

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CUDDY FOOD PRODUCTS

- The Employer

-and-

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION,
LOCAL 175

- The Union

AND IN THE MATTER OF policy grievance #972475 regarding weekend overtime

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Frank A. Angeletti

- Counsel

Dawn Janveaux

- Vice-President, Human Resources

On behalf of the Union:

Kelly Kucey

- Counsel

A. G. Sherman

- Union Representative

Betty Pardy

- Chief Steward

Hearing held July 9, 1998 in London, Ontario

AWARD

I. INTRODUCTION

This grievance concerns the method by which the Employer seeks volunteers for weekend overtime. The collective agreement requires the Employer to first offer the overtime to employees in the department. The question is this:

How many times must the Employer offer weekend overtime to employees within the department before moving beyond the department in its search for volunteers?

II. THE FACTS

In April, 1997 the Union filed a policy grievance in which it alleged the Employer had improperly distributed weekend overtime. At the hearing the parties advised that they sought an interpretation of the articles of the collective agreement involving the selection of employees for weekend overtime and further advised that it was unnecessary at this stage to consider either individual instances of overtime distribution or the matter of remedy.

The Employer processes chicken and turkey. It operates three divisions, or plants, in London, Ontario. There are approximately 850 hourly employees in the three divisions covered by one collective agreement between the Employer and the Union. Employees are hired to work in one division and employee movement among the divisions is normally limited to layoff and bumping. There are several departments within each division.

The standard work week is 40 hours per week, i.e. five days of eight hours, Monday through Friday. The Employer often needs employees to work overtime and the agreement contains provisions on overtime. Employees are paid 1.5 times their regular rate for all hours they work in excess of 8 hours per day or 40 hours per week. Employees are paid 1.5 times their

regular rate for all hours they work on Saturday and 2.0 times their regular rate for all hours on Sunday. In addition, employees are paid 2.0 times their regular rate for their hours of work which exceed 12 consecutive hours.

The agreement includes a process for finding volunteers for overtime work. When overtime is required in a department during the standard Monday to Friday work week, it is offered on a voluntary basis beginning with the senior qualified employees within the department who are at work. If too few departmental employees volunteer, the work is then offered to the senior qualified employees outside the department but within the division who "are at work and available". The agreement also provides a process for canvassing for volunteers for weekend overtime. Weekend overtime is offered first to senior qualified employees in the department, then within the division, and finally to employees in other divisions.

If the Employer's overtime requirements cannot be met by volunteers, the Employer can assign the overtime to the most junior qualified employee, subject to the proviso that no employee will be required to work an unreasonable amount of overtime.

Whenever possible, the Employer is to staff its Saturday overtime twenty-four (24) hours in advance; it is to staff its Sunday overtime forty-eight (48) hours in advance.

This grievance relates to the process by which employees are canvassed to solicit their interest in working weekend overtime. The three divisions have historically operated somewhat separately from one another. As a result, different practices have sometimes developed in the different divisions. The solicitation of volunteers for overtime is one such instance where differing practices have developed. In one division canvassing for volunteers for weekend overtime is done with the employees in the department and, if an insufficient number of employees volunteer, those same departmental employees are canvassed a second

time. In another division, if the first canvass within the department does not produce enough volunteers, the search immediately moves to the rest of the division. The practice varies in the third division. It was on this issue of the proper approach in canvassing for volunteers for weekend overtime that the parties sought an interpretation of their agreement.

III. PROVISIONS OF THE AGREEMENT

The following are the relevant provisions of the agreement:

14.05 (a) **Divisions "A", "B" & "C":**

- i) [Deals with weekday overtime]
- ii) Subject to 14.08, the opportunity to work overtime on Saturday or Sunday shall be offered first on a voluntary basis from qualified senior employees in order of seniority within the Department; then

To employees within the Division; then

To employees within other Divisions (based upon combined seniority lists)
- iii) If the Company cannot fill its overtime requirements on a voluntary basis as outlined in Article 14.05 (a) (i) and (ii), the Company will assign the overtime work and such employee(s) will be required to perform the work on the following basis:
 - (1) [Deals with weekday overtime]
 - (2) Overtime work required in accordance with Article 14.05 (a) (ii) will be designated to the most junior qualified employees in the Divisions.
- (iv) No employee shall be required to work an unreasonable amount of overtime.

14.06 Employees in Division "A", "B" or "C" who are designated to work overtime in accordance with Article 14.05, must, whenever possible, be provided with advance notice as follows:

- (a) [Deals with weekday overtime]

(b) **Weekend Overtime**

Saturday Overtime - Notice of such designation at least twenty-four (24) hours in advance.

