

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

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

WATERLOO FURNITURE COMPONENTS LIMITED

- The Employer

-and-

UNITED STEELWORKERS OF AMERICA, LOCAL 7155

- The Union

AND IN THE MATTER OF a grievance of Walter Fernandes

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

William S. Cook	- Counsel
Bob Wettlaufer	- Operations Manager
Ruth Phillion	- Human Resources Manager

On behalf of the Union:

David Hilker	- Staff Representative
Leo Drisdelle	- Local President
Walter Fernandes	- Grievor
Dieter Klotzin	- Steward
Gerald Ballard	- Steward

Hearing held September 22, 1998 in Kitchener, Ontario.

AWARD

I. INTRODUCTION

The Employer terminated the employment of Walter Fernandes, the grievor, in July, 1998. The grievor filed two grievances. One grievance alleged that the Employer did not have just cause for the discharge. The second grievance, and the one addressed in this award, alleged that the grievor was terminated without having his steward present and thus the Employer had violated the grievor's rights to Union representation contained in the agreement. As the grievor was accompanied by a Union official at the discharge meeting, the issue addressed in this award is whether the presence of that Union representative met the requirement of the collective agreement to have "the employee's steward" present.

The two grievances were to be heard together. When it became apparent that the hearing could not be completed in one day, the parties argued only the issue of union representation, an issue which had the potential to provide a final resolution. This award is confined to that grievance.

II. THE EVIDENCE

I note that the outline of the evidence as it relates to the question of just cause is provided as a general background, based on the evidence heard to date, and is not provided as any finding of fact.

The Employer operates two plants in Kitchener. The larger plant is known as the Manitou plant and the parties have had a lengthy collective bargaining relationship at this plant. In 1995 the Employer purchased a second plant known as the Trillium plant. The Steelworkers were certified as the bargaining agent for the Trillium employees in 1996 and a separate

collective agreement was negotiated. The provisions in the two collective agreements are similar but not identical.

Under the Manitou collective agreement, employees who have been transferred from the Manitou plant to the Trillium plant continue to be covered by the Manitou agreement. The grievor was one of some 50 to 60 Manitou employees who were transferred to the Trillium plant. Under their Manitou agreement there was an additional steward appointed at the Trillium plant to represent the employees, like the grievor, who had been transferred.

The Employer has been concerned about the grievor's absences. In October 1997 the Employer terminated the grievor's employment because of his absences and then reinstated him under a grievance settlement. In May 1998 the Employer discharged the grievor a second time for similar reasons and again reinstated him.

In July 1998 Bob Wettlaufer, the Employer's Operations Manager responsible for both plants, was advised that the grievor had missed an overtime shift. He was also advised that the grievor's recent absenteeism rate was about 12% as compared with a plant average of 4 to 5%. Mr. Wettlaufer decided that the grievor should be fired unless he had a good excuse for his absence. Mr. Wettlaufer advised the grievor's manager, Ozael DeSousa, to meet with the grievor when the grievor returned to work. Mr. Wettlaufer further advised Mr. DeSousa to discharge the grievor if the grievor did not provide a reasonable explanation for his absence.

Mr. Wettlaufer did not attend the meeting at which the grievor was dismissed. However, he did testify as to his understanding of the meeting. The following summary of events is derived from Mr. Wettlaufer's testimony and the matters agreed upon by the parties.

Mr. Wettlaufer and his management colleagues were aware of the provisions of the collective

agreement requiring the presence of "the employee's steward". Gerald Ballard was the steward for those Manitou plant employees who had been transferred to the Trillium plant, and was thus the grievor's steward. Mr. Ballard was on vacation. The Employer had been advised to contact the Manitou chief steward during Mr. Ballard's vacation. The chief steward for the Manitou plant, Evan Graham, was away on Union business. The Union had an office in the Manitou plant and the Employer called the Union's Manitou office but could not reach anyone. The Employer thus arranged for Andy Wideman to attend the meeting.

At the time of the hearing Mr. Wideman was the Chair of the Trillium plant bargaining unit and Recording Secretary for the Executive of the two plants. At the time of the grievor's discharge Mr. Wettlaufer believed Mr. Wideman to have been the Chair of the Trillium plant bargaining unit, to have been chief steward or at least acting chief steward for the Trillium plant, and to have been on the Executive of the Union Local representing the employees in the two plants. The Union disputed the accuracy of Mr. Wettlaufer's recollection of Mr. Wideman's various Union roles at the time of the grievor's discharge. In any event, the parties were in agreement that Mr. Wideman was active in the Union at the time of the grievor's discharge and that he remained active at the time of the hearing.

The grievor was dismissed at the meeting which Mr. Wideman attended.

Mr. Wettlaufer testified that he wanted to ensure that the grievor had Union representation as required by the agreement and that, in the absence of the grievor's steward and the Manitou chief steward, he felt that Mr. Wideman would give fair Union representation and that his presence would meet the requirement of the agreement.

Asked by the Union about the purpose of a steward being present at a disciplinary meeting, Mr. Wettlaufer indicated that in his experience, when an employee gets to the point of termination, the employee and steward are well aware of the situation. Thus the discharge

meeting is usually a formality at which the Employer explains the situation and at which little discussion occurs. The employee and steward then leave to discuss the matter further.

Mr. Wettlaufer expressed his view that the Employer's two collective agreements were with the same Union. Again, the Union disagreed with Mr. Wettlaufer. The Manitou collective agreement lists Local 7155 as the Union. The Trillium collective agreement lists Local 7155-03 as the Union. Another Kitchener employer, Camco, has an agreement with Local 7155-02. While submitting that these are different Unions, the Union acknowledged that there was one Executive responsible for the three collective agreements. It appears that the Union, for internal purposes such as its financial records, maintains a separation between the bargaining units and uses different numbers.

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The following are the relevant provisions of the collective agreement:

ARTICLE IV - STEWARDS

4.01 The Company acknowledges the right of the union to appoint or otherwise select ten stewards one of whom will be the chief steward and one of whom will be the time study steward. All stewards will be regular employees of the Company actually at work who have completed their probationary period. The Company will recognize and deal with the stewards as hereinafter set forth.

...

ARTICLE V - GRIEVANCE PROCEDURE

...

5.03 Grievances properly arising under this Agreement will be resolved and settled as follows:

Step No. 1 . . .

Step No. 2 - The grievance may be referred to the Operations Manager . . . by the grievor and the Plant Grievance Committee composed of the President of the Local, the Chief Steward, and the Steward of the area in which the grievance originated. . . .

Step No. 3 - The grievance may be referred to the Company President . . . by the grievor and the Plant Grievance Committee. At this meeting the International Representative of the Union may attend. . . .

ARTICLE VI - DISCHARGE CASES

. . .

6.04 When an employee has been dismissed without notice the employee will have the right to discuss the matter with the employee's steward for a reasonable period of time before leaving the plant premises.

6.05 Copies of disciplinary and discharge notices will be given to the Union and will be initialled by the appropriate Company and Union officials. Any employee, who is requested to come to the supervisor's office for a written warning or discharge notice, will have the employee's steward present.

IV. POSITION OF THE UNION

The Union submitted that the Employer had violated the grievor's rights under the second sentence of Section 6.05 which speaks of "the employee's steward" being present. The Union submitted that the right to have a steward present was substantive rather than procedural and that the remedy for breach should be a declaration that the dismissal was null and void. The Union submitted that the effect of such a declaration would be that the Employer could not re-visit the issue of discipline for this absence through a properly convened meeting. However, in view of the submissions of the Employer noted later, I record in detail only the Union's submissions on the question of whether the Employer was in breach of its obligations.

The Union accepted that there was some flexibility in the words "the employee's steward" such that it included more persons than Mr. Ballard, the steward for the Manitou employees working in the Trillium plant. Yet the words were not sufficiently broad as to permit a steward from another bargaining unit to attend the meeting. The steward must be a steward under the Manitou collective agreement. In the absence of the regular steward and the chief steward, the Employer should have found another steward in the Manitou plant and arranged

for that steward's attendance at the meeting. The Union expressed its concern that a broader interpretation would permit the attendance of a Steelworker steward from the Camco plant or of a steward from another union entirely, and submitted that such a result would not have been intended.

The Union referred to a number of authorities in support of its submissions. Those authorities dealt with the issues of whether the right to Union representation was substantive or procedural and the remedy for breach, points on which the Employer expressed no disagreement. The authorities were as follows: *Re J & A Building Services Ltd. and United Food and Commercial Workers' International Union, Locals 175 & 633* (1997), 63 L.A.C. (4th) 49 (Sarra); *Re Brink's Canada Ltd. and Independent Canadian Transit Union, Local 1* (1997), 69 L.A.C. (4th) 199 (Jamieson); *Re Toronto Western Hospital and Canadian Union of Public Employees, Local 1744* (1985), 19 L.A.C. (3d) 191 (M. G. Picher); *Re Queen Elizabeth Hospital and Canadian Union of Public Employees, Local 1156* (1988), 2 L.A.C. (4th) 1 (Davis); *Re Meat Connection Inc. and United Food & Commercial Workers, Local 1105P* (1985), 23 L.A.C. (3d) 159 (Solomatenko); *Re Glendale Spinning Mills (1981) Ltd. and Amalgamated Clothing & Textile Workers Union, Local 1070-T* (1988), 1 L.A.C. (4th) 353 (Jolliffe); *Re Hickeson-Langs Supply Co. and Teamsters Union, Local 419* (1985), 19 L.A.C. (3d) 379 (Burkett); *Re Valdi Foods and United Food and Commercial Workers, Local 175* (1991), 19 L.A.C. (4th) 114 (Kirkwood); *Re B.C. Pavilion Corp. and British Columbia Government Employees' Union* (1990), 14 L.A.C. (4th) 62 (Chertkow); and *Re Denison Mines Ltd. and United Steelworkers, Local 5762* (1988), 1 L.A.C. (4th) 391 (Freedman).

As for remedy, the Union asked that I conclude the Employer had violated the grievor's right to Union representation, that the right was a substantive one, that the breach of that right led to a declaration that the discharge was null and void, and that the Employer was not able to re-visit this in any form even if a properly convened meeting was to be held. In addition, the

Union asked me to order the grievor's reinstatement and to remain seised.

V. POSITION OF THE EMPLOYER

The Employer submitted the issue was simply whether the representation provided for the grievor was in conformity with the collective agreement. The Employer submitted it had not violated the collective agreement.

The steward, Mr. Ballard, was on vacation. The Employer had been advised to contact the chief steward but the chief steward, Mr. Graham, was absent on Union business. The Employer was unable to contact anyone at the Union office. The Employer arranged for the presence of Mr. Wideman. Mr. Wideman was an official of the same Union, was active in the same Local, was involved in the same executive as the one which represents the Manitou employees including the grievor, worked for the same Employer as the grievor, and reported ultimately to the same supervisor (Mr. Wettlaufer) as did the grievor.

The Employer agreed that it could have used another Manitou steward. However, if one looks at the purpose of the provision as one of ensuring fair Union representation, then the Employer submitted that it had met its obligations. Mr. Wideman worked in the same plant as the grievor, was the Union's plant chairperson for that plant and was functioning as a Union chief steward. That was very different from the concerns expressed by the Union about the Employer arranging for the presence of a steward appointed under a Steelworker collective agreement with another employer, or arranging for a steward from another union.

The Employer referred to the following authorities: Brown and Beatty, *Canadian Labour Arbitration*, 3rd ed., looseleaf (Aurora: Canada Law Book) Section 7:2100; *Re Procor Ltd. and International Brotherhood of Boilermakers, Local 75* (1991), 19 L.A.C. (4th) 145 (Devlin); and *Re Espanola General Hospital and Canadian Union of Public Employees*

(1991), 21 L.A.C. (4th) 211 (Joyce).

VI. CONCLUSIONS

An employee's right to the presence of a steward at a disciplinary meeting is an important right. I acknowledge the Union submission that this is not merely a matter of procedure but rather a substantive right. Similar provisions in other collective agreements have been interpreted in that manner. I also acknowledge the Union submission that if the Employer violated an employee's right to Union representation then, as the remedy, the discipline should be set aside. Again, this has been the conclusion reached under similar provisions in other collective agreements. The Employer expressed no disagreement on these points; it argued that in this instance it had not violated this grievor's rights to Union representation under this collective agreement.

Sections 6.04 and 6.05 of the agreement provide for three aspects of Union representation in a discharge. First, an employee is entitled to the presence of a steward at the meeting at which the discharge occurs. Secondly, a copy of the discharge notice is to be given to the Union and initialled by the Union officials. Finally, the dismissed employee has a right to discuss the matter with the steward for a reasonable time before leaving the premises. It is only the first of those three matters which is at issue in this case.

There are three questions before me:

1. *What did the parties intend when they agreed that "the employee's steward" would be present at a discharge meeting?*
2. *Did Mr. Wideman's presence at the meeting meet the requirements of the collective agreement?*
3. *If the Employer was in breach of the agreement, what is the appropriate remedy?*

I address each question in turn.

1. *What did the parties intend when they agreed that "the employee's steward" would be present at a discharge meeting?*

This first question is a matter of interpretation of the parties' agreement. My task is to determine the parties' intention. To do this I examine the words used as it was through those words that the parties expressed their intention. The words of an agreement are not to be read in isolation but rather in the context of the other related provisions of the agreement.

My task of interpretation in this instance has one unusual point which I will highlight prior to proceeding. The words "the employee's steward", with the use of "the" and the singular "steward", are suggestive of a particular steward. Ordinarily, one quite plausible interpretation of the phrase would be that the parties intended that a particular steward should be present - in this case Mr. Ballard. However, I am seeking to determine the parties' intention and the parties agreed that they did not intend such a narrow interpretation; they agreed that it should be interpreted more broadly. Both parties acknowledged that they intended the reference to "the employee's steward" to be interpreted as including the chief steward and other stewards under the Manitou agreement. The Employer submitted other persons were also included. They thus disagreed as to whether "the employee's steward" included Mr. Wideman who was active in the Union and was, among his several Union roles, the chief steward for the Trillium plant. As the parties have agreed that they intended a broad meaning, the question of interpretation is: *how broad a meaning did they intend?*

I begin with the words used. I find nothing in "the employee's steward" which indicates with any precision the group of persons the parties intended to cover, other than the implication that the persons should have a role in administering the collective agreement. The words do not indicate, for example, whether the President of the Local Union, Mr.

Drisdelle, who is active in administering the collective agreement, would be included nor whether a Union staff representative such as Mr. Hilker, who represented the Union at the hearing, would be included.

Looking at other related provisions, I note that the first sentence of Section 6.05 states that copies of the disciplinary notices will be given to the Union and initialled by "the appropriate . . . Union officials". The agreement provides that the employee is entitled to have "the employee's steward" present when requested to come to the supervisor's office for a "written" warning or a discharge "notice". Sections 6.04 and 6.05 thus have the employee and steward attend a meeting at which the Employer provides written notice which is initialled and, in a discharge case, the steward and employee then meet privately to discuss the matter before the employee leaves the plant. As the disciplinary notice would normally be given to the Union and initialled at the disciplinary meeting, I conclude that both "steward" and "Union officials" are used in Section 6.05 to describe the representative of the Union who attends the meeting with the employee. While this use of "the appropriate . . . Union officials" supports the parties' submissions that they intended that more persons than simply the one steward may attend these disciplinary meetings, and would permit the inclusion of, for example, the Local Union President, it does not provide any clear guidance in determining the precise scope of the provision.

I was referred to no other provision in the agreement which would assist in determining the parties' intention. I thus turn to the purpose of the provision in order to determine what help that provides in ascertaining the parties' intention.

I had little direct evidence as to the purpose of this provision. Mr. Wettlaufer expressed his view that in cases of discharge there was usually little discussion at the meeting. Instead he indicated the meetings were normally a formality and that the employee and steward would then leave to discuss the matter further - I assume under Section 6.04 *supra*. This evidence

that most meetings are a formality does not assist in determining who can attend.

What do stewards do at such meetings, and does that assist in determining who can attend? As the employee who is being discharged may be under such stress as to be unable to accurately comprehend or remember the events, one common role stewards fulfil is to listen to the reasons expressed for discharge and then, in the Section 6.04 meeting which follows the discharge, advise the employee as to the grievance process and any steps that might be taken to preserve the employment relationship. I am confident that some stewards do more, notwithstanding Mr. Wettlaufer's testimony about what generally occurs in such meetings under this agreement. Some stewards may actively attempt to resolve the issues at the meeting, for example, by negotiating a lesser form of discipline for the employee.

Given the role of the steward, who would the parties have intended to be present to fulfil the requirements of the agreement? I note that the Local President is a member of all plant Grievance Committees under the grievance procedure. If the Employer had arranged for Mr. Drisdelle, the Local Union President, to attend the meeting, I believe that his attendance would have fulfilled the purpose of the agreement, even assuming that Mr. Drisdelle was not also a steward in the Manitou plant. Similarly the agreement provides that the International Representative of the Union can attend Step 3 grievance meetings. If the Employer had arranged for a Union staff representative, a person such as Mr. Hilker who represented the Union at the hearing, to be present at the meeting, I believe that his presence would have satisfied the purpose of providing Union representation. On the other hand, I agree with the Union that the purpose of the provision would not be met if the Employer had gone outside its own operations to find a steward from another union. Nor, assuming that the Employer had a collective bargaining relationship with another union, would the Employer meet the purpose of the provision if the Employer used one of its employees who was a steward for that other union.

Other possible persons are more problematic. I note, for example, that one of the stewards is designated as "the time study steward". I do not know precisely what the steward does in that role. If he is involved solely in time studies and incentive rate disputes and not in the broader range of grievances, then his presence at a discharge meeting would not fulfil the purpose of Union representation. Similarly the Union may have other employees or officers who have no role in administering the agreements or resolving grievances. If the Employer were to have such an employee or officer of the Union attend, I conclude it would not meet the purpose of providing Union representation.

I now turn to the arbitration awards cited by the parties. Although they are interpretations of other agreements, they do form a part of the collective bargaining context in which this provision was negotiated and, if they provide a clear consensus, one might assume that the parties intended to adopt that approach. Two of the awards are of some assistance on this issue. The remaining awards stress the importance of provisions requiring Union representation and address the consequences of the breach of such provisions, but they provide no assistance on the question of what the parties intended when they required the presence of "the employee's steward" and are thus not reviewed here.

In *Re Procor Ltd.*, *supra*, the agreement required that discipline be given "in the presence of the Department Steward or the Chief Steward or both in the case of suspensions or dismissal notices." (p. 145) In that case the employee had been suspended but in the presence of neither the steward nor chief steward - another steward, the only union steward on the premises at the time, was present. In that case the arbitration board interpreted the provision as requiring the presence of both the steward and chief steward and held that the Employer had violated the agreement. The Board then turned to the issue of remedy and on that issue made the following comments.

In any event, regardless of precisely how [the agreement] is characterised, in the board's view, the position of the union cannot prevail. The purpose of [the agreement] is to provide an employee with union representation when discipline is imposed. In this case, while neither

the chief steward nor the department steward was present at that time, the grievor did have the benefit of representation. . .(p. 150)

The Board concluded that the breach of the agreement did not nullify the discipline.

In *Re Espanola Hospital, supra*, employees had "the right upon request to the presence of his/her steward" (p. 211). In that case an employee was disciplined in the presence of the president and the vice-president of the local union. The union then submitted that the Employer had violated the employee's right to "the presence of his/her steward". Following a review of the language of that agreement, Arbitrator Joyce concludes as follows:

. . .when one starts to draw fine lines by saying that the collective agreement does not permit the president and the vice-president to attend disciplinary meetings as representatives of employees, the fine lines cannot be cut off as suited for the occasion.

The administration of the local union has the right to state who will be in attendance at meetings pertaining to the collective agreement. If the employer disagrees on the basis of contract wording, that could well be another issue, but in the instant case there was no such disagreement. This being so, the attendance of the president and the vice president was proper. (p. 215-216)

Thus the word "steward" in the *Espanola Hospital* agreement was interpreted as including the president and the vice-president of the local union, the officials who had in fact attended the meeting, and the employer was not in violation of the agreement.

Those two awards demonstrate the approaches other arbitrators have followed in interpreting similar provisions in other collective agreements. In both cases the arbitrators looked to the purpose of requiring union representation at such meetings. However, the two cases do not indicate anything close to a consensus in the labour relations community which I might assume the parties to have adopted and, beyond the general approach, are of little assistance in determining the meaning of the words "the employee's steward" in this agreement.

I now summarize the above considerations and interpret the provision. Given that:

1. The parties agreed that the phrase "the employee's steward" is to be read broadly;

2. The phrase "the employee's steward" is used interchangeably with "appropriate . . . Union officials" in the same Section;
3. The word "steward" implies persons who are active in administering collective agreements; and,
4. The purpose of the provision is to allow for union representation at such meetings, representation which can be provided by more persons than simply those who hold a position as steward under the Manitou agreement;

I conclude that the parties intended to require the presence of a representative of the Union who was active in grievance administration for the Local Union with this Employer.

2. *Did Mr. Wideman's presence at the meeting meet the requirements of the collective agreement?*

Mr. Wideman attended the meeting at which the grievor was discharged. Mr. Wideman worked in the same plant as the grievor. Mr. Wideman and the grievor had the same Employer and both reported ultimately to Mr. Wettlaufer. Although they were covered by different collective agreements, the two collective agreements are similar. Both the grievor and Mr. Wideman were represented by the Steelworkers, and I conclude by the same Local Union and the same Local Union executive, even if for internal purposes the Union maintains differences between the two bargaining units. Mr. Wideman was active in the grievor's Local Union. He was on the executive or held another Local Union position. He was chair of the Trillium unit. He was chief steward or acting chief steward for the Trillium unit and active in grievance administration for the Local Union with this Employer. I conclude that Mr. Wideman was a representative of the Union who was active in grievance administration for the Local Union with this Employer and thus meets my interpretation of "the employee's steward", and that Mr. Wideman's presence at the discharge meeting thus met the requirement of the collective agreement. It follows that by proceeding with the discharge in the presence of Mr. Wideman the Employer did not violate its obligations under this part of

the agreement.

3. *What is the appropriate remedy?*

Given my conclusion that the Employer did not breach the agreement in this respect, it is not necessary to consider this third question.

I believe the above makes sound labour relations sense. The right to Union representation is a substantive one designed to ensure early Union involvement in, for example, discharge cases and permit the Union to represent its members from the beginning of the process. (See, for example, *Re Brink's Canada Ltd., supra.*) The Union was involved from the beginning and able to represent the grievor. There was nothing to indicate that the provision was intended to be read narrowly so as to nullify a reasonable Employer action such as the one here where the Employer arranged for Mr. Wideman's presence, an action which was taken in good faith in an effort to meet its obligations under this section of the collective agreement.

It follows from my conclusions above that the grievance which alleged that the grievor did not have proper Union representation is dismissed. The matter may be scheduled for the continuation of the hearing in order to address the other grievance.

Dated at London, Ontario this 13th day of October, 1998.

Howard Snow, Arbitrator