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

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

MAPLE LEAF POULTRY
- The Employer

-and-

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175
- The Union

AND IN THE MATTER OF a Union/Policy grievance and of individual grievances of Kevin Calovro, Carl Parent and Joao Da Costa, all dealing with new hire wage rates

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Dan J. Shields	- Counsel
Mike Foster	- Director
Kelly Dobbyn	- Director of Human Resources
Joe Pimental	- Operations Manager
Wayne Fraser	- Ontario Human Resources Manager

On behalf of the Union:

Georgina Watts	- Counsel
Joe DeMelo	- Union Representative
Joao da Costa	- Grievor
Carl Parent	- Grievor
Kevin Calovro	- Grievor
Melanie Correia	- Steward

Hearing held February 26, May 8, May 9, September 5 and September 16, 2003, in Toronto, Ontario.

AWARD

I. INTRODUCTION

The parties' previous collective agreement had a schedule of wages for the several "grades" of employees and specified starting rates for new employees. The current agreement kept those provisions but added a letter of agreement which "shall apply to new employees in GRADE 1" and provided lower starting rates. The Employer submitted that the letter also applied to new employees in the other grades and asked that the agreement be rectified to that effect.

II. THE EVIDENCE

The Employer, Maple Leaf Poultry, operates a poultry processing plant in Brampton, Ontario.

Although the Union submitted that the collective agreement was clear and that the evidence of the negotiations was not needed to resolve the grievances, the parties did agree that I would hear this negotiating history.

The previous collective agreement included wage rates for eight grades of employees, the top grade, grade 8, being maintenance employees. As of June 1997 grade 1 employees received $14.22 per hour and employees in each higher grade received a somewhat higher wage. The wage differentials between the grades varied and the grade 8 hourly rate was $15.73. New employees, "excluding Maintenance Classifications", started at "80% of job rate" with the rate increasing by 5% every three months reaching the full job rate after 12 months.

In the last round of bargaining the Employer sought to decrease its total wage cost. It sought

to achieve this through a proposal that new employees receive a lower starting wage rate of $10.00 and reach the job rate in four years. The Employer proposal was to apply to all grades of employees with new grade 1 employees paid $10.00 per hour and each higher grade receiving the same wage differential as existing between the job rates. On the other hand, the Union sought a higher starting rate with employees beginning at 85% of the job rate and increasing by 5% each month to achieve the job rate in three months.

No agreement was reached on this wage issue in the early days of bargaining. The Employer and the Union each maintained its respective proposal on new hire wage rates.

The Employer's chief negotiator was Wayne Fraser, the Employer's Human Resources Manager. He communicated to the Union the importance the Employer placed on the need to reduce its wage costs.

The Union's chief negotiator for most of the negotiations was Kate Chrysler, a Union Representative. However, this wage issue was not resolved until mediation and in the mediation Harry Sutton, the Union's director for this region, assumed the role of chief negotiator.

At the mediation session April 24, 2001, Mr. Fraser and Mr. Sutton represented the parties and they reached a resolution of the bargaining. They did this by meeting one-on-one and then reporting to their respective committees, and they were therefore the only persons directly involved in the final negotiations. After several one-on-one meetings and reports to their committees Mr. Fraser and Mr. Sutton reached an oral agreement on all outstanding issues, including the matter of starting wage rates in dispute in these grievances. That same day a Memorandum of Settlement was prepared, reviewed, revised and signed.

The Memorandum indicated that the new collective agreement was to consist of the old

agreement with various amendments. The wage rates were increased $0.17 per hour on June 1, 2000, and a further $0.35 per hour on June 1, 2001. No mention was made of either an amendment to, or the deletion of, the old provision on 80% starting rates. However, a new “Letter of Agreement #1" was added as part of the collective agreement. That Letter "shall apply to new employees in GRADE 1, hired after May 1, 2001" and specified that their rate of pay at the start would be $10.00, at 1 year it would be $11.05, at 2 years $12.10, at 3 years $13.15, and at 4 years $14.22 (the job rate for grade 1 before the June 1, 2000 increase). It also provided that "Any employee receiving the above rates shall receive all negotiated wage increases." The language "shall apply to new employees in GRADE 1, hired after May 1, 2001" was new; it had not been included in the Employer's earlier proposals on new hire rates.

The Memorandum of Settlement was ratified and a collective agreement was prepared. However, by that time Mr. Fraser had left the Employer so that neither Mr. Fraser nor Mr. Sutton reviewed or signed the formal agreement.

After the settlement was reached Mr. Fraser believed the new hire rates in Letter #1 applied to all new employees, excluding maintenance employees, and the Employer paid new employees on that basis. The Employer paid new employees in grade 1 using the $10.00 rate and paid each higher grade $10.00 plus the normal wage differential. The Union was unaware of this practice for some time but, upon learning of it, grieved the paying of new employees in grade 2 through grade 7 the lower rate. Several newly hired employees also grieved. These grievances are before me for resolution.

I note first that neither Mr. Fraser nor Mr. Sutton had a clear memory of those negotiations. That is as one would expect since both have been involved in many rounds of bargaining and there was nothing in this bargaining that was exceptional or memorable.

Wayne Fraser indicated that the new hire wage proposal had been very important. The Employer was making new investments in the plant and had negotiated new lower starting rates at its plant in Toronto. He said it was important to the Employer to reduce the "fully burdened wage rate", that is the average hourly amount for wages and benefits. He said he conveyed the importance of the Employer's new hire proposal to the Union negotiators on several occasions. During conciliation, six weeks before the mediation, he advised the Union that the Employer must reduce its wage costs to remain competitive.

