and during the first three months the trainee works on fire and 9-1-1 with a trainer. From months four through six the trainee assumes primary responsibility for that same work. During months seven through nine the trainee begins police dispatch, once again working with a trainer. Finally, for months ten through twelve the trainee assumes responsibility for police dispatch while a trained dispatcher is still available. Ms Smith noted that the training is based on the number of hours actually worked and, depending on how many hours a part time employee works, the training may take well over a calendar year.

Ms Smith had prepared the checklist that the grievor completed. Ms Smith said that every point on the Employer's checklist had come from the Ministry's checklist and she felt the Employer's checklist fairly reflected the qualifications needed by a dispatcher. She said that the two part time dispatchers scored 100% and the two full time applicants scored 29% and

19%. She said the Employer commonly used 65% as a pass mark on tests. She said that after she reviewed the results of the checklist she had recommended two applicants as being qualified and two as not qualified and that she was informed later that the position was given to the senior of the two qualified applicants.

Paul Cook is now the Chief of the North Bay Police Service but at the time this position was filled he was deputy chief. He said that he made the decision on this position based on the checklists showing that two of the four applicants were qualified and that two were not qualified. By “qualified” he said he meant being able to step in and do the job right away. The position was given to the senior qualified applicant.

Mr. Cook also reviewed the provincial adequacy standards and the effect of those on the operation of the police service. He said those standards had a major impact requiring that many policies be reviewed and rewritten, including those for dispatch. He said the Employer could be audited and, if the Employer was found not in compliance with the Adequacy Regulations, sanctions could be imposed.

Mr. Cook said that since 1991 all dispatchers had started as part time dispatchers. He said that allowed greater flexibility and was better for training. The full time dispatchers worked 12 hour shifts and it was difficult for anyone to be trained for 12 hours. Part time employees start with shorter shifts and the training could be done by a mentor much more effectively in those shorter periods.

Mr. Cook acknowledged that had no part time dispatcher applied, the Employer would have trained one of the full time applicants. The Employer trains many of its new employees, both police officers and civilian employees.

Finally Mr. Cook testified that he did not view this as a promotion under the Promotion article. Rather he saw it as falling under the Job Bulletining article. In any event, he expressed the view that the language outlining how the Employer was to choose among candidates under either article had to relate to the position being sought and, in particular, the applicant's "activity" had to be in, or related to, that position.

I note that Mary Bonenfant, the successful candidate, attended the hearing and was given an opportunity to participate.

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The following are the key provisions of the parties' 2002-2003 collective agreement:

ARTICLE 10 - PROMOTION

10.01 With respect to promotion, preference will be given to those with the greatest length of service when supported by the necessary qualifications of loyalty, activity, intelligence and conduct.

ARTICLE 26 - JOB BULLETINING

26.01 When a job becomes vacant, either permanently or temporarily,

- (a) the position shall be bulletined internally for fourteen (14) days before it is advertised publicly, or otherwise filled, excepting, (2002)
- (b) it may be temporarily filled in the event of unexpected vacancy, while the Chief is proceeding with clause (a)
- (c) when a new job position is created or when a job position which is being filled by a temporary employee becomes open as a permanent position, such position shall be bulletined internally for fourteen (14) days before it is advertised publicly or otherwise filled. (2002)
- (d) Civilian Members applying for a bulletined position, provided they are qualified, shall be given first consideration.

26.02 (a) When employees are to be reassigned laterally within the North Bay Police Service, the openings for reassignments shall be bulletined for at least fourteen (14) days before it is filled. (2002)

- (b) The position may be temporarily filled in the event of unexpected vacancy, while the

- Chief is proceeding with clause (a).
- (c) When, in the Chief's opinion, after all other considerations are taken into account, preference will be given to Members who have applied, with the greatest length of service when supported by necessary qualifications of loyalty, activity, intelligence and conduct.

IV. UNION POSITION

The Union submitted that this was a promotion under Article 10.

