

IN THE MATTER OF AN ARBITRATION

BETWEEN

RENNIE INC.

- the Employer

and

UNION OF NEEDLETRADES, INDUSTRIAL
AND TEXTILE EMPLOYEES, LOCAL 740

- the Union

AND IN THE MATTER of a group grievance and a policy grievance regarding incentive rates and time studies

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

John Couto - Plant Manager

Renata Rinaldo - Personnel Department

On behalf of the Union:

Marisa Pollock - Counsel

Rudi Trevisan - Representative

Jennifer Bennett - President, Local 740

Hearing held in Guelph, Ontario on May 29, 1996.

INTERIM AWARD

I. THE ISSUE

In two grievances referred to me under Section 49 of the *Labour Relations Act, 1995* the Union sought an order that, as part of its investigation of incentive pay grievances, it had the right to do its own time study of the job involved.

The dispute centres on whether the following language of Article 1.02 includes a Union right to perform a time study:

Any Union representative shall . . . have the right to enter the plant . . . during working hours, for the purpose of investigating any grievance, or dispute arising out of the . . . Agreement.

II. THE EVIDENCE AND POSITIONS OF THE PARTIES

In September, 1995 the Employer announced a new incentive rate for the trim and inspect job in its Guelph shirt manufacturing facility. The Union grieved and sought two remedies. This award deals only with the first remedy - the Union request regarding its right to do its own time study. I heard evidence beyond what is necessary to resolve the question. In this award I restrict my review of the evidence to an outline of those events which are necessary in order to interpret the agreement and decide the question of the time study.

The collective agreement provides that many employees are to be paid on the basis of how much work they complete - that is on the basis of piece work rates. The amount of work an employee is expected to complete is established for each job. An employee who does exactly the expected amount of work gets the basic wage. An employee who produces more work than the expected amount is paid an extra amount under the incentive plan. The higher

amount is referred to as the incentive earnings.

Historically the expected rate of work has been established by means of a time study. The evidence indicated a time study can be done in different ways, but in general terms a time study involves a "scientific" analysis of a job, first breaking the job into its various components, and then timing how long it takes to accomplish each of the components. The time for the job is then the sum of the time for the components. Adjustments in the time for the entire job are made to reflect how long it would take a worker of normal ability, working with normal effort, to do the job. Allowances are then made for matters such as washroom breaks, rest breaks, etc., and a "standard allowed number of minutes" is established for completion of the entire job. Thus if a person of normal ability working with normal effort, and considering the various allowances, takes two minutes to trim and inspect one shirt, then in one hour a worker would be expected to trim and inspect thirty shirts.

The pay rates provided in the agreement for workers covered by the incentive plan are the base rates, based on, in this example, the expectation that a worker trims and inspects thirty shirts per hour. An employee who completes thirty shirts would receive that base rate. However, an employee who, through superior talent or extra effort, trims and inspects forty five shirts per hour would have accomplished an extra fifty percent of the normal amount of work. That employee would be paid more than the normal or base pay - he or she would be paid an incentive rate at 150% of the base hourly rate in order to reward for the extra work.

The use of incentive pay of this nature is common in the clothing manufacturing business in Ontario. The incentive pay system is very important to the Employer's operation. The Employer acknowledged that it has a vital interest in maintaining reasonable incentive rates.

The use of time studies to establish the incentive rate is also common. It appears that the

Employer had performed its own time study in arriving at the new trim and inspect standard which it announced in September, 1995. Rudi Trevisan, the Union representative for Rennie Inc. employees, has had considerable experience in performing time studies. He received formal training in work measurement and time study at Ryerson Polytechnic University and has acquired practical experience in the industry both as an engineer working for another clothing manufacturer and more recently as a Union representative called upon to do time studies over the last fourteen (14) years. He testified that he had done a number of time studies at Rennie Inc. in the early 1990's, before he became the Union representative responsible for Rennie. He also testified that he was frequently called upon by his fellow Union representatives to do time studies in other plants where employees are represented by other Union locals and work under similar incentive systems. It was clear both from Mr. Trevisan's evidence and from the other evidence that time studies of one sort or another are an integral part of the incentive pay system at Rennie Inc. and throughout the industry.

About three years ago (the evidence was not clear but it was probably in early 1993) the trim and inspect function was changed and a new incentive rate was introduced. In the years following the introduction of that "1993 rate" there were various changes in the trim and inspect job but the incentive rate remained unchanged. Following numerous expressions of concern or discontent by the employees and the Union, the Employer announced an adjustment in the incentive rate in September, 1995 with a new "1995 rate". The Union filed its first grievance and asked:

1. to do its own time study of the trim and inspect job; and
2. that full redress be given.

That September grievance was not resolved. In March, 1996 the Union filed a second grievance in which it referred to the earlier September grievance and sought as a remedy that "The Union Engineer be allowed to time study the trim and inspect operation."

Those two grievances are before me for resolution. At the hearing the Union asked that I address only the Union's right to do a time study. The Union submitted a time study would shorten the rest of the hearing; without a time study it would be much more difficult for the Union to address the remedy of full redress sought in the first grievance. In simple terms, the Union felt it would be unable to adequately or efficiently deal with the appropriateness of the Employer's 1995 incentive rate in trim and inspect without having its own expert do a time study of the function. In addition, the Union sought to clarify the general question of its right to do its own time study.

This award is restricted to the issue of the Union's right to do its own time study. The Union submitted:

1. that the agreement provided for the Union to do its own time study; and,
2. in the alternative, that if the agreement did not do so explicitly, I should imply such a term.

The Employer submitted that:

1. the new incentive rate was fair,
2. by filing a grievance so soon after the introduction of the "1995 rate," the Union had not given any time for the new rate to be tried, and
3. the Employer had the right to set the incentive rate.

On the issue of the time study, the Employer submitted that:

4. the Union had no right under the agreement to do its own time study.

III. THE PROVISIONS OF THE AGREEMENT

The following are the relevant provisions of the collective agreement:

ARTICLE 1
RECOGNITION

- 1.01 The Company recognizes the Union as the exclusive Collective bargaining agent . . .[for the unit].
- 1.02 The Employer shall recognize and deal with such representatives of the employees and [*sic*] the Union may elect or appoint. Any Union representative shall, upon obtaining permission of the designated official of the Employer have the right to enter the plant, including any of the work rooms, during working hours, for the purpose of investigating any grievance, or dispute arising out of the administration, interpretation, application or alleged violation of the terms of the Agreement. Union representatives or representatives in performing such duties, shall not interrupt or delay production.
- 1.03 The Employer agrees to make available to the Union a quarterly report of all employees in the Union, showing seniority, job classification, quarterly average or time work rate.

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ARTICLE 7
INCENTIVE PLAN

- 7.01 The Company agrees that the Piecework Incentive Plan being operated by the Company as at the effective date of this Agreement shall continue in effect for the duration of this Agreement.
- 7.02 Standard Piecework Incentive Rates will not be changed, after formal issuance, unless there has been a change of method, material, tooling, equipment, process, location, design or style of product, or unless change [*sic*] by mutual agreement between the parties. Such restrictions shall not apply when changing temporary or estimated Piecework Incentive Rates.
- Rates for new operations, changed operations or changed conditions shall be set by the Employer. Rates for new equipment shall be set by the Employer and shall be considered temporary for a maximum period of six (6) months, during which time the Employer shall have the right to modify or change the rate. After the period of six (6) months changing of a rate shall not be done except by mutual agreement.
- 7.03 Employees assigned work to be performed under the Incentive Plan, may obtain from their immediate Supervisor the Piecework Incentive Rate applicable to such work assignment. If an employee working on an incentive job believes the Standard Piecework Rate to be incorrect. [*sic*] He or she may take the matter up under the Grievance Procedure as herein provided.

...

IV. CONCLUSIONS

The Piecework Incentive Plan is a vital part of this collective agreement. The use of time studies in setting and reviewing incentive rates has been common both with the Employer and with other employers elsewhere in the clothing manufacturing business. The use of time studies has been so common and they are such an integral part of an Incentive Plan that I conclude that Article 7.01, which continues in general terms the Piecework Incentive Plan without defining the term, also continues the use of time studies as part of that Plan.

Article 7.02 preserves the Standard Piecework Incentive Rates. Those rates can only be changed when there is a change in the job, or by mutual agreement. Rates for changed operations or changed conditions are "set by the Employer" (Article 7.02). Although the parties disagreed on the meaning of this provision, it is not necessary for me to interpret it at this stage. Suffice it to say that the Employer asserted that this gave it, in essence, a unilateral and unfettered right to set rates. The Union disagreed.

Given this background, what are the rights provided to the Union in Article 1? Do the rights include the right to perform its own time study?

The Union's rights are all expressed in general terms:

- the Employer shall recognize and deal with Union representatives;
- any Union representative can, with permission, enter the plant for the purpose of investigating any grievance or other dispute under the collective agreement; and,
- the Employer provides the Union with quarterly reports. (Those quarterly reports show, among other things, the average incentive rate achieved by each employee working under the incentive plan.)

