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Re United Automobile Workers, Local 673, and Douglas Aircraft Co of Canada Ltd

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**RE UNITED AUTOMOBILE WORKERS, LOCAL 673, AND DOUGLAS
AIRCRAFT CO. OF CANADA LTD.**

I. Christie. June 19, 1970.

UNION GRIEVANCE alleging that the company had violated the collective agreement by promoting certain employees outside the bargaining unit.

F. Fairchild and others for the union.

D. G. Archer and others for the company.

AWARD

The facts

In art. 1 of the collective agreement the company recognizes the union as sole bargaining agent on behalf of its office and clerical employees, subject to a long list of exclusions which includes "secretaries to department managers and above". This arbitration arises from the fact that the company effected a reorganization at the start of 1970 by which, in company terms, the procurement department became the sub-division of procurement and material "headed by a director who administers five different and separate departments" each headed by a manager. The company has since assumed that the secretary assigned to each of these "managers" is excluded from the bargaining unit. The union's position is that, whatever reorganization the company may have made for its own purposes, the company cannot unilaterally affect the rights of the union under the collective agreement by a change in job titles.

The parties put before me considerable documentary evidence in the form of organization charts and samples of stenographic work demonstrating for whom the employees concerned had worked at various times and what titles had been employed by those for whom the work had been done. I have examined all of this evidence with some care but I have no intention of adverting separately to each and every document. There are, of course, some of them that must be referred to, and when doing so I will use the letter with which the document was marked at the hearing.

There are four organization charts that I find particularly relevant: Exhibit "M", issued September, 1966, sets out the overall organization of the company at that time; "P" gives the internal organization of "Procurement" in September, 1967; "AM" shows the overall organization of the company in October, 1968; and "O" shows the company's concept of the present organization, including some detail on "Procurement and Materiel".

Exhibit "M" shows procurement as a department headed by a manager, who in September, 1966, was one of five subordinate to the works manager. At that time the company employed a total of 4,460 employees, 500 of them in Local 673. "P", an organization chart for procurement alone, issued September 29, 1967, shows the department to be headed by a

manager with an assistant, and directly subordinate to the manager are five supervisory positions; chief purchasing agent, material release supervisor, general supervisor records and stores, general supervisor material control, and administrator materials services. By September, 1967, the total of employees had dropped to 4,267, with 399 in Local 673.

Exhibit "AM", issued a year later, shows "Procurement" no longer reporting to the works manager. At this time there was a "Director of Materiel" who, according to the chart, reported directly to the general manager and his deputy and who stood on a level with the chief engineer, the assistant general manager manufacturing, the director quality assurance, the vice-president marketing and administration and the vice-president finance. At this point the fortunes of the company had reached their low point for the period 1966-70. There was a total of 3,749 employees with 297 of them in Local 673. It is worth noting that exhibit "AM" shows five supervisory positions reporting to the director of materiel, including three with the title "manager" shown on the chart; "Manager Inventory Operations", "Manager Material Services" and "Manager Shipping and Receiving". That is, in Autumn, 1968, there were already supervisors in "Materiel" who, on the company's chart, bore the title "Manager".

By January, 1970, the total of employees had risen to 6900, with 865 in Local 673. Just prior to that, at the first of December, 1969, there were seven stenographers working in the procurement department, formerly "Materiel". They included Priestley, Dudar and Thomson who are the subject of this union grievance, Presswood, to whom I will return presently, Ardito, who was not a member of the bargaining unit, and two others. On January 15th, Priestley, Thomson and Dudar had been removed from the bargaining unit as had Hebden, who had just entered the department. Presswood had been removed from the bargaining unit but had lodged a grievance under art. 7, s. 1(c) (2) which provides:

An employee covered by this Collective Agreement shall not be transferred to a position excluded from this Agreement unless he agrees to such transfer.

As a consequence Presswood was returned to the bargaining unit, and on January 15th, still worked in the procurement department. She has since left that department.

