

IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*, RSBC 1996 c. 244

Between

HERTZ CANADA LIMITED

(the “Employer”)

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES’
UNION, LOCAL 378

(the “Union”)

(VSA and CSR Layoff Grievances)

ARBITRATOR: John B. Hall

APPEARANCES: Earl G. Phillips, for the Employer
Pamela R. Costanzo and Stephanie T.
Mayor, for the Union

DATES OF HEARING: August 9-10, and September 14, 2010

PLACE OF HEARING: Vancouver, British Columbia

DATE OF FINAL
WRITTEN SUBMISSION: November 9, 2010

DATE OF AWARD: April 14, 2011

AWARD

I. INTRODUCTION

This proceeding arises from a grievance filed by the Union over the Employer's decision to lay off several employees in the fall of 2009. Two classifications were affected: Vehicle Service Attendant ("VSA") and Customer Service Representative ("CSR"). The Union contends the layoffs in both classifications were improper because its members were laid off out of seniority order; more specifically, senior full time employees were laid off while junior part time employees were retained. The Union submits this violated a Collective Agreement term which provides that "[t]he employee with the least amount of seniority *in any job* will be first laid off from that job" (emphasis added).

The Employer does not dispute the factual circumstances of the layoffs. It defends its actions by arguing the Collective Agreement does not preclude it from laying off full time employees ahead of less senior part time employees where there is a lack of full time work as occurred at the time. The Employer submits further that the word "job" must be interpreted as meaning not only the particular classification, but also the associated hours of work. It additionally says there is no express language in the Collective Agreement which prohibits the layoff of full time employees ahead of less senior part time employees.

A second issue raised by the grievance is whether one part time employee was scheduled for more hours than the 30 hours per week permitted by the Collective Agreement following the layoffs. This issue turns largely on an interpretation of the word "scheduled" in the relevant Collective Agreement provision. The Employer acknowledges the employee worked more than 30 hours during most of the weeks in question. However, it maintains she was never scheduled for more than 24 hours during any of the weeks, and the additional hours resulted from the employee volunteering for relief coverage and/or changing shifts with other employees.

The Union submits there is no meaningful distinction between “scheduled” and “hours written on the schedule”; accordingly, once a manager has written hours of work for an employee and posted those hours, that employee has been scheduled for purposes of the Collective Agreement. That is what occurred in the present case; the employee was so scheduled, and worked more than 30 hours per week on a regular basis.

This brief introduction sets out the primary issues raised by the grievance. The written submissions filed after the hearing reveal several other interpretive and evidentiary differences. Those matters will be identified and addressed in the course of this award to the extent that their examination proves integral to my analysis of the primary issues.

II. RELEVANT COLLECTIVE AGREEMENT TERMS

The parties’ submissions refer to numerous Collective Agreement provisions, as set out below. Those terms bearing most directly on the primary issues have been reproduced in italics:

HERTZ CANADA LIMITED

(hereinafter termed the “Employer”)

PARTY OF THE FIRST PART

-and-

**CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES’ UNION,
LOCAL 378**

(hereinafter termed the “Union”)

PARTY OF THE SECOND PART

as evidenced by signature(s) of their duly authorized representative(s) hereinafter affixed.

ARTICLE 1 - PREAMBLE

Purpose of Agreement

It is the intent of the Parties through this Agreement to:

- (a) Establish and maintain harmonious relations between the Employer and the Union and between the Employer and its employees represented by the Union;
- (b) Establish and maintain mutually satisfactory terms and conditions of employment for employees of the Employer who are subject to the provisions of this Agreement;
- (c) Provide an equitable method of resolving disputes and grievances arising out of the terms and conditions of this Agreement;
- (d) Establish and maintain collective bargaining.

ARTICLE 3 - DEFINITION OF EMPLOYEES

3.01 Employee Categories

All Employees hired by the Employer within the bargaining unit shall be categorized as either Full Time Regular, Part Time Regular or Casual Employees, as the case may be, as defined in this Agreement. All such Employees shall be subject to the probation period referred to in Article 14 of this Agreement.

3.02 Definition Of Fulltime Regular Employee and Application of Agreement

- (a) *"Full Time Regular Employee" means an Employee hired in accordance with this Agreement to perform work of a continuing nature on a full-time basis. The hours of work of such Employee shall be governed by Clause 19.03(a) and all other applicable provisions of this Agreement.*

3.03 Definition of Part Time Regular Employee and Application of Agreement

- (a) *"Part Time Regular Employee" means an Employee hired in accordance with this Agreement to perform work of a continuing nature on a part time basis. The hours of work of such Employee*

shall be governed by Clause 19.03(b) and all other applicable provisions of this Agreement.

3.04 Definition of Casual Employee and Application of Agreement

- (a) (i) "Casual Employee" means an Employee hired in accordance with this Agreement to work on a full time or part time basis to replace an incumbent Full Time Regular or Part Time Regular Employee who is absent from work for any reason, and for unusual peak work loads, and may be hired for a maximum of ninety (90) calendar days.

ARTICLE 15 - SENIORITY

15.01 Definition of Seniority

Seniority shall be defined as the length of an Employee's continuous service with the Employer within the bargaining unit, subject to the provisions of this Article 15.

15.03 Calculation of Seniority - Full Time Regular Employees

Full Time Regular Employees shall accrue seniority under this Agreement in accordance with Clause 15.02(a) above and all other applicable provisions of this Agreement.

15.04 Calculation of Seniority - Part Time Regular Employees

- (a) Seniority for Part Time Regular Employees shall be calculated on a pro-rata basis in accordance with the proportion of full-time equivalent hours worked, or deemed to have been worked. For the purposes of this calculation, it is agreed that the "full-time equivalent" hours on an annual basis shall be deemed to be one thousand nine hundred and ninety-two (1,992).

15.07 Portability of Seniority Within The Bargaining Unit

Any Employee who changes employment status from Full Time Regular or Part Time Regular Employee to another of these categories of employment, without a break in service, shall be credited with all seniority accrued in accordance with this Agreement prior to such change in employment status.

15.10 Seniority List

- (a) *The Employer shall compile and maintain an up to date seniority list including, but not limited to, the name, employment status, job title, job classification, hire date, seniority date and total hours worked of each Employee in the bargaining unit.*

ARTICLE 16 - HIRING AND PROMOTION

16.01

The Employer shall post and fill job vacancies from within the bargaining unit before hiring new regular employees, providing employees are available with the necessary qualifications to fill the vacant position. Where a vacancy has not been filled from within the bargaining unit or from the recall list, the Union will have the right to refer qualified employees from the Union unemployed roster, provided the Union realizes the Employer has no obligation to hire such referred employee.

16.02

Posting Job Vacancies

- (a) Except as expressly provided otherwise by this Agreement, all job vacancies shall be posted, in paper form, by the Employer on a bargaining unit wide basis for seven (7) consecutive calendar days to give all eligible Employees an opportunity to apply for the job(s).

(b) Job Posting To Contain Pertinent Details

A job posting shall state all pertinent details of the job including, but not limited to, job title, salary range, hours of work, duties, qualifications, any special conditions pertaining to the vacancy and the posting and closing dates of the job posting and the date by which the vacancy is to be filled. For Temporary vacancies, if the projected or actual end date for the job is known by the Employer, this information shall be included in the job posting. The Union will be notified whether the job posting is a result of a replacement, addition to staff or new position.

16.03 Eligibility For Posted Job Vacancies

(a) All Employees Are Eligible After Probation Period

All Employees who have completed their probation period per Article 14 shall be eligible to apply and be considered for any posted job vacancy, except as expressly provided by Clause 16.04 (e)(1) below.

16.03 (b) Eligibility of Laid Off Employees

All Employees who are laid off and who are eligible for recall pursuant to this Agreement shall be eligible to apply and be considered for any posted job vacancy during their period of recall.

16.07 Priority For Job Selection

In accordance with the provisions of this Article, preference in the filling of all job vacancies shall be given to candidates in the following order:

- (1) The Employee with the highest seniority who was previously displaced or laid off under Article 17 from the position now vacant. A job vacancy which is to be filled on this basis shall not require job posting.
- (2) The Employee with the qualifications and ability, in accordance with Clause 16.05 (b) above; and the highest seniority, in that order, who is the successful applicant on a job posting for the vacant position.
- (3) If there are no applicants within the bargaining unit who meet the qualifications the Employer may fill the vacancy by hiring outside the bargaining unit. Such outside hire must meet the qualifications for the job vacancy.

ARTICLE 17 - LAYOFF, RECALL AND SEVERANCE

17.01

If a reduction of staff is necessary, the Employer will first endeavour to make such reduction by attrition. Should this not be possible, the Company shall give as much notice as possible.

17.02 Notice of Displacement or Layoff to Union

(a) Due to Lack of Work or Being Bumped

The Employer will provide the Union and the employee with as much notice as possible but not less than a minimum of ten (10) calendar days prior written notice when regular employees are to be displaced or laid off due to a lack of work. This notice will specify the anticipated effective date of the displacement or layoff and the number, job titles and work locations of employees who may be displaced or laid off.

17.05

(a) *The employee with the least amount of seniority in any job will be the first laid off from that job, but may displace an employee in a similar or lower classification with less seniority providing they are able to satisfactorily do the job. Employees who are displaced from their jobs as a result of such bump back procedure may themselves bump employees having less seniority, in similar or lower classifications, providing they are able to satisfactorily do the job.*

(b) Employees on the recall list shall have first rights to any vacancy in their former job classification or to a similar classification for which the employee is qualified, and the employer will not hire for, nor transfer, nor promote to such a classification while an eligible employee is available from the recall list.

17.06 Recall

A regular employee who is displaced and laid off under this Agreement shall have the right for a period of two (2) years or his length of service whichever is less, from the date of his last being laid off to be recalled to work in accordance with Article 17.05(b).

17.15 Special Protection for Full Time Regular Employees

A Full Time Regular Employee who is recalled into any position having less than full-time hours of work shall continue to be treated in all respects under this Agreement as if he or she were a Full Time Regular Employee working full-time hours, save and except for the reduced hours of work. Such person shall continue also to be categorized as a Full Time Regular Employee.

17.16 No Reduction In Hours Of Work

It is agreed that there shall be no partial reduction of hours of work for any Full-Time Employees in lieu of displacement or layoff, without the mutual agreement of the Parties.

ARTICLE 19 - HOURS OF WORK AND SHIFTS

19.01

Each Full Time Regular and Part Time Regular Employee will have an established shift. Shifts and shift hours required will be designated by the Employer. Changes of shift bids shall be posted for the information of affected Employees for a minimum of three (3) calendar days with such shift bids to begin at the start of the next full week; and whenever possible, the Company shall post such bid at the beginning of the week prior to the effective date of the bid. Employees will select shifts in order of seniority.

19.02 Shift Changes

Employees will have the right to apply for a change of shift on an individual basis and, when practical, the Employer will make such change, provided there is not conflict with the provisions of Clause 19.01 above. Qualified Employees may arrange to exchange shifts or portions of shifts, on a temporary basis, provided prior approval is obtained from the supervisor(s) concerned. There will be no penalty to the Employer for such temporary interchange of shift.

19.03 Standard Working Hours

(a) Full Time Hours Of Work Defined

Each Full Time Regular Employee will be scheduled five (5) consecutive days per week, eight (8) hours per day excluding the unpaid lunch.

(b) Part Time Hours of Work Defined

Part time hours of work may involve scheduled hours up to the standard number of daily hours of work for one (1) or more work days in any work week as prescribed by Clause 19.03 (a) above, but scheduled hours shall not exceed thirty (30) hours of work in any work week without the express prior agreement of the Union,

except in the case of when a new shift schedule commences or a voluntary shift change between two (2) Employees occurs. Employees working part time hours of work must have at least two (2) consecutive scheduled days off work, as days of rest, in each work week.

19.06 No Split Shifts

There shall be no split shifts.

ARTICLE 31 - BENEFIT PLANS

31.01 Medical Coverage and Extended Health Benefits

(a) All Employees except Casual Employees and Part Time Employees regularly working twenty four (24) hours or less in any given calendar week, and their spouse including common-law spouses and dependant children under twenty one (21) years of age, shall be eligible to receive the basic medical and surgical coverage provided by the B.C. Medical Services Act through the Medical Services Plan.

Finally, I note Letter of Understanding No. 4 which records the parties' mutual agreement to establish a Shift Scheduling Committee. The Letter of Understanding provides in part:

- (2) The purpose of the Committee shall be to develop shift scheduling recommendations covering all bargaining unit work, in respect of all prospective shift bids within the bargaining unit, based on meeting the business requirements of the Employer, as established by the Employer, *and upholding the principle that where full-time hours of work can be identified, it will be performed by Full-Time Regular Employees.* The Committee will accept input and assistance from appropriate representatives of the Employer in the development of shift scheduling recommendations.
- (3) The shift scheduling recommendations of the Committee, once developed in each case, shall be subject to final approval by the Employer. In the event that any shift scheduling recommendation of the Committee is not accepted by the Employer, either in whole or in part, the Committee shall be given the reason(s) for the rejection(s) by the Employer and provided

with an opportunity to discuss and attempt to resolve any such differences with the Employer.

- (4) Shift schedules arising out of this Letter of Understanding shall be subject to shift bidding in accordance with the applicable provisions of the Collective Agreement.

III. BACKGROUND

(a) The Car Rental Business

The following general background is taken substantially from the Employer's submission, and is an accurate reflection of the evidence given by Dolly Safiq, the Vancouver Area Manager:

- (i) The Employer operates a car rental business with various locations worldwide. This grievance involves the Employer's Vancouver area operations at three separate locations: the Vancouver International Airport (the "Airport Location"), the Landmark Hotel (the "Landmark Location") and Granville Street (the "Granville Location"). Most of the employees at these locations are represented by the Union.
- (ii) In the last 15 years, the Employer has undergone significant changes which have in turn impacted the operational needs of the business. Prior to 2005, the Employer was a wholly owned subsidiary of Ford Motor Company. In 2005, the Employer was sold to a private equity group, and the following year, it became a publicly traded company. Since that time, the Employer has faced pressure from shareholders to improve its bottom line, and has taken measures to improve profitability and remain competitive in the car rental industry.
- (iii) Since the sale, the Employer has begun to take a critical look at labour utilization to determine whether cost savings could be achieved through reductions in the workforce.

Since 1995, the number of employees in the bargaining unit has decreased from 76 to 54. Management employees were reduced from 27 to 12.

- (iv) The global economic recession which began in the fall of 2008 has also had a significant impact on the Employer's business, and in turn, its operational needs. Since the Recession, business and leisure travel have declined significantly, thereby reducing the demand for rental cars. This decline has continued to the present. During the fall of 2009 (when the layoffs at issue were implemented), rental volumes were down significantly from the previous year.
- (v) While business volume and revenues have decreased, many of the Employer's costs have remained the same or increased. For example, the cost to purchase new vehicles has increased due to the loss of preferred pricing and changes to guaranteed vehicles buy back programs. Rental costs for the Airport Location have remained fairly constant, while rental costs for the landmark and Granville Locations have increased. These factors have had a significant impact on the Employer's business.
- (vi) The car rental industry is seasonal and the Employer's peak season typically ran from mid-May to early September. In better economic times, the Airport Location typically processed up to 400 rentals per day while the Landmark and Granville Locations (collectively the "Downtown Locations") processed up to 100 rentals per day during high season.
- (vii) As a result of the recession, the Employer's peak season has shrunk and now runs from late June to early September. In peak season, the Airport Location is now processing less than 200 rentals per day on average and the Downtown Locations are processing on average less than 50 rentals per day during peak season. In off season, these averages are significantly less. For example, in the fall of 2009, the Airport Location processed an average of 115 rentals per day while the Downtown Locations processed an average of 11 rentals per day. Operating hours of all the Vancouver locations have also been reduced.

- (viii) These changes have forced the Employer to change how it utilizes its workforce. In the past, the Employer was able to meet most of its staffing needs using full time employees to cover core shifts. Part time employees were only used to provide additional coverage during busy periods. However, due to shorter peak seasons, shorter operating hours and decreased rental volume, the Employer now requires a mix of full time and more part time employees in order to provide coverage for its Vancouver locations in an efficient and effective manner.
- (ix) The layoffs giving rise to this grievance were part of the seasonal layoffs which took place in the fall of 2009. Due to significant declines in the Employer's business, as well as changes in its operational needs, the Employer determined that it did not have enough full time work available. Consequently, the Employer decided to lay-off some of its full time VSAs and CSRs.

(b) Layoffs of the Vehicle Service Attendants

Ms. Safiq identified a number of factors that influenced the "employee mix" (i.e. the number of full time versus part time employees) during the fall of 2009. These included: advance reservations; year over year business; available vehicles; competition; operating hours; airline flights and schedules; holidays; loss of cruise ship business to Seattle; and "headcount" changes each month (the latter refers to guidelines established through what Ms. Safiq characterized as "the Hertz world"). More specifically, there was a greater need for part time employees to cover shorter hours of peak coverage at the Airport Location; to work at the Landmark Location which was only open for four hours per day; and to provide a second employee at the Granville Location for the start and the end of each shift after employees raised concerns about working alone.

In accordance with Article 17.01 of the Collective Agreement, Ms. Safiq initially canvassed the bargaining unit to see if a reduction in staff could be made by attrition. A full time VSA, Hardev Dosanjh, chose to take a voluntary layoff. Ms. Safiq then laid off the three most junior VSAs. Beginning with the least senior employee, they were: Chu Har Gaw, a VSA who

had been recalled to part time work but had previously attained status as a Full Time Regular Employee; Pit Hwa Chiu, who was in the same situation; and Robert Vaughn, who was working as a full time VSA. All three were given a similarly worded notice of layoff dated August 20, 2009:

This letter serves as notice of lay-off from your position of part time Vehicle Service Attendant, effective October 29, 2009.

Please advise, in writing, if you will be exercising your option to bump to a Vehicle Agent position, by August 31, 2009.

Please do not hesitate to contact me at 604-606-4700, if you have any questions or concerns.

The notice given to Mr. Vaughn also advised that he had the option “to bump to a part time Vehicle Service Attendant”. At the time, this was a mistake as there would be no part time VSA position remaining due to the layoffs of Messrs. Gaw and Chiu. Ms. Safiq testified that she used a form letter and did not discover the error until later. In any event, Mr. Vaughn elected to bump into a full time Vehicle Agent (“VA”) position. Ms. Safiq spoke with Mr. Vaughn after receiving his response. She testified that she had been surprised by his choice given the difference in the rate of pay between the two classifications, and told Mr. Vaughn that he would be guaranteed 24 hours per week as a part time VSA and could pick up extra hours. She told him she could not guarantee more than 24 hours, but reminded him about how extra hours were usually available due to unexpected sick call-ins, peak periods and/or shift changes. As Mr. Vaughn wanted guaranteed hours of work and seemed happy bumping into the full time VA position, Ms. Safiq accepted his decision.

I digress briefly from the present narrative to recount the history of shift changes. The contractual basis for the concept is Article 19.02 of the Collective Agreement. Ms. Safiq recalled this provision resulted from the 2001 negotiations. The practice until more recently allowed employees to “exchange” shifts as the provision expressly contemplates, as well as to “give away” shifts. Ms. Safiq’s evidence was to the effect that either arrangement was allowed by the Employer, provided the employees were qualified and unless it would result in an employee not having nine hours off between shifts, would result in an employee working seven

days a week, or would negatively impact the Employer's business. Otherwise, the Employer had no objection if any type of shift change worked for the employees involved.

The subject of shift changes apparently surfaced after the grievance was filed during the parties' most recent negotiations. According to Ms. Safiq, the Union objected to the practice of shift "give aways". The Union's interpretation of Article 19.02 was confirmed at arbitration by its main witness, Representative Glen MacInnes. He testified that the provision contemplates a "straight exchange" between employees; for example, one employee who cannot work eight hours on Tuesday may switch with another employee for eight hours on Wednesday. In those circumstances, the hours are excluded from the maximum for part time employees under Article 19.03(b) of the Collective Agreement.

Returning to the layoffs of the VSAs, Messrs. Gaw and Chiu also elected to bump into full time VA positions. However, on October 19, 2009 (i.e. prior to the effective date of their layoffs), Ms. Safiq sent them both a letter rescinding the earlier notices. This resulted from the Employer's realization that they were needed to provide the additional coverage for opening and closing hours at the Granville Location due to the safety concerns mentioned earlier. According to Ms. Safiq, as split shifts are not permitted under the Collective Agreement, it would not have been possible to provide this coverage with a single full time VSA. She stated she did not ask Mr. Vaughn whether he wanted one of the reinstated part time VSA positions because he had already said he wanted full time hours when electing to bump into the VA position. Mr. Vaughn was not called as a witness, and there is no evidence contradicting Ms. Safiq's recollection that he was not interested in part time work.

In the course of her cross-examination, Ms. Safiq explained that the layoffs were determined by what full time and part time positions she needed. As she needed part time employees, "there was no point in laying off part time people". Thus, while seniority was part of the layoffs, she did not go "from the bottom to the top" of the seniority list as that "was not reasonable" in her opinion.

(c) Layoffs of the Customer Service Representatives

The changes in the CSR ranks were somewhat more complex. The eventual outcome was that two full time positions were replaced by a part time position in order to satisfy the Employer's operational requirements, including coverage at peak periods which could be met by part time employees. The most junior employee on the seniority list was Ashley Prasard, a full time CSR; above her on the list were Sheryl Vansprossen and Rehana Mohammed, who were both part time CSRs; and above them was Masumi Belway, who was another full time CSR. The Employer gave notices of layoff to Ms. Prasard and Ms. Belway on September 25, 2009 although the effective dates were different. Ms. Vansprossen and Ms. Mohammed were not given similar letters because they were still needed as part time employees. The layoff notice to Ms. Prasard advised in part:

This letter serves as notice of lay-off from your position of full time Customer Service Representative, effective October 15, 2009.

Please respond, in writing, by October 22, 2009, if you will be exercising your options to bump to part time Customer Service Representative or any of the other classifications available to you.

It was Ms. Safiq's view that the Collective Agreement -- and, more particularly, Article 17.16 -- did not allow her to reduce the hours of a full time employee except by mutual agreement between the Employer and the employee. Thus, when she gave the layoff notices to Ms. Prasard and Ms. Belway, she gave them three options: accept the layoff, accept a reduction in hours; or bump to a part time position (it will be noted that the second option was not articulated in the formal notice of layoff copied to the Union). Ms. Safiq spoke initially with Ms. Belway, and had a conversation similar to her prior discussion with Mr. Vaughn to the effect of 24 hours per week being guaranteed with the potential to pick up extra hours. However, Ms. Belway indicated her situation would be better if she accepted the layoff and collected Employment Insurance, as opposed to working only part time and paying for child care.

Ms. Safiq testified further that the part time CSR position that existed after the layoffs was not a new position. Rather, she eliminated one full time CSR position and reduced the hours

of the second full time CSR position; in her words: “It was the same position, just lesser hours”. She did not believe there was a need to post the position unless both Ms. Belway and Ms. Prasard chose layoff. To her, “it made sense” to offer the position to the two employees being laid off and, as Ms. Belway was senior, she had “first-shot”. After the option was declined by Ms. Belway, she offered the part time CSR position to Ms. Prasard who accepted the reduction in hours. The Employer later included the position on the CSR shift schedule with the notation “VR/PT” which stood for Vacation Relief/Part Time. Ms. Safiq believed such a position had existed in the past, although there had only been a “VR/FT” immediately prior to the layoffs. She decided to utilize the VR/PT in order to avoid “changing people around” when relief coverage was required.

To complicate matters, a full time CSR Lead returned to work about this time following a medical leave. This caused the Employer to eliminate another full time CSR position, and it gave layoff notice to Luis Gonzales on October 19, 2009:

This letter serves as notice of lay-off from your position as full time Customer Service Representative, effective December 3, 2009.

Please advise, in writing, if you will be exercising your option to bump to a Part Time Customer Service Representative or to any of the other classifications as outlined in the Collective Agreement, by October 29, 2009. You will be placed on the recall list in accordance with the Collective Agreement.

Mr. Gonzales was by then the most junior full time CSR, and he chose to bump down to a full time VA position. The Employer did not give layoff notice to either Ms. Mohammed or Ms. Vansprossen, who had less seniority than Mr. Gonzales, because it needed part time employees to meet the needs of the business.

(d) Hours Worked by Ashley Prasard

Despite the existing shift scheduling and bid process, extra hours inevitably become available during the week by reason of unexpected absences and/or peak periods. Employees have in the past obtained extra hours through the shift change arrangements described already.

Following the layoffs in dispute, the Employer experienced an unprecedented number of absences due to unexpected sick call-ins, as well as several lengthy leaves of absence. Specifically, between October 2009 and January 2010, there were 168 days of employee absences. As a result, the Employer had a number of extra hours which it says were made available to all employees in an equitable manner.

I was provided with various documents related to the hours worked by Ms. Prasard during the weeks ending October 29, 2009 through January 7, 2010. The resulting state of the evidence is somewhat unsatisfactory, and the parties do not agree on what the documents establish. For instance, Mr. MacInnes testified that “the problem with [Ms. Prasard as VR] is that she did not have a schedule”. On the other hand, CSR Shift Schedules introduced by the Employer include scheduled days and hours of work for Ms. Prasard, along with the other CSRs. Further, the Employer is adamant that “in every such instance, [Ms. Prasard] was only scheduled for 24 hours/week” (underlining in Employer’s written argument). The Employer maintains Ms. Prasard volunteered to work a number of extra hours each week in addition to the 24 hours she was being scheduled after accepting a reduction to part time. Further, she also accepted a number of shift changes with other employees. On those occasions, the Employer did not become involved aside from approving the particular shift change.

As recorded in the Introduction to this award, the Union rejects the Employer’s interpretation of the word “scheduled” in Article 19.03(b) of the Collective Agreement. It argues the documentation shows Ms. Prasard regularly worked in excess of the maximum 30 hours per week, and puts forward the following reconstruction of her schedule during the weeks under review:

Week ending	Hours excluding shift changes	Hours including shift changes
January 7, 2010	24.6	32.4
December 31, 2009	34	58

December 24, 2009	34.5	36.5
December 17, 2009	30.5	38.5
December 10, 2009	24.5	24.5
December 3, 2009	32.5	32.5
November 26, 2009	41.2	41.2
November 19, 2009	34.5	36
November 12, 2009	23.2	36
November 5, 2009	32	44
October 29, 2009	27.6	27.6

There is no need to sort out Ms. Prasard's actual hours of work at this juncture -- that exercise can at least await my interpretation of the relevant Collective Agreement language. Nonetheless, it can be fairly observed that Ms. Safiq appeared genuinely surprised at arbitration by the number of hours that Ms. Prasard had worked. She testified in direct examination that the average was 30.7 hours per week for the period in question. In cross-examination, she confirmed that Ms. Prasard had not received benefits in accordance with Article 31.01(a) of the Collective Agreement, and stated: "I did not realize she had worked that much ... until I did the calculation today".

(e) Negotiation History

Mr. MacInnes was not present for the 2006 round of collective bargaining between the parties. However, he identified a document headed "Company Issues & Proposals" that he had located in the Union's records. The document establishes that the Employer's proposals for the 2006 to 2009 Collective Agreement included the following amendments:

- delete the existing definition of seniority, and replace it with language making seniority “separate by job classification” and defining seniority by job classification to mean “the time employed in a regular full or part time classification”;
- delete Article 17.15 (Special Protection for Full time Regular Employees); and
- add a new category of employee called “Flex” who could work on a full time or part time basis at the sole discretion of the Employer.

According to the unchallenged evidence of Mr. MacInnes, the first-mentioned proposal would have resulted in separate seniority lists for full time and part time employees. The Employer did not achieve any of the three proposed amendments in the subsequent Collective Agreement that was still in force at the time of the layoffs.

Ms. Safiq gave evidence regarding what is now Article 17.16 of the Collective Agreement, which she recalled resulted from the 2001 negotiations. Previously, rather than layoff full time employees, the Employer would unilaterally reduce their hours of work. The Union was opposed to this practice, and wanted its members to have the ability to take a layoff, rather than be forced to accept part time hours. The outcome was new language that remains part of the Collective Agreement:

17.16 No Reduction In Hours Of Work

It is agreed that there shall be no partial reduction of hours of work for any Full-Time Employees in lieu of displacement or layoff, without the mutual agreement of the Parties.

Ms. Safiq testified that this provision made a difference to how she approached the 2009 layoffs. If the situation had arisen prior to 2001, she would have reduced Ms. Belway to 24 hours per week and laid off Ms. Prasard. Similarly, she would have reduced Mr. Gonzales to 24 hours per week and laid off Ms. Vansprossen. In other words, she would have reduced hours of work and laid off employees by seniority. However, under the current Article 17.16, she offered

reduced hours to the more senior employees and, when they did not accept the reduction, laid them off and retained less senior part time employees.

It became apparent through the Union's cross-examination of Ms. Safiq that she regarded "the Parties" in Article 17.16 to mean the Employer and the affected employee. She stated: "We always saw it as the employee making the decision [about whether] they wanted to go to part time [and] if the employee agreed, I did not feel I had to go to the Union". She later allowed, based on a conversation with Mr. MacInnes during mediation in 2010, that Article 17.16 requires agreement by the Union and the employee.

IV. ANALYSIS

The Union does not allege that any of the Employer's actions related to the layoffs were influenced by bad faith or other improper motive. Thus, the matters in dispute primarily, if not exclusively, engage questions of contract interpretation.

(a) The Layoffs

The Union points initially to Article 17.05(a) to support its position that the Employer must lay off employees in accordance with seniority "in any job":

- (a) The employee with the least amount of seniority *in any job* will be the first laid off from that job, but may displace an employee in a similar or lower classification with less seniority providing they are able to satisfactorily do the job. Employees who are displaced from their jobs as a result of such bump back procedure may themselves bump employees having less seniority, in similar or lower classifications, providing they are able to satisfactorily do the job. (emphasis added)

The Union proceeds to argue that seniority is determined by the single seniority list that the Employer is required to prepare under Article 15.10(a) for all employees in the bargaining unit. The consequence of the foregoing provisions, says the Union, is that the Employer must

lay off employees in reverse order of seniority in their classification, regardless of their full time or part time status.

The Employer puts forward a different interpretation of Article 17.05(a). It notes the word “job” is used throughout the Collective Agreement and, in most instances, is qualified by other language such as “job grouping”. The Employer contends the word “job”, when used on its own, is not limited to classification only. Rather, it includes other characteristics such as the job title and hours of work. In this regard, it relies on Article 16.02(b) where the word “job” is used alone:

(b) Job Posting To Contain Pertinent Details

A job posting shall state all pertinent details of *the job* including, but not limited to, *job title*, salary range, *hours of work*, duties, qualifications, any special conditions pertaining to the vacancy and the posting and closing dates of the job posting and the date by which the vacancy is to be filled. For Temporary vacancies, if the projected or actual end date for the job is known by the Employer, this information shall be included in the job posting. The Union will be notified whether the job posting is a result of a replacement, addition to staff or new position. (italics added)

This approach leads to the nub of the Employer’s justification for the layoffs:

Based on the above, where the word “job” is used alone (as in Articles 16.02 and 17.05(a)) it must be interpreted as meaning not only classification but also hours of work. As such, the Employer submits that Article 17.05(a) permits layoff of the least senior person in a “job”, with reference to classification and full time/part time status. (written argument at para. 55; underlining in original)

The Employer submits further that it was entitled to lay off full time employees ahead of less senior part time employees because Article 17.05(a) does not contain any express language to the contrary:

... For example, Article 17.05(a) does not limit the circumstances in which full time employees can be laid off, nor does it require the Employer to maintain a specific ratio of full time to part time employees or preclude the Employer from reallocating work from full time employees to part time employees. In the absence of any such restrictions, the Employer submits that it is permitted to

layoff full time employees as the economy and efficiency dictate. (*ibid*, at para. 56)

I will return to examine Article 17.05(a) more closely in a moment. First, however, it is necessary to address what I have concluded is a fundamental misconception of Article 17.16 that is vital to the Employer's overall position on the first issue. The misconception is revealed by the following submissions:

The Union advances a different interpretation [of Article 17.05(a)], suggesting that the Employer was required to layoff employees strictly in reverse order of seniority, without regard to full time and part time status. This blind adherence to the concept of seniority produces a result which is inefficient and unworkable and does not consider the interplay among various clauses in the Collective Agreement.

If this interpretation is correct, all four employees (Prasard, Mohammed, Vansprossen and Belway) would have been laid off. The Employer would have then recalled the three most senior employees (Belway, Vansprossen and Mohammed) to part-time positions. Not only is this an unusually complicated process but it leads to an absurd result by eliminating the very choice Article 17.16 was introduced to protect. Specifically, Prasard (who was willing to work part time) would have remained on layoff while Belway (who wished to remain on layoff) would have been forced to part time.

* * *

The Employer submits that the term "parties" as used in Article 17.16 is a reference to the Employer and the employee. This is consistent with the negotiations which took place prior to the introduction of Article 17.16 ... (written argument at paras. 66-67 and 99)

This submission echoes the testimony given by Ms. Safiq but, with respect, is based on an incorrect interpretation of what the parties resolved during the 2001 negotiations. Moreover, if the Employer's view of Article 17.16 was upheld, it could serve to undermine the special protection secured in Article 17.15 for full time regular employees. Before elaborating, it is helpful to recall the language of both provisions:

17.15 Special Protection for Full Time Regular Employees

A Full Time Regular Employee who is recalled into any position having less than full-time hours of work shall continue to be treated in all respects under this Agreement as if he or she were a Full Time Regular Employee working full-time hours, save and except for the reduced hours of work. Such person shall continue also to be categorized as a Full Time Regular Employee.

17.16 No Reduction In Hours Of Work

It is agreed that there shall be no partial reduction of hours of work for any Full-Time Employees in lieu of displacement or layoff, without the mutual agreement of the Parties.

In my view, it would be quite unusual to read the words “the Parties” in Article 17.16 as meaning the Employer and a full time employee being asked to consider a reduction of hours -- especially, as the clause refers already to “any Full-Time Employees”. The more obvious reading of the provision is that it requires mutual agreement between the Employer and the Union. This is supported by the fact that the Employer is styled as “Party of the First Part” and the Union is styled as “Party of the Second Part” to the Collective Agreement. Article 1 then sets out “the intent of the Parties” and enumerates subjects which are predominantly matters for employers and trade unions under a collective bargaining regime (e.g. “Establish and maintain mutually satisfactory terms and conditions of employment for employees ... who are subject to the provisions of this Agreement”).

I acknowledge the Employer’s submission that Section 48(a) of the *Labour Relations Code* makes a collective agreement “binding on ... every employee of an employer who has entered into it and who is included in or affected by the agreement”. It is questionable whether this statutory language makes individual employees “parties” to a collective agreement; however, it certainly cannot have the effect of excluding a trade union as one of the parties. In any event, as a matter of contract interpretation, I find “the Parties” in Article 17.16 should be taken to mean the Employer and the Union.

Additionally, the Employer’s interpretation of Article 17.16 could undermine the protection of continued benefit coverage in the immediately preceding Collective Agreement

term. Assume the admittedly hypothetical example of the Employer needing to reduce the hours of one full time position in a job (however that is defined) where the most junior employee has regular full time status. If the Employer could secure the employee's agreement to work 24 hours or less per week, the employee would lose entitlement to benefits under Article 31.01(a). On the other hand, if the Union did not agree to the reduction in hours, the employee could elect to bump or be laid off, and the Employer would presumably have a part time vacancy available. Regardless of the prior election, the employee would have preference for the vacancy under Article 16.07(1). The critical difference is that by accepting the part time position under the latter scenario, the employee would be "full time recalled to part time", and thus be entitled to benefits like Messrs. Chiu and Gaw. As the Union aptly notes in its reply submission, the Employer's approach to the Collective Agreement "ignores the difference between a reduction in hours to part time, and a recall to a part time position" (para. 13).

Nonetheless, I agree with the Employer's submission that one must consider "the interplay among various clauses in the Collective Agreement" and not read Article 17.05(a) in isolation. And, as the Employer points out, the word "job" is used throughout the Collective Agreement in a variety of contexts and with numerous modifying words; e.g. "any posted job vacancy" in Article 16.03(b). However, if taken to its logical extension, the Employer's interpretation of the word "job" would not merely be limited to the distinction between full time and part time status within a classification; rather, it could conceivably turn on any of the "pertinent details" required by Article 16.02(b) to be included in a job posting. A similar argument was rejected in *Re Maxxim Medical Canada Ltd. and Teamsters, Local 938* (1998), 75 L.A.C. (4th) 84 (Barrett), where the term "jobs effected" was taken to mean "classifications". In my view, particularly when read in the context of Article 17.05(b), the word "job" in Article 17.05(a) must be equated with "classification" as the Union contends:

17.05

- (a) The employee with the least amount of seniority *in any job* will be the first laid off *from that job*, but may displace an employee *in a similar or lower classification* with less seniority providing they are able to satisfactorily do *the job*. Employees who are displaced from *their jobs* as a result of such bump back procedure may themselves bump employees having less seniority, *in similar or*

lower classifications, providing they are able to satisfactorily do *the job*.

- (b) Employees on the recall list shall have first rights to any vacancy *in their former job classification* or to *a similar classification* for which the employee is qualified, and the employer will not hire for, nor transfer, nor promote *to such a classification* while an eligible employee is available from the recall list. (emphasis added)

As can be seen, the words “job” and “classification” are essentially used interchangeably in the above provisions. They are used conjointly in Article 15.10(a):

15.10 Seniority List

- (a) The Employer shall compile and maintain an up to date seniority list including, but not limited to, the name, *employment status*, job title, *job classification*, hire date, seniority date and total hours worked of each Employee in the bargaining unit. (emphasis added)

Another critical point to note in the above provision is that “employment status” (e.g. Full Time Regular or Part Time Regular as per Article 15.07) and “job classification” are distinct concepts. And once again, Article 17.05(a) directs that layoffs be made by “seniority in any job” and not by “employment status”

A comparable situation arose in *Re Bonnechere Manor and C.U.P.E., Local 1508*, [1993] O.L.A.A. No. 292 (Young), where the union alleged that only full time staff, and not part time staff, were laid off (in fact, the full time staff were placed on part time status). The collective agreement provided that “employees shall be laid off in reverse order of seniority” subject to bumping rights. The employer contended that it was exercising its management rights to decide how many full time and part time positions would be utilized; further, it had applied the seniority provisions by first reducing the hours of part time staff and then reducing the hours of full time staff. The employer’s arguments did not succeed:

I accept the proposition of the Employer that, generally speaking, it is within the prerogative of management rights to determine how many full-time and part-time staff it wishes to employ at any given period. It is also open to the

Employer to increase or decrease the size of its work force: Article 2.02(b). But those rights are not unqualified; they are limited by other express provisions of the collective agreement: Article 2.01(a).

When it comes to laying off employees, the agreement places limits upon these broad managerial rights; *the employees' reverse order of seniority governs*: Article 15.01. Seniority is defined as length of continuous service with the Employer: Article 13.01(a). However, part-time employees' seniority must be calculated on the number of hours worked: Article 13.01(b). All employees must have their seniority computed as against one another across the bargaining unit, irrespective of whether they are full or part-time employees: Article 13.01(c). That is, to apply the contract correctly, as I understand it, means that employees may be subject to lay-off, but only in order of their respective seniority computed on a unit-wide basis.

This would mean that part-time employees with less seniority than full-time employees must be laid off first, and vice versa. To choose to deal with them in separate groups, e.g. as full-time versus part-time, would, in my mind, run counter to the thrust of the agreement and distort its clear meaning. It would compartmentalize seniority. This collective agreement covers both full-time and part-time employees. I do not believe that it properly may be interpreted as freezing the division of work between full-time and part-time jobs. Such a freeze would prevent the conversion of part-time work to full-time work, and vice versa, something I doubt the parties intended. (Here, I echo the comments of Arbitrator Brown in the *Timmins* case (supra) at p. 28.) *That does not mean that management cannot choose the number of part-time or full-time employees it wishes to carry; it simply impacts upon how management gets there in the case of lay-offs, particularly in the case of an ongoing operation such as this, once that decision has been taken.* (paras. 50-52; emphasis added)

The Employer seeks to differentiate *Bonnechere Manor* based on the arbitrator's statement that nothing in the applicable collective agreement prohibited the conversion of full time to part time jobs, while Article 17.16 "clearly prohibits such conversion" under this Collective Agreement. Although not specified, I have assumed the Employer is relying on Arbitrator Young's statement in paragraph 52 quoted above that the collective agreement before him could not be "interpreted as freezing the division of work between full-time and part-time jobs" so as to "prevent the conversion of part-time work to full-time work, and vice versa". These statements are a direct lift from the *Timmins* award, cited below, where Arbitrator Brown was addressing the posting of part time vacancies after a full time position had been vacated. The comments were not made in the context of layoffs. Further, as the Union correctly observes, Article 17.16 speaks to the reduction of hours for an individual full time employee in lieu of

layoff, as opposed to the division of work generally between full time and part time positions in the bargaining unit.

The Employer cites several arbitral awards which it submits support management's prerogative of laying off more senior full time employees ahead of part time employees. In my view, the reasons put forward by the Union to distinguish those authorities are sound. For instance, and without being exhaustive, in *Re Yoke's Supermarket Ltd. and U.F.C.W., Local 864* (1994) 43 L.A.C. (4th) 327 (Outhouse), the arbitrator held the employer "enjoys plenary authority with respect to the matter of layoff, save to the extent that such power is circumscribed by the terms of the collective agreement, either expressly or by necessary implication" (p. 339). The arbitrator found no express restriction (p. 340), and stated restrictions on management's right to lay off full time employees and replace them with part time employees "will not lightly be implied" (p. 344); further, past practice between the parties supported the employer's ability to lay off full time employees for reasons of economy and/or efficiency, and to replace them with part time employees.

As the Union emphasizes, it does not assert that the Employer is precluded from laying off full time employees ahead of part time employees. Rather, its position has always been that Article 17.05(a) requires the Employer to lay off employees by seniority order. In any event, given my interpretation of Article 17.05(a), the immediate Collective Agreement does contain an express restriction on management's right to lay off full time employees ahead of part time employees with less seniority. This alone is sufficient to differentiate the outcome in *Yoke's Supermarket*. I additionally note that the award has been questioned in this jurisdiction: see *Maple Ridge (District) and Canadian Union of Public Employees, Local 662*, [1997] B.C.C.A.A.A. No. 39 (Diebolt) at QL para. 22, citing *Re Corporation of the City of Timmins and Canadian Union of Public Employees, Local 1140* (1991), 14 L.A.C. (4th) 23 (R.M. Brown).

Two other awards cited by the Employer are also distinguishable, although on a different ground. *Re 426979 Ontario Ltd. and R.W.D.S.U., Local 582*, [1996] O.L.A.A. No. 764 (Dissanayake), effectively adopted the analysis in *Re Loeb I.G.A. Four Corners and R.W.D.S.U., Local 579*, [1993] O.L.A.A. No. 632 (Briggs). It is apparent from both awards that there were

separate collective agreement provisions covering full time employees and part time employees. As stated in the earlier *Loeb* award:

The Union suggested that Article 8.02 gives preference for full time employees over part time employees in all matters, including lay-offs. I disagree. *Article 8.02 of the full time Collective Agreement provides for a ranking of full time employees amongst themselves.* It allows that seniority is the determining factor in a variety of situations such as promotions and the like. The expression "and all other matters" which was relied upon by the Union, does not provide for a preference of full time employees over part time employees. "All other matters" may indicate, as suggested by the Company, other circumstances in which the seniority of full time employees is to apply, for example, for vacations. However, there is nothing that substantiates the argument of the Union that "all other matters" indicates a preference for full time employees seniority over part time employees seniority. To confer such a benefit would have to be done in the clearest of terms and such is not the case in Article 8.02.

I am re-enforced in that view by the fact that Paragraph #4 of Schedule "B" is very similar to Article 8.02 of the full time Collective Agreement. *This provision provides for the ranking of part time employees amongst others in the part time bargaining unit, again for a variety of express purposes. (paras. 40-41; emphasis added)*

For the reasons given already, the immediate Collective Agreement does not provide for a ranking of full time employees amongst themselves, separate from a ranking of part time employees amongst themselves, in different bargaining units.

What should have occurred here in the fall of 2009 when the Employer decided to reduce its workforce due to a significant decline in business? In answering this question, I reject the Union's submissions that layoffs were not necessary in the circumstances and/or there remained sufficient hours available to schedule employees on a full time, as opposed to a part time, basis. The latter submission overlooks several practical contingencies such as covering for peak periods and the start/end of shifts at the Granville Location. Two part time positions do not equate automatically to a full time position given the nature of the Employer's operations. I also accept Ms. Safiq's testimony that the Shift Scheduling Committee was involved at the time, and created the shift schedules in accordance with Letter of Understanding No. 4 based on the parameters she provided. Nor is there any basis to reject Ms. Safiq's further evidence that the Committee did

not suggest any alternative to the layoffs and, indeed, indicated the Employer would be “over staffed” given the level of business.

Based on the above interpretation of Article 17.05(a), I find the Employer breached the Collective Agreement when it laid off full time employees ahead of less senior part time employees. The Employer could have sought the Union’s agreement to reduce the hours of full time employees under Article 17.16 and lay off junior part time employees. Failing agreement, another option would have been for the Employer to lay off employees by seniority order until it attained the desired level of full time positions. This is consistent with the statement in *Bonnechere Manor* that “it is within the prerogative of management rights to determine how many full-time and part-time staff it wishes to employ at any given period” (para. 50). Obviously, at that stage, the Employer would have needed additional part time positions, having laid off junior part time employees to attain the desired level of full time positions. The resulting part time vacancies would have been subject to posting in accordance with Article 16 of the Collective Agreement. Further, by virtue of Article 17.16, any full time employee recalled to one of the part time positions would have continued to be categorized as a Full Time Regular Employee. I recognize that this option would have presented a more cumbersome process for the Employer. Nonetheless, it is the unavoidable consequence of Collective Agreement provisions which allow the Employer to staff according to its business requirements, while giving due recognition to the seniority rights of all employees and affording “special protection” to full time employees where layoffs result in them working part time hours. I should add as well that there might have been other options open to the Employer -- provided any layoffs were carried out by seniority order.

The second issue raised by the grievance is whether Ms. Prasard worked more hours than permitted by the Collective Agreement following the layoffs. Two provisions are directly relevant to this question:

19.03 Standard Working Hours

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(b) Part Time Hours of Work Defined

Part time hours of work may involve scheduled hours up to the standard number of daily hours of work for one (1) or more work days in any work week as prescribed by Clause 19.03 (a) above, but scheduled hours shall not exceed thirty (30) hours of work in any work week without the express prior agreement of the Union, except in the case of when a new shift schedule commences or a voluntary shift change between two (2) Employees occurs. Employees working part time hours of work must have at least two (2) consecutive scheduled days off work, as days of rest, in each work week.

31.01 Medical Coverage and Extended Health Benefits

- (a) All Employees except Casual Employees and Part Time Employees regularly working twenty four (24) hours or less in any given calendar week, and their spouse including common-law spouses and dependant children under twenty one (21) years of age, shall be eligible to receive the basic medical and surgical coverage provided by the B.C. Medical Services Act through the Medical Services Plan.

The Union makes the following submissions under this heading:

[T]he Employer's scheduling of Ms. Prasard following the layoffs violates Article 19.03, which prohibits part time employees from working more than 30 hours per week. The evidence supports this assertion:

- Ms. Prasard did not bump a part time CSR. She was placed in a part time position created for her, in violation of the posting provision in Article 16.
- Ms. Prasard regularly worked over 30 hours per week.
- Ms. Prasard did not achieve that level of hours through voluntary shift changes.

The Employer used Ms. Prasard as a "flex employee", a classification it could not achieve through bargaining in 2006 (see Exhibit 4). She was asked to work to cover sickness, busy times, and any other gap in the schedule. There is only one exception to the maximum in the Agreement in Article 19.03: voluntary shift changes. By scheduling her time in this manner, the Employer avoided paying benefits and overtime to other employees. (written argument at pages 19-20)

The Employer admits there were “some instances” where Ms. Prasard worked more than 24 hours per week. However, it contends there was no violation of the Collective Agreement for the following reasons:

... the Collective Agreement does not prohibit part time employees from working more than 30 hours/week. Rather, it prohibits part time employees from being scheduled for more than 30 hours/week. The Union fails to appreciate this distinction.

The term “scheduled” refers to the hours an employee is guaranteed to work per week as set out in Article 19.03. Prasard was never scheduled to work more than 24 hours/week. Therefore, the Employer denies that Article 19.03(b) has been breached.

Where Prasard worked more than 24 hours/week, she did so by volunteering for extra hours. These extra hours were for vacation or relief coverage in unexpected circumstances for sick leaves, unexpected leaves of absence, peak periods, etc. and not just vacation coverage as the Union suggested. As Ms. Safiq testified, there were an unusually high number of such leaves (168 days) in the fall of 2009. (written argument at paras. 87-89; underlining in original)

I will begin with the Union’s assertion that Ms. Prasard’s placement in a part time position violated the Collective Agreement’s posting provisions. The complaint is justified. It will be recalled that Ms. Safiq testified to eliminating one full time CSR position, and to reducing the hours of a second CSR position from full time to part time. I have not been directed by the Employer to any Collective Agreement provision which might have permitted its unilateral action. Any reliance on Article 17.16 and Ms. Prasard’s agreement to work reduced hours must be rejected for reasons given already. Due to the requirements of Article 16.02(b), the change in “hours of work” alone was probably sufficient to trigger a job posting. But that must unquestionably be the case when one recalls that the position Ms. Prasard assumed was designated “VR/PT”; unlike pre-existing “VR/FT” designation, there was no such position immediately prior to the layoffs. It was a “job vacancy” that should have been posted and made available to the bargaining unit.

The term “scheduled hours” in Article 19.03(b) must be given meaning. Given other terms of the Collective Agreement, it cannot simply mean the hours worked by an employee. Nor does it necessarily mean the hours that an employee is “regularly working” given the different terminology found in Article 31.01(a) for purposes of determining benefit coverage. At the same time, the interpretation proffered by the Employer is unduly restrictive; i.e. the hours an individual employee is scheduled to work when the shift schedules are initially prepared. This potentially opens the door to certain part time employees frequently working more than 30 hours per week (as demonstrated by Ms. Prasard’s situation) to the detriment of others employees.

In my opinion, a more natural and purposive interpretation of “scheduled hours” is that they are the hours flowing from the Shift Scheduling Committee process established by Letter of Understanding No. 4 to the Collective Agreement. This approach is reinforced by the second exception in Article 19.03(b) -- namely, that a voluntary shift change between two employees does not affect the 30 hour calculation. If the Employer’s interpretation of the Article were correct, there would be no need for this exception because the shift change would not have been part of the individual employee’s “scheduled hours” in the first place. In contrast, there is no exception where an employee volunteers to work the scheduled hours of another employee who has called in sick.

To repeat, it is my opinion that “scheduled hours” means the hours on the established shift schedules. Thus, where the Employer arranges for an employee to provide relief coverage, and the hours being covered were part of the existing shift schedules, the employee is working “scheduled hours”. On the other hand, and without listing all of the possible circumstances, if the hours of work result from overtime at the end of a shift or from some other unanticipated (i.e. unscheduled) exigency, the hours do not count for purposes of Article 19.03(b).

The question of whether Ms. Prasard actually worked more than 30 “scheduled hours” per week during the period in dispute is referred back to the parties for consideration in light of the above interpretation. If they are unable to resolve the matter, I reserve jurisdiction to make a final determination after hearing further submissions based on the present record.

Many pages back, I noted the Employer's practice of guaranteeing part time employees 24 hours per week in accordance with guidelines in "the Hertz world". This subject eventually became the focus of considerable time and attention during the evidentiary portion of the proceeding. It was also addressed at some length in the parties' written submissions. However, the submissions also suggested there might be no need to examine this potentially controversial area: the Union maintained "the alleged past practice is not relevant to these violations [of the Collective Agreement]", and the Employer submitted the evidence of past practice "is not necessary to the disposition of this grievance". The accuracy of those assessments was borne out during my deliberations. Accordingly, nothing found in this award should be construed as a comment about the Employer's scheduling practices (or the merits of the parties' associated arguments) should the subject arise on a future occasion.

V. DECISION

I will not attempt to summarize the various findings and interpretive conclusions made throughout this award. The Employer is hereby declared to have breached the Collective Agreement to the extent of the violations set out above. In addition to the specific referral regarding the "scheduled hours" worked by Ms. Prasard, all remaining remedial matters are referred back to the parties for resolution based on my interpretations of the relevant provisions. I reserve jurisdiction to make final and binding determinations regarding any points that cannot be settled by the parties. More generally, I reserve jurisdiction to address any difficulty implementing the terms of this award.

Dated at Vancouver, British Columbia on April 14, 2011.

A handwritten signature in black ink, appearing to read "J. Hall", written over a large, loopy circular flourish.

JOHN B. HALL

Arbitrator