IN THE MATTER OF AN ARBITRATION UNDER THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996

BETWEEN:

PACIFIC NEWSPAPER GROUP

(the "Employer")

AND:

COMMUNICATIONS, ENERGY AND PAPERWORKERS' UNION OF CANADA, LOCAL 2000

(the "Union")

Re: Funding-Electrical Part "C" and Mechanical Part "D" Grievance

ARBITRATOR:	John Steeves
COUNSEL:	Israel Chafetz, Q.C. for the Employer Alan Black, Q.C. for the Union
DATE OF HEARING:	September 22, 2008
PLACE OF HEARING:	Vancouver, B.C.
DATE OF DECISION:	November 5, 2008

A. INTRODUCTION

1. This is a decision about whether the payment of long term and short term disability benefits are a "paid shift" under the collective agreement. If they are paid shifts then the Employer is required to make contributions to a Union managed dental plan.

2. The Union submits that there is no ambiguity in the collective agreement and it requires the Employer to make contributions "per paid shift" as that term is used in the agreement. Therefore, long term disability (LTD) and short term disability (STD) payments are included in a "paid shift". Further, the dental plan, although it is Union run, is still a benefit to employees and the collective agreement states that the Employer "shall continue to pay for benefit plans during absences due to illness" and other circumstances. The Union also relies on other examples of contributions to the dental plan that are made while an employee is not at work, including sick leave and others. As a remedy the Union seeks a declaration that the Employer is required to make contributions to the dental plan from March 11, 2008 (the date of the grievance) forward. No retroactive amounts are sought.

3. The Employer submits that there is considerable ambiguity in the collective agreement about the issue raised in this grievance. The phrase "paid shift" is capable of various meanings as reflected in different provisions of the agreement applying to different components of the bargaining unit, according to the Employer. Further, the Employer places considerable reliance on a past practice since 1982 of not paying contributions to the dental plan for LTD and STD payments. They accept that they are required to make contributions to the dental plan in some circumstances such as jury duty, bereavement leave and vacation pay. But payments for LTD and STD are of a different character. Overall the Employer submits that their obligation is to make contributions for the payments

that are consistent with "paid shift" and LTD and STD benefits are not included in this obligation. The Employer submits that the grievance should be denied.

B. BACKGROUND

4. The history to this grievance begins in 1982. At that time the Employer's operations were structured around separate certificates for seven bargaining units of employees and seven separate collective agreements. The areas covered by these agreements were: the Building Services and Information Technology (Kennedy Heights), Composing Room, Electrical Department, Mechanical Department, Mailroom Department, Pre-Press Department and Pressroom Department. As will be seen it is the Electrical and Mechanical Departments that are at issue in this grievance.

5. In 1996 there was a consolidation of the seven bargaining units as a result of an application by the Employer to the Labour Relations Board. The result was one bargaining unit and one collective agreement. However, the single collective agreement included seven components that reflected to a considerable degree the separate collective agreements in existence before the consolidation. The new single collective agreement, with the seven components, was ratified in 1999. The component agreements are as follows: Part A (Building Services and Information Technology (Kennedy Heights)), Part B (Composing Room), Part C (Electrical Department), Part D (Mechanical Department), Part E (Mailroom Department) and Part F (Pre-Press Department and Pressroom Department).

6. The primary focus of this grievance is two Letters of Agreement between the parties with regards to Parts C and D of the collective agreement, the Electrical and Mechanical Departments respectively. For convenience I will be referring to Letter of Agreement #4 in the Electrical component agreement. It is the same as Letter of Understanding #5 in the Mechanical Department component agreement and this award applies to both letters and Parts C and D of the collective agreement. Letter of Agreement #4 is as follows,

FUNDING

> IT IS AGREED that $6.66 *per paid shift* will be paid to the individual Union member employee from December 1, 2006 to November 30, 2007, $6.86 *per paid shift* will be paid to the individual Union member employee from December 1, 2007 to November 30, 2008, $7.07 *per paid shift* will be paid to the individual Union member from December 1, 2008 to November 30, 2009 and $7.32 *per paid shift* will be paid to the individual Union member from December 1, 2009 to November 30, 2010 (with the exception of paid shifts of the General Foreman whose said amount will be added to his contribution to his Pacific Newspaper Group Pension Fund if in accordance with the rules of the Plan.
>
> New Employees hired after the date of ratification (July 1999) will be required to join the Welfare Plan for CEP members.

I have italicized the phrase "per paid shift" as it is the subject of this grievance.

7. With two exceptions, Letter of Agreement #4 has remained the same over the years. The first change was that each of the numerous rounds of bargaining since 1982 included an increase in the dollar figure to be paid per shift. The other change is the second paragraph, with the reference to July 1999. Prior to that date employees in the Electrical and Mechanical Departments could elect to receive the contributions described in the Letter of Agreement as a cash payment. However, as a result of the 1999 change, these employees were required to make a one-time election (effective July 1999) on whether to take the cash or have the Employer make contributions on their behalf. Any new employees do not have an election and the Employer makes contributions on their behalf.

8. Letter of Agreement #4 is the basis for Employer contributions to a dental plan. There is no dispute that the dental plan is administered pursuant to a trust agreement between the Union and the trustees of the plan. The articles of the trust document state that the qualifications for trustees are that they should be "selected from amongst persons who are members in good standing of CEP Local

2000". There are no Employer representatives on the plan, the Employer is not involved in the administration of the dental plan and nor is it otherwise part of the collective agreement. Mr. Brian Norris, the Human Resources Manager for the Employer, testified that a cheque is regularly sent to the Union with an itemized list of the contributions. Further, the accountant for the Union administers various aspects of the Plan and the clerical staff of the Union deal with questions about the plan such as coverage.

9. It is agreed that the Employer makes contributions under Letter of Agreement #4 to the dental plan for employees who are working, who are on paid vacation, for employees on statutory holidays, for employees on jury duty, for the first three days of parental leave (up to five days are permitted but only three days are paid) and for employees on bereavement leave. It is also agreed that the Employer makes contributions for the first five days (one work week) of sick leave entitlement under Article 19. With respect to jury duty and bereavement, Norris explained that in each case "it is wages going through our payroll system and that is the determining factor".

10. The issue in this case is whether the employer is required to make contributions to the dental plan for LTD and STD payments. Pursuant to Article 20, an employee may be entitled to STD benefits from the second week of any disability, up to fifteen weeks (after the five days of sick time is used). LTD benefits start on the sixteenth week with a formula determining benefits for two time periods (from the sixteenth week to age 65 and after age 65).

11. The Employer takes the position that they do not have to make contributions for STD and LTD or for employees on workers' compensation or on an unpaid leave of absence. The Union accepts that the Employer does not need to make contributions for employees on an unpaid leave of absence but the grievance in this case asserts that contributions are to be made for STD and LTD payments. The issue of workers' compensation arose during the course of the hearing and

the Union also submits that the Employer is required to make contributions to the dental plan in this case as well.

12. Mr. Robert Osipa, a representative of the Union, testified about the origins of the grievance in this case. In late 2006 or early 2007 Osipa received a call from a member of the Union, Mr. Art Sear, who said that he had been on STD or LTD and he was no longer covered by the dental plan because the Employer was not funding contributions on his behalf. Sear worked in either the Electrical or Mechanical Departments. Osipa contacted the Employer and confirmed this was the case. He testified that this was the first time that anyone in the Union knew that the Employer was not making contributions to the dental plan for those on STD or LTD benefits.

13. Following some inconclusive discussions between the Employer and the Union, the latter filed a grievance on February 12, 2007. It alleged a violation of Letter Agreement #4, the Hours of Work provision (Article 10(h)) in the Electrical component agreement (Part C). It also cited the equivalent provisions in the component agreement for the Mechanical Department (Part D).

14. There were further discussions between the Union and the Employer and the latter's position was that they did not accept there was a violation of the collective agreement. Norris, the Manager of Human Resources and Labour Relations for the Employer, testified that the reason for denying the grievance was based on the language in the collective agreement as well as the long history of not paying contributions for LTD and STD benefits.

15. Osipa, the Union's representative, testified that another reason given by the Employer for denying the grievance was that the dental plan trust agreement did not permit contributions to be made for LTD and STD benefits. In his evidence Norris denied this was a reason he gave to the Union for denying the grievance. There is a document in evidence titled "Vancouver Newspaper Guild Health and Welfare Plan Dental Policy" that is undated except for a handwritten date of

"October 30, 2001". Among other things this document states, "Members who are on LTD will no longer be eligible for dental". Osipa testified that he did not see this document until after his discussions with the Employer about the grievance.

16. After the above discussions between the parties, Osipa approached the dental plan trustees and requested an amendment to the plan to include the following,

> Where an eligible member is accepted on LTD, and the Employer is required to contribute to the Health and Welfare Plan, the member shall remain eligible to be in Health and Welfare Plan.

At a meeting on October 4, 2007, the trustees of the dental plan approved this amendment. The evidence does not explain why STD benefits were not included in this amendment. On the same date the Union's grievance was withdrawn on a without prejudice basis.

17. On March 4, 2008 Osipa sent an email to Norris explaining the change to the dental plan. Osipa also requested that the Employer review their position on funding for dental coverage of employees on LTD and STD in the Electrical and Mechanical Departments. In a reply dated March 6, 2008 Norris stated that the change to the dental plan did not change the Employer's position.

18. The Union then filed a second grievance dated March 11, 2008. This grievance noted the change to the dental plan and it initiated a policy grievance on behalf of the Union with regards to the failure to make contributions to the dental plan for employees on LTD benefits.

19. It is this grievance that is the subject of this arbitration.

C. DECISIONS AND REASONS

20. I begin by restating the issue in this grievance. The Union submits, as a matter of interpretation of the collective agreement, that the payment of LTD and STD benefits are a "paid shift" for the purposes of Letter of Agreement #4. If they are correct, then the Employer is required to pay contributions on LTD and STD benefits to the dental plan. On the other hand, the Employer submits that the payment of LTD and STD benefits are not a "paid shift", that the practice of the parties over many years confirms this interpretation of Letter of Agreement #4 and, therefore, there is no requirement to make contributions to the dental plan.

(a) The Articles of the Dental Plan

21. As discussed above, the dental plan is a creation of a trust agreement between the Union and the trustees of the plan. The Employer's involvement in the dental plan is limited to making regular payments to the Union and the latter administers these funds and deals with many matters related to coverage under the plan.

22. There is evidence that the trustees of the plan amended the articles of the plan to permit an eligible member "accepted on LTD" to also be eligible for benefits for payments under the plan. This amendment was obviously done in good faith and the trustees were prudent enough to include the requirement that "the Employer is required to contribute to the Health and Welfare Plan" as part of the amendment. However, I am unable to find that this development is of great significance for the grievance before me. The grievance involves the interpretation of the collective agreement between the Union and the Employer and the trust agreement for the dental plan is not determinative of the interpretive questions that arise under the collective agreement.

23. All that can be said on this point is that if the Employer is required to make contributions to the dental plan, there do not seem to be any obstacles to the plan receiving those contributions. But, again, that is something for the trustees to determine on their own.

24. A related matter is the document with the handwritten date of October 30, 2001 and titled "Dental Policy"; it states, "Members who are on LTD will no longer be eligible for dental". The evidence is that the parties became aware of this document after the grievance was denied. Further, as above, the issue of coverage by the plan is not determinative of the issue under the collective agreement about whether the Employer is required to make contributions to the plan.

(b) "Per Paid Shift" (Parts C and D of the Collective Agreement)

25. In this case there is no evidence of previous bargaining history and, therefore, the meaning of "per paid shift" is to be determined on the basis of general principles of contract interpretation. The following is a list of the principles of contractual interpretation that are often followed by arbitrators,

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for an interpretation is the collective agreement.
3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.
4. Extrinsic evidence may clarify but not contradict a collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one that places them in conflict.
7. All clauses and words in a collective agreement should be given meaning, if possible.
8. Where an agreement uses different words one presumes that the parties intended different meanings.

