

**-Dismissal
-Estoppel**

**PRELIMINARY
FINDINGS AND AWARD
IN A DISPUTE**

BETWEEN:

**NEWFOUNDLAND AND LABRADOR
ASSOCIATION OF PUBLIC AND PRIVATE
EMPLOYEES**

(hereinafter called the "Union")

AND:

**EASTERN REGIONAL SUPPORT BOARD,
REPRESENTED BY NEWFOUNDLAND AND
LABRADOR HEALTH BOARDS ASSOCIATION**

(hereinafter called the "Employer")

GRIEVOR:

TERRY HALE

FOR THE UNION:

FRANK PITTMAN

FOR THE EMPLOYER:

MARK GILL

BEFORE:

W. JOHN CLARKE, C. Arb., C. Med., Sole Arbitrator

RULING ON PRELIMINARY OBJECTION BY EMPLOYER

ON WHETHER DOCTRINE OF ESTOPPEL APPLIES

The hearing of this matter took place in St. John's on June 15 and 16th, 2009 at which time the parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure had been properly followed or requirements had been waived.
4. The Arbitrator would remain seized of the matter in the event the parties could not agree on the interpretation of the Award or in the event there was a question of compensation arising from the Award.
5. Witnesses were excluded from the hearing until called upon to testify.
6. The time limits for filing the Award were waived with a request that the Award be



filed within 90 days of the completion of the hearing.

7. There was no person potentially affected by the outcome of these proceedings who has not been notified of same.

The following exhibits were entered by consent and identified as follows:

- C#1 Grievance dated November 24, 2005.
- C#2 Collective Agreement between the parties expiring June 30, 2008.

The following persons testified under oath and entered exhibits identified as follows:

For the Employer:

Michael Croucher, who entered the following:

- MC#1 Memo to all employees from Mike Croucher of the employer dated February 4, 2005.
- MC#2 Memo to all employees from Mike Croucher dated March 16, 2005.
- MC#3 Agenda and minutes of Labour Management meeting of March 21, 2005.
- MC#4 Minutes of Labour Management meeting of September 7, 2005.
- MC#5 Email from Mike Croucher to Trudi Brake of the union dated September 26, 2005.
- MC#6 Letter to grievor from Mike Croucher dated September 26, 2005.
- MC#7 Agenda and minutes of Labour Management meeting of October 14, 2005.
- MC#8 Memo to all employees from Mike Croucher dated October 24, 2005.
- MC#9 Minutes of Labour Management meeting of December 9, 2005.
- MC#10 Letter from grievor to Mike Croucher dated June 4, 2004.

Trudi Brake, who entered the following:

- TB#1 Letter to Mike Croucher from Trudi Brake dated December 6, 2005.
- TB#2 Letter from Trudi Brake to Mike Croucher dated October 18, 2005.

For the Union:

Mike Spurrell



Terry Hale, the grievor, who entered the following:

TH#1 Letter dated November 23, 2005 from Mike Croucher to the grievor.

TH#2 Letter dated October 27, 2005 from the grievor to the employer.

TH#3 Letter dated October 25, 2001 from Mike Croucher to the grievor.

TH#4 Letter dated August 20, 2003 from Mike Croucher to the grievor.

THE FACTS

The employer is a support agency which provides support for disabled persons. This support is provided through approximately 14 cooperative apartment units which were formerly known as group homes. It employs approximately 135 employees and has approximately 37 residents in the St. John's area at any given time.

In 2004 there was a review of operations. A reorganization was planned which was intended to be a transitional program. Those individuals (referred to as residents) who had significant delays and challenges were to receive in-depth programming and support. Others, with less complicated problems were to be moved to less restricted environments outside of the Eastern Regional Support Board. As a result of this change the number of scheduled hours would be reduced. The entire process took approximately 10 months to complete. Implementation was delayed somewhat because of the late arrival of some of the new referrals.

The entire process including the restructuring of schedules was done with the involvement of union representatives. Communication with the general employee group was done by memo from the employer to each of the 14 units. These memos were not necessarily delivered personally to each employee but were made available to them. One such memo (06-02/2005) was dated February 4, 2005 and reads as follows:

"All employees are hereby notified that management is currently reviewing the schedules at all units to determine whether existing scheduled hours may be allocated in a more efficient manner.

We are in the process of developing schedules that will distribute a greater number of scheduled hours to the more senior employees. The end result will be less permanent part-time positions but not necessarily a reduction in hours.