Mr. Fraser acknowledged that in mediation April 24, 2001, the Union was represented by Harry Sutton, a Union director. Mr. Fraser said that the Union often sent a director at the end of bargaining to finalize issues as the directors had a broader understanding of what was happening in the industry than did the Union representatives. Mr. Fraser and Mr. Sutton met and through the course of the day resolved each of the remaining items in dispute. In particular they reached agreement on new hire rates. Mr. Fraser said he understood the new hire rates were not restricted to grade 1 employees and he said there had been no discussion about restricting new hire rates to grade 1.

After all the items were resolved through oral discussion, the parties prepared and signed a Memorandum. Mr. Fraser said Mr. Sutton prepared most of the Memorandum. Prior to signing the Memorandum the Employer reviewed the text and changes were requested and made. The Memorandum was signed that same day.

While the text of the new hire Letter states that the rates are for new employees in grade 1, Mr. Fraser said that at no time was there any discussion of restricting the rates to grade 1. Mr. Fraser said that at no time did Mr. Sutton state that the new rates applied to only grade 1. Mr. Fraser further said he would have remembered it if the Union, or Mr. Sutton, had ever mentioned that they understood that the rates applied only to new grade 1 employees. Mr. Fraser said that he interpreted the specific mention of grade 1 as an example only.

Following the negotiations Mr. Fraser and a payroll clerk prepared a table with new hire rates for the first seven grades of employees (that is, excluding maintenance employees), adding the negotiated increases and the wage differentials for the other grades, and the Employer paid its newly hired employees in all seven grades at those new rates. This meant new employees in grades 2 through 7 were paid substantially less than they would have been paid under the 80% of job rate provision.

Mr. Fraser referred to other collective agreements, especially the agreement at the Employer's Brantford facility (not to be confused with the Brampton facility involved in these grievances) with this same Union. That Brantford agreement specified new hire wage rates at $10.00 and Mr. Fraser said that the Employer treated the amount as an example and applied the same approach to all grades using $10.00 for grade 1 and adding the wage differential for the other grades of employees.

In cross examination Mr. Fraser agreed that he needed to refer to his notes to refresh his memory of the negotiations. He agreed that he could recall no specific discussion with Mr. Sutton on the new hire provision. He also agreed that money issues were important for both parties and that negotiators often had to compromise to reach an agreement. He acknowledged that if the agreement was as the Union asserted it would represent a compromise, whereas if it was as the Employer asserted then the Employer had achieved exactly what it had requested on new hire wage rates. He also agreed that if the Employer view was correct there was no need to have kept the old language about starting rates being 80% of the job rate.

Harry Sutton was the main Union negotiator during the mediation stage of the bargaining. Like Mr. Fraser, Mr. Sutton needed to refer to notes to refresh his memory and he, too, was unable to recall specific details of his bargaining with Mr. Fraser on this issue. Mr. Sutton said he did recall discussion of problems he anticipated the Employer would have in hiring

new employees at the proposed rates and of problems which had arisen at another plant over new hire rates. Mr. Sutton testified that he prepared the draft Letter of Agreement # 1 and most of the Memorandum of Settlement and it was reviewed by, and amended at the request of, the Employer and signed that same day.

Mr. Sutton said the letter on new hires was in his writing and that he did not negotiate or write in code. He said that if it had applied to other than grade 1, his practice would be to say so. He said that if he had agreed that this provision was to apply to all employees he would not have written grade 1 and he would not have left the old 80% starting rates provision in the agreement. He said he understood new grade 1 employees received the $10.00 rate but other grades were covered by the other starting rates provision, beginning at 80%.

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The key provisions of the parties' 2000-2003 collective agreement are as follows:

SCHEDULE "A"
JOB CLASSIFICATIONS & HOURLY WAGE RATE

	JUNE 1/2000	**JUNE 1/2001**
GRADE I . . .	$14.39	$14.74
GRADE II . . .	$14.51	$14.86
GRADE III . . .	$14.63	$14.98
GRADE IV . .	$14.82	$15.17
GRADE V		

. . .	$14.99	$15.34
GRADE VI		
. . .	$15.11	$15.46
GRADE VII		
Truck Driver	$15.35	$15.70
Tractor Trailer Driver	$16.30	$16.65

[NOTE: GRADE VIII and GRADE IX are the maintenance employees.]

. . .

STARTING RATES

New employees hired after the date of ratification (excluding Maintenance Classifications) will be paid 80% of job rate, with 5% increase every 3 months. Full rate after 12 months.

. . .

LETTER OF AGREEMENT #1

. . .

The Parties agree the following shall apply to new employees in GRADE 1, hired after May 1, 2001:

	Hired after May, 2001	**Hired after May, 2002**
Start	**$10.00**	**$10.52**
1 Year	**$11.05**	**$11.57**
2 Years	**$12.10**	**$12.62**
3 Years	**$13.15**	**$13.67**
4 Years	**$14.22**	**$14.74**

Any employee receiving the above rates shall receive all negotiated wage increases.

. . .

IV. POSITION OF THE EMPLOYER

The Employer made three alternative submissions. It asked first that the agreement be rectified, secondly that the Union be estopped from relying on its interpretation of the agreement, and thirdly that an ambiguity be found to exist in the agreement and that it be resolved in favour of the Employer.

The Employer reviewed the evidence of the negotiations in detail and said there were three

periods. The first period was before the April 24, 2001, mediation and only Mr. Fraser testified about that period. His evidence was uncontradicted and demonstrated that the importance of this new hire wage issue had been clearly communicated to the Union and that the Union understood the Employer proposal applied to all grades. As for April 24, Mr. Fraser's evidence was more direct than was Mr. Sