Grievance No. 680 F4/14

IN THE MATTER OF:

A Policy/Group et al grievance dated September 12, 2014;

- and -

An arbitration of the said grievance;

BETWEEN:

United Food and Commercial Workers, Local 1400,

UNION,

- and -

Westfair Foods Limited (The Real Canadian Superstores),

EMPLOYER.

AWARD
February 14, 2018

T. F. (TED) KOSKIE, B.Sc., J.D.,
SOLE ARBITRATOR

HEARING:

Saskatoon, Saskatchewan

APPEARANCES:

Sachia Longo, for the Union, United Food and Commercial Workers, Local 1400

Larry Seiferling, Q.C., for the Employer, Westfair Foods Limited (The Real Canadian Superstores)

TABLE OF CONTENTS

1. INTRODUCTION

[1] On September 12, 2014, United Food and Commercial Workers, Local 1400 ("UFCW") lodged a grievance (the "Grievance")[1] alleging that Westfair Foods Limited (The Real Canadian Superstores) ("WFL") gave one employee ("WC")–and not two others ("DM" and "MN")–a higher rate of pay when going from part time ("PT") to full time ("FT"), in violation of the Collective Bargaining Agreement (the "CBA").[2] UFCW sought "full redress" and asked that WFL increase DM's and MN's pay to $14.00 per hour and pay them the difference between that rate and the one paid since each went full time.

[2] The parties were unable to settle the Grievance and UFCW referred same to Arbitration.

[3] The parties agreed I have jurisdiction to hear and determine the matters raised by the Grievance and, in the event the Grievance is successful, any ruling as to any specific remedy be reserved pending further evidence and submissions from the parties.

2. FACTS

[4] On or about December 1, 2013, WFL promoted WC from PT to FT employment as a produce clerk ("PC") at Superstore #1535 (the "Store").[3] At that time, WFL increased his wage from $11.00 per hour to $14.00 per hour. UFCW did not lodge a grievance with respect to that promotion and/or wage increase.

---

[1]Exhibit G-1, Tab 2, Grievance #680 F4/14 dated September 12, 2014

[2]Exhibit G-1, Tab 1, CBA between WFL and UFCW for the period of March 27, 2013, to March 31, 2018

[3]Exhibit G-1, Tab 6, E-mail from Craig Long ("Long") to Keith Tsang ("Tsang") dated February 12, 2015

[5] On or about June 8, 2014, WFL promoted MR from PT to FT employment as a PC at the Store.[4] At that time, WFL increased his wage from $11.00 per hour to $14.00 per hour. UFCW did not lodge a grievance with respect to that promotion and/or wage increase.

[7] Under examination in chief, DM testified:

a) he started as a PT PC on June 6, 2012;

b) he subsequently asked Jim Horvath ("Horvath"), WFL's Produce Department Manager, for a promotion to FT; and

c) at some point, Horvath told him WFL would promote him to FT in September 2014 and that it would increase his wage to $14.00 per hour.

[8] Under cross examination, DM testified that in:

a) June 2014, Horvath asked him if he was interested in a promotion to FT and he replied "no"; and

b) September 2014, Horvath again asked him if he was interested in a promotion to FT and this time he replied "yes."

[9] On or about September 6, 2014, WFL promoted both DM and MN from PT to FT employment as PCs at the Store. At that time, WFL did not increase their wages. As well, it did not give UFCW notice of the promotions.

---

[4] *Ibid.*

[10] DM testified:

a) he expected his wage to increase from $11.00 to $14.00 per hour when he became FT;

b) after he saw he was still getting $11.00 per hour, he spoke with Horvath, who told him to wait and see;

c) after a few months, he spoke with the Store Manager, who in turn spoke with Horvath, who in turn denied speaking with DM about a raise; and

d) he then spoke to UFCW about it in January 2015.

Under cross examination, however, DM said he spoke to UFCW about his wage shortly after he went FT in September 2014–when he got his cheque showing he was paid $11.00 per hour.

