

ARBITRATION AWARD
(Preliminary Award)

BETWEEN:

FISH, FOOD AND ALLIED WORKERS UNION
(FFAW/CAW)
(hereinafter called the "Union")

AND:

NOTRE DAME SEAFOODS and
NORTHERN SHRIMP COMPANY LTD.
(hereinafter called the "Companies")

GRIEVORS:

Allen Starkes and Ross Petten

COUNSEL:

For the Union

V. Randell J. Earle, Q.C.

For the Companies

Denis Mahoney

ARBITRATOR:

James C. Oakley

The hearing with respect to a preliminary issue raised by the Companies was held on February 12, 13, and 14, and March 3, 2008. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. The Arbitrator would remain seized of the matter in the event there was a question of interpretation or compensation arising from the Award, with any issue to be referred to the Arbitrator within sixty (60) days following publication of the Award.
3. The parties agreed to waive any applicable time limits for the filing of the Award.
4. Witnesses were excluded from the hearing.

The Companies raised a preliminary objection as to the jurisdiction of the Arbitrator and submitted that the grievance procedure was not properly followed. The Companies submitted that the Union did not comply with Articles 10 and 11 of the Collective Agreement and, in particular, did not give proper notice of intention to arbitrate. The Companies submitted that they were unable to properly prepare for the hearing because they did not know what the grievance was about. The Union submitted that the grievance was about the Companies receiving shrimp and failing to pay for it, and referred to communication about the grievances prior to the arbitration hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Master Collective Agreement between Association of Seafood Producers (“ASP”) and Fish Food and Allied Workers Union (FFAW/CAW)
- Consent 2 - Spring shrimp schedule 2006 - Schedule “A” of the Collective Agreement
- Consent 3 - Grievance Form No. 481 dated July 10, 2006 (Allen Starkes)
- Consent 4 - Letter dated August 14, 2006 from Roland Hedderson to Notre Dame Seafoods

- Consent 5 - Letter dated August 31, 2006 from Roland Hedderson to Notre Dame Seafoods
- Consent 6 - Grievance Form No. 480 dated July 10, 2006 (Ross Petten)
- Consent 7 - Letter dated August 14, 2006 from Roland Hedderson to Northern Shrimp Company
- Consent 8 - Letter dated August 31, 2006 from Roland Hedderson to Northern Shrimp Company
- Consent 9 - Email dated December 13, 2006 from Derek Butler to David Decker
- Consent 10 - Letter dated February 6, 2008 from Denis Mahoney to V. Randell J. Earle, Q.C.
- Consent 11 - Letter dated February 7, 2008 from V. Randell J. Earle, Q.C. to Denis Mahoney
- Consent 12 - Email dated February 8, 2008 from Denis Mahoney to V. Randell J. Earle, Q.C.
- Consent 13 - Email dated February 11, 2008 from V. Randell J. Earle, Q.C. to Denis Mahoney and prior email
- Consent 14 - Email dated February 11, 2008 from Denis Mahoney to V. Randell J. Earle, Q.C. and prior email

- RH - 1 Email dated July 13, 2006 from Derek Butler to David Decker re broken shrimp
- RH - 2 Email dated June 15, 2007 from V. Randell J. Earle, Q.C. to Denis Mahoney
- RH - 3 Letter dated June 14, 2007 from V. Randell J. Earle, Q.C. to Denis Mahoney
- RH - 4 Email dated July 23, 2007 from Denis Mahoney to V. Randell J. Earle, Q.C. and prior email
- RH - 5 Email dated September 10, 2007 from Denis Mahoney to V. Randell J. Earle, Q.C. and prior email
- RH - 6 Email dated September 11, 2007 from Denis Mahoney to V. Randell J. Earle, Q.C. and prior email
- RH - 7 Email dated December 4, 2007 from Earle McCurdy to Derek Butler and prior email
- RH - 8 Email dated July 24, 2006 from David Decker to Derek Butler and prior email
- RH - 9 Grievance Form No. 465 dated July 27, 2007

- RH - 10 Letter dated September 6, 2006 from Richard Roberts, Manager, Northern Shrimp Company Limited to Roland Hedderson
- DB - 1 Email dated September 26, 2006 from Derek Butler to company representatives subject - grievances update
- DB - 2 Email dated September 28, 2006 from Martin Sullivan to Derek Butler
- DB - 3 Email dated October 2, 2006 from Richard Roberts to Derek Butler