9. Ordinarily words in a collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

(*Pacific Press v. Graphic Communications International Union, Local 25-C*, [1995] B.C.C.A.A.A. No. 637 (Bird), at paragraph 27).

Arbitrator Bird also pointed out that, "not all rules of interpretation are rigidly binding. Common sense and special circumstances must not be ignored" (paragraph 27).

26. Other authorities have discussed these issues and established that an arbitrator cannot depart from the plain meaning of the agreement between the parties unless there is some ambiguity in the language of the agreement (*Federated Co-operatives Ltd. and IWA-Canada, Local 1-417*, BCLRB No. B39/94, at pages 7-8). Nonetheless, I am also empowered to "inquire into all of the background material which, as a matter of practical, common sense, is helpful in the interpretation of the collective agreement in order to discover the actual intent of the parties who wrote it" (*University of British Columbia and Canadian Union of Public Employees, Local 116,* [1977] 1 C.L.R.B.R. 13 (Weiler) at page 17). This is because labour relations are a reflection of a "real-life bargain" and not a "purely literary exercise" (page 18). Further, extrinsic evidence may demonstrate an ambiguity because "ambiguity lurks within even apparently clear clauses" (*Nanaimo Times Ltd. and G.C.I.U., Local 525-M,* [1995] B.C.L.R.B. No. 250, paragraph 33, citing the award under review (July 24, 1995, (MacIntyre)).

27. Focusing on the specific language in Letter of Agreement #4, there is the phrase "per paid shift". This is critical to this grievance because, if LTD and STD payments are a "paid shift", then the Employer is required to make contributions to the dental plan for employees receiving LTD and STD payments. There is disagreement between the parties about whether there is any ambiguity in this phrase. The Union submits there is no ambiguity and, on its face, it includes LTD

and STD benefits; the Employer says there is considerable ambiguity and, therefore, I must look at the history of the Employer not making contributions over a number of years.

28. In my view there is some ambiguity in the phrase "per paid shift". I say this because it raises the question of what is a "shift" instead of answering that question. It does not say, "per shift *worked*" as is the language in other component agreements. The other component agreements provide examples of other applications of "shift", although as discussed below they may not be determinative of the interpretative issue in this case. For example, the phrase "for each shift worked" is used in the Building Services & Information Technology (Kennedy Heights) component agreement (Part A, Article 15). Nor does Letter of Agreement #4 state "per shift, *whether worked or not*" (my construction).

29. As a result of this ambiguity, further analysis is necessary to look beyond the specific language of "per paid shift". A useful starting point is to note that there is no dispute that contributions to the dental plan by the Employer are required for shifts that an employee has not actually worked. As above, contributions are made for paid vacation, paid sick leave (for the first five days/one week), statutory holidays, parental leave (for the first three paid days), bereavement leave and jury duty. I agree that the payment of contributions to the dental plan for these benefits is consistent with the phrase "per paid shift". This is because Letter of Agreement #4 does not say shift *worked* and "shift" can reasonably be interpreted to mean something other than hours worked.

30. In this sense "shift" is a unit of entitlement rather than a description of actual work and the entitlement is typically calculated in some specific manner. In the case of sick leave, for example, the collective agreement stipulates that the first five days (one week) of sick leave are paid by the Employer (subject to a number of conditions such as the Employer's right to require a medical certificate in some circumstances). If the sickness continues beyond five days an employee may be entitled to short term disability benefits from the second week of any disability,

up to fifteen weeks. Long-term disability benefits, under Article 20, start on the sixteenth week with a formula determining benefits for two time periods (from the sixteenth week to age 65 and after age 65). It is agreed that the Employer makes contributions to the dental plan for the five days of sick leave but, as reflected in this grievance, they do not make contributions for LTD and STD payments.

31. In the cases of sick leave, STD and LTD benefits the employees are not working and there are medical and/or psychological reasons for the absences from work. In terms of Letter of Agreement #4, sick leave is a paid shift but absence from work for the same sickness, but under STD or LTD, is not a paid shift, according to the Employer. Is this distinction justified under the collective agreement?