Exhibit "O" shows that currently "Procurement and Materiel" is headed by a director, L. Gordon who reports to the vice-president and general manager. Subordinate to Mr. Gordon are five managers; Mr. Jerome, Mr. Hass, Mr. Blythe,

Mr. Wulfin and Mr. Hall. The evidence shows that at present Ardito, who throughout has not been a member of the bargaining unit, works for Jerome, as she has done for some months. Dudar works for Hall, as she has done for some months, although she has only been out of the bargaining unit since the New Year. Thomson is secretary to Wulfin, Hebden to Blythe and Priestley to Hass. Where formerly there were eight secretaries in procurement there are now five. Hebden and Thomson each work for two other men in addition to the managers for whom they work and Priestley works for one other.

I am not faced with the issue of whether, assuming for the moment that the employees named in the grievance have been properly excluded from the bargaining unit, they may be said to be improperly doing "bargaining unit" work. The issue was avoided because in the course of the hearing Mr. Archer, for the company, conceded that unless a secretary worked exclusively for a department manager or above she would be improperly doing bargaining unit work. The parties agreed that this concession should be included in my award as a ruling.

Mr. Hiscock, the company's compensation manager, testified that in 1966 there were 21 non-bargaining unit secretaries and on January 15, 1970 there were 34, including the four named in the grievance. In 1966 there were 31 supervisory personnel in the procurement and materiel sub-division, on January 15, 1970 there were 42. For the union, Mr. Lomas testified that before the reorganization there were six "group #5" stenographers in the procurement department who were members of the bargaining unit. Now there is one.

Early in January the union commenced proceedings before the Ontario Labour Relations Board for a determination of whether the employees listed in this grievance were in fact "employees" within the meaning of the Act. Before the Board the company conceded that the named persons are employees within the meaning of the Act but took the position that they were excluded from the bargaining unit by the terms of the scope clause of the collective agreement. The Board ruled accordingly that they were employees under the Act but that the question of whether they were properly excluded from the bargaining unit was one for arbitration. Mr. Archer took the same position at the hearing before me.

The issues

The issue is whether the four named employees, Dudar, Thomson, Priestley and Hebden, can properly be said to be

secretaries to department managers and therefore excluded from the bargaining unit. The union's position is that the collective agreement was negotiated on the basis that "Procurement and Materiel" was a department with one manager and that, regardless of what the company may do for its own purposes of responsibility and reporting, it may not change its organization in a way that adversely affects union rights under the collective agreement. The company's position is that the work force has increased by 70%, that this has, naturally been accompanied by an increase in the supervisory staff at all levels, which quite properly included an increase in the number of department heads. Having created the department managers the company takes the position that it is entitled to provide them with secretaries who, in accordance with the collective agreement, are excluded from the bargaining unit.

Decision

None of the four employees named in the grievance can be considered to have been adversely affected by being removed from the bargaining unit. While it could be, in the long run, that they will suffer as a result, none of them has chosen to grieve as they are entitled to do under art. 7, s. 1(c) (2), and as Presswood did. I must therefore assume that they have not been adversely affected by the company's action. That, however, is a small point.

It is, of course, the union itself that is adversely affected by the company's actions, in that it has been deprived of some of its membership in the company's plant. The union's interest in maintaining membership is a perfectly legitimate one for which it has bargained and upon which the parties have agreed. The problem, of course, is whether art. 1, s. 1(a), which provides that "secretaries to department managers and above" are to be excluded from the bargaining unit, does in fact protect the union membership interests in this situation. The employees involved are, in the company's terms, secretaries to department managers but clearly there must be some limits on the company's power to rename its supervisory staff in a way that removes employees from the bargaining unit.

As a starting point, it is clear that the company has the right to reorganize its management structure. The union does not dispute this, so long as it does not impinge on any of the union's rights under the collective agreement. Article II, s. 2(a) provides, in part:

Within the framework of this Agreement, the Company reserves the right to operate and manage its business in all respects in accordance with its commitments and responsibilities to maintain order and efficiency on its premises, and to determine the location of its plants, the products to be manufactured, the scheduling of its production and its methods, processes and means of manufacturing.

The company, then, in restructuring its management organization, must stay within "the framework of this Agreement". In what way could management here be said to have failed to observe this limitation? It appears to me that there are two types of limitation which must necessarily be read into the exclusion of "secretaries to department managers and above" from the bargaining unit, as a matter of interpreting the words to give effect to the mutual intention of the parties.

In the first place, as Mr. Archer acknowledged at the hearing, the company must act in good faith in designating members of its supervisory staff as department managers. If it could be established that the company was, in fact, effecting its management reorganization in an attempt to reduce the bargaining unit then, clearly, the scope clause, art. 1, s. 1, could not be interpreted to give effect to the company's designs. On the facts established before me I am unable to conclude that the company's reorganization announced on January 15, 1970, was carried out with this ulterior motive. No case of bad faith has been made out here.

The second implied limitation on the company's power to exclude people from the bargaining unit as a by-product of managerial reorganization depends on what must be assumed to have been the common expectations of the parties when they signed the collective agreement. Specifically, in this case, has the continued existence of the unit represented by Local 673 been threatened? The parties must be taken to have foreseen the company's work force could either expand or contract. The parties probably expected that if the total of employees increased the number of office and clerical employees and the supervisory staff would expand proportionately. Thus, if the company's work force expansion had been unduly concentrated in groups excluded from the bargaining unit, even if no bad faith were established, it might be said that the company was not "keeping within the framework of the collective agreement".

In the case before me the facts indicate that the expansion that has taken place has been in proper proportion. In the period 1966 to 1970 the employment total has increased by 70%, and the number of employees represented by Local

673 has increased 73% and the number of excluded staff secretaries has increased by 62%. It is true that among the stenographers in the procurement "Sub-Division", as the company would call it now, the percentage included in the bargaining unit has been distorted, but when expansion requires reorganization of one aspect of the company's operations some distortion must be inevitable at first in the restructured branch.

In light of the management's rights clause and perhaps even without it, the starting point must be that the company can reorganize itself. It is then for the union to show either bad faith or changes that so clearly defeat the common expectations of the parties that they may be said to be contrary to the terms of the collective agreement. While Mr. Archer did not give any reasons other than increase in size for the reorganization of the procurement department, I have no basis for saying that size alone does not justify the change or that it was done in order to exclude the named secretaries from the bargaining unit. Secondly, it seems to me that the union must have expected that if the work force increased dramatically there would be changes in the managerial arrangements which, in accordance with art. 1, s. 1(a), would take secretaries out of the bargaining unit. It may well be that the union did not foresee, specifically, that the various supervisors in the procurement department would be made managers but, even so, it does not seem to me that the existence of the bargaining unit has been threatened or that legitimate expectations about the nature of the bargaining unit have been defeated.

In art. 1, s. 1(a) of the collective agreement the union agreed that "secretaries to department managers" would be excluded from the bargaining unit, regardless of the nature of their work. It is not up to the company to justify the reorganization, unless the union can establish a *prima facie* case of bad faith or obvious distortion of the parties' expectations about the bargaining unit.

As mentioned above, shortly after the effective date of the current agreement the company issued organization chart 1 ex. "AM" on which three supervisors in procurement already bore the title "Manager". The fact that the company did not at the point insist that their secretaries be taken out of the bargaining unit amounts to nothing more than a failure by the company to press the exclusion. There is no reliance or any other basis upon which the union can rely on that fact.

In the course of argument Mr. Fairchild pointed out that there are several other provisions of the collective agreement which depend for their effect on the company's departmental organization. The most important of these appears to be the seniority article, dealing with bumping rights. It is not for me to decide whether "departmental" bumping rights are confined to the "new departments" within "Procurement" or whether for those purposes the old procurement "department" must be considered as continuing. When, and if, that matter is put in issue before an arbitrator, it seems to me that the same questions must be asked: did the company act in bad faith and, even if it did not, did the change defeat the legitimate expectations of the employees and the union? The answer will not necessarily be the same as in this case. Expectations with regard to seniority may be defeated where union membership expectations are not. But that issue is not before me. The grievance is denied, subject to Mr. Archer's concession that unless a secretary excluded from the bargaining unit works exclusively for a department manager or above, she is improperly doing bargaining unit work.