

IN THE MATTER OF:

AN ARBITRATION BETWEEN:

**THE SCHOOL DISTRICT OF SNOW LAKE #2309
(hereinafter called the "*District*")**

- and -

**THE UNITED STEELWORKERS OF AMERICA, LOCAL 8262
(hereinafter called the "*Union*")**

- and -

**MARC JACKSON and SHARON STUBBS
(hereinafter called the "*Grievors*")**

BOARD OF ARBITRATION: Jack M. Chapman, Q.C. Sole Arbitrator
DATE OF HEARING: September 27, 1999
LOCATION OF HEARING: Thompson, Manitoba
APPEARANCES: Rob Simpson, counsel for the District
Wayne Skrypnyk, counsel for the Union and Grievors
DATE OF AWARD: June 22, 2000

ARBITRATION AWARD

On June 7, 1999, Jack M. Chapman, Q.C., was appointed as sole Arbitrator in the dispute between the District, the Union, and the Grievors. By agreement between the parties, it was agreed that the hearing would take place September 27, 1999 in Thompson, Manitoba. Mr. Rob Simpson, Barrister, appeared on behalf of the District, and Mr. Wayne Skrypnyk appeared on behalf of the Union and the Grievors.

At the commencement of the hearing, the parties confirmed the jurisdiction of the Arbitrator to hear the matter, and there were no preliminary objections to the matter proceeding. It was agreed that witnesses would be excluded and that if any compensation was adjudged to be due to the Grievors, then that would be resolved by the parties and failing such resolution, it would be referred to the Arbitrator who was to retain jurisdiction for that purpose.

The parties are subject to a Collective Agreement (Exhibit "3"), which is in effect for the period from January 1, 1998 to June 30, 2001.

There are two Grievances. The first, filed as Exhibit "1", is dated April 27, 1999 and was filed by Marc Jackson. The relevant portions read:

"Nature of Grievance

We have a Grievance under the Collective Agreement due to the hours of the Maintenance Supervisor being cut.

Settlement requested in Grievance The Employer comply with the hours of work article & the C.A.

Agreement Violation Article six, but not excluding any other provisions of the CA or any applicable legislation"

Exhibit "2" is dated April 27, 1999 and the relevant portions read as follows:

"Nature of Grievance

We have a grievance under the Collective Agreement due to hours of the Librarian being cut.

Settlement requested in Grievance The Employer comply with the hours of work article & the C.A.

Agreement Violation Article six but not excluding any other provisions of the CA or any applicable legislation. "

On April 21, 1999, the District wrote a letter to Ms. Stubbs (Exhibit "4"), which reads:

"Mrs. Sharon Stubbs, President
United Steelworkers of America
Local 8262
Snow Lake, MB
ROB IMO

Dear Mrs. Stubbs:

The 1999/2000 budget has been finalized. Due to budgetary considerations and in the interest of maintaining an efficiency of operation, please be advised that the board has made the following decisions.

Effective September 1, 1999 the maintenance supervisor classification will become a part time position and shall work twenty-five (25) hours per week consisting of five (5) consecutive, five (5) hour days between the hours of 8:00 a.m. and 1:00 p.m.

Effective September 1, 1999 the librarian-technician part time hours will be reduced to 17.5 hours per week consisting of five (5) consecutive, 3.5 hour

days.

If you wish to discuss this further, please contact the writer."

It was as a result of that letter that the Grievances were filed.

On April 28, 1999 the District denied the Grievance and wrote to Ms. Stubbs (Exhibit "5")

Sharon Stubbs, President
The United Steelworkers of America
Local 8262
Snow Lake, MB
ROB IMO

Dear Mrs. Stubbs:

The Grievance Committee of the Board of Trustees rejects the two grievances dated April 27, 1999

Article 6.01 of the collective agreement refers to the hours of work for full time employees. As of September 1, 1999 the maintenance supervisor position is to be part time. The library technician position has been part time since the hours of work were reduced in 1994.

Article 6:03 states that "part time employees shall work such hours as assigned pro-rated based on the full time hours in article 6:01". The rejection of the grievances is based on these articles and any other applicable articles.

Pursuant to Article 11: 03, please advise if you wish this grievance to proceed to Step 3."

In addition to the Exhibits noted above, the Union filed Exhibit "6" being the Collective Agreement enforced between the parties between January 1, 1995 and December 31, 1997. Mr. Simpson pointed out and Mr. Skrypnyk agreed, that if the current Agreement (Exhibit "3") was clear on its face, and absent any finding of ambiguity, Exhibit "6" would not be relevant.

By way of opening comments, Mr. Skrypnyk pointed out that the two Grievances were affected by the same process. In his view, the language of the Collective Agreement was clear and unequivocal. The wording in the current Collective Agreement was not the same as in the past Agreement, and the District had acted improperly.

Mr. Simpson stressed that special attention should be paid to the provisions of Article 3, being the Management Rights clause, Article 6, being the Hours of Work clause, and certain other portions of the Agreement. Further reference will be made to those sections.

Mr. Jackson gave evidence. He stated that he had been employed by the District for some 22 years and had been Maintenance Supervisor for 20 years and was responsible for supervision of two full time employees, one part time employee and three casual ones. His duties included, *inter alia*, setting out their work, opening the building, ordering supplies and generally was in charge of maintaining the

fixtures and all of the physical plants of the District. He was also in charge of keeping the records of his department and arranging for contract work, which was not able to be done "in house".

Generally, his hours were from 8:00 a.m. until 4:00 p.m. and at one time had been until 5:00 p.m. He had been a full time employee and was never approached to change his status. He certainly had not agreed with the actions of the District as set out in Exhibit "4".

He was Secretary of the Union and had been on the Bargaining Committee on a number of occasions, and during the last negotiations. He could not recollect any discussions respecting any change of hours or status of employ for his position.

With respect to the Library Technicians, he could not recall there being any discussion as to changes in that classification. He noted, however, that during the negotiations, there had been a change to Article 6:01 in that reference was now made to full time employees in the first paragraph and that Article 6:03 dealing with the concept of part time employees had been added for the first time.

In the past, anytime there had to be a staff reduction, it was the part time positions which had been eliminated. There had been no discussion about changing his full time position into a part time one. There was no agreement between him and the Employer or between the Union and Employer as to any such change. He noted that according to Exhibit "4" his position had been changed from that of Supervisor to a part time position working 25 hours per week consisting of five consecutive five hour days from 8:00 a.m. to 1:00 p.m.

During cross-examination, he agreed that he was still working from 8:00 a.m. to 4:00 p.m., although he had previously worked from 8:00 a.m. to 5:00 p.m. The District had one school, which presently had approximately 270 students, and previously had about 500. He agreed that he was working days and that there were two Night Custodians who worked from approximately 3:30 p.m. until 11:00 p.m., and there was a slight overlap of a half an hour. He acknowledged that the position of part time maintenance staff had been eliminated for a period of time and then had been reinstated. There was no dispute that the board had stated that it had to "cut back" and had asked him to examine the workload in his department. He did not come up with any solution to reduce costs and admitted that the most significant and largest portion of the cost of his department was for labour. He was referred to Exhibit "4" which stated that his position was to become part time with reduced hours, and similarly, that the part time Library Technician's hours would be reduced. With respect to his personal situation, he acknowledged that he had said that if the District went ahead with its plans, he would exercise his seniority and bump out the other employees so as to get his full hours. However, he would still have suffered a loss. He acknowledged that during discussions, the District had taken the position that it had the authority to make changes under the Management Rights Clause, but he was adamant that the Union had disputed that. He was not sure why the District wanted the changes that had been made to the Collective Agreement in Article 6:01.

During re-examination he stated that he had never received a layoff notice other than in the previous Exhibits. In response to questioning by the Arbitrator, he stated that he was working full time.

Ms. Stubbs gave evidence. She has been with the District for 26 years as an Administrative Secretary. She is President of the Union and has served on many of the negotiating committees. She stated that the hours of Librarian had been reduced, but by agreement between the Union.

She acknowledged that Article 6 was changed, and in her view, it was done because the District wanted some rights with respect to the part time individuals. There had been no agreement at any time to cut anyone's hours other than those of the Librarian's from 40 to 35. There had never been any approval of reducing the full time positions to part time positions.

During cross-examination, she agreed that the reduction of student enrolment had occurred over a number of years. She also acknowledged that the Librarian had been working less than 40 hours, and that at one time an attempt had been made by the District to do away with a custodial position. She agreed that during the course of negotiations, there had been some talk about the ability of the District to assign positions, but nothing definite was arranged. The board had asked to reduce the hours of work to 35 and it was agreed. With respect to reducing the Librarian's hours, she stated that was a specific instance where one individual was red circled. She did not dispute that under Article 6:03 a part time employee could be assigned hours pro-rated to those in Article 6:01. However, she was adamant that only applied to the part time employees.

Mr. Arnold Assoignon gave evidence on behalf of the District. He is a Secretary-Treasurer and had been employed for a number of years as Superintendent. He had been present during the testimony and confirmed that the enrolment had dropped from some 500 students to 270 students. He reviewed the District budget and noted that there would be a deficit. As a result, the District had to assess the costs in all departments, and accordingly the changes set out in Exhibit "4" were required to bring the budget into balance. In his view, Exhibit "4" clearly reflected the decision of the District, and it was a decision which had to be made.

Mr. Joe Trubyk, a staff member of the Manitoba Association of School Trustees, gave evidence. He had consulted with the District and was familiar with the Collective Agreement and was the Labour Relations Consultant to the District. He reviewed his interpretation of Article 6 and he had been involved in the discussions with respect to the changes. The District felt that it had the unilateral right to determine the hours of work for the Librarian and it could assign less than 40 hours. He acknowledged that the Union did not agree. As a result of the position taken by the Union to bolster its position, the District added Article 6:03.

During cross-examination, he reviewed the negotiations which had taken place on a "face to face" basis with the Union representative. There had not been many meetings of the committees. A number of items required clarification, and therefore Article 6:01 was amended to restrict it to full time employees and Article 6:03 was added to cover part time employees. He was adamant that the Union had agreed that the Library Technicians would work 35 hours instead of 40.

In argument, Mr. Skrypnyk submitted that the language in Article 6:01 was clear and unequivocal and that full time employees were entitled to the protection that Article granted. He acknowledged that under Article 6:01(d) that reference was made to permanent part time Custodians, and that their hours might be changed in accordance with Article 6:03. However, that did not apply to full time. In fact, the Union had agreed to the Library Technician's hours being reduced from 40 hours to 35 hours, but that was by agreement, and not by the unilateral decision of the Employer.

He was adamant that Article 6:02 specified that there had to be mutual agreement with respect to any change in the hours of work, and, in his opinion, there was no evidence that it related only to the shifts of various employees. In his view, although there may have been some evidence which established that the parties were not in agreement as to the effect of the changes, nevertheless they had resolved and finalized the wording and were bound by it. He reviewed the negotiations and again stressed that if Article 6:02 was to be restricted only to shift changes, then it would have clearly specified that.

He submitted that to accept the position of the Employer would establish and confirm that the Employer had sought to simply set an ambush for members of the Bargaining Unit, and was "lurking in the woods".

Mr. Simpson was of the view that the evidence of the negotiations should only be considered if there was any ambiguity. However, even if such evidence was admitted, it was not clear and was contradictory.

The one thing that was clear, in his opinion, was that the onus rested on the Union to establish a breach of the Collective Agreement and that it had not done so. If it was admitted that Article 6:03 permitted the Employer to deal with permanent part time Custodians and their hours as set out in Article 6:01(d), then he queried as to why it did not apply to the other employees.

It was necessary to consider the entire issue and the economic climate at the time, and that the issue had arisen over the reduction of the hours of the Library Technician. Wording was changed because the Employer wanted, quite properly, to make it clear.