32. It is true that the carrier of the STD and LTD plan makes the payment of STD and STD benefits while sick leave is paid through the payroll department of the Employer. As Norris, the Employer's Human Resources Manager put it, "It is wages going through our payroll system and that is the determining factor". However, this approach appears to be oriented to shifts worked in the sense of payment for work, rather than the actual language of "per paid shift". Therefore, I am unable to find that this essentially administrative issue is one that determines the meaning of the phrase "per paid shift".

33. A related matter is that the evidence also demonstrates that the Employer has what could be described as less control over dental plan coverage than over other things like sick leave. This is because the plan is entirely run by the Union through a trust agreement with the plan's trustees and coverage issues are primarily within the union's control. I take the point to be that the Employer can control or even deny sick leave but they cannot do either for the dental plan. It is unlikely that this is a cost issue (and it was not presented in those terms by the Employer) since the Employer's contributions to the dental plan are defined in the collective agreement and are not defined by the benefits paid by the plan. In

any event, in my view, this too is an administrative or operational issue that is not determinative of the legal issues in this grievance.

34. Returning to the collective agreement itself, I note Article 10(h), under "Hours of Work and Overtime", states,

> h) All days off work due to illness, jury duty, subpoenaed witness duty, bereavement leave, workers' compensation or other paid leave shall be counted as days worked for determining other entitlement.

This is broad language inasmuch as it refers to "All days off due to illness" as well as some specific occasions when the Employer pays contributions to the dental plan (jury duty etc.). Vacation pay and sick leave are not mentioned, although sickness can be taken to be the same or very similar to illness. The phrase "counted as days worked for determining other entitlement" is similarly broad. Overall, Article 10(h) supports a conclusion that days off "due to illness" while on STD and LTD are to be counted as days worked – or as a "paid shift" – for determining employees' entitlement to dental plan coverage.

35. The Union urges me to find that the dental plan is a "benefit" for the purposes of Article 20 which is as follows,

> The Company shall continue to pay for *benefit plans* during absences due to illness or accident when covered by a Company, Company-Union Trust or Benefit Society policy or by Workers' Compensation. Similarly, *benefits* will continue to be covered while serving on a jury. (Emphasis added).

36. The phrases "benefit plans" and "benefits" are also broad terms on their own and they are not defined in the collective agreement. Generally speaking, I find that there is nothing in Article 20 that is inconsistent with my conclusion that "per paid shift" includes LTD and STD benefits and nor is it inconsistent with my interpretation of Article 10(h).

37. I conclude that it is a reasonable interpretation of the phrase "paid per shift" in Letter of Agreement #4 that it includes LTD and STD payments. Further, this is an interpretation that is consistent with the application of that phrase in other situations under the collective agreement such as sick leave and consistent with Article 10(h) and Article 20 of Part C of the collective agreement. The same conclusions apply to Part D of the collective agreement.

(c) The Other Component Agreements

38. I have also considered the other component agreements (A, B, E, F) in the collective agreement. In some cases these parts of the agreement have different language about contributions by the Employer to various benefits, including dental benefits. For example, the component agreement that applies to the Composing Room (Part B of the collective agreement) includes Article 47 and this states that the Employer will make a contribution "per shift per employee" and later in the Article it refers to "any shift for which an employee receives compensation (e.g. Sick leave, vacations, holidays, disability insurance, bereavement leave, jury duty) ...". The component agreement for the Mailroom Department (Article 35, Part E) contains the same language.

39. The component agreement for the Press Room Department (Part G) states that contributions will be made for "each shift worked including paid vacations and paid statutory holidays, paid bereavement leave and paid jury duty or any other straight time shift for which the employee receives compensation, ... (Article 31 b)). The component agreement for Building Services and Information Technology (Kennedy Heights) (Part A), like the language in the Press Room Department component agreement, contains the phrase "each shift worked" but it does not have the reference to paid vacations, etc. The component agreement for the Pre-Press Department (Part F) is not at issue in this grievance.