A common dictionary definition of promotion is "advancement in rank or responsibility." The dispatch position is the most important civilian position and it is a step up from the clerk position in status, in responsibility and in pay.

The arbitration awards indicate that improved salary is only one way of looking at a promotion. The possibility of improved job opportunities or a better work environment may also indicate a promotion. A job that is preferred by employees as being a higher class of work with greater responsibilities is a promotion. A promotion involves a move up. Moreover, the cases make it clear that the rights found in a promotion article of a collective agreement should be construed broadly in favour of the applicant unless the agreement itself suggests otherwise. For the grievor this was a promotion.

In this case the Union said the grievor met the requirements of Article 10. The reference in Article 26.01 to "qualified" must be read in light of Article 10. The phrase "the necessary qualifications of loyalty, activity, intelligence and conduct" appears in both Article 10 and in Article 26.02(c) and amounts in substance to a definition of the word "qualified". The Union said it would be normal to expect that the term qualified would have the same meaning in both articles. In substance, the Union said that the grievor had all the four qualifications of "loyalty, activity, intelligence and conduct." As she had all those

qualifications she was entitled to preference. If that language had been intended to mean the ability to step into the job and do it right away, it was poorly phrased. Article 10 says nothing about “skills and abilities” but rather speaks of activity.

The Union also submitted that when, as here, the grievor has demonstrated a *prima facie* case (that is proof that will suffice unless and until it is overcome by other contradictory evidence) the Employer must establish the correctness of its decision not to promote the senior applicant. The Union reviewed several awards in which the arbitrators discussed the approach to be followed in applying the language before them and in assessing the employer decisions in those fact situations.

The Employer wants its employees to go to work, do a good job, and be involved in the community through volunteer activities. An employee who does so, as the grievor has, should benefit. Here the Employer conducted a charade, a sham process - it knew from the start that if any part time dispatchers applied the senior one would get the job. This was not done in a *bona fide* manner.

Finally, the Union noted that it was common in police work for employees to first be hired and then trained. The fact the grievor would need training was not unusual in this environment and should not be a determining factor.

The Union referred to the following: various dictionary definitions; Palmer, Earl E, *Collective Agreement Arbitration in Canada*, extract from Chapter 13, *Meaning of Promotion*; *Re Nova Scotia Liquor Commission and Nova Scotia Liquor Commission Employees Union, Local 470* (1983), 13 L.A.C. (3rd) 438 (MacDougall); *Re Labatt's Breweries Ltd. and United Brewery Workers, Local 304* (1973), 2 L.A.C. (2d) 40 (O'Shea); *Re St. Paul's Hospital and Registered Nurses' Association of British Columbia* (1980), 28

L.A.C. (2d) 51 (Vickers); *Board of Commissioners of Police for the City of Cornwall and Cornwall Police Association* (October 22, 1991), unreported (Thorne); *Re Canadian Brotherhood of Railway Transport and General Workers and St. Lawrence Seaway Authority* (1969), 23 L.A.C. 156 (P. C. Weiler); *Re Board of School Trustees, Delta School District and Canadian Union of Public Employees, Local 1091* (1994), 46 L.A.C. (4th) 216 (Laing); and *Re Corporation of District of Maple Ridge and Canadian Union of Public Employees, Local 622* (1979), 23 L.A.C. (2d) 86 (Hickling).

V. EMPLOYER POSITION

The Employer submitted that the collective agreement contemplated three scenarios. Article 10.01 dealt with promotion to supervisors - office manager, communications supervisor, etc. Article 26.02 dealt with lateral reassignments where nothing changed other than the shift. Article 26.01 dealt with the remaining cases. Looking at the provisions in that way, Article 10.01 makes sense as the applicant's activity must be seen in the context of the particular job being sought, as would be the case for a clerk seeking the office manager position or a dispatcher seeking the communications supervisor position.

The requirements of this dispatch job were based on statute, regulations and guidelines and were not disputed by the Union. Here there was no *prima facie* case that the grievor could do the job as even the grievor testified that she would need to be trained.