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article 10 - Grievance Procedure

- 10:01 The parties to this Agreement are agreed that it is of the utmost importance to adjust grievances and disputes as herein defined as quickly as possible. Should a Processor(s), the Union or a fisher, a member of the bargaining unit, allege a breach of this Agreement, the matter or matters in which it is alleged that the Agreement has been violated shall be indicated promptly to the other party in writing. An individual fisher may take the matter up directly with the Processor or in conjunction with a Union representative. No complaint shall be considered a grievance if the circumstances occurred or originated more than thirty (30) days prior to the written grievance being served on the other party.
- 10:02 If the matter has not been settled to the satisfaction of the Processor, individual fisher or the Union with thirty (30) days of its initiation as a grievance it may be referred to arbitration within a further ten (10) days.
- 10:03 Should a dispute or difference arise between a Processor and the Union, or between a Processor and another Processor bound by this Agreement, as to the interpretation of application of this Agreement, or should there be an allegation that there has been a violation of this Agreement, the matter shall be taken up by notices in writing to the Processor, the Union and/or affected person. If a satisfactory settlement of the dispute is not reached within ten (10) days, the matter may be referred to arbitration within a further ten (10) days by either the Union or the affected Processor.
- 10:04 Time limits specified may be changed by agreement in writing between the parties. No grievance shall be denied through error in form or technical irregularity.

Article 11 - Arbitration

- 11:01 Matters in dispute involving individual fishers or groups of fishers or the parties to or bound by this Agreement arising out of the interpretation, application, administration or alleged violation of this Agreement and including any question as to whether a matter is arbitrable may be referred to arbitration by any of the parties involved in the dispute after exhausting the grievance procedure established by this Agreement. Such disputes will be referred to a sole arbitrator or where a Processor and the Union mutually agree, an arbitration board may be appointed and act in place of a sole arbitrator as hereinafter provided.
- 11:02 The party or affected person desiring to submit the matter to arbitration shall deliver to the Processor, the Union and/or any other affected person a notice of intention to arbitrate. This notice shall state the matter at issue and shall state in what respect the agreement has been violated or misinterpreted. The notice shall also stipulate the nature of the relief or the remedy sought.
- 11:03 Within ten (10) days after the date of delivery of the foregoing notice, the parties involved in the dispute giving rise to the arbitration shall endeavour to agree on the appointment of the arbitrator.
- ...
- 11:05 After the arbitrator has been appointed by the foregoing procedure, he/she shall meet with the parties involved in the dispute and any grievor wishing to be present and hear the evidence of the parties involved in the dispute and render a decision with twenty-one (21) days after the completion of taking evidence.
- ...
- 11:07 The decision of the arbitrator on the matter at issue shall be final and binding on the parties involved in the dispute, but in no event shall the arbitration board have the power to add to, subtract from, alter or amend this Agreement in any respect.

Evidence

The witnesses called on the preliminary objection were Roland Hedderson, staff representative for the Union and Derek Butler, executive director, Association of Seafood Producers (the "Association").

Roland Hedderson is a Union staff representative with responsibility for the Northern Peninsula and coastal Labrador and for issues related to shrimp harvesting and the shrimp development fund. He is a member of the Union's bargaining committee for the shrimp schedule. He is not the chief negotiator. He has not attended all meetings between the Union and the Association on shrimp issues.

Mr. Hedderson filed a total of 5 grievances in 2006 regarding payment for shrimp, two of which were the grievances at issue in this matter filed on behalf of Allen Starkes and Ross Petten. The grievance forms, dated July 10, 2006, stated the nature of the grievance was "failure to pay for shrimp as per spring shrimp schedule 2006, Schedule "A" of the Collective Agreement and any other related articles". The required adjustment was stated to be "full redress". Mr. Hedderson submitted the Allen Starkes grievance to Notre Dame Seafoods and the Ross Petten grievance to Northern Shrimp Company Ltd. Mr. Hedderson testified that fish harvesters were complaining they were landing shrimp for which they were not being paid. The fish harvesters wanted something done about broken shrimp for which they were not paid, but processors were selling bags of shrimp containing broken shrimp.