Sunday Overtime - Notice of such designation at least forty-eight (48) hours in advance.

...

14.08 Employees will not be required to report for their scheduled shift unless a minimum of nine (9) hours has elapsed since the completion of their last scheduled shift.

IV. CONCLUSIONS

The overtime provisions of this agreement are based solely on seniority. There are no provisions requiring or permitting the Employer to equalize the overtime opportunities. Thus the most senior employee in a department could work all or none of the overtime for which he or she is qualified, depending on his or her wishes. If the senior employees in a department volunteer to work overtime, then the junior employees in that department would be invited to work overtime less frequently since the Employer's canvass for volunteers would be completed before the Employer reached the junior employees. As the overtime is distributed solely by means of the canvass, the proper conduct of the canvass is of considerable importance.

The parties developed differing interpretations of this language and differing practices regarding the conduct of the canvass. The differing interpretations cannot, however, both be correct. The parties did not intend multiple meanings of this language.

The interpretation of a collective agreement requires a determination of the intention of the parties. Arbitrators first seek the parties' intention in the words used, as it was in those words that the parties expressed their intention. I thus consider the language regulating the process

for offering weekend overtime. I begin by noting the use of the word "first" in Article 14.05 (a) (ii). Weekend overtime is offered "first" within the department and this use of first is suggestive of one time. If the word first were deleted, it leaves the canvassing process to be conducted in the same order, but the language would more easily support a system of multiple departmental canvasses. The rest of the language provides no clear support for either of the two approaches. Taken as a whole, the examination of the words used by the parties does not provide a compelling argument one way or the other. The best that can be said is that the words, particularly the use of "first", suggest a single canvass. If there were no other aids to determining the parties' intention, I would conclude that the parties intended a single canvass.

In this instance there are two other factors which should be considered, both of which suggest a single canvass.

When interpreting collective agreements, arbitrators usually assume the parties intended to use concepts in common use in collective agreements in a manner consistent with their general use in collective agreements, unless the parties have clearly indicated their contrary intention. Seniority is one such concept. Speaking generally, when seniority is used in relation to employment opportunities (such as job advancement situations or layoffs) it normally operates on a one time basis. For example, when a promotion opportunity is available and employees are asked to signify their interest by applying, employees do not ordinarily have multiple opportunities to apply. Similarly, an employee who is offered a chance to bump rather than to be laid off normally receives only one chance to signify his or her desire to bump. Employees who do not apply for promotion or who do not indicate a desire to bump do not ordinarily get a second opportunity to do so.

I note that the provisions of this agreement on promotion and layoff appear consistent with

this general approach. Thus, elsewhere in this agreement, seniority is used in a manner similar to that described above.

In their language on the canvass for volunteers, the parties did not express a clear intention to deviate from this normal use of seniority. Thus the examination of the use of seniority, both elsewhere in this agreement and in other agreements generally, suggests that employees would be asked or canvassed only once about their willingness to work weekend overtime, and supports the conclusion which I would reach based on the language alone.

Secondly, arbitrators sometimes attempt to derive the parties' intention from an examination of the purpose of the provision. In essence arbitrators sometimes consider which interpretation is most consistent with the purpose. I assume this provision was intended to produce the number of employees whom the Employer required to work overtime within the specified time frame and to distribute the overtime fairly by seniority while providing as much notice as possible to employees. I also assume that the parties expected employees to answer the canvass honestly when asked. If an employee did not wish to work weekend overtime and would not volunteer to work weekend overtime, nothing would be gained by asking a second time. If an employee knew that he or she would not be asked a second time, he or she would more likely give a carefully considered answer when canvassed the first time. Moreover, a process of multiple canvasses within the department would decrease the amount of notice employees in other departments or divisions would receive of the overtime opportunity. I can see nothing in these purposes which would be enhanced by a multiple canvass, and no reason why the parties would have intended a multiple canvass within the department. Thus this approach also suggests a single canvass for volunteers for weekend overtime.

Based on the above - the wording of the provision, supported by the general use of seniority

and the purposes of the canvass - I conclude that the Employer is required to canvass within the department only one time for volunteers for weekend overtime. If an insufficient number of employees volunteer on the first departmental canvass then the Employer is to canvass, in order of seniority, the employees within the division, and then, if necessary, to canvass the employees in other divisions. In other words, I conclude that the agreement does not provide for, and does not permit, multiple canvasses of employees within the department.

I remain seised to deal with any matters which may arise in the implementation of this award.

Dated in London, Ontario, this 22nd day of July, 1998.

Howard Snow, Arbitrator