There is no training provision in this agreement. It is generally accepted that in the absence of a training provision an employer need not promote someone who requires training. Nor must this Employer promote someone who cannot do the job. As the grievor was not qualified to do this job, the fact that she was the senior applicant does not mean the Employer must promote her.

The Employer referred to the following: *Brown and Beatty*, Canadian Labour Arbitration, 3rd Edition, Section 6:3210, *Senior employee with the required ability*, and Section 6:3230, *Trial, training and familiarization periods*; *Re Lake Ontario Steel Co. Ltd. and United Steelworkers, Local 6571* (1975), 10 L.A.C. (2d) 215 (Hinnegan); *Re St. Catharines General Hospital and Service Employees' Union, Local 204* (1975), 10 L.A.C. (2d) 258 (Adams); *Re Liquid Carbonic Canada Ltd./Ltee and United Steelworkers, Local 12998* (1976), 12 L.A.C. (2d) 222 (Weatherill); and *Re Hamilton Teachers' Credit Union Ltd. and Office & Professional Employees' International Union, Local 343* (1989), 5 L.A.C. (4th) 62 (Verity).

VI. CONCLUSIONS

The issues raised by this grievance are as follows:

1. Was this a promotion governed by Article 10 or was it a job to be filled under Article 26?
2. What did the applicable Article require of the Employer in terms of selecting among the candidates?

Was this a promotion governed by Article 10 or was it a job to be filled under Article 26?

Although Article 10 regulates promotion, promotion is not defined in the collective agreement.

Promotion is a concept that is common in collective agreements and arbitrators have interpreted it as meaning a change to a higher rank, status, or job. When parties use such a word so commonly found in other collective agreements, I assume that they intend that it have the same meaning as in other collective agreements.

In this case, would a change from clerk to dispatcher be a change to a higher status or job and thus be a promotion? The dispatch job pays more than the clerk job, and pay is a very important factor in evaluating and ranking jobs. In addition, the position of dispatcher is perceived as involving greater responsibility as the dispatcher is, in the words of some of the witnesses, the “life line” for the police officers in the field. The grievor, as well as Ms Cousineau (the office manager) and Mr. Tarini (a police officer and Union President), expressed the view that the dispatcher job was a promotion from the clerk position and no witness disagreed with that assessment. I conclude that this was a promotion for the grievor.

I must also consider the Employer submission that Article 10 deals only with some promotions. The Employer said that only promotions to certain supervisor positions were covered by that Article and that other promotions, such as this, were dealt with in Article 26.01. I am unable to accept this submission. I cannot believe that the parties used the general term promotion in Article 10 to describe only a few selected, but unspecified, promotions and then failed to use the word promotion at all in Article 26.01 if they had intended there to deal with the remaining promotions.

I thus conclude that this was a promotion and it was regulated by Article 10.01 of the collective agreement.

What did Article 10.01 require of the Employer in terms of selecting among the candidates?

Article 10.01 states that “preference will be given to those with the greatest length of service when supported by the necessary qualifications of loyalty, activity, intelligence and conduct.” Since the grievor was the most senior applicant she was to be given “preference” if she had the “necessary qualifications of loyalty, activity, intelligence and conduct.” The parties disagreed as to what that latter phrase meant.

On the one hand, the Union said that the grievor had been loyal to the Employer, she had been active, she was intelligent, and her conduct had been good, such that she met the criteria and the onus then shifted to the Employer to demonstrate why the grievor was not given “preference” and awarded the position. On the other hand, the Employer said the “necessary qualifications of loyalty, activity, intelligence and conduct” had to be read in the context of the job and had to relate to the job being sought. In this case the activity, intelligence and conduct had to be related to the dispatch position and the grievor acknowledged she could not perform many aspects of the job without training.

This article is not written as clearly as one might like and the phrase “the necessary qualifications of loyalty, activity, intelligence and conduct” is ambiguous.