Mr. Hedderson testified that he did not receive any response to the grievances and he sent a letter dated August 14, 2006 to both Companies stating: "I would like to request your written position with

respect to settling this matter”. After the letter he received a call from the manager of the Northern Shrimp plant at Jacksons Arm asking what the grievance was about. Mr. Hedderson told the manager the grievance was about broken shrimp and the Collective Agreement did not allow for rejection of broken shrimp. He may have also told the manager that the grievance was about getting paid for shrimp that is processed. The manager told Mr. Hedderson that Northern Shrimp was incorrectly named in the grievance because it was not the buyer of the shrimp.

Mr. Hedderson sent letters dated August 31, 2006 to both Companies stating “further my letter dated August 14/06, I hereby give notice of our intention to proceed to arbitration with respect to the above-noted grievance”, and proposing an arbitrator to hear the grievance. Mr. Hedderson testified that these letters gave notice of intention to submit the matter to arbitration pursuant to the Collective Agreement. There were no other letters submitting the matter to arbitration.

Mr. Hedderson received a letter dated September 6, 2006 from Northern Shrimp which stated as follows:

Re: Grievance # 00483; 00480

Dear Mr. Hedderson:

In response to your correspondence on August 14 and again on August 31, I would like to express my concern and request clarification on the issues that you raise. First, technically you have not stated what clause of our collective agreement you are grieving. A grievance must be an infringement of an agreed clause in a collective agreement. You fail to mention what clause has not been honored by our company. Further to that you did provide some clarification during our phone conversation a couple of weeks ago in saying that the grievance was based on the fact that we did not pay for broken shrimp. This in itself raises a number of issues. As you are well aware the current agreement between processors and harvesters allow for an independent company (IDG) to complete grading on all landings to determine,

among other things, broken shrimp. In both cases that you are trying to grieve the determination was made by IDG as agreed which has been the past practice agreed upon by all parties. On the fact then I fail to see how technically there is even a grievance. The second issue is that Northern Shrimp Company does not purchase shrimp directly from harvesters. We are a third party buyer and do not conduct any fisher payroll from the plant. Therefore technically we did not purchase the shrimp directly from these vessels and if there even is a grievance it has been directed to the wrong company. Due to these facts we do not support arbitration on the matter as we fail to see any infringement of the collective agreement in general and more specifically fail to see an infringement by our particular company as we have not been directly involved in the purchasing of this product. Please feel free to contact me as per the above at any time.

Regards
Richard Roberts
Manager

Mr. Hedderson testified that he did not reply to the letter.

Mr. Hedderson testified about the procedure used to identify broken shrimp. When the shrimp is landed by the harvester, samples are taken and a grading report is prepared by a grading company. The grading report is prepared for each landing, and the Union receives a copy. The grading report states the percentages of broken shrimp. The grading report also states other categories that are rejected and for which the fish harvester is not paid, such as foreign material, including other fish species and other shrimp species, undersized shrimp less than two grams, and spoiled or tainted shrimp.

The grading reports relevant to the 5 grievances filed in 2006 were provided by the Union to the Association. The Association and the affected processors reviewed the grading reports. Following discussions between the parties, it was agreed to proceed first with the Allen Starkes and Ross Petten

grievances, and deal later with the other 2006 grievances.

Mr. Hedderson testified that the grievances deal with the subject of broken shrimp, and also deal with shrimp harvesters getting paid for everything that is processed. He testified that if product identified as foreign material, spoiled or tainted shrimp, or broken shrimp is processed, then the fish harvester should be paid for it. Mr. Hedderson said that the grievances, in part, challenge the grading system used by the graders and challenge the independence of the grading system. The grievances take issue with the categories in the Size and Quality Determination Booklet (the "Grading Booklet"). The grievances do not take issue with whether individual graders properly complied with the Grading Booklet when the relevant grading reports were completed.

Mr. Hedderson testified that the spring 2007 shrimp negotiations did not settle the issue of payment for broken shrimp. There were three groups of grievances filed in 2007 on broken shrimp. Each group contained 17 grievances and covered periods of 30 days. One of the 2007 grievance forms was entered as an exhibit. It stated the nature of the grievance was "weigh backs from gross weight landed were done in violation of shrimp schedule and Master Collective Agreement".

Derek Butler, executive director of the Association of Seafood Producers, testified that shrimp processors in the Province, with some exceptions, are members of the Association. The Association represents shrimp processors in collective bargaining and other relations with the Union. The Association does not represent its members with respect to grievances. When the 5 grievances were filed in 2006, the Association contacted the affected processors, and it was agreed the Association

would coordinate a response. Mr. Butler communicated with the Union and the processors about the grievances. The parties agreed, for the purpose of the facts on the preliminary objection, that what Mr. Butler knew about the grievances would be considered to be known by the Companies.

