IN ARBITRATION PROCEEDINGS PURSUANT TO THE
AGREEMENTS BETWEEN THE PARTIES

UNIFOR, LOCAL 2000,	
Union,	Opinion and Decision of John Kagel Arbitrator
and	
PACIFIC NEWSPAPER GROUP,	
Employer.	November 19, 2014
	Palo Alto, California, USA
Re: Job Guarantees	

APPEARANCES:

For the Union: Anthony Glavin, Esq., Koskie Glavin Gordon, Vancouver, BC

For the Employer: Israel Chafetz, QC, Taylor Jordan Chafetz, Vancouver, BC

INTRODUCTION:

1. These proceedings are pursuant to two Agreements, both between Pacific Press Ltd. and Vancouver Printing Pressmen, Assistants and Offset Workers Union, Local 25. The first, effective October 22, 1977, concerns Stereotypers (Un. Ex. 3); the second, bearing a 1983 date, but noting it was negotiated in 1979, concerns Pressmen. (Un. Ex. 7)

ISSUE:

2. The issue arises out of a "Closure Agreement" between the Parties where the *Vancouver Sun* and the *Vancouver Province* newspapers will contract out their production to outside contractors but continue to publish. It provides:

> "29. The nine (9) Kennedy Heights employees who are named in two letters of agreement (the 'Agreements') between the parties—one covering Pressmen is dated April 14th, 1983 and the other covering a former Stereotyper, now Mailroom employee, is dated October 22, 1977, are addressed in the addendum document which forms part of the Closure Agreement." (Un. Ex. 11)

3. The referred-to addendum provides that notwithstanding the Closure Agreement, for those employees who decide to pursue whatever rights they may have under the Agreements, those will be determined in this arbitration which is to be governed by the Labour Code of British Columbia, Part 8, Division 3. While the undersigned is named as arbitrator in the Pressmen document, the Parties have agreed this proceeding will encompass the rights of the former Stereotyper as well. The Closure Agreement further states:

> "The issue to be arbitrated is the application, if any, of the Agreements to the closure of Kennedy Heights. The arbitration cannot challenge the decision to close Kennedy Heights and contract out the work."

More specifically:

> "What are the rights, if any, of the named individuals I've already mentioned with respect to Union Exhibits 3 and 7, under the circumstances to be produced?" (Tr. 12)

4. The addendum goes on to note that if the Union is unsuccessful, the affected employees will receive severance and and/or an enhancement pursuant to the Closure Agreement. It then provides:

> "If the union is successful at arbitration, the terms of employment of the employees will be determined by the arbitration decision regarding the Agreements. The employees will be covered under Part 'A' of the collective agreement effective the closure date. The employees will not be eligible for severance pay …" (Un. Ex. 12)

5. Four Pressmen named in the 1983 document, G. Berg, N. Martinuk (now Spooner), M. Sharpe, and J. McMurchie, as well as former Stereotyper S. H. Andersen, named in the 1977 document, have elected to have their rights be subject to this arbitration.

6. The Parties have stipulated that in the event the Union is found to be successful that the determination of the terms and conditions of the post-closure rights of the aforementioned employees will be remanded to the Parties, with the undersigned retaining jurisdiction for such determination in the event the Parties cannot agree. (Tr. 20)

THE AGREEMENTS:

7. The Pressmen Agreement reads in pertinent part:

> "This Agreement is made and entered into this 1st day of March, 1983 (resulting from the attached copy of agreement negotiated in 1979) by and between PACIFIC PRESS LIMITED, hereinafter referred to as the Company, and The Vancouver Printing Pressmen, Assistants' and Offset Workers' Union, No. 25, for and on behalf of 109 named employees as listed in Appendix A attached hereto, hereinafter referred to as the employees.
>
> COVERAGE – This Agreement covers 109 employees who are named in the attached Appendix A. (The named employees are

covered by this Agreement only if they remain members in good standing of the Union.)

TERM OF AGREEMENT – Term of this Agreement shall be until the employment of all the persons named in the attached Appendix A has ceased. (Neither party shall raise any matter dealt with in this Agreement in future negotiations for any new collective agreement.[)]

JOB GUARANTEE - The guarantee to the individuals named in the list shall be full time employment and full pay at not less than the prevailing craft union rate of pay (as agreed to in collective agreements which will be negotiated between the parties from time to time.) The employer's volume of business, whether up or down, will have no effect on this guarantee. There will be no economic layoffs. Similarly, technological change or process change will have no effect on this guarantee.