With respect to Mr. Jackson, he stated that there was nothing which prevented employees from being laid off, and Mr. Jackson acknowledged that he could have bumped into other positions. There was no guarantee of employment under the Agreement. The Employer had the right, under Article 3:01 to determine the services necessary for the efficient operation of the school. Additionally, there was nothing in the Collective Agreement which guaranteed the hours of work.

Mr. Simpson referred to the following cases:

Re Lumber & Sawmill Workers, Local 2995. and Kokotow Lumber Ltd. 22 L.A.C. 48

Re James Howden & Parsons of Canada Ltd. and International Brotherhood of Boilermakers, Local 637 6 L.A.C. (2^d) 166

Re Air Canada Vacations (Touram Inc.) and Canadian Auto Workers, Local 2213 65 L.A.C. (4th) 120

Re City of Calgary and Amalgamated Transit Union, Local 583 48 L.A.C. (4th) 229

It is perhaps important to note the relevant sections of the Collective Agreement. These are as follows:

“3.01 The Union recognizes the right of the District to determine matters in respect to employment, subject to the provisions of this Agreement, the operating of schools and direction of the work force, including the right to hire, suspend or discharge for just cause, to assign to jobs; to classify; to promote; to transfer employees among the schools; to increase; decrease or re-organize the work force; to determine the services necessary for the most efficient operation of the schools, is clearly a function of management and is vested exclusively in the District or its agent. The District agrees that it will not exercise any of the foregoing rights of this clause in a discriminatory manner.

3.02 The District agrees that any exercise of rights and powers under this Article in conflict with any of the provisions of this Agreement shall be subject to the provisions of the grievance procedure."

"ARTICLE 6 - HOURS OF WORK

6.01 The regular hours of work for full time employees under this agreement shall be as follows:

- (a) Maintenance Supervisors shall work forty (40) hours per week consisting of five (5) consecutive, eight (8) hour days between the hours of (8:00) A.M. and (5:00) P.M
- (b) Administrative Secretary shall work thirty-five (35) hours per week consisting of five (5) consecutive, seven (7) hour days between the hours of eight-thirty (8:30) A.M. and four-thirty (4:30) P.M.
- (c) Custodians shall work forty (40) hours per week consisting of five (5) consecutive, eight (8) hour days between the hours of three (3:00) P.M. and twelve (12:00) midnight.
During the period when school is not in session, the hours of work shall be between eight (8:00 A.M. and five (5: 00) P.M.
- (d) Permanent Part-time Custodians shall work twenty-two and a half (22 1/2) hours per week consisting of four and a half (4 1/2) hour days. More hours will be approved if justified by the Maintenance Supervisor, to be paid at regular rate.
- (e) Librarian-Technician shall work forty (40) hours per week, consisting of five (5) consecutive, eight (8) hour days.

6.02 The above hours of work may be changed by mutual agreement between the District and the employee.

6.03 Part time employees shall work such hours as assigned prorated based on the full time hours in article 6:01."

Reference has been made to Article 7, but we do not feel it necessary to recite it.

There is no question that under Article 3, Management has substantive rights and in particular we note: "... to determine the services necessary for the most efficient operation of the schools ...". However, Article 3:02 restricts Management's rights to the other terms of the Collective Agreement. Article 6, in its entirety is somewhat unique. It mandates what the regular hours of work are for full time employees and, under Article 6:02, those hours cannot be changed unless there is mutual agreement. The one

exception is that under Article 6:03, the hours of part time employees can be varied. The only part time employees referred to in Article 6:01 are those in 6:01(d) who are permanent part time Custodians. Another exception is that the Library Technicians have agreed to work 35 hours per week instead of 40, but this was by agreement.

The terms of any Collective Agreement are to be interpreted in accordance with the plain and simple meaning of the language chosen by the parties. The exception to this, of course, is if there is an ambiguity in the wording.

I am satisfied that there is no ambiguity in the terms of the Collective Agreement, and accordingly, I am not considering the evidence respecting the bargaining or negotiating, nor am I considering the terms of the previous Collective Agreement.