During the process we will attempt to increase the number of permanent fulltime positions by utilizing part-time hours from two or more units.

These actions will not only provide increased consistency to our residents, but are more in line with Collective Agreement requirements and expectations.

The employer realizes the disruption to employees' personal lives caused by schedule changes. We are very appreciative of the cooperation and participation of staff during past changes, and will make every reasonable effort to avoid altering existing permanent fulltime schedules.

We anticipate this process will be completed by March 31, 2005."

In February 2005 the scheduled hours were not done on the basis of seniority. There was no requirement for an employee to accept the hours available based on their seniority. The grievor and others were at the bottom of the scheduled hours. A second memo (No. 09-03/2005) was sent to employees on March 16, 2005. It reads as follows:

"Memo No. 06- 02/2005 notified all staff that the employer was in the process of reviewing all permanent part time hours and intended to realign these hours in an effort to maximize the scheduled hours of senior part time employees. We had intended that this process be complete by March 31, 2005.

However, all schedules are subject to change as a result of program review initiatives and future referrals. As a result, we will not be implementing revised schedules until such a time as there is more stability in the scheduled hours.

All staff will be notified well in advance of any impending changes."

The union at this time was involved in the process by way of the labor management committee meetings. When there were issues to be discussed the committee met on a monthly basis but otherwise less frequently. The thrust of the management plan was to combine the current part-time positions into full-time positions. The minutes of these labour management meetings indicated that the union was fully apprised of the plans and was in agreement with them. No grievances were filed as a result of the memos which were sent around.

The labor management committee met on September 7, 2005. At that meeting the schedule revision was discussed. It was pointed out that because of the changes there

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would be a reduction of approximately 18,000 hours on an annual basis. It was noted as well that schedules were drafted to reflect these reductions as well as the realignment of the remaining part-time schedules. The full-time complement went from 70 employees to 83 employees. There were, however, significant reductions in the number of part-time employees.

The minutes of that labor management meeting point out that 32 part-time employees were to receive notification that, effective November 8, 2005, their scheduled work hours would no longer be available and they would be contacted prior to this and presented with schedule options. Employees were to be offered schedules based on seniority with the most senior individuals being offered the greatest number of scheduled hours. It was stated in the memo that employees must accept these hours offered unless they can show just cause why they could not accept them. The employer stated its opinion that the only obvious reasons for just cause would be other employment of longer duration, or a medical condition that prevented them from accepting. It was also noted that employees who did not accept would lose their seniority and would effectively have severed their employment with the employer. There was a consensus among members of the committee, including the union members, that the new schedules were more in line with the collective agreement criteria with respect to seniority and scheduling. The minutes of the meeting were signed by both the employer and the union representatives.

The memo to all employees (No. 23-2005) dated September 26, 2005 was forwarded by e-mail to the union representative on that date prior to it being circulated to the union membership with a request that it be looked over and comments provided. The response was "looks fine to me". Shortly after, the memorandum was circulated to all employees. A part of the message of that memo was that 33 part-time employees would have their scheduled hours unavailable effective November 8, 2005. A letter was sent to the grievor by the employer on September 26, 2005 formally advising him of the change in the operational requirements of the employer and realignment of schedules for all current part-time employees. The grievor was advised that he would be contacted with a presentation of the schedule options that were available for him. There was no response

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from the grievor. The options which were available to the part-time employees were: 1. to accept pay in lieu of notice based upon a layoff or, 2. go to the casual list and keep recall rights for two years. If no permanent or part-time positions came up in that time they would stay on the call-in list.

On October 14, 2005 the labor management committee again met and it was noted by the union representative that she could find no violation of the collective agreement with respect to the proposed procedure but that she would consult further with her coworkers and, if it was shown that there was a violation of the agreement or an employee's rights, she would follow through with that issue. No issues were raised.

On October 24, 2005 another memorandum was sent to employees advising that the implementation of the schedule was being delayed because of the introduction of a new resident. As well, part-time employees and temporary positions were extended to November 22, 2005.

On December 9, 2005 the labor management committee again met and no changes were suggested to the minutes of the October 14, 2005 meeting.

The only grievance filed with respect to the changes was the current one filed by the grievor on November 24, 2005.