Mr. Butler testified that the issue of broken shrimp was raised by the Union in the spring 2006 shrimp negotiations, and in subsequent discussions. He sent an email dated July 13, 2006 to David Decker of the Union, which stated as follows:

Dave,

Re. broken shrimp and our recent conversations, if the Union is considering grievances to resolve this (as you indicated you have instructed staff to proceed), then so be it. The average broken appears to be in the range of past years. Some higher instances are given warm temperatures (the highest average temps of June and July on record, according to today's news) and the large tow sizes of late, among other factors. We continue to say the 6th segment is broken, and that is true of all producers from conversations I have had with producers. That has not changed from past practice. I confirmed that with Tavel as well. The 6th segment is required for the peelers to grasp the shrimp, for one. Any segment broken or missing - even small - will impact on ability to peel. Any shrimp broken is broken, including the 6th segment. Our protocol on that is referenced in the collective agreement, and is the same one in place since both Tavel and IDG have done the grading.

Rgds,
Derek

Mr. Butler testified that the reference to broken shrimp including the 6th segment, was a reference to the Grading Booklet. Mr. Butler understood that the Union had concerns about the average broken shrimp. He knew when he sent the email that the Union was considering filing grievances. David

Decker replied to Mr. Butler by email dated July 24, 2006 which stated, in part, as follows:

The protocol for broken states “broken shrimp has no commercial value”. The majority of shrimp that is graded as broken is processed, packed and marketed as Grade A shrimp. This is unacceptable and the practice calls into question the integrity of the grading system.

Again, I feel we should have the grading company put together the required information and meet to try and resolve this issue. The lack of action on this issue leaves the grievance route as one course of action in trying to get this issue resolved.

Mr. Butler did not know if the 5 grievances that were filed in 2006 were the ones David Decker told him to expect. Mr. Butler testified that he heard about the grievances no later than the end of July, 2006. He sent an email to the affected companies in September, 2006. There was a subsequent exchange of emails with the Union about proceeding with one grievance to arbitration. He did not see the letter dated September 6, 2006 from Northern Shrimp before it was sent to the Union. Mr. Butler acknowledged that he sent emails to the Union in 2007 referring to the “broken shrimp grievances”, but he did so because that was how the Union was describing the grievances. He received various correspondence about the grievances, including copies of correspondence between legal counsel, but he did not know what the grievances were about based on the correspondence. He still did not know what the grievances were about, after he heard the testimony of Roland Hedderson. There were several issues that could be raised by the grievances, which included (1) shrimp broken at the time of purchase but visible in the package after processing; (2) the incorporation of the Grading Booklet into the Collective Agreement; (3) the issue of what segments constitute broken shrimp; (4) problems with a particular grader; (5) fish harvesters claiming payment for everything processed; (6) problems with the specification of broken shrimp in the Grading

Booklet; and (7) concerns by the Union about the average broken shrimp. Mr. Butler said he had no idea what redress was being claimed if the grievance was upheld.

Companies Submission

The Companies submitted that Articles 10 and 11 were violated and therefore the Arbitrator did not have jurisdiction to hear the grievances. The grievance forms do not comply with Article 10.01 because they refer to the entire Shrimp Schedule and are not specific with respect to what article is alleged to be violated. The matter at issue cannot reasonably be determined from the grievance forms. The grievances could not be settled under Article 10.02 if the Companies did not know what the grievances were about. Article 11.02 stated that the notice referring the matter to arbitration “shall state the matter at issue and shall state in what respect the agreement has been violated or misinterpreted”. The repeated use of the word “shall” throughout Article 11.02 indicated that it was a mandatory provision and failure to comply rendered the grievances inarbitrable. The letters from the Union to the Companies giving notice of intention to refer to arbitration did not comply with Article 11.02. The letters merely referred to the grievance form and did not specify how the Collective Agreement was violated. The Companies referred to *Re International Chemical Workers, Local 721 and Brockville Chemical Industries Limited* (1972) 24 L.A.C. 423 (Reville) where the arbitration board considered an article similar to Article 11.02 and stated that compliance with the article was mandatory and not directory. Article 11.02 was to be interpreted so that the defending party, the company, would know what case it had to meet at arbitration. In support of the claim that compliance with Article 11.02 was mandatory, the Companies also referred to *S.D.R. Apparel Inc.*