However, I have concluded that the Employer interpretation is more probable for two related reasons.

1. The Article includes the words “the necessary qualifications of”. If the words “the necessary qualifications of” were deleted so that the article read simply “preference will be given to those with the greatest length of service when supported by loyalty, activity, intelligence and conduct” the Union’s interpretation would be more plausible. With that language, the Union might reasonably claim that the provision required simply that a senior applicant be loyal, active, intelligent and of good conduct in order to receive preference.

The parties, however, included “the necessary qualifications of” and I believe the parties intended those words to have meaning. I believe that the phrase “the necessary qualifications of loyalty, activity, intelligence and conduct” was intended to convey a requirement that the senior applicant have that amount of the “qualifications” of

“loyalty, activity, intelligence and conduct” which is “necessary” in order to do the job being sought, not simply some reasonable measure of those qualities divorced from that job. Since the grievor cannot now do the dispatch job, she is lacking the necessary “loyalty, activity, intelligence and conduct”.

In this case there is no need to distinguish “loyalty” from “activity”, or from “intelligence”, or from “conduct”, nor to determine precisely what each qualification means. In another grievance where the parties disagree on whether the grievor is able to do the job this analysis may be required, but it is not needed here.

2. The provision does not stand on its own and, as with any part of a collective agreement, the article must be read in context. The context here is to provide to an employee a right which flows from seniority. Employees who desire a job promotion are to apply and the senior person meeting the standard is to get preference.

Some other collective agreements contain “competition” clauses for promotions. Under a typical competition clause the most qualified candidate is entitled to the promotion although, if there are two or more candidates who are equal, or relatively equal, in terms of their qualifications, the senior among them is to be promoted.

But this promotion article is not a competition in the sense that the best candidate is to get preference; rather the senior qualified person receives preference. Under this agreement there may be many persons seeking a promotion all of whom are qualified to do the job, and perhaps one of those many qualified persons is clearly the most qualified. Nevertheless, under this agreement, the most qualified candidate is not entitled to be promoted but rather the senior among those qualified candidates is to be promoted. In collective agreements this is often referred to as a “sufficient ability”

clause.

Other collective agreements with a sufficient ability test often use wording such as “the required knowledge, ability and skills” (see *Re Corporation of District of Maple Ridge, supra*), or “the necessary qualification to perform the work” (see, *Re Lake Ontario Steel Co. Ltd., supra*). Those phrases are more obviously linked to the job being sought than is the wording in this agreement specifying “the necessary qualifications of loyalty, activity, intelligence and conduct”.

In this collective agreement, while it is clear that the test is a sufficient ability clause, the nature of that test of sufficient ability is not as clear. It seems unlikely the two parties would have intended that a loyal, intelligent and active employee with good conduct who was *unable* to perform the work would be given a job in preference to a less senior person who was also loyal, intelligent and active with good conduct but who was able to do the work. I do not think the parties intended that the Employer be required to promote someone who could not do the job in preference to a person who could. Instead it seems much more probable that the parties intended that the senior applicant had to be able to do the job in order to receive preference.

Considering both the wording of this provision and the purpose of it, I conclude that an applicant seeking a promotion must demonstrate that he or she has the qualifications necessary to do the job being sought. The senior applicant among those with sufficient loyalty, activity, intelligence and conduct to perform the job is to receive preference, whether or not there is a junior applicant who would be better at the job.

In this grievance it was clear from the testimony at the hearing that the grievor was unable to do the job when she applied. The grievor would have needed considerable training in

order to do this job. I note that there is nothing in this collective agreement which entitles any employee to training and nothing in the agreement to indicate that a senior employee has a right to be trained in the event that he or she seeks a promotion. As the grievor was unable to do the job and had no right to training, it follows that the grievor was not entitled to preference and that the Employer did not violate the collective agreement in failing to give the grievor, the senior applicant, the promotion.

The grievance is dismissed.

Dated in London, Ontario, this 19th day of November, 2004.

Howard Snow, Arbitrator