[11] On or about November 6, 2014, WFL produced a seniority list (the "List") for its full time employees at the Store.[5] WFL provided the List to UFCW on or about the same date.[6] The List shows WC, MR, DM and MN as full time employees being paid $14.00, $14.00, $11.00 and $10.80 per hour, respectively.

[12] Under examination in chief, Keith Tsang ("Tsang"), UFCW's representative at the Store, testified:

a) near the time of the Grievance date, UFCW members at the store expressed

---

[5]Exhibit G-1, Full Time Employees' Seniority List dated November 6, 2014

[6]Evidence of Tsang on Cross-Examination

concerns to him that fellow workers were being paid more than them;

b) he did not know about this issue before it was raised;

c) he learns about workers' pay issues at the time members raise them–he does not look "without a trigger"; and

d) upon learning of the issue, he investigated and then lodged the Grievance.

[13] Under examination in chief, Tsang testified:

a) he wrote about the matter to:

   i) Craig Long ("Long"), WFL's Human Resources Manager, on November 24, 2014; and

   ii) Theresa Antonio ("Antonio"), WFL's Bookkeeper, on February 11, 2015;

b) he met and/or spoke with Long and Antonio both before and after his e-mails to Long and Antonio; and

c) neither Long nor Antonio:

   i) mentioned WFL having difficulty in hiring PCs;

   ii) commented about WC "being a great employee or likely to leave"; or

   iii) gave any reason why DM and MN were not paid more.

[14] Under cross examination, Tsang testified UFCW:

a) gets the seniority lists produced by WFL and the information therein was accessible;

b) filed no grievances concerning FT PCs being paid $14.00 per hour; and

c) wants the wages of FT PCs moved up to $14.00 per hour; and

d) does not want the wages of FT PCs moved down from $14.00 per hour.

[15] Some time on or before May 22, 2015, WFL promoted AA from PT to FT employment as a PC at another store–Superstore #1536–but did not increase her wages.[7] UFCW lodged a grievance with respect to same, but later withdrew it.[8]

3. DISPUTE

[16] The issues herein are as follows:

a) Are individual remedies for DM and MN available under the Grievance?

b) Did WFL, by failing to increase the wages of DM and MN, act inconsistently with its obligations under the CBA?

4. AWARD

[17] I find that individual remedies for DM and MN can be available under the Grievance.

---

[7]Exhibit U-1, E-mail thread between Long and Tsang dated May 22, 2015

[8]Evidence of Tsang on Cross-Examination

[18] I find that UFCW has not provided evidence that establishes WFL violated the CBA.

[19] I dismiss the Grievance.

5. REASONS

5.1 CBA

[20] The relevant provisions of the CBA are as follows:

> . . .
>
> ARTICLE 2 - NATURE OF BARGAINING UNIT
>
> The Employer recognizes the Union as the sole agency for the purpose of collective bargaining for all employees, whether full-time or part-time, employed by Real Canadian Superstores, in the Province of Saskatchewan, save and except:
>
> . . .
>
> ARTICLE 7 - WAGES & PREMIUMS
>
> 7.1 Rate Schedule
>
> The Employer agrees to pay all persons covered by the terms of this Agreement, not less than the attached Schedule of Wages during such time as the Agreement is in force and provided that, if an employee is receiving a wage rate in excess of the wage rates herein contained, such wage rate shall not be reduced by reason of signing of this Agreement.
>
> . . .
>
> ARTICLE 10 - UNION'S RECOGNITION OF MANAGEMENT RIGHTS
>
> The Union agrees that the management of the Company, including the right to plan, direct and control store operations, direction of the working force, discharge employees for just cause, and those matters requiring judgement as to the competency of the employees, is the sole right and function of the Employer.
>
> The parties agree that the Employer shall be the sole judge of the merchandise it may handle, process, manufacture or package and of the manner in which these functions may be carried out and in which the merchandise may be handled, stored, shipped or sold.
>
> The parties agree that the foregoing enumeration of Management's rights shall not be deemed to exclude other recognized functions of Management not specifically covered by

this Agreement. The Employer, therefore, retains all rights not otherwise specifically covered by this Agreement.

. . .

ARTICLE 15 - SENIORITY

. . .

15.6 Promotions and Vacancies

Promotions and vacancies shall be filled within the department on the basis of seniority, providing the senior employee has the merit, fitness and ability to perform the work. The Employer agrees to act in good faith and further agrees not to discriminate in any manner.

. . .

ARTICLE 16 - GRIEVANCES, DISMISSALS

. . .

16.1 Definition

Any complaint, disagreement or difference of opinion between the Parties, hereto, concerning the interpretation, application, operation or any alleged violation of the terms and provisions of this Agreement, shall be considered a grievance, subject to the grievance and arbitration provisions of this Agreement.

This Article shall not apply in cases of any dismissal of an employee for any reason, whatsoever, where such employee has worked less than (30) working days or has been found unacceptable to the Employer's Bonding Company.

. . .

16.3 Grievances

All grievances not presented to the Employer within twenty-one (21) calendar days from the date the grievance arose shall be waived. It is further agreed that fourteen (14) calendar days shall apply with respect to grievances concerning the dismissal of an employee.

ARTICLE 17 - GRIEVANCE PROCEDURE

The procedure for adjustment of grievances shall be as follows:

1st Step: The employee, with or without the Union Steward (at the employee's option) shall discuss with Management all grievances not covered by Article 7.7 of this Agreement.

The Employer shall render a decision within three (3) days, and if the employee is not satisfied with the settlement of the matter; then,

2nd Step: The aggrieved person must notify the Union within seven (7) working days

> of the answer to Step one. The grievance shall be presented by the Union, in writing, and shall clearly set forth the grievance and contentions of the aggrieved party within fourteen (14) days; then the Union representative(s) and the Employer's representative(s) shall meet, and in good faith, earnestly endeavour to settle the grievance submitted.

If a satisfactory settlement cannot be reached, or if either party to whom the grievance has been served, fails to meet the other party within fourteen (14) days of receiving the written notice- grievance, either party may, by written notice served upon the other, require submission of the grievance to a Board of Arbitration. Such Board of Arbitration to be established in the manner provided in Article 18 of this Agreement.

ARTICLE 18 - BOARD OF ARBITRATION

Either of the parties may, within ten (10) days of a decision at Step 2 of the Grievance Procedure, notify the other party in writing, of its desire to submit the grievance to Arbitration.

. . .

The Arbitrator in reaching his decision shall be governed by the provisions of this Agreement. It is distinctly understood that the Arbitrator is not vested with the power to change, modify or alter this Agreement in any of its parts. The Arbitrator may, however, interpret the provisions of this Agreement. The Arbitrator shall have the authority to withhold, change, modify or alter the penalty in suspension or dismissal cases.

. . .

5.2 LEGISLATION

[21] The relevant provisions of *The Saskatchewan Employment Act* ("*SEA*")[9] are:

Interpretation of Part
6-1(1) In this Part:

. . .

(d) "collective agreement" means a written agreement between an employer and a union that:

(i) sets out the terms and conditions of employment; or

(ii) contains provisions respecting rates of pay, hours of work or other working conditions of employees;

---

[9]S.S. 2013, c. S-15.1

(e) "collective bargaining" means:

(i) negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision;

(ii) putting the terms of an agreement in writing if those terms were arrived at in negotiations or are required to be inserted into a collective agreement by this Part;

(iii) executing a collective agreement by or on behalf of the parties; and

(iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union;

. . .

5.3 ANALYSIS

5.3.1 JURISDICTION

[22] Arbitral jurisprudence confirms individual remedies are available under policy grievances under a modern approach and in certain circumstances:

> At one time, certain arbitrators held that relief for individual employees had to be filed as individual grievances, not policy grievances. However, the more contemporary arbitral view is that *unless the collective agreement explicitly restricts the type of grievance that can be utilized in particular circumstances, such claims may be advanced by way of a policy grievance*. (Emphasis added)[10]

[23] *Brown & Beatty*[11] confirms the same approach, and the same criteria, for when policy and individual grievances, and respective remedies, must remain separate:

> Thus, currently, individual grievances and policy grievances are usually not considered to be mutually exclusive, although they may be made so by the terms of the collective agreement.

---

[10] *Kootenay Mobile Services Ltd.* v *United Steelworkers of America, Local 9705*, 2008 CanLII 87769 (BC LA), at pages 11 - 12.

[11] Brown and Beatty in Canadian Labour Arbitration, Fourth edition (on-line at Labour Spectrum), (Aurora, Ont.: Canada Law Book, 2014), ("*Brown & Beatty*").

> Where they are so defined, or where separate and mutually exclusive procedures are delineated, the arbitrability of each grievance will depend upon the grievance being processed through the proper procedure. In essence, such questions ultimately become issues of contract interpretation, and may arise either where an individual grievance is brought as a policy grievance or vice versa.[12]

[24] I therefore find that individual remedies for DM and MN can be available under the Grievance.

[25] It may be advisable in the future that the parties consider discussing and implementing separate procedures for the presentation of policy and individual grievances, respectively. Such a separation would detail the nature of what relief can be requested in what grievances, and would avoid (or reduce the likelihood) of situations such as the matter here involving what is purportedly a policy grievance that seeks relief for individual employees.

5.3.2 TIMING OF THE GRIEVANCE/UNDUE DELAY

[26] It is worth noting that individual grievances were not filed with respect to the promotion and/or wage increase of WC on December 1, 2013, or MR on June 8, 2014. The issues raised in this Grievance require WFL to address events and decisions that would usually be considered out of time under the CBA. Undue delay was addressed thoroughly in *South Country District Health*[13] and provides an excellent review of the competing considerations. Typically, it would be appropriate to consider the evidence in the present case to decide whether an extension of the time to bring the grievance should be permitted. However, the grievance requests a review of past promotions and/or wage increases in the context of addressing a continuing policy grievance. No relief has been requested with regard to the increases given to WC or MR. Accordingly, the evidence

---

[12] *Ibid.* at p. 2.3130.

[13] *South Country District Health and CUPE, Local 1481, Re*, 2002 CarswellSask 944

related to those increases should not be excluded just because they occurred outside the time allowed to file a personal grievance.

5.3.3 THE EXERCISE OF DISCRETION

[27] The central issue in this dispute is whether WFL, by failing to increase the wages of DM and MN, has acted inconsistently with its obligations under the CBA. The parties agree that WFL retains discretion under the CBA to increase wages above the floor created by article 7.1, but they differ on whether WFL exercised discretion here and, if it did, whether WFL decided in a reasonable manner.

[28] The exercise of discretion requires the deliberative use of independent judgment. It will necessarily involve the comparison and evaluation of alternative courses of conduct. There are limits on WFL's exercise of discretionary decision making power. Without clear language to the contrary, WFL must exercise its discretion in a way that is reasonable and in good faith, without arbitrariness or discrimination.[14] Generally speaking, arbitrators can review discretionary decisions and decide whether the decision was rational and promoted a "legitimate business interest."[15] In an earlier decision involving the same parties herein, Arbitrator Stevenson applied this standard and determined that WFL had a legitimate business interest in paying available-anytime employees higher wages than those required by the CBA.[16] In the current matter, UFCW argues that WFL has failed to provide a rational business interest for increasing the wage of MC, but not DM or MN.

5.3.4 EVIDENTIARY BURDEN

---

[14] *L/3 Communications/Spar Aerospace Ltd. v. I.A.M. & A.W., Northgate Lodge 1579*, 2004 CarswellAlta 1017

[15] *Ibid* at para. 123

[16] *U.F.C.W., Local 1400* v *Westfair Foods Ltd.*, 2010 CarswellSask 852, 102 C.L.A.S. 209, 196 L.A.C. (4th) 129, (the "*2010 decision*") at para. 46

[29] UFCW seeks relief for employees who have not had their rate of pay increased. In doing so, it effectively argues that WFL must establish the *presence* of a legitimate business purpose in relation to previously promoted employees and a corresponding *absence* of a legitimate business purpose for declining to increase the salaries of the employees in the present grievance.

[30] This is distinct from a situation where UFCW presents a grievance asserting that WFL has violated the CBA by paying unequal amounts for the equal work. There, WFL is required to show that it had a legitimate business purpose to provide increased remuneration to only one of two or more employees doing the same work. In such a scenario, WFL would only need to illustrate that it had a legitimate business purpose to provide an employee increased pay.

[31] UFCW implicitly argues that, when an employee is promoted from PT to FT work, WFL is obligated to exercise its discretion and to decide whether that employee should receive increased remuneration. UFCW also maintains that these decisions set a precedent with regard to future promotions–in essence arguing that if one individual receives increased compensation, then future employees should as well, unless WFL can provide a sufficient justification for declining to do so.

5.3.5 INTENTION OF THE PARTIES

[32] A previous arbitration between these parties has addressed the intention regarding Article 7.1 of the CBA. Arbitrator Stevenson confirmed that the language of the CBA reflected the parties' intention to create a floor, and not a maximum, rate of pay.[17] In that 2010 decision,[18] Arbitrator Stevenson dealt with the same article of the CBA involved in the

---

[17] *Ibid*

[18] *Ibid.* at paras 43, 45, and 47.

matter here, and reviewed Arbitrator England's prior decision regarding the same:

> 45 I cannot conclude that Arbitrator England was wrong in his conclusion that *the ordinary and grammatical meaning of not less than establishes a floor and not a maximum.* Had the parties intended that 7.1 should also establish a ceiling, there would be no reason to include the words not less than. The parties chose to insert these words and I must give meaning and purpose to the language used. The parties have identified a number of specific provisions in the Agreement which expressly provide that in these specific circumstances, employees will be paid rates or premiums not provided for in Schedule A. Because of these express provisions, such as sub-articles 2 to 7 of article 7, there would be no need for the parties to include not less than in 7.1 to permit the payment of these premiums. This provides guidance on the interpretation and ascertaining the intent of the parties. I am satisfied that the language is sufficiently clear to establish the intent that the wage rates in Schedule A are a floor and do not freeze the rates. As such the Employer retains the management right to negotiate higher wages with individual employees for legitimate business purposes. (Emphasis added)[19]

[33] In light of previous arbitral decisions confirming the parties' intention, and resulting interpretation of the CBA, it would be illogical to create a situation in which WFL must prove the absence of a legitimate business purpose on any occasion where it has chosen to promote an employee without providing a pay increase.

[34] That position would contradict a plain reading of the CBA, which creates no positive obligation on WFL to exercise its discretion when promoting an employee to FT work. Where WFL does not review the wage of the employee and simply allows the status quo to persist, it cannot be said that it has exercised its discretion. By contrast, where the WFL does increase the wage of an employee above the floor required by the CBA, it can be said to have exercised its discretion. Such a decision must be made on reasonable grounds. WFL is not required to justify why it *did not* exercise its discretion in a particular case. Creating such a requirement would exceed the terms of the CBA and runs counter to the notion of discretionary authority.

[35] There is similarly no provision in the CBA that requires WFL to consistently provide

---

[19] *Supra* note 14 at para 45.

wage increases unless they are able to show a reason not to do so. Having provided a raise in a previous circumstance does not create an obligation to distinguish future cases. Rather, WFL's obligation is to provide remuneration in accordance with the wage floor established by the parties and to act reasonably where it exercises its discretion to increase the salary of an employee above that floor.

5.3.6 EQUAL PAY

[36] Underlying UFCW's position is the notion that, since each worker is performing the same functions, they should each receive the same pay, unless the employer can show a legitimate business purpose for treating each differently. Unequal pay was discussed in *Flexia Corp*,[20] where the application of the principle was limited to scenarios where the inequality was the result of a violation of the collective agreement or of a relevant statute:

> The principle that requires equal pay for equal work does not exist in a vacuum, but rather takes it's foundation from either an inappropriate application of a collective agreement, or from the application of statute. The principle does not stand alone, or operate to enable an arbitrator to rectify inequalities or anomalies that result from the parties' own negotiations...
>
> In order for an arbitrator to intervene and correct an inequality or anomaly in wage, there must be a determination that either some provision of the collective agreement has been violated, that legislation of general application, such as a Human Rights Code, has been breached, or legislation that has been incorporated by reference into the collective agreement, has been avoided...
>
> A situation has been allowed to develop in this workplace in which individuals performing the exact same work are being paid different wages. That is undesirable. However, as the Company here argues, my view is that this is a situation that resulted from express decisions on the part of both the Union and the Company, and in the absence of a violation of the collective agreement or statute incorporated by reference into that agreement. This board of arbitration would err, and would violate article 6.03 of the collective agreement, if it intervened to rectify that anomaly.[21]

[37] As in *Flexia Corp*, the provisions of the CBA in the present case will produce

---

[20] *Flexia Corp. v. IWA-Canada, Local 500*, 2007 CarswellOnt 5079

[21] *Ibid.* at para 47-48 and 66.

employees who preform the same duties, but earn different wages. However, an arbitrator should not intervene to address the issue unless there is evidence that the CBA, or a relevant statute, has been violated.

[38] UFCW did not present evidence and argument as to the provisions of a relevant statute breached. It does allege that WFL breached its obligations under the CBA by exercising its discretion, pursuant to section 7.1, in an inconsistent and unreasonable manner. UFCW is obligated to plead, and to provide evidence that supports the conclusion that there has been a violation of the CBA or a relevant statute. WFL would then be able to respond by providing argument and evidence that shows no such violation of the CBA or statute occurred.

[39] I find that the Union has not provided evidence that establishes WFL violated the CBA. Accordingly, although unequal rates of remuneration exist, it would be improper for me to take corrective action.

5.3.7 EXTRINSIC EVIDENCE

[40] One other point raised in Arbitrator Stevenson's 2010 decision is the role of previous bargaining history in analyzing the parties' intentions. Arbitrator Stevenson references this point as follows:

> 47 In reaching my conclusion to follow the England Award, I take into account the fact that since that Award, these parties have been through a round of bargaining and entered into the current Agreement. These experienced and sophisticated parties bargained with the knowledge of the England Award and its interpretation of the collective agreement. There were no changes to the provisions that give rise to this dispute as interpreted by the England Award. Such circumstances are appropriately considered in reaching a conclusion as to the intention of the parties when entering into the Agreement.[22]

---

[22] *Supra* note 14 at para 47.

[41] A similar approach to the impact of bargaining history on an arbitrator's decision–specifically bargaining history where there has been no change–was discussed in *Keller*:[23]

> 48 Unless there is new language elsewhere to suggest a different intent, I am satisfied the intention of the parties in leaving the language the same was to have the language interpreted and applied as it had been in the past...
>
> 49 With respect to bargaining history, *Brown and Beatty* say:
>
> > Both the history of a specific agreement through it sequence of prior agreements, and documentary evidence, including memoranda of agreement or minutes of settlement forming part of the negotiations of the particular collective agreement, may be introduced. Such documentary evidence may include a related agreement which was used as a point of reference, and interest arbitration award, as well as proposals made, discussions held, notes made, and agreements reached during negotiations, although reservations have been expressed to admitting evidence as to the give-and-take of negotiation.[24]

[42] Since previous bargaining history is outside the CBA itself, and therefore technically falls into the category of extrinsic evidence as defined by *Brown & Beatty*,[25] it may be necessary to learn whether there is a basis to look at the same.