and Ontario District Council of I.L.G.W.U. (1992) 30 L.A.C. (4th) 343 (Carrier). The failure to comply with Article 11.02 was not a technical irregularity and was not saved by Article 10.04. In the alternative, the matter in dispute could not reasonably be determined, and the Union had been evasive when asked to give particulars of the grievances. The testimony of Roland Hedderson confirmed that there was a “basket” of issues that could be part of the grievances. Clarification of “broken shrimp” was needed. It was unclear whether the claim was for payment for everything landed, everything processed or everything above a certain percentage of broken shrimp. Other possible issues were whether the Grading Booklet was part of the Collective Agreement and whether the grading system was independent. The Union’s processing of the grievances had prejudiced the Companies’ ability to defend the grievances. There was authority for an arbitrator to order particulars, and the Companies referred to *Re United Steelworkers, Local 6320 and Collingwood Shipyards* (1971) 23 L.A.C. 115 (Weatherill), and *I.B.E.W., Local 424 and Devonian Electrical Services Ltd* (1971) 23 L.A.C. 358 (Lucas). In the event the Arbitrator did not dismiss the grievances as inarbitrable, then the Companies requested that particulars be provided by the Union or that the Arbitrator stipulate the issue in dispute.

Union Submission

The Union submitted that the grievances were arbitrable. There was compliance with the grievance and arbitration procedure in the Collective Agreement. Article 10.01 referred to the “matter or

matters” at issue. The Union was not limited to presenting a single issue on the grievance form. The matter at issue was that fish harvesters delivered shrimp and failed to get paid for it under Schedule “A” of the Collective Agreement. It was clear from correspondence exchanged between the parties that the core issue was broken shrimp. However, that did not mean that other issues could not be raised. There was no requirement to state a specific article. The Companies were attempting to narrow the scope of the grievances. The Companies did not respond to the grievance form or the letter requesting a response. The letters giving notice of intention to refer the matter to arbitration complied with Articles 11.01 and 11.02. The “matter” submitted to arbitration was the same matter described in the grievance form. Compliance with the grievance procedure was not an issue discussed by the parties prior to the arbitration hearing. Derek Butler knew about the allegation of failure to pay for broken shrimp in 2006 and 2007. There was no article in the Collective Agreement authorizing deduction for broken shrimp, and no article incorporating the Grading Booklet into the Collective Agreement. Alternatively, if there was any defect in procedure, it was saved by Article 10.04. The Union referred to arbitral case authority stating that a defect in form did not render a grievance inarbitrable, *General Motors of Canada Ltd v. C.A.W. Canada, Local 199* (1999) 80 L.A.C. (4th) 256 (Dissanayake), *Greater Sudbury Hydro Plus Inc. v. C.U.P.E., Local 4705* (2003) 121 L.A.C. (4th) 193 (Dissanayake) and *Hydro Ottawa v. I.B.E.W., Local 636* (2007) 161 L.A.C. (4th) 312 (ON.C.A.). The case authorities supported the principle that an arbitrator should construe a grievance liberally so that the real issue between the parties is decided. With respect to the Companies’ argument that the Union’s inability to define the issue at the hearing went to the jurisdiction of the Arbitrator, the Union submitted that there was no onus on the Union to define the grievance. The onus was on the Companies to prove its case on the preliminary objection. The

Union did not object to an order for particulars, however, the Companies were not entitled to disclosure of the evidence that the Union intended to present at the hearing.

Considerations

The Arbitrator will consider the preliminary objection that the grievances are not arbitrable. The issues related to arbitrability are whether the Arbitrator lacks jurisdiction because (1) the Union did not comply with the Collective Agreement, in particular, Article 11.02; and (2) the Union has not adequately stipulated the description of the grievance at the arbitration hearing. If the Arbitrator finds that the grievance is arbitrable, then the Arbitrator will consider the request for an order for particulars.

The Union submitted grievance forms on behalf of the individual Grievors, Allen Starkes and Ross Petten, which stated under the heading “Nature of the Grievance” the following: “failure to pay for shrimp as per spring shrimp schedule 2006 - Schedule “A” of the Collective Agreement and any other related articles”. The submission of the grievance is governed by Article 10.01 of the Collective Agreement which states that “the matter or matters in which it is alleged that the Agreement has been violated shall be indicated promptly to the other party in writing”. The “matter” indicated on the grievance form was “failure to pay for shrimp”.

Article 11.02 provides for notice of intention to arbitrate. The Union, by letter to each Company, gave notice of intention to proceed to arbitration with respect to the “above-noted grievance” and referred to the specific grievance form already filed. The “matter” referred to in the letters was the matter set out in the grievance form. The letters did not add any particulars with respect to how the

Collective Agreement was alleged to be violated. By incorporating the grievance form into the notice of intention to arbitrate, the matter at issue stipulated in the notice was “failure to pay for shrimp as per the spring shrimp schedule 2006 and other related articles”.

The Companies’ objection to the notice of intention to arbitrate is that it is too vague, and the Companies are unable to prepare for the arbitration hearing. The Companies submit that many requests were made to the Union to state the nature of the grievance prior to the arbitration hearing, but the Union has still not provided any clarity as to the nature of the grievance. There were exchanges of correspondence that referred to “broken shrimp”, however, the Companies submit that “broken shrimp” is too vague, and could include several issues such as (1) payment for broken shrimp visible in the packaged product; (2) whether the Grading Booklet is incorporated into the Collective Agreement, (3) what is the proper specification for broken shrimp, including what segments constitute broken; and (4) problems with a particular grader. The Companies submit that the grievance form and the statements made on behalf of the Union prior to and at the arbitration hearing, raise issues in addition to “broken shrimp”. The Companies refer to the Union’s position that the grievance is also about fish harvesters getting paid for whatever is processed, which could include getting paid for processing of undersized shrimp, processing of foreign materials such as other fish species or other shrimp species, or processing of spoiled or tainted shrimp. The Companies submit that the Union ought not to be allowed to maintain such a “basket” approach to the description of the grievance.

In Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, at paragraph 2:3122, the authors

discuss the form of the grievance as follows:

As a general principle, the form of a grievance must comply with the requirements for initiating complaints stipulated by the collective agreement. Thus, where the contract required a grievance to be in writing, it was held that the mere submission of a written statement that was not in the proper form rendered the grievance inarbitrable. Similarly, where a grievance was not signed as required by the collective agreement, it was held to be inarbitrable. Indeed, even if the grievance does meet the formal requirements, it might be invalid if it lacks particularity or if it is too vague.

However, notwithstanding these earlier awards, in keeping with the comments of the Ontario Court of Appeal to the effect that “cases should not be won or lost on the technicality of form”, today most arbitrators will seek out the merits of a grievance and refuse to permit undue technicality to render a dispute inarbitrable. . . . Furthermore, where a grievance is too vague or a specific submission to arbitration lacks particularity, arbitrators now are more likely to direct that particulars be provided rather than hold the matter to be inarbitrable

The Brown & Beatty text states at paragraph 2:1300, in reference to the submission to arbitration, as follows:

Necessarily, the arbitrator will be required to construe the submission to arbitration or grievance in the context of the collective agreement to determine its scope . . . In this regard a distinction must be made between a grievance which is merely lacking in particularity and one which fails to define or include a matter and thereby put it in issue in the dispute. If the written grievance is merely too vague, that will not affect the arbitrator’s jurisdiction and it may be cured by giving particulars, or by granting an adjournment.

In Re International Chemical Workers, Local 721 and Brockville Chemical Industries Limited (1972) 24 L.A.C. 423 (Reville), the collective agreement contained a provision similar to Article 11.02, requiring that a party deliver notice of intention to arbitrate that states the matter at issue and in what respect the agreement was violated. The arbitrator considered that the purpose of such an article was to provide the arbitration board with a statement of the real grievance and to give the

union an opportunity to cure any defects in the original grievance submission. The arbitrator found the provision to be mandatory, even though it did not expressly state a penalty for the breach. It was necessarily mandatory because a party who must defend a grievance could not do so without a precise description of the grievance. The effect in that case of finding the article to be mandatory was that the jurisdiction of the arbitrator was limited to the statement of the grievance in the notice of intention to arbitrate, and the union was not allowed to expand the scope of the grievance at the arbitration hearing. As a result, the grievance was still arbitrable, and the arbitrator had jurisdiction over the grievance as submitted.