40. I return to the principles of contract interpretation as described in *Pacific Press, supra,* above. It may be recalled that one of those principles is that

different words presume different meanings. For example, if one part of a collective agreement uses the phrase ""shift worked" and another part of the same agreement uses the phrase "per paid shift" there is a rebuttable presumption that the parties intended different meanings to these different terms. However, this assumes that the differing words or phrases are negotiated at the same time or, at a minimum, within the context of the same agreement. The evidence in this case is that the different component agreements are the result of the consolidation of a number of separate collective agreements in 1999.

41. The significance of this is that it may not be appropriate in this case to strictly apply the presumption that different words or phrases are presumed to have different meanings. Historically, although there was one Employer there were a number of Unions and there may have been historical reasons for the different language as opposed to meanings that should be applied to all the component agreements. That is, the differences in language may have more to do with historical differences than reasons that reflect different contractual intentions by the parties. On the other hand, there is no evidence of collective bargaining that explains these differences (beyond the obvious differences in language) and there is no common term that can be applied to all components.

42. I accept that the language in the other component agreements is relevant in order, for example (and as above), to demonstrate in broad terms that there are other applications of "shift" such as "shift worked". Other than that observation I conclude that the above analysis (that "per paid shift" requires contributions to the dental plan for LTD and STD benefits) is an interpretation that is consistent with the specific language of Part C of the Agreement (and Part D). Put another way, the structure of the collective agreement and its history demonstrates that there are interpretive issues that are distinctive to some component agreements rather than the collective agreement as a whole.

(d) Past Practice

43. There is also the history of the parties' application of Letter of Understanding #4. As above, the evidence is that since 1982 the Employer has not made contributions to the dental plan for employees on LTD and STD benefits. The Union responds to this by saying they had no knowledge of this history until late 2006 or early 2007 when a member advised them that he had been cut off the dental plan because he had been on LTD and the Employer had stopped making contributions.

44. The parties are joined on the issue of the significance, if any, of this history as an issue of past practice. The leading award in this area is *John Bertram & Sons Co.* (1967), 18 L.A.C. 362 (Weiler), where the following was stated,

> Hence it would seem preferable to place strict limitations on the use of past practice in our second sense of the term. I would suggest that there should be (1) no clear preponderance in favour of one meaning, stemming from the words and structure of the agreement as seen in their labour relations context; (2) conduct by one party which unambiguously is based on one meaning attributed to the relevant provision; (3) acquiescence in the conduct which is either quite clearly expressed or which can be inferred from the continuance of the practice for a long period without objection; (4) evidence that members of the union or management hierarchy who have some real responsibility for the meaning of the agreement have acquiesced in the practice." (Page 368).

It is the fourth requirement that is primarily at issue in this case: whether there has been acquiescence by one party (the Union in this case) in the practice (the history of the Employer not making contributions).

45. The Employer submits that the lack of any challenge by the Union to the practice of not making contributions to the dental plan is, using language from a

previous award, an "extraordinary oversight" and "one which would not go unnoticed for many years" (*Pacific Press v. Graphic Communications International Union, Local 25-C*, [1995] B.C.C.A.A.A. No. 637 (Bird), at paragraph 29). The Employer submits that it was open to the Union to raise this issue and they did not. Since there is ambiguity in the term "per paid shift" the Union must be held to the parties' past practice about what that term means. That is, the parties' actions have been consistent with the Employer not making contributions. On the other hand, the Union submits that there is no evidence that any official of the Union acquiesced in the practice over the years.

46. In deciding this issue I note that there is no evidence of any union official discussing the practice of contributions to the dental plan and nor is there evidence from which their acquiescence can be inferred. It is true that members of the Union are trustees of the dental plan; indeed the articles of the plan require that status. Some trustees (perhaps three) were also members of the Union's bargaining committee and another trustee may have been a shop steward. However, in legal terms the plan is a separate entity from the Union and the knowledge of the former cannot be taken to be the knowledge of the latter. In any case, there is no evidence that the trustees of the plan acquiesced or even knew about the practice. It bears repeating that the requirement in *John Bertram & Sons. Co, supra*, on this point is for "evidence that members of the union or management hierarchy who have some real responsibility for the meaning of the agreement have acquiesced in the practice" (page 368). The evidence in this case is that no members of the Union with real responsibility for the meaning of the agreement acquiesced in the Employer's practice of not making contributions to the dental plan for employees on STD and LTD benefits.