The grievor started working as a temporary part time employee with the predecessor of this employer. He subsequently became a full time permanent employee for approximately 10 years and then applied for a full-time teaching position. After becoming a teacher he remained as a permanent part time employee with the employer, working approximately 20 hours biweekly on a permanent schedule. He picked up temporary hours when he was available over holiday periods such as Christmas, Easter and time off. He described this employer as being very cooperative when it came to getting leaves of absence.

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In 2004/2005 the grievor was a permanent teacher and he worked 20 hours biweekly as a permanent part-time employee with this employer. He worked mostly 12 hour shifts. He occasionally received calls during the week and decided upon his availability depending upon his schedule. If he wanted additional shifts he made sure that his employer knew that he was available. The permanent part-time position allowed him great flexibility. The grievor stated that he had worked this pattern for years and it had been accepted by both the employer and the staff as well. He filed the grievance because, after having conversations with the office, the shop steward and the employer, they could not reach a reasonable accommodation with respect to his situation.

With respect to the memos that he had received, only the October one caused him any grief. The other memos he felt were benign. He was never sure anything would happen or what it would be if it did. He received a call from Shirley Walsh representing the employer who advised him that he had a right to a full-time position because of his seniority. Someone junior to him took the part-time position. He would have applied for any part-time positions if they had been posted but he could not apply for a full-time position as he was working full time as a teacher.

On October 27, 2005 the grievor had a meeting with several representatives of the employer where he explained that he was a permanent full time teacher and that he did not understand why he could not be offered another part-time position. He argued about his seniority and that he thought he was building secure employment. He was asked why he would not work somewhere else. The grievor said that he wanted to work here as he had a lot invested in it and he liked the work. The grievor felt that none of his arguments was working.

On October 27, 2005 the grievor wrote to the employer in the following terms:

"Further to our conversation today, October 27, 2005, I feel that you are aware of the fact that I am a full-time teacher and enjoy part-time employment with your organization on the weekends, summers and other holidays with the option to pick up temporary hours as they might be available to me in the homes that I am orientated to work in and based on my availability.

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I have to take exception to the process that you are following and feel that you are placing me in the unfortunate position of not being able to accept your offer of full time employment. It is my position that I should have access to all jobs including the part-time positions of which I would accept any of the 8 hour, 16 hour or 24-hour positions. This would better equate the position that I currently occupy at Guzwell Dr. Upon more careful consideration of the positions that you have posted, two of the 24 hour jobs seem to contain the hours that I am currently employed to work. Please reconsider.

On November 23, 2005 the grievor received a letter which reads in part as follows:

"This letter will confirm our November 17, 2005 meeting at which we reviewed the possibility of your continued employment with the Eastern Residential Support Board Inc.

At that meeting you were informed that it was our opinion that you did not present us with just cause for your October 26, 2005 refusal of full-time employment as offered by Ms. Shirley Walsh. In turn, we informed you that by virtue of your October 27, 2005 correspondence you effectively terminated your employment relationship with Eastern Residential Support Board Inc.

You are hereby notified that our position on this issue has not changed and that we consider your employment terminated effective November 22, 2005.

Ms. Margaret White is available to provide information with respect to pension and other outstanding monetary and benefit issues.

We thank you for your service with Eastern Residential and its predecessor boards and wish you continued success in your future endeavors."

That was the last contact the grievor had with the employer other than to ask for a record of his seniority at which time he was referred to the union to provide it. The grievor had a bad feeling that he could lose his job during the revision process but felt that he was being paranoid. He spoke to his union representatives who told him that there was nothing they could do until management made a decision which affected him. As soon as he received the letter, he immediately filed a grievance.

THE GRIEVANCE

On November 24, 2005 the grievor filed a grievance which was stated as follows:

"Mr. Terry Hale was unjustly dismissed by Eastern Residential Support Board, in addition Eastern failed to follow layoff and recall procedure and fail to post



position which is a violation of the NAPE collective agreement with the group homes, articles 12:04, 13:03, 13:04 and all other pertinent articles."

The union requested:

"full redress. Mr. Hale wishes to get his permanent part-time position back plus all benefits and pay for all shifts missed.(sic.)"

The employer replied:

"No violation of Collective Agreement. A without prejudice statement outlining how we arrived at this position is attached."

There was no attachment to the exhibit placed in evidence.

