IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS UNION OF CANADA - (C.A.W.-CANADA)
- the Employer

-and-

RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR,
DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 448
- the Union

AND IN THE MATTER of a grievance of Rick Gingrich regarding child care benefits

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Dean Fowler	- Director, Family Education Centre

On behalf of the Union:

Dave McCormick	- Representative
Rick Gingrich	- Grievor
Gail McCormick	- Chief Steward

Hearing held May 23, 2001 in Port Elgin, Ontario.

AWARD

I. INTRODUCTION

This collective agreement provides for employees to be reimbursed for “childcare” costs. Rick Gingrich grieved the Employer’s refusal to pay him these child care benefits. The parties disagreed on whether the care provided by the grievor's oldest child for his younger sibling was “childcare”.

II. THE EVIDENCE

The grievor works at the C.A.W.-Canada Family Education Centre near Port Elgin. In the most recent collective agreement the parties added a provision for the payment of child care benefits to reimburse employees for expenses incurred in the care of their children.

Last year (2000) the grievor requested reimbursement for amounts he had paid in 1999 to his eldest child, Nathan, now age 14, for the care of his youngest child, now age 7. The Employer (itself a union) reimbursed the grievor for the 1999 payment but advised the grievor and other employees that the Employer did not view this arrangement as falling within the term “childcare” under the agreement. The Employer advised employees that child care had to be provided by a “childcare provider” in future years.

This year the grievor claimed reimbursement for amounts he had paid Nathan for the care of his youngest child in 2000. The grievor submitted a receipt from Nathan for $650.00. The Employer declined to reimburse the grievor on the grounds that Nathan had not provided child care. In its reply to the grievance the Employer stated “receipt must be from an adult, on a proper receipt for childcare as previously stated”.

The grievor’s wife works unusual shifts. Because of this, his own schedule, and his

children's school schedule, the grievor testified that he often required child care for odd hours, such as 5:00 am to 8:00 am. The grievor said it was difficult to make child care arrangements for such times. The evidence of child care possibilities in Port Elgin was not detailed; it appeared that the area does not have many child care facilities which will accept a child for short periods, especially on an occasional basis or outside the normal work day. It would have been difficult to arrange commercial child care for those times when Nathan provided care.

As for employing someone to come into his home to provide child care, the grievor said he felt safer with his son Nathan at home providing care than he would in hiring someone to come into his home. The grievor said that Nathan was a responsible person who sometimes gave up other babysitting opportunities in order to look after his sibling. The grievor also noted that his parents lived nearby and, in an emergency, Nathan could contact his grandparents or a neighbour. The grievor said he believed this was the best possible arrangement for his children

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The following are the relevant provisions of the parties' 1998-2001 collective agreement.

ARTICLE 29 - GENERAL

. . .

29.02 Effective January 1,1999

An eligible employee who works more than 1,500 hours in a calendar year will be entitled to payment for childcare benefits of up to $600.00 per year.

An eligible employee who works more than 1,000 hours in a calendar year will be entitled to payment for childcare benefits of up to $400.00 per year.

An eligible employee who works more than 500 hours in a calendar year shall be entitled to payment for childcare benefits of up to $200.00 per year.

> To be eligible for this benefit, the parent or legal guardian must provide receipts for child care. Payment will only be made for a child or children under the age of twelve (12) in the calendar year preceding pay-out of this benefit. Payment will only be made to one parent if both are members of RW Local 448. Payment of this benefits [sic] will be made in March of each year for the preceding calendar year. Applications for this benefit must be received by February 1, the year of payout.

. . .

IV. POSITION OF THE UNION

The Union submitted that the grievor had arranged and paid for child care and was entitled to be reimbursed. It was the grievor's responsibility as a parent to look after his children and the grievor had made arrangements for his child to be cared for in a responsible manner.

The collective agreement is clear. The grievor provided the Employer with a receipt for child care for a child under age 12. There were no limits on child care arrangements and this was clearly child care. A person who looked after a child was a person who provided child care; Nathan provided child care.

The Union sought an order that the Employer reimburse the grievor for $600.00, the maximum amount of this benefit under the collective agreement.

V. POSITION OF THE EMPLOYER

The Employer submitted that the collective agreement contemplated only certain types of child care - such as an agency providing day care or an adult operating a day care service. The Employer said it was necessary to distinguish between child care and baby-sitting. Baby-sitting was not included as child care in this collective agreement.

In 2000 the Employer had made clear that in future years it would only reimburse employees

for amounts paid to a child care provider and not payments made, as here, to a family member.

The Employer provided me with definitions of "child care facility", "child care services" and "child care", as well as "baby-sitter". The first two were definitions of terms as used in legislation and do not assist in this matter. The definition of "child care" from the Collins English Dictionary, 1986, is as follows:

> *n. Brit*. care provided for children without homes (or with a seriously disturbed home life) by a local authority.

