**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

GREATER VANCOUVER REGIONAL DISTRICT

(the "Employer")

-and-

GREATER VANCOUVER REGIONAL DISTRICT EMPLOYEES UNION

(the "Union")

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| PANEL: | John B. Hall, Vice-Chair |
| COUNSEL: | Alan J. Hamilton, for the Employer<br>David Tarasoff, for the Union |
| CASE NO.: | 41479 |
| DATE OF DECISION: | February 4, 2000 |

## DECISION OF THE BOARD

### I. INTRODUCTION

1 The Union has applied under Section 99 of the *Labour Relations Code* for review of an arbitration award dated November 12, 1999 by David C. McPhillips (Ministry No. A-203/99(a)). The award concerned a dispute between the parties regarding the payment of overtime wages. The Union argued that overtime was payable for hours worked within eight hours of an overtime shift being completed, regardless of whether the overtime shift was connected to, or separate from, the ensuing eight hours. The Employer argued that overtime was payable for work done within eight hours only where an overtime shift was separate from the ensuing hours of work. The Arbitrator upheld the Employer's interpretation and dismissed the grievance.

2 The Union seeks review on the basis that the award is inconsistent with principles expressed or implied in the Code because the Arbitrator failed to make a genuine effort to interpret the collective agreement provisions at issue. The Union advances a number of arguments under this heading; however, for reasons which will become apparent, I will only address the Union's primary submission that the Arbitrator based his decision on language not found in the collective agreement.

### II. THE AWARD

3 The Arbitrator had earlier decided a policy grievance filed by the Union over the payment of overtime. According to the Arbitrator, the policy grievance "did not in any way address the issue which is now before this Board" (page 7). The new issue concerned the rate of pay for a regularly scheduled shift where an employee had worked overtime immediately prior to the shift. The Arbitrator expressed the issue in these terms:

> The issue that has now arisen between these parties is whether Article 3.01(e) applies to a situation where an overtime shift occurs prior to and contiguous to a regular shift. The Union asserts the eight hours of the regular shift should be paid at double time and the Employer argues it should be paid at straight time. (p. 4)

4 Articles 3.01 and 3.06 of the agreement were reproduced at pages 2-3 of the award. Article 3.01(e) is particularly relevant to this application and reads:

> 3.01 Overtime Allowed
>
> Unless otherwise noted herein, overtime wages will be paid as follows…

> (e) at twice times schedule "A" rates for work done within eight (8) hours of having completed an overtime shift. …

5 Beginning at page 5 of the award, the Arbitrator set out the parties' agreement regarding how overtime is treated in a number of scenarios. The disagreement in question and the submissions of counsel were then recorded. The "Decision" portion of the award began on page 7. After making two points as part of his analysis, the Arbitrator stated on page 8:

> Moreover, the terminology used in Article 3.06(e), which refers to a shift commencing within eight hours, seems to indicate as well that the parties were contemplating work actually ceasing and then recommencing at a later time and would not apply where one shift runs into another shift.
>
> Those provisions, of course, do not explicitly dictate what rate of pay was intended for the regular shift that follows an overtime shift but it is clear that under the overtime scheme in this agreement the parties do treat connected and unconnected shifts differently. This leads this Board to the conclusion that the Employer's interpretation fits more logically within the scheme of this Agreement. (underlying in original)

6 The Arbitrator then made a further point before agreeing "[f]or the above reasons … with the position of the Employer on this interpretation issue" (p. 7).

## III. POSITIONS OF THE PARTIES

7 As indicated, the Union maintains the Arbitrator did not base his decision on language found in the collective agreement, but instead drew words from elsewhere which do not appear in the provisions at issue. The Union points more specifically to the Arbitrator's comments about "Article 3.06(e)" in the passage reproduced above from page 8 of the award (this was likely intended as a reference to refer to Article 3.01(e), as there is no Article 3.06(e) in the collective agreement). According to the Union, the significant and troubling problem with the Arbitrator's interpretation is that Article 3.01(e) does not contain the word "commencing"; nor does it refer to "a shift" commencing within eight hours of an overtime shift.

8 The Employer seeks to support the award by reminding the Board that this aspect of the Arbitrator's reasoning was but one of a series of thoughts leading to his conclusion. The Employer suggests further that there is no meaningful distinction between "a shift commencing within eight hours" and "work done within eight hours" of having completed an overtime shift. The Employer notes as well that when the Arbitrator reproduced verbatim language from the collective agreement he used quotation marks, rather than the underscoring placed below the word "commenced". In sum, even accepting the Union's submissions, the Employer argues this point does not go to the heart of the award, and is not of sufficient significance to compel interference by the Board.

## IV. DECISION

9 The Board's longstanding policy concerning review of arbitration awards under Section 99 of the Code need only be briefly summarized. Where the issue is one of contract interpretation, an arbitrator's analysis is entitled to a "sympathetic reading". Nonetheless, the arbitrator must have due regard to the substance of the dispute, and make a genuine effort to reach a decision based on the relevant provisions of the bargain struck by the parties: *Lornex Mining Corporation Limited,* BCLRB No. 96/76, [1977] 1 Can LRBR 377.

10 The issue in this case turned on the Arbitrator's interpretation of Article 3.01(e) of the collective agreement. This provision was mentioned only once in the decision portion of the award, and it was regrettably referred to as "Article 3.06(e)". The more substantive concern is the comments which immediately followed this reference. To repeat a portion of the paragraph reproduced earlier, the Arbitrator stated Article 3.01(e) "refers to a shift commencing within eight hours" (underlining in original). I acknowledge the Arbitrator did not place the words in quotation marks. Nonetheless, the word "commencing" was presumably underlined for some degree of emphasis, and there is no dispute the word is not found in the parties' collective agreement.

11 I acknowledge as well that the passage impugned by the Union was only one of several points leading to the Arbitrator's conclusion. In other cases, this fact might well be sufficient to uphold an award. However, I cannot reach that result here for three reasons: first, Article 3.01(e) was the central collective agreement provision in issue; second, the mischaracterization occurred in the only passage of the Arbitrator's analysis referring to the Article; and finally, the Arbitrator indicated he reached his final conclusion on a cumulative basis (i.e. "[f]or the above reasons").

12 I am not prepared to speculate as to whether the Arbitrator would have reached the same conclusion had the actual language of Article 3.01(e) been explicitly recognized in the award. These circumstances are analogous to *Construction Labour Relations Association of British Columbia,* BCLRB No. 91/84 (Reconsideration of No. 412/83), where the reconsideration panel concluded that a statement "may" have been of significance and remitted the matter to the original panel.

## V. CONCLUSION

13 The award under review is accordingly set aside. I do not agree with the Union's submission that the Board should adjudicate the merits of the grievance. Instead, the matter is remitted to Arbitrator McPhillips for further consideration. He can determine the appropriate process, including whether the parties are entitled to make supplementary submissions.

14 I have deliberately refrained from addressing the Union's remaining arguments. In my view, the Arbitrator should first be given an opportunity to revisit his award. He may come to the same conclusion; but nor is he constrained by the original outcome. Should the Arbitrator again uphold the Employer's position, the Union may rely on any

of the arguments not addressed by this decision if it subsequently applies to the Board for review.

15 On the above basis, the Union's application is granted in part.

LABOUR RELATIONS BOARD

***"JOHN B. HALL"***

JOHN B. HALL
VICE-CHAIR