IN A DISPUTE INVOLVING

D-J COMPOSITES INC.

('THE EMPLOYER')

AND

UNIFOR, LOCAL 597

('THE UNION')

MEDIATOR'S REPORT

NOVEMBER 20, 2017

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INTRODUCTORY

In accordance with Section 115(5) of the *Labour Relations Act,* the Minister of Advanced Education, Skills and Labour determined that a mediator be appointed to deal with the collective bargaining dispute between the Employer and the Union. The Collective Agreement between the parties, which had been effective from April 1, 2012 to March 31, 2015, had expired and negotiations to achieve a new collective agreement had been unsuccessful. The mediator was appointed by letter from the Minister on October 26, 2017.

In the mediation process, the Employer and the Union were represented by their Chief Negotiators and their respective negotiating teams.

While the workplace is located in Gander, NL, mediation meetings into this dispute were conducted with the parties' negotiating teams and/or their Chief Negotiators in St. John's, NL, with their consent on November 1, 9 and 10, 2017.

THE MANDATE

The mediator's mandate was *"to confer with the parties in an attempt to secure settlement of the differences between them and make a report"* within 14 days from the date of appointment. At the request of the mediator and due to difficulties in finding meeting dates achievable for all parties, the time for reporting was initially extended to November 13, 2017. A further extension at the parties' request was granted to November 27, 2017.

FACTUAL BACKGROUND

The Employer manufactures composite parts for use in the aerospace industry at its facility in Gander, NL. From time to time since its inception, the facility has employed in excess of 100 workers. Current work levels are, however, much lower. Approximately 30 bargain unit employees are directly affected by this dispute.

While the business was originally locally owned, in or about 2011-2012 the composites manufacturing facility was acquired by a US entity - 'D-J Engineering Inc.' of Augusta, Kansas. D-J Engineering's website indicates that, in addition to its Augusta headquarters, it has additional operating locations through its various subsidiaries in a) Conway Springs, Kansas, b) Subic Bay, Philippines and c) Gander, NL, Canada.

The Union is a local of a national Canadian trade union with head office in Toronto, ON. According to its website, Unifor is *"Canada's largest private sector union, with more than 315,000 members"*. According to a written brief filed by the Union, the Union and the Employer have had a collective bargaining relationship since 2003.

On February 4, 2015 the Union delivered 'Notice to Bargain' to the Employer, but due to difficult economic conditions existing in the Gander facility at that point in time, both parties agreed to defer negotiations to a later date. Those negotiations finally commenced in 2016. At that time, the facility employed less than 35 collective bargaining employees. Although a number of changes to the Collective Agreement were agreed upon in direct negotiations, a number of important issues remain unresolved. When workers took a unanimous strike vote in early December 2016, the Employer decided to lock out its bargaining unit employees on December 16, 2016. Those employees remain locked out to the present time. Management and supervisory personnel continue to operate the facility on a limited basis.

A conciliation officer was appointed in August 2016 to help the parties with their outstanding issues, but despite this assistance, they continued to be unable to find resolution. Prior to the mediator's involvement, the last face-to-face negotiations between the parties were on June 7-8-9, 2017.

The mediator has been advised by the parties that there are applications at the Labour Relations Board involving allegations of failures to bargain in good faith and judicial interventions related to picketing related activities. Disciplinary action involving one employee

is pending alleging unlawful picket line activities. Little goodwill currently exists between the parties, although mediation meetings were at least superficially cordial between them.

THE MEDIATION PROCESS

The Chief Negotiator for each side met jointly with the mediator on November 1 in St. John's for the purpose of informing the mediator of the scope of the disputed issues and to agree on a time and place for direct meetings involving their full negotiating committees.

All parties met jointly with the mediator on November 9 initially to discuss, in front of one another, their then-current positions and the rationales for them. Subsequently, the mediator met primarily separately with the two committees or their Chief Negotiators in order to determine what flexibility, if any, was available in their positions.

The Employer presented its position involving the fundamental outstanding issues during the day on November 9. The Union responded to that position later on the same date. The Employer subsequently responded to the Union's position on November 10, essentially restating the Employer's opening position. There being insufficient movement by each side on important and 'principled' differences, the parties and the mediator agreed that no further mediation efforts would be useful. Mediation sessions ended at 3:30 pm on November 10. The parties agreed that further progress was unlikely on November 11 so that date was abandoned.

ISSUES IN DISPUTE

The primary issues (and related Articles of the Collective Agreement) remaining unresolved fall into three main categories:

1. Duration (Article 23 – 'Term')

The parties' opening positions on the term of a new collective agreement were – from the Union, 1 year – from the Employer, 3 years. During discussions they also explored the possibility

of a 4-year term. Because no agreement could be reached on the important 'Classifications and Wages' issue, no agreement on length of term could be found at this time.

2. Classifications and Wages (Appendix A – 'Pay Grid, Wage Increases and Classifications')

a) Classifications: The expired Collective Agreement has a Pay Grid containing a total of 5 bargaining unit positions – Utility Worker, Technician I, Technician II, Technician III and Master Technician, each of which has a series of 5 increasing 'Step' pay rates – Step 1 being the entry level rate for each position and Step 5 being the 'Top Rate'. These 5 classifications have been in place for many years, emanating from a time when a much larger workforce existed in the facility. The most recent Pay Grid is dated April 1, 2014. The Union claims that employees have not received advancement in their 'Pay Rates' from that date, but the Employer insists that annual 'cost of living' increases were negotiated in the last round of negotiations for each position for the years following those negotiations.

It is worthy to note that there are no defined job duties or job descriptions associated with any of those 5 current classifications. The Employer has been advocating a new series of only 4 positions (with different titles in some cases). Those new classifications would be 'Utility Worker, General Worker, Specialist and Master Technician'. In reality, the new Utility Worker and the Master Technician classifications were almost identical to the former classifications having the same titles, but the 3 former Technician I, II and III classifications would be collapsed into the 2 new titles of General Worker and Specialist.

In mediation, the Union agreed that it would consider moving to a total of 4 new classifications, but there was no agreement between the parties on defining what duties or skillsets would be associated with each level. An additional complication arose when the parties attempted to assign the current 30+ employees into those 4 new classifications from their 5 prior ones. No agreement could be reached on where existing employees would fit within the new 4 level classification system.

Titles are less important, but having assigned specified job duties that define the differences between the various roles is essential to finalizing a new classification system.

b) Wages: The allocation of specific hourly rates to each position was a further challenge. The Employer took the position that, because of economic conditions in the composites industry and the lack of work currently on its 'order book', it could not pay significantly increased wages. The Union sought both step and annual economic increases.

Union members complain that workers in different classifications are doing similar work and are receiving pay rates that are very different for the same work. This is creating feelings of unfair treatment. The Employer agrees that this outcome is inappropriate, but claims that, in order to fix the problem on a cost-acceptable basis, it cannot simply bring all workers doing the same work to the highest rate of pay. Under its proposal, increases for some classifications would necessarily bring decreases for others. Consequently, the Employer advocated some current workers being placed in new classifications that would sometimes result in a reduction in their pay rates. To alleviate individual hardship, the concept of 'red circling' was discussed to deal with such employees' pay rates. This approach could affect, however, as many as 7-8 workers in a workplace where only 20 of 32 workers may find immediate employment after the lockout ends. The chilling effect that these consequences could have on a ratification vote is easy to comprehend. All workers have been without any regular pay for almost one year.

c) Performance/Merit Pay: The Employer is maintaining that higher Steps on the Pay Grid cannot be reached by workers without an assessment of their 'merit' to achieve those rates of pay. The Employer insists that it must be entitled to determine each employee's merit before that worker would receive pay increases to these higher Steps. Under the Employer's proposal, the assessment of merit would be based on such factors as attendance, productivity, product wastage and employee attitude, all as assessed annually by the Employer.

The Union maintains that it will not accept pay rates which are subject to 'arbitrary' determination by the Employer. It claims that none of its collective agreements in Canada, and some are in the aviation manufacturing industry, allow that to happen. It opposes this Employer proposal 'in principle', claiming this opposition to be a 'National Policy' of the Union.

While the concept of using objectively measurable criteria to determine merit or productivity was explored somewhat with the parties in mediation, there was little appetite by either side for suggestions of compromise. That initiative was not explored more deeply when the Union insisted that it would not bring to its members for ratification any contract containing 'merit' type pay rates.

3. Return to Work Protocol

While this subject is not normally a collective bargaining issue, both parties realize that conflict is likely to arise once a new contract is signed. Since the lockout commenced, the Employer claims that work levels have decreased significantly to the extent that, even if agreement was reached now on a new contract with the bargaining unit, immediate layoffs would be required because of a lack of current work at the facility. The Employer argues that it had been retaining many employees at the workplace before the lockout even though there was insufficient work for them to perform prior to the lockout. It does acknowledge that it expects work levels to increase, at least to a degree, in the short to medium term, so that some of its laid off employees would expect to be recalled, but the Employer insists they cannot all be put back to productive work immediately on ratification. The Employer estimates that there is only sufficient work available now for 20-22 workers, thus 8-10 of the currently locked out employees would not be actively employed on ratification of a new contract.

Without any agreement on the classifications into which the current employees could be placed, or an agreement on what skill levels various workers hold, it would be impossible to determine in mediation which employees would be required immediately after a new contract would be signed. [redacted]

[redacted]

The Union claims that the Employer is attempting to eliminate workers who the Employer believes are undesirable or troublemakers. It alleges unfair discrimination or 'targeting'.

Once again, the lack of trust between the parties hampers their ability to fashion a fair recall and layoff protocol. This return to work topic was not discussed in great depth during the mediation sessions because no significant progress could be achieved on the underlying problems associated with classification and pay.