The Union noted that a time study is the normal or standard way of investigating incentive pay rates, or disputes about incentive pay rates. The Union submitted that it follows that in providing a right to enter and investigate grievances or disputes, Article 1.02 includes a right to do a time study.

I believe the word "investigating" in Article 1.02 should be given a purposive interpretation based on a consideration of the nature of the dispute, and a consideration of the nature of the employer's business and the other provisions of the collective agreement. I note the following points:

1. Incentive rates are a vital part of this agreement.
2. The use of time studies is essential to the incentive pay system continued in this agreement.
3. The agreement requires the Employer to provide quarterly reports to the Union on the incentive pay, presumably so the Union has an opportunity to review the operation of the incentive system.
4. The right to grieve incentive rates is mentioned explicitly in the agreement (Article 7.03).

What sort of "investigating" of incentive pay disputes did the parties contemplate that the Union could do under Article 1.02? Many types of grievances or disputes can be investigated by speaking to the people involved. Other disputes require the examination of documents, or consultation with experts. The evidence here, however, suggests that speaking to the people involved, or examining documents, or consulting experts would not be of much assistance in investigating this or other incentive pay grievances. The Union evidence and argument was to the effect that the most sensible and the common manner of investigating an incentive pay grievance was through a time study - for the Union to have its own expert study the job. The Employer did not dispute that point - it simply said there was no such

right in the agreement for the Union to do a time study.

This Employer has used time studies when it investigated incentive rates, other employers do the same, this Union has used time studies in investigating incentive pay disputes with other similar employers, and, in the past, this Union has used time studies to investigate incentive pay disputes or grievances with this Employer. Given the importance of the incentive pay system, the key role of time studies in this system, and the preservation of both of those in this agreement, it would be reasonable for the parties to have included in their agreement the Union's right to do a time study. Article 1.02 provides the general right for the representatives of the Union to enter the plant to investigate grievances or disputes. On the basis of the above considerations, I conclude that the parties use of the general phrase of "investigating" a grievance or dispute was intended to include a time study as part of the Union's right to investigate a grievance or dispute over incentive rates. This interpretation makes better sense than a conclusion to the effect that the Union cannot do a time study in investigating disputes about incentive pay - cannot do the sort of investigation which the parties knew was the common approach in cases of conflict over incentive pay matters. Had the parties intended the word investigating to exclude such a common method of investigating such an important matter in their agreement, I would have expected the parties to have said so directly.

However, the Union's right to enter and investigate is subject to two express limitations. Nothing was said about either of these in the hearing. I assume that the parties felt the limitations would cause no difficulty, if I found the Union had a right to do a time study. I trust they are correct. I feel it necessary, however, to briefly mention these two points.

Under Article 1.02 the Union must obtain permission to enter the plant. I have found that the Union has the right to enter to do a time study. The Employer cannot withhold

permission indefinitely or arbitrarily. Any restrictions on entry and inspecting must flow from a valid business reason.

In Article 1.02 the exercise of the Union's rights is subject to the proviso that the representatives "shall not interrupt or delay production." From the general description of the conduct of time studies, it seems it may be necessary to speak to employees, or perform other analyses beyond mere observation, which may in turn cause a marginal delay in production. Most investigations of grievances, whether they involve talking to employees, reviewing documents, or doing time studies, will have some marginal impact on production and thus I do not believe the normal impact of a time study was what was contemplated by the parties when they used the term "interrupt or delay" production. I am of the view that any interruption or delay of production of the sort which is normal with time studies must have been contemplated. It follows that the Union's right to perform a time study is the right to perform one in the usual manner such that it has only the usual impact, if any, on production.

I direct the Employer to permit the Union to conduct its own time study of the trim and inspect function at its plant. I remain seised to deal with any difficulties which may arise in the implementation of this direction.

This award addresses only one of the remedies sought by the Union. As requested, I also remain seised to deal with any other matters which may arise from the grievances.

V. SUMMARY

In summary, I have concluded as follows:

1. The Union has the right under this collective agreement to perform its own time study of jobs which are covered by the incentive plan in the collective agreement and which

are involved in a dispute or grievance.

2. In particular, the Union has the right to time study the trim and inspect function which is in dispute in these grievances. I direct the Employer to provide access to the plant so the Union's chosen time study representative can perform a time study of the trim and inspect function.
3. I remain seised to deal with any remaining issues, that is any issues which may arise regarding the conduct of the time study itself and any issues which the Union may wish to continue to pursue after it has completed its time study.

Dated in London, Ontario, this _____ day of June, 1996.

Howard Snow, Arbitrator