47. It is also true that the Union received regular statements about the Employer's contributions to the dental plan and a careful review of those statements might well have revealed the absence of Employer contributions. But that is not the test to be applied. Previous awards have established that it is not reasonable or feasible to assume that the Union will conduct "spot audits" of the Employer's

transactions with the Union and the latter is "almost always moved to action by employee complaints" (*Pilkington Brothers (Canada) Ltd.* (1966) 17 L.A.C. 146 (Arthurs) at page 155; cited in *Hollinger Canadian Newspapers v. Vancouver Printing Pressmen, Assistants & Offset Workers' Union, Local 25 (C)*, [2004] B.C.C.A.A.A. No. 79 (McPhillips) at paragraph 36). There is no evidence of meetings, correspondence, or otherwise, on which to make a finding that representatives of the Union who had real responsibility for the collective agreement knew of the past practice over the years.

48. The award in *Pacific Press, supra,* is noted and the issue was whether the union in that case had bargained a specific wage rate for assistant foremen. The union's grievance was that the employer was paying assistant foremen more than the rate in the collective agreement and this resulted in enhanced benefits for them. Arbitrator Bird found that the union had not bargained for wages and benefits for assistant foremen "for many years, if ever" and the "thrust" of the wage structure was that pay increased with greater skills and responsibility (paragraph 29). In contrast, the facts in the case before me are that the Union did not know about the Employer not paying contributions to the dental plan for LTD and STD benefits. Unlike the *Pacific Press* award I cannot find that the Union had knowledge of the issues and did nothing about it over the years.

49. Overall I conclude that there was no acquiescence by a Union official with real responsibility for the meaning of the collective agreement in the history of the Employer not making contributions to the dental plan for employees on LTD and STD benefits.

D. SUMMARY & CONCLUSION

50. It is a reasonable interpretation of the phrase "per paid shift" in Letter of Agreement #4 of Part C of the collective agreement (and Letter of Agreement #5 in Part D of the agreement) to include STD and LTD benefits as a paid shift. This is also consistent with the interpretation of the same phrase by the parties to

include sick time, jury duty and other entitlements. This is consistent with a provision in the agreement that states, "all days off work due to illness ... shall be counted as days worked for determining other entitlement". The result is that I conclude that Letter of Agreement #4 requires the Employer to make contributions to the dental plan, as it does for sick time, jury duty and other entitlements.

51. While the Employer has not made contributions to the dental plan since 1982 the evidence is that no representative of the Union who had real responsibility for the meaning of the collective agreement acquiesced in this practice. Therefore, the Employer has not established the legal doctrine of past practice. As well, different language in other parts of the collective agreement is noted but it may not reflect different contractual intentions for historical reasons and, in any case, the language is not inconsistent with the conclusions of this award. Finally, the changes made by the trustees of the dental plan to the articles of the plan have no bearing on the interpretation of the collective agreement.

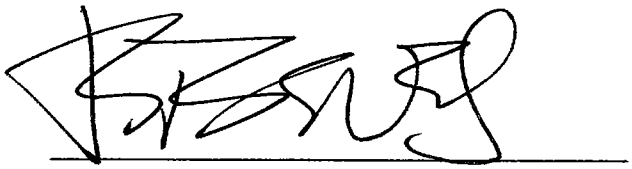
52. This award applies to Part C and Part D of the collective agreement.

53. The issues of whether the Employer is required to make contributions while an employee is on workers' compensation benefits or parental leave arose during the hearing of this grievance. These were not fully argued (and not referred to in the grievance) and I refer them back to the parties for consideration in light of this award. If they are unable to resolve these issues the parties may request a decision from me.

54. For the above reasons the grievance is allowed. I retain jurisdiction in the event there are issues with respect to the implementation of this award.

It is so awarded.

Dated this 5th day of November, 2008, in the City of Burnaby, Province of British Columbia.



John Steeves