LOSS OF COVERAGE - The employees will cease to be covered by this Agreement solely for one of the following reasons:

1. Death of the employee.

2. Voluntary resignation by the employee from the Company.

3. Retirement by the employee.

4. Final permanent discharge from the Company.

Permanent discharge can only occur for a major offence and only then, if the discharge grieved, it is upheld in arbitration. This is the standard to be used in interpreting permanent discharge and can be varied solely by mutually agreed to amendments to the collective agreement. Discharges for minor offences and/or incompetence shall be considered as an unpaid leave of absence for prior credit purposes.

EMPLOYER'S EXISTENCE - This Agreement will be applicable for its term irrespective of the owner (s) of Pacific Press (even if the name is later changed). Therefore it will be binding on purchasers, successors or assigns of the Employer. Similarly it will be blinding even if both newspapers permanently cease publication but the production facilities continue in such activities as commercial printing. It will no longer be binding if both

> newspapers permanently cease to exist and the production facilities do so as well. In the event one paper permanently ceases to exist and production is permanently curtailed, the separate agreement will continue in full force and effect but the impact of that curtailment, if any, will be submitted to arbitration. Until an arbitration decision the guarantee shall stay if effect. The Employer will bear the burden of establishing the need to vary the terms of the Agreement. In the event publication is begun again, the full terms and conditions of the Agreement will be reinstated.
>
> This Agreement shall be binding on the successor of the Vancouver Printing Pressmen, Assistants' and Offset Workers' Union, No. 25, as provided in the Labour Code of British Columbia. …
>
> GRIEVANCE PROCEDURE - In the event of dispute as to interpretation, application or breach of this Agreement, the grievance procedure to be followed shall be that laid out in the collective agreement between the Company and the Union, which is in effect at the time that the grievance is initiated.
>
> In the event the dispute is not resolved at the Joint Standing Committee stage, the arbitrator shall be John Kagel, unless another arbitrator is mutually agreed to." (Un. Ex. 7)

8. The pertinent provisions of the Stereotyper Agreement have virtually identical language. (Un. Ex. 3)

BACKGROUND:

9. Due to technological change and a jurisdictional resolution which awarded work to Photoengravers, a provision of the Stereotypers' collective agreement concerning employment security was triggered, protecting their employment until the expiry of the then current collective agreement. (Tr. 79) That led to the Stereotypers' Agreement involved in this case, which listed 27 individuals by name. (Un. Exs. 1-3) Thereafter they assumed other jobs at the papers, primarily in production. (Tr. 80) Stereotype work no longer was being done on full implementation of the technological change (Tr. 83, 85),

although whether that occurred before or after the Stereotyper separate Agreement was uncertain. It was signed after the Stereotyping Department was closed. (Tr. 89)

10. Shortly thereafter, Pacific Press and the Vancouver Typographical Union No. 226 entered into an agreement which is virtually identical to the Pressmen's 1979, 1983 Agreement here. (Un. Ex. 4) A Compositors' newsletter of November 1977, describing the bargaining that led to it as well as a new collective agreement, against a background of anti-inflation legislation then in effect, described the Agreement as "[a] life-time job guarantee" for each of the more than 200 individuals named therein, along with other aspects of the agreements. (Un. Ex. 5) According to Union witness Funk, the Compositors also agreed to eliminate the requirement of Bargaining Unit personnel to reproduce camera-ready copy used in the papers as supplied directly from customers or their advertising agencies. Mr. Funk described that requirement whereby in slack periods Compositors would reproduce the material on Employer time, and then it would be discarded. but the reproduction had to occur within a year of the material's acceptance by the Employer. He pointed out that the term "contracting out" of work was not then the parlance of such a practice, but it was based on the Compositors' jurisdictional claims. (Tr. 105-107, 115-120) The last of the named Compositors in their agreement had resigned, retired, or died by 2012-2013. (Tr. 113)

11. The Pressmen's Agreement came about under different circumstances. While there were technological changes affecting the Pressroom, a lengthy work stoppage occurred in 1978-1979. A principal issue involved the Employer seeking to change the manning provisions of the Pressmen's collective agreement which up to that time had

been controlled within the Chapel by them, as opposed to the Employer designating the staffing of the presses. (Tr. 136) In addition to this set manning, which the Employer maintained required more staffing than was needed, the inability of the Union to supply men at straight time led to the Employer's argument that the resulting excessive overtime gave Pressmen an expectancy of significant income over their straight-time earnings. (Er. Ex. 1)