THE EMPLOYER'S POSITION ON THE PRELIMINARY OBJECTION

The employer alleges that the union is estopped from grieving the actions of management. In order for there to be an estoppel made out, three criteria are required:

1. There was a clear and unequivocal representation by way of discussions from February 4 onward. The employer issued memos which reflected the minutes of the management labor committee meetings. The minutes of the management labor committee meetings were signed by representatives of the union. There was silence from the union and the employees in response to the employer notices and memos that were distributed.
2. The representations from the union were intended to be relied upon by management notwithstanding the provisions of article 9:02 that such agreements are not binding. If these representations were not intended to be relied upon why were the meetings held?
3. The third criterion is that the reliance by the employer must have been detrimental to it. In this case, there was significant financial and human resource cost as a result of the grievance being filed. If the grievance is successful the back wages could be in the range of six figures. The employer is entitled to rely upon the union as the voice of the employees and it is clear that they were in favor of the changes. The grievor objected to the situation but did it too late, all the while the union position did not change.



The employer argued that all of the criteria for estoppel are present in this case. The employer filed various cases to support its contention that the estoppel be upheld and the grievance be denied.

THE UNION'S POSITION

The union argues that the employer has not established an estoppel. The union did waive the job posting provisions of the collective agreement to expedite the process but that should be the only representation to be relied upon. The union recognized that there would be more permanent jobs and waiving the posting provisions would expedite that situation. The only detriment to the employer was this grievance; no other employee was terminated. None of the witnesses realized that the grievor would lose his position as a result of the employer's activities. The employer had let the grievor work in the part-time position and allowed him to come in on his schedule. No discipline was ever meted out to him. This led him to believe that he would not lose his seniority for refusing a full-time position.

The employer cannot rely upon the minutes of the labor management committee meetings. This is the only document which says that employees would lose all their seniority. No other document contained that statement.

The implementation of the employer's decision was delayed for approximately 6 to 7 months. As the situation evolved, it was realized that there would be upheaval if the union did not agree to waive the posting provisions. Nobody realized that the grievor would lose his job. The only option offered to the grievor was full-time employment which he could not do as he was already in full-time employment as a teacher. It is unreasonable to think that the grievor would give up his full-time teaching position for this position given that he now has his master's degree.

With respect to the signing of the minutes by the union representative, that was not an indication of agreement with the content merely that the content of the minutes was what was said at the meeting. In any event, article 9:02 of the collective agreement specifically

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states that the meetings shall not bind either the Association or its members or the employer to any decisions or conclusions reached during discussions. As well, article 4:04 stipulates that no employees shall be permitted to make a written or verbal agreement with the employer or its representative which may conflict with the terms of the agreement. Here, there is a direct conflict with the wording of article 9:01. Article 8:04 of the collective agreement specifies that an arbitrator cannot change the terms of the collective agreement.

The union conceded that it waived the job posting but that is all. The employer did not send out a specific memorandum to the employees and many employees do not read the labor management meeting minutes. When the grievor found out that he lost his seniority there was a violation of the collective agreement and he filed a grievance. There was no violation of the agreement until that time. The grievor had been working part-time positions in the past and had not been penalized for doing so. Why would he think that he would be penalized now? He assumed that nothing would happen to him.

In this situation the grievor was forced to retire and that can equal a wrongful dismissal. The grievor had no choice; he was terminated if he could not take a full-time job and he could not. The grievor left under duress. He was willing to work there on a permanent part-time schedule which some other employee took over when he left. Seniority is the cornerstone of union membership and in this case it was used against the grievor.

The grievor was a good employee; he worked extra hours and called in to inform his employer of his availability.

In the union's estimation there is no estoppel in favor of the employer in this case. If there is an estoppel it is that the grievor relied upon the employer's silence; not the opposite.

The union filed various cases to support its view that the estoppel argument of the employer should be denied and the grievance be allowed to continue on its merits.

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THE COLLECTIVE AGREEMENT

The relevant provision of the collective agreement for purposes of this preliminary objection is found in article 9. It reads as follows:

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ARTICLE 9

LABOUR-MANAGEMENT LIAISON

9. 01 It is agreed that representatives of both the Employer and the Association will meet as the need arises, but in any event no greater than once per month unless mutually agreed otherwise, to discuss the following general matters:
- (a) promoting safety and sanitary practices;
 - (b) reviewing suggestions from employees, questions of working conditions and service;
 - (c) other problems and matters of mutual interest which affect the relationship which are not properly the subject matter of a grievance or negotiations.
9. 02 These meetings shall not supersede the activities of any other Committee of the Association or of the Employer and shall not bind either the Association or its members or the Employer to any decisions or conclusions reached during discussions.

Article 8.04 of the collective agreement reads as follows:

“8.04 Decision of the Board

The decision of the majority shall be the decision of the Board. Where there is no majority decision, the decision of the Chairperson shall be the decision of the Board. The decision of the Board of Arbitration shall be final, binding and enforceable on all parties, and may not be changed. The Board of Arbitration shall not have the power to change this Agreement or to alter, modify or amend any of its provisions. However, the board shall have the power to dispose of a grievance by any arrangement which it deems just and equitable.”

FINDINGS AND CONSIDERATIONS

The basic thrust of the argument of the employer is that it proceeded with its plans for the reorganization of the group home with the full knowledge, consent and participation of the union. This reorganization cost the employer in terms of staff time for the planning



and the implementation of a work plan whereby more bargaining unit employees were employed on a full-time basis. If the grievance of this grievor is permitted, the employer will, as well, suffer financially from the settlement of his claim for payment of all shifts which the grievor has missed since the implementation of the plan.

The union, on the other hand, argues that the union made no representations to the employer that it could rely upon. If any representations were made it would of necessity have been the results of the labor-management liaison committee. Article 9.02 specifically states that these meetings shall not bind either the Association or its members or the employer to any decisions or conclusions reached during their discussions. Therefore, it is argued, the employer is not justified in relying upon those minutes and the arbitrator has no authority, pursuant to the provisions of article 8.04 "to change this Agreement or to alter, modify or amend any of its provisions."

Given the wording of article 9.02 combined with the wording of article 8.04, unless the doctrine of estoppel is applied it would seem that the undersigned is powerless to grant relief to the employer. Can the doctrine of estoppel be applied in the fact situation in this case?

Much has been written about the doctrine of estoppel as it applies in the labour relations context. In Canadian Labour Arbitration, Brown and Beatty (Canada Law Book) at section 2:2200 of the loose leaf edition the following appears:

"The statutory basis of an arbitrator's jurisdiction is generally limited to determining disputes 'arising from the interpretation, application, administration or alleged violation of the agreement'. As well, collective agreements often define the arbitrator's jurisdiction in similar terms, and they expressly state that the arbitrator shall have no power to add to, vary or amend the collective agreement or to make a decision that is inconsistent with its terms. Because it has been suggested that the effect of the doctrine of estoppel is to prevent one party from relying upon the strict terms of the collective agreement, at one time doubt was expressed as to its application. However, and although the matter has not as yet been conclusively determined by the Supreme Court of Canada, courts and arbitrators are now generally of the view that arbitrators do have jurisdiction to apply the doctrine. While some arbitrators' justification for invocation of the doctrine of estoppel is that it simply gives effect to the parties own amendment of the collective agreement, the more generally accepted position is that no less than



any other contractual document, collective agreements are subject to the equities when they are applied. As well, it has been suggested that the doctrine of estoppel should be considered as a rule of evidence, preventing the unfair assertion of what would otherwise be material grounds for a claim.” (citations omitted)

It would seem from this authority that the general consensus is that arbitrators can indeed apply the doctrine of estoppel even in the face of articles such as 8.04 and 9.02. What is required in order to establish an estoppel? This question is answered by Messrs. Brown and Beatty at section 2:2211 on page 2-74 of the loose leaf edition where, quoting from Canadian General Electric Co. (1971), 22 L. A. C. 149 (Johnston), at pp. 150-151 the learned authors state:

"It is apparent that there are two aspects of the doctrine as thus stated. There must be a course of conduct in which both parties act or both consent and in which the party who later seeks to set up the estoppel is led to suppose that the strict rights will not be enforced. It follows that the party against whom the estoppel is set up will not be allowed to enforce his strict rights if it would be inequitable to do so. The main situation where it would be inequitable for strict rights to be upheld would be where the party now setting up the estoppel has relied to his detriment."

In this case, there is no doubt that the union and the employer were both of one mind as to the progress of the employer's plan and that it would be beneficial to both the employer and to the bulk of the union membership if the plan were implemented. They were both in agreement with it and actively encouraged each other. Unfortunately, it did not occur to anyone involved in the process that the grievor might be disenfranchised by the process. The grievor himself however, did have some misgivings about what was going on but did not express these misgivings to anybody until the final plan was put into action. Indeed, it may well have been impossible for him to have foreseen the impact upon him until he was finally confronted by management with the options which were available to him.