I have carefully considered all of the cases submitted by Mr. Simpson. I do not take issue with any of those cases which state that the specification of hours of a shift is not a guarantee that the employees will receive that number of hours of work. In order to have that protection, the Agreement must specifically state so.

I note the comments of Arbitrator Shime in Re Lumber & Sawmill Workers, Local 2995, and Kokotow Lumber Ltd. case where he said at page 2:

"We are also satisfied that had the parties intended a guaranteed work week for all the employees they would have made a specific provision similar to the one concerning millwrights . . ."

However, those cases, as must always be done with precedents that are quoted, must be interpreted in accordance with the terms of the Collective Agreement in the case. My reading of those cases does not reveal any clause similar to Article 6:02 which mandates that there be a mutual agreement between the District and the employee. Some of those cases do make reference to meetings between representatives of the Bargaining Unit and the Employer if there is to be a change, but they do not have the clear and simple language of this Collective Agreement.

It must be noted that there is no guarantee of employment of any person in the Bargaining Unit. The Collective Agreement describes what is to happen, but there is no prohibition against layoff.

Article 17 is a lengthy Article dealing with seniority and this Agreement clearly recognizes the principle of seniority and its value to members of the Bargaining Unit. In essence, the Article provides that any layoff or work reduction is to be done in accordance with the seniority rights of the individuals and further, that an employee who is transferred to meet the employer's convenience to another job is entitled to salary maintenance.

Mr. Jackson was not a part time employee. Admittedly, there is no obligation on the Employer to maintain the position of Maintenance Supervisor (or even of Librarian), but if such individuals are maintained in their position, then their hours of work, under Article 6:02 cannot be varied without their consent.

It would appear from the evidence that Mr. Jackson is doing the same work as done previously. His position was stated to have been reduced to a part time one and to be only working 25 hours per week

rather than 40. He confirms he is still basically working full time. Similarly, the part time Library Technician's hours were to be reduced from 35 to 17.5. Mr. Jackson has remained in his position and there is no evidence that he is not doing the same work as done previously. His hours of work, in accordance with the Agreement, cannot be changed without his approval.

If the Library Technician was working on a part time basis, the hours of work could be changed under Article 6:03. If, on a full time basis, they could not be so changed. The question is whether the Library Technician was working on a full time or part time basis. I do not have that evidence.

It should be noted that the Employer is not obligated to maintain any particular position, but once it makes a decision to do so, then in my opinion, it does not have the right to unilaterally reduce the hours of full time employees under Article 6:02. It can do so under Article 6:03 with respect to part time employees.

I have concluded that the Grievance be allowed with respect to Mr. Jackson as he is doing the work he had done as Maintenance Supervisor. If the Librarian Technician is working full time, then the hours of that incumbent are to be maintained. If, on the other hand, the incumbent was working on a part time basis, then the hours can be reduced.

As mentioned, the Employer is not obligated to maintain any particular positions and is entitled to rearrange its workforce under the provisions of the Management Rights Clause, but it cannot maintain employees in the same position on a different basis, or for lesser hours, unless there is an agreement.

As mentioned, the Grievance of Mr. Jackson is allowed, and the Grievance with respect to any Library Technician working on a full time basis is allowed, subject to the agreement of the parties that it only be 35 hours. The Employer is entitled, under Article 6:03 to reduce the hours of part time employees on the further condition, of course, that they be prorated on the same basis as set forth in 6:03.

Subject to the above, the above Grievances are allowed, and I am retaining jurisdiction to resolve any disputes which may arise to compensation, if any should be due, if it cannot be resolved by the parties.

The parties shall be jointly responsible for my costs.

I wish to thank Mr. Simpson and Mr. Skrypnyk for their presentation of the cases. There has been a delay in the publication of this Award, and I apologize to the parties for that delay.

DATED at Winnipeg this 22 day of June, 2000

JACK M. CHAPMAN, Q.C, SOLE ARBITRATOR