12. Having failed to resolve the issue by mediation during the work stoppage, the Parties thereafter agreed to an enquiry panel chaired by Donald R. Munroe, Chairman of the Labour Relations Board. Chairman Munroe, in June 1979, set forth "certain supplementary understandings" of the parties to their earlier agreed-upon provisions for an enquiry panel (Er. Ex. 7) that the enquiry panel would have the authority to mediate, mediate-arbitrate, and to make a final decision. Included in his letter Chairman Munroe wrote that the Pressmen would provide names of employees guaranteed and,

> "The company shall thereupon provide a letter to each of the employees so guaranteed which shall be similar in terms to letters supplied by the company in the past to other guaranteed employees in other bargaining units." (Er. Ex. 5, *see also* Tr. 143)

13. The Chair of the enquiry panel was Mr. Justice McTaggert who also was unable to bring about a settlement of the Pressmen manning dispute and sought to withdraw, enclosing in his withdrawal letter to Mr. Munroe a set of recommendations. (Er. Ex. 6) Thereafter, the Employer and the Pressmen entered into both a collective agreement for 1982-1984 (Er. Ex. 8), and by date of March 1, 1983, noting it was the result of bargaining in 1979, the Employer-Pressmen separate Agreement involved in this

case. At that time, there was no facility in the Vancouver area which had the ability to produce the *Sun* and the *Province* other than at the then Granville Street location of the papers' production facility. Later, the papers moved their production to Kennedy Heights, which is now in the process of shutting down altogether, and to which the Closure Agreement applies.

POSITION OF THE PARTIES:

14. Position of the Union:

That in addition to the four stated grounds where a named employee could lose coverage, a fifth is that that the Agreements will no longer be binding which requires that the papers cease to exist and the production facilities do so as well; that the Agreements do not expire when collective agreements do but carries on in perpetuity until no one is covered anymore; that the Agreements do not say they will cease to apply if there is a contacting out or the Employer is getting rid of its presses; that if the Parties had intended that, they could have simply said that, but they did not; that the Parties have continued to apply the Agreements' job guarantees notwithstanding that there is no work in the Unions' jurisdictions; that the Employer's interpretation would require that the Agreements be amended to show they were intended to cover contracting out; that no lifetime Compositors lost jobs due to contracting out after their Union gave up reproduction nor when there was no work due to surplus labour; that such employees retained their jobs after mandatory retirement ages; that the terms of the Agreements such as "similarly" show that the events listed are a listing of examples; that there is no

prohibition in the Agreements, unlike the collective agreements, that prevent contracting out; that interpretative principles to be applied do not allow the lifetime gob guarantees to be negated due to contracting out; that if the Employer could contract out at any point and void the Agreements, then the lifetime job guarantees would be useless and lead to an absurd result; that the Parties did not agree to a provision that the Agreements would cease if publishing stops alone; that there is no evidence that the Grievors cannot work elsewhere, such as into the Guild's jurisdiction as Stereo personnel had passed through, for the guarantee is not tied to the guarantee of their specific jurisdiction; that the Union here is not seeking to prohibit contracting out provided the job guarantee is honored; that the named individuals are not disentitled to the benefit of the Agreements; that there is no need to infer a term to uphold that benefit.

15. Position of the Employer:

That the examples of Stereotypers and Compositors are inapt since their jobs were protected by technological change; that the Agreements do not apply without presses, for their disappearance is not one of the circumstances listed in the Agreements providing job protection; that in all of those specified circumstances, there are still presses and still a plant; that the Union's position is inconsistent in that its position is that if one paper's production is cut the number of those protected can be reduced but if two papers' production is, all are protected; that if the listed employees had protection from contracting out, that should have been included as one of the stated circumstances for protection, but the Agreements are silent as to that; that there was no issue with respect to the Pressmen as to contracting out because there then were no other facilities in

Vancouver where the papers could be published than in-house; that as to the Stereotypers, the issue also was not contracting-out but technological change; that the situation of outside ads being used is not a contracting out issue; that the Union is seeking to expand its jurisdiction when there are no presses but seeks a right to work when the work is eliminated, moving its jurisdiction from the Pressroom to the existence of a paper; that the Union seeks the Arbitrator to serve to implement conditions of employment for the next 20 years, illustrating the complications of the Union's position; that the clearest and most explicit terminology is required to be shown by the Union to get the extraordinary protection in job security cases as well as the monetary obligation involved; that the result the Union seeks would entail obligations which cannot be inferred or presumed; that contracting out was not the issue giving rise to the Agreements; that an Employer is not prevented from contracting out unless there is a specific prohibition in collective agreements.

DISCUSSION:

Interpretation Principles:

16. The stark issue here is whether the Agreements provide for the named employees' protections when the papers continue to publish but they have no production facilities of their own. They provide the editorial and advertising content but outside contractors produce and distribute the physical papers. As put by the Employer, how can Pressmen and the former Stereotyper claim continued employment when the Employer has no presses?