[43] In a labour arbitration context, the goal of collective agreement interpretation is to discover the intention of the parties who agreed to it. This inquiry focuses on the agreement itself. Arbitrators and the Courts attempt to give meaning to the words used by the parties, their intention as it was expressed rather than as it might have been written.[26] The modern Canadian approach has been articulated as follows:

---

[23] *Keller Foundations Ltd. and IUOE, Local 870, Re* 2014 CarswellSask 827, 121 C.L.A.S. 274, 249 L.A.C. (4th) 283, ("*Keller*").

[24] *Ibid.* at paras 48 and 49.

[25] *Supra, note 2* at p.3:4400.

[26] *Supra*, note 2 at p.4:2100.

> In the interpretation of collective agreements, their words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object and the intention of the parties.[27]

[44] The role of extrinsic evidence in an arbitration is often limited to situations where the agreement is ambiguous. In such cases, past practice, bargaining history and other sources of information should be considered only where the agreement is unclear.[28] This is expanded on further by *Brown & Beatty*:

> Although there are numerous exceptions, the general rule at common law is that extrinsic evidence is not admissible to contradict, vary, add to or subtract from the terms of an agreement reduced to writing. If the written agreement is ambiguous, however, such evidence is admissible as an aid to the interpretation of the agreement to explain the ambiguity but not to vary the terms of the agreement. The two most common forms of such evidence in labour arbitrations are the negotiating history of the parties leading up to the making of a collective agreement, and their practices before and after the making of the agreement. And in addition to its use as an aid to interpretation of a collective agreement or a settlement agreement, or to establish an estoppel, it may be adduced in support of a claim for rectification. However, for such evidence to be relied upon it must be "consensual". That is, it must not represent the "unilateral hopes" of one party. Nor can it be equally vague or as unclear as the written agreement itself.[29]

[45] While extrinsic evidence can be admitted, it will generally be considered an error of law to rely on it to interpret the collective agreement, unless a latent or patent ambiguity exists.[30] No ambiguity exists where there is "a clear preponderance of meaning stemming from the words and construction of the agreement."[31]

[46] In the present case, I agree with Arbitrator Stevenson in concluding that there is no ambiguity in article 7 of the CBA. I also do not believe that we are here faced with

---

[27] *Imperial Oil Strathcona Refinery* (2004), 130 L.A.C. (4th) 239 (Elliott), at para. 40.

[28] *Supra,* note 2 at p.4:2250.

[29] *Supra*, note 2 at p.3:4400.

[30] *R. v. Barber* (1968), 68 D.L.R. (2d) 682 (Ont. C.A.), at pp. 689-90.

[31] *John Bertram & Sons Co.* (1967), 18 L.A.C. 362 (Weiler)

circumstances that would require extrinsic evidence to be analyzed to decide whether estoppel applies. As a result, I do not find it necessary to consider extrinsic evidence in reaching my conclusion. However, I note that the parties have maintained article 7 "as is" before and during the formation of the CBA. This would affirm that the parties intended article 7.1 to operate as a floor, not as a ceiling, for wage rates.

[47] WFL retains the discretion to provide remuneration to employees more than the wage floor established by the CBA. Where WFL exercises its discretion and increases the wage above what the CBA requires, it must do so rationally, in pursuit of a legitimate business interest. If WFL does not exercise its discretion, and otherwise follows the terms of the CBA and applicable legislation, then the decision is not subject to review. No freestanding obligation requires WFL to provide equal pay for equal work. Without any violation, providing the relief requested by UFCW would be inappropriate.

Dated at Saskatoon, Saskatchewan, on February 14, 2018.

T. F. (TED) KOSKIE, B.Sc., J.D.
SOLE ARBITRATOR