The question for resolution is whether or not it is fair for the union to now disavow its agreement and acquiescence to the detriment of the employer. The employer seems to have done all that could be expected of it in this reorganization plan. It kept the union apprised of all that was going on, including delays and other issues of timing which it was experiencing. The union was responding that it saw nothing wrong with the plan.



Indeed, the union waived the provisions with respect to posting job vacancies in order to facilitate the employer's restructuring without having a complicated bumping situation. The minutes of the meetings reflected the impending changes and their scheduled commencement times. No objection was registered at the meetings or at the subsequent meetings when the minutes were approved. The union put up a valiant argument that approval of the minutes is not necessarily approval of what happened at the meeting. However, the approvals were noted in the minutes and no objections were registered either at the meeting or subsequent approval. It "looks fine to me" as a response to a request for review is not an indicator of disagreement.

There is no doubt that the employer has expended considerable sums of money and time in the execution of the plan of which both parties were aware. If the union was permitted to deny the agreement, the employer would incur considerable damages in compensating the grievor since 2005 for shifts that he lost in the interim. There is no evidence as to why the grievance was not pursued at an earlier stage and it is not for me to speculate on that issue.

Would it be fair to allow the union to now claim the protection of the agreement when it knew its provisions all along and nevertheless adopted the plan or, at the very least, acquiesced in it? It would seem not. There were many opportunities along the way for the union to have expressed concern or doubt or disapproval of the changes. No concerns, doubts or disapprovals were raised. The union was aware of these provisions in the collective agreement as was the employer – they negotiated it. The union cannot negotiate or acquiesce in such a large scale change in the operating system of the employer as is the case here, agree to it and then, upon implementation when it discovers a flaw that it had not previously considered, back out of the arrangement and attempt to hide behind the protection of the clause. If such a situation were to be sanctioned by arbitration, no employer would ever again negotiate improvements or any changes in working conditions with the union for fear of the union backing out at the last minute. In my view this would hamper constructive improvements in the work place in between times of formal negotiations of collective agreements.

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Having said that, I have some reservations about the fairness of what has happened to this grievor. He has apparently fallen through a crack somewhere in the process. For example, it is difficult to understand how he could have gone from a permanent part time position to no position at all. Surely there must have been some part time openings for an employee who has been with the organization for such a long period of time. He seems, on the surface of the scanty evidence I have before me, to have been a valued employee. Unfortunately for him in this case, he is not a party to the collective agreement and the union is the party which holds his bargaining rights. It is the union and the employer who are the parties to this collective agreement and these proceedings and it is their relationship which must be examined by me. One would hope, however, that those parties could reach some accommodation for this individual whereby he could be accorded some consideration for future shifts.

The case at hand is considerably different than those argued by the union in support of its position. NAPE & Dept. of Natural Resources – Lane Grievor (unreported, 1996, Ivany, Hurley & Oakley, Chair) was a case where the Board found at p.22:

“Therefore the Board finds that the Employer did not rely to its prejudice on any representation made by the Union. The elements of the doctrine of estoppel are not proven.”

Similarly, in Avalon Community Accommodations Board & NAPE –Dwyer Grievor, (Unreported, 1995, Hurley, March and Panjabi, Chair) the Board found, at p. 35:

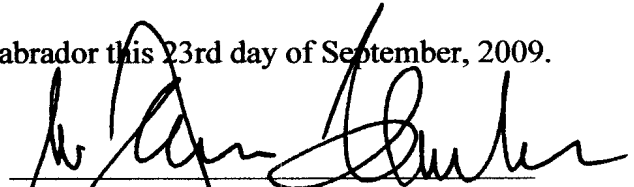
“The Union argued in Summation that an estoppel applies to the facts of the instant case. The Employer argued that estoppel is irrelevant in this case. As no evidence was led to establish an estoppel this point could not be considered.”

Both of these cases are examples of where the arbitrators found that the elements necessary for an estoppel had not been established. Such is not the case here. As noted, in this case, I am satisfied that the elements of the estoppel have been made out, as is the unfairness which would be wrought on the employer if the estoppel were not enforced.

As a result I find that the employer is entitled to rely on the doctrine of estoppel and that it is applicable in this fact situation. The union is estopped from denying the terms of the agreement involving the re-arrangement of the shift system.



DATED at St. John's, Newfoundland and Labrador this 23rd day of September, 2009.



W. JOHN CLARKE – Sole Arbitrator