17. According to the authorities put forth by the Parties, the goal in construing the terms of the Agreements is "to discover the intention of the parties who agreed to it." (*Communications, Energy and Paperworkers Union of Canada Locals 63, 88 and 59N and Abitibi Consolidated Inc. (Grand Falls Division)*), 2005 CarswellNfld 393 (Oakley, 2005). The foremost principle to be applied to determine that issue is the parsing of the language the Parties used in their Agreements. Extrinsic evidence, the Parties' bargaining history, as well as how the Parties have applied their terms, can be helpful provided that they are evidence of the mutuality of the Parties, as opposed to the individual intention of either. (*Catalyst Paper Corp. (Port Alberni Division) v. Communications, Energy and Paperworkers Union of Canada, TYEE Local 686* [2010 BCCAAA No. 49] (Germaine 2010) citing *Government of BC -and- BCGEU* (McPhillips 2009) in turn citing *Pacific Press,* BCCAAA No. 637 (Bird 1995))

Any obligation of the Employer to provide employment when it has no work for employees requires "the clearest of language and that such a guarantee, given its implications for an employer, should not be inferred or presumed." (*The Canadian National Railway Company v. Rail Canada Traffic Controllers,* 43 LAC (4th) 13 (Frumkin 1994) citing *International Simultaneous Translation Service Ltd. and National Association of Broadcast Employees and Technicians*, 35 LAC (4th) 55 (Taylor 1993))

> "It should also be said that guaranteed employment for the life of a collective agreement, while not a novel concept, is nevertheless extraordinary. It is a concept which, if truly intended, one would expect to see expressed in the clearest and most unambiguous language and cast in a way which would, upon consideration for the collective agreement as a whole and on a balance of probabilities, dispel a bona fide doubt. …" (*See also Wire Rope*

> *Industries Ltd. v. United Steelworkers, Local 3910,* 4 LAC (3d) 323 (Chertkow 1982), precise agreement language required to take away fundamental right of management to reorganize work force)

And, "… a contract ought not to be interpreted to disentitle a party to other rights under the agreement unless there is express language to support that view," *Re Western Mines Ltd. and Canadian Association of Industrial, Mechanical and Allied Workers, Local 19*, 1 LAC (3d) 31 (McColl 1981), citing *Re Joseph Brant Memorial Hospital of Burlington-Nelson Hospital and CUPE, Local 1065,* 5 LAC (2d) 15 (Brown 1973):

> "To unilaterally place an employee in a position whereby the terms of any article in a collective agreement would detrimentally affect his rights under that agreement would take clear and unequivocal language."

Wording of Agreements:

18. The Union is seeking guaranteed employment for the working lives of the five persons involved in this case. Examination of the pertinent wording of the Agreements shows at the Agreements' outset that there is a stated job guarantee of full-time employment and full pay. There are four numbered conditions listed where they can lose their guarantees, which do not apply here.

19. There is also a fifth: The Agreements will "no longer be binding if both newspapers permanently cease to exist *and* the production facilities do so *as well.*" (italics supplied). Expressly stated in another sentence, if the papers cease and the production facilities continue, the Agreements continue to be binding. The corollary is expressed in this sentence; that the production facilities cease but the papers continue. This sentence, in and of itself, written in the conjunction, twice, by the use of the term

"and," and then ending with the term "as well," is clear that both conditions must occur, or the Agreements continue to be binding.

20. The major position of the Employer essentially is that since the Agreements provide for their continuation in a number of specified circumstances—volume of business, technological change, process change, economic layoffs, ownership change, cessation of publication but switching to commercial printing—there is no specification for their continuation for cessation of production by fully contracting that work. To find such a requirement, according to the Employer, it would have to be one that is inferred from these examples and such a restriction on management's operation or the provision of employment when there is no work to perform could not be so found since such a restriction of that magnitude must be clearly and affirmatively stated and, in the Employer's view, it is not.

21. But, to repeat, such a restriction is both clearly and affirmatively stated. As the Union maintains, the listed restrictions are examples of circumstances where the Agreements continue. Their wording describes at least two of them as "similarly," referring to the specified circumstances of technological or process change, or of only commercial printing. Immediately after the last "similarly" statement, there is then the sentence which expressly announces when the Agreements will no longer be binding, specifying cessation of both publication and production "as well." The "as well" phrase is clear evidence that in addition to the "similar" conditions of Agreement continuation that that key sentence is, and is intended to be, an all-encompassing expression guaranteeing

that the Parties intended to cover all circumstances not otherwise listed to keep the Agreements in force except for the cessation of both production and printing.

22. Thus there is no implication required to find the Agreements remain in effect when the papers continue to publish but production ceases; that requirement is already affirmatively stated in the wording of the Agreements. It is a clear statement of a very important promise in the Agreements for the entitlement of the named employees, (*Brant Memorial Hospital, supra*), and a clear statement placing obligations on the Employer's reorganizing its workforce (*Wire Rope, supra*) in addition to providing employment even if the original work of the employees if no longer available. (*Rail Canada Traffic Controllers, supra*)

23. Further, the next sentence in the Agreements supports that view, for if one paper permanently ceases "*and* the production is permanently curtailed," the Parties provided for how that circumstance would be dealt with. (italics supplied) It would be anomalous to impact, and, presumably, lessen, the guarantees in the Agreements by one paper both ceasing to exist and permanently curtailing production through arbitration, but where both papers continue publishing nullifying the entirety of both Agreements.

24. (And, by contrast to the wording of the key sentence, *see Times-Colonist (Victoria) v. Mailers Union, Local 121, (Sjoberg Grievance)*, [1984] BCCAAA No. 111 (McColl 1984) construing a job security provision of a collective agreement providing for a set number of positions "save and except the closure of the Times-Colonist during the term of the agreement *or* the elimination of any edition of the production of the Times-Colonist." (italics supplied))

25. Accordingly, examination of the wording of the Agreements supports the Union's view of how to interpret and apply them as a clear statement of mutual intent upon consideration of the Agreements as a whole, and thus on a balance of probabilities there is clear intention that they continue in existence as the papers continue, whether or not they have production facilities. Any other interpretation would require that provisions be read out of the Agreements, which an arbitrator has no authority to do. (*Catalyst Paper Corp., supra*)

Extrinsic Evidence:

26. The extrinsic evidence of mutuality of intention of the Agreements emphasizes this analysis of their language. The prototype Agreement was that of the Stereotypers. At the time it went into effect, or shortly thereafter, there no longer was a use for the Stereotyper craft in the papers' production. While the named Stereotypers took other positions at the papers, all Parties was considered that Agreement as being in effect even though there was no stereotyping to be done. The identical model for the Pressmen's Agreement was that of the Compositors. When there was no work for named Compositors, they continued to be employed even if they were playing cards. (Tr. 112)

27. What these examples show is that the Parties considered the Agreements in effect whether or not there was work available for those who were covered by them. And, what they mean in the current dispute is that whether or not the Employer has machinery that Pressmen would have otherwise operated is not relevant to their effect. Employment continued under the same wording with the same Employer or its successor even if there was nothing for the named employees to do in terms of production. Accordingly, these

examples underscore how the Employer and the signing Parties mutually viewed the intent of the Agreements to the benefit of the individuals named in them, namely that they would continue in existence when the papers published but there were no production facilities available for those individuals to work in.

28. Likewise, it was common for covered employees, the Unions involved, and the Employer to consider the Agreements as providing for "lifetime job guarantees," even if that term does not appear in them. (Tr. 101, Un. Ex. 5, *Pacific Newspaper Group v. Communications, Energy and Paperworkers Union of Canada Local 2000*, 123 LAC (4^{th}) 209 (Germaine 2003)) While that mutual common description is not determinative of the precise issue here, it does place the issue into the Agreements' context, indicating mutual expectation of the Parties and underscoring that the necessity of a clear and unequivocal statement depriving the individual employees of rights under the Agreements which is not shown. (*Brant Memorial Hospital, supra)*

29. The Employer maintained that the circumstances bringing about the Pressmen's Agreement are different from the Stereotypers' and Compositors' in that there was no technological change involved leading to their creation. But that factor does not negate its application. Chairman Munroe's letter concerning the guaranteed employees provided that the Employer's letter would be similar to that of "the other guaranteed employees in other bargaining units." Its intended application necessarily follows how the Employer applied those understandings.

30. The Employer also reckons its obligation to the five individuals, all 58 or 59 years old (Tr. 17-18), at $3-5,000,000 over their working lives if the Union is successful.

That obligation is what was undertaken in 1979: "…it is the parties' mutual intention which is sought and which is determinative, even if conditions may have changed since the applicable terms were negotiated." (*Catalyst Paper Corp., supra*)

DECISION:

31. The Agreements continue as to the five employees named above notwithstanding the closure of Kennedy Heights. The terms and conditions of the continued application of them are remanded to the Parties, the undersigned retaining jurisdiction if they cannot agree thereon.

Arbitrator