I have considered the case authorities and Articles 10 and 11 in their entirety. I find that Article 11.02 is mandatory to the extent that the Arbitrator's jurisdiction is derived from the statement of the grievance as set out in the notice of intention to arbitrate. In this case, the scope of the grievance is set out in the notice of intention to arbitrate, which incorporates the grievance form. If the statement of the grievance is vague or lacking in particulars, that does not mean that the Arbitrator lacks jurisdiction to hear the grievance. However, there may be a need to order particulars so that there is clarity as to the scope of the grievance over which the Arbitrator has jurisdiction, and so that

the Companies know the case they have to meet. I refer to *Greater Sudbury Hydro Plus Inc. v. C.U.P.E., Local 4705* (2003) 121 L.A.C. (4th) 193 (Dissanayake) at paragraph 9 as follows:

- 9 Where a grievance raises an issue, but is vague or lacking in particularly, that by itself does not render the grievance inarbitrable. Such a defect may be cured by an order to provide adequate particulars, [See, *General Motors of Canada Ltd. v. CAW-Canada, Local 199* (1999), 80 L.A.C. (4th) 256 (Ont.

Arb. Bd.) (Dissanayake)] or by granting an adjournment [See, *Toronto (Metropolitan) v. C.U.P.E., Local 43* (1975), 10 L.A.C. (2d) 247 (Ont. Arb. Bd.) (Adams)].

The role of the Arbitrator to determine the issue in dispute is also described in *Hydro Ottawa v. I.B.E.W., Local 636* (2007) 161 L.A.C. (4th) 312 (ON.C.A.) starting at paragraph 9 as follows:

9 An arbitrator has no inherent jurisdiction and is limited to determining the dispute remitted by the parties in accordance with the language of the collective agreement. Once the grievance is submitted, neither the arbitrator nor one of the parties may unilaterally alter the substance or expand the scope of the grievance: Donald J.M. Brown and David M. Beatty, *Canadian Labour Arbitration*, 4th ed., looseleaf (Aurora, Ont.: Canada Law Book, 2006) at 2:1300 (The Submission to Arbitration), 2:3122 (The Form of the Grievance) and 3:2200 (Change of Position) (“Brown & Beatty”). An arbitrator who does so exceeds his or her jurisdiction, and any decision made as a result is patently unreasonable. Hydro Ottawa submits that is the situation here.

...

13 An arbitrator is required to construe the submission to arbitration or the grievance in the context of the applicable collective agreement to determine its scope, and grievances should be construed liberally to get at the real issue between the parties: *Blouin Drywall Contractors Ltd. v. C.J.A., Local 2486* (1975) 8 O.R. (2d) 103 (Ont. C.A.); Brown & Beatty, *supra*, at 2:1300 (The Submission to Arbitration).

The Arbitrator finds that where the notice of intention to arbitrate is lacking in clarity that does not mean that the Arbitrator does not have jurisdiction to hear the grievances. The Union has complied with Articles 10 and 11, and in particular with Article 11.02, and has stipulated the grievances at the hearing, to the extent required for the Arbitrator to have jurisdiction over the grievances.

The Arbitrator has authority to order particulars so that there is clarity as to the scope of the grievances over which the Arbitrator has jurisdiction, and so that the Companies may adequately prepare for the arbitration hearing and know the case they have to meet. I find that the authority to order particulars is implied in Articles 10 and 11, is based on arbitral principle, and is based on the inherent jurisdiction of the Arbitrator to control the process of the arbitration hearing. I refer to *Re I.B.E.W., Local 424 and Devonian Electrical Services Ltd* (1971) 23 L.A.C. 358 (Lucas) where particulars were ordered so that the company would know the case it had to meet and to ensure fairness and efficiency of the arbitration hearing.

I have considered the correspondence between the parties and legal counsel, and the evidence presented at the hearing. I find that the information provided by the Union to date is lacking in clarity and does not give adequate particulars. It is appropriate to order particulars in the interests of fairness and the efficiency of the arbitration hearing. If necessary, the parties may apply for further directions as to the particulars to be provided. The Union is directed to provide particulars to the Companies within 30 days following the date of this Preliminary Award, and prior to the continuation of the hearing of the grievances.

Decision

The Companies' preliminary objection as to arbitrability is denied. The Union has complied with Articles 10 and 11, and has stipulated the grievances to the extent required for the Arbitrator to have jurisdiction to hear the grievances. The Companies' application for particulars is allowed. The

grievances and notices of intention to arbitrate are lacking in clarity. The Union is directed to provide particulars to the Companies within 30 days following the date of this Preliminary Award, and prior to the continuation of the hearing of the grievances.

DATED this 31st day of March, 2008.

James C. Oakley
Arbitrator