Further Negotiations/ADR: The concept of 'Interest Arbitration' to find resolution of their differences was explored with each of the parties. Two models are possible – one where the arbitrator fashions a resolution of compromise having heard from both sides, and the other where the arbitrator must accept the complete proposal of one side or the other. Neither party was prepared to allow that process of dispute resolution to be adopted as a means of resolving their important issues of principle.

The one-year anniversary of the date of lockout looms. The parties have, however, recently advised the mediator of their plans to resume direct negotiations in the near future.

FINDINGS AND RECOMMENDATIONS

The mediator is mandated to report to the Minister with findings and recommendations which, at the Minister's discretion, may be made available to the parties.

This is a complex dispute involving a large Canadian union, which represents hundreds or thousands of workers in the aerospace industry (including Boeing, etc.) in this country and a

private corporation owned and operated by an investor who is resident outside of this jurisdiction. They each have skilled and sophisticated negotiators who understand the complexities and nuances of their differences. In those circumstances, considerable care must be taken not to aggravate existing difficult relationships between these parties.

It is difficult to see where compromise might be able to be found when 'principled' issues like performance pay are involved. Additionally, in must be remembered that a mediator with only limited knowledge of the details has insufficient insights into the workplace and knowledge of the actual skills of individual workers to be able to place any employees appropriately into a 4-classification, 5-Step pay grid.

All of that being said, the mediator has the following observations:

1. After a lengthy and fractious lockout, a contract term longer than 2 years is normally recommended in order to restore a period of stable labour relations. If the parties agreed to an unusual and new provision which might create difficulty or conflict when implemented, a shorter term may be considered as prudent.

2. A 4-classification system is more than adequate for this small workplace. Job descriptions defining the differences between the various required skillsets at each of the 4 classifications will ensure a fair distribution of the work among the workers who hold very different skillsets. The parties already have the skills necessary to complete this task.

3. Without a true knowledge and understanding of the variety of skills held by all workers and the different tasks required from each classification, which assignment would take far more hours of study than are available in this current assignment, a mediator is unable to add value to or recommendations on the issue of placing current employees on a new classification system. Any further recommendations would be arbitrary and could be highly

prejudicial to one or both sides. An external human resources agency may be able to add value if conflicts arise between the parties.

4. The easiest way to deal with Wages is simply to give all employees a percentage increase in their pay rate for each year of a new agreement. That approach would simply postpone, however, an existing and imbedded problem currently complained about by both sides, which is that many workers are receiving different levels of pay for performing very similar work. The problem is made more complex when 'Step' increases and 'cost of living' increases are not always the same for every employee. For those reasons, consideration should be given to finding a way out of the current 'Step' process for this small bargaining unit. A simpler no-step grid is recommended, although a transition over a period of time to that modified grid may be required. Starting rates for new employees can be established as a percentage of the regular rate in each classification, if productivity is considered lower at entry into the workforce.

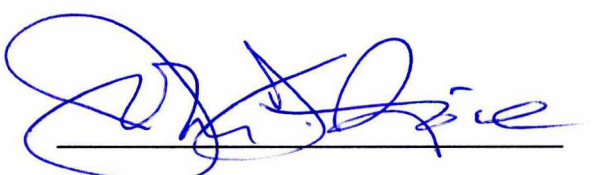
4. The concept of Performance Pay is a huge problem. Both parties are completely 'stuck' in their current and divergent positions. It is understandable that the Employer, working in an industry where high quality output and productivity are paramount, is searching for a method to improve work performance. It is similarly understandable that the Union is not prepared to allow the Employer to subjectively measure merit based on immeasurables such as 'attitude'. Base pay rates should not be dependent upon individual and subjective assessment. If individual performance is a problem, the supervision and disciplinary processes should be invoked. If overall plant productivity is the primary objective, which it should be in any workplace, then a system of bonuses based on overall facility improvement and productivity using objective measurables (such as quality and quantity of product output, less wastage overall, etc.) is one alternative that should be explored more fully.

5. The recently expired Collective Agreement - Article 16 - contains provisions technically adequate for dealing with layoff and recall due to lack of work. Following ratification, seniority and ability to perform the remaining work will dictate the protocol and which employees can be retained to perform the required and available work. The grievance and arbitration procedures can resolve disputes about skill and ability. Because of the lack of trust between the parties and the large number of layoffs expected, however, considerable challenges are likely and upset will inevitably be the result. Entering into a new collective agreement with many disagreements that are expected to arise immediately is not prudent. Accordingly, it is advisable that the parties negotiate and settle this issue before ratification of a new contract, even if further independent third party intervention is required to achieve that objective.

6. There are a number of Supreme Court and Labour Relations Board applications already commenced, plus disciplinary actions pending, all arising from the lockout and the difficult negotiations. The parties should agree that all such matters will be discontinued or withdrawn on agreed terms upon settlement of a new collective agreement.

While an extension to November 27 for the filing of this Report was initially requested by both parties, they have subsequently asked that the mediator render this Report before the expiry of that extension period. It is believed that some discussions between them will continue beyond this date.

Dated at Corner Brook, NL, on November 20, 2017.



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