"Baby-sitter" is defined in the same dictionary as follows:

> *n.* a person who takes care of a child or children while the parents are out.

The Employer asked that the grievance be dismissed.

VI. CONCLUSIONS

The article uses both "childcare" and "child care". Neither party suggested that there was any difference in meaning between the two. I view them as having the same meaning in this article.

This collective agreement provides for reimbursement for child care expenses. The grievor submitted receipts for the care of his child who was under age 12. The grievor met all the requirements of the agreement with the possible exception of the basic issue of whether his son Nathan provided "childcare", as distinct from some other sort of care, for his sibling.

Did Nathan provide "childcare"?

The correct approach to the interpretation of this or any other collective agreement is to determine the intention of the parties. To do this an arbitrator first examines the words of

the agreement as it is through those words that the parties expressed their intention. The particular words in dispute are not examined in isolation. Instead they are interpreted within the context of any related provisions of the collective agreement and within the context of the purpose and history of the article. Where the intention cannot be determined from the language of the agreement, other sources - such as the history of the negotiation of the provision or the manner in which the provision has previously been administered - are examined to see if those assist in determining the parties' intention.

I begin with the word "childcare". I cannot accept that the parties intended the definition of child care provided by the Employer - "care provided for children without homes (or with a seriously disturbed home life) by a local authority". There is nothing in the language of this agreement which suggests that the parties had that particular meaning in mind or any other similar narrow meaning.

In my experience child care is normally used to mean caring for a child. I have never understood child care to be commonly used as having a narrow or restrictive meaning. There are many types of arrangements that can be made to care for a child and I have understood them to be various types of child care. Apart from a situation in which a parent is caring for his or her own child, I view "caring for a child" and "providing child care" as having the same meaning. Child care thus includes a wide assortment of arrangements which can be made to look after a child.

I believe that a baby-sitter provides child care. I note the definition of “baby-sitter” provided by the Employer - "a person who takes care of a child or children while the parents are out". Using that definition of baby-sitter, which is the meaning I have long understood for baby-sitter, it is difficult to see how Nathan, whom the Employer accepted acted as a baby-sitter, was not providing child care in the usual sense of the term.

From an examination of the words used in the Article, I would conclude that Nathan did provide child care.

As indicated above, the words should be examined in the context of other related articles. In this case the child care benefit is a new provision and is unrelated to any other provision of the collective agreement. There are no other articles which need to be considered with this article to determine the intention of the parties.

My view that Nathan provided child care is supported by the purpose and history of this article. A maximum reimbursement of $600.00 per year will not cover full-time day care costs for one year. The amount of this benefit serves only as a partial reimbursement or as reimbursement for an employee who occasionally has to make child care arrangements due to changes in to his or her work schedule, or due to a child's illness, etc. Given the amount of the yearly benefit and the scarcity of commercial child care facilities where a parent might take a child on an irregular basis or at unusual times, had the parties had a narrow range of services in mind I would have expected them to have clearly indicated this. The introduction of a small benefit in a location with limited child care options tends to support the conclusion that the parties wished to include a broad range of child care arrangements.

In view of the above, I conclude that the agreement contemplates a variety of child care arrangements. Neither the words nor the purpose of this provision suggest a narrow approach. The grievor's son Nathan cared for the grievor's youngest child and, in terms of this collective agreement, I conclude that Nathan provided child care.

Negotiating history or past practice is only considered when the language of the collective agreement is ambiguous. In this case I do not find the language to be ambiguous but I will comment briefly on the Employer's submissions.

Although the Employer suggested that the parties, or at least the Employer, had intended a restrictive interpretation, it led no evidence that the parties shared such an intention during their negotiations and the Union disagreed with the Employer on this point. There is no evidence of negotiating history which would assist in determining the parties' intention.

Nor is there any practice which can be relied upon. The fact that the Employer reimbursed the grievor for Nathan's services in 2000, while indicating that in the future it would not do so, has no impact on the resolution of this issue. Since the Employer paid the benefit in 2000, there was nothing for the grievor to have grieved and no prejudice to the Union position. The Employer's interpretation was consistent, but the mere fact of a consistent position does not make that position correct or even more persuasive. The only impact of the Employer's actions in 2000 was to inform the grievor, other employees, and the Union that there might be a grievance over this issue in a future year.

The grievor has met all the requirements of the agreement for child care benefits and I direct the Employer to reimburse the grievor in the amount of $600.00, the maximum benefit under the agreement.

I will remain seised to deal with any issues which may arise in the implementation of this award.

Dated in London, Ontario this 22nd day of June, 2001.

Howard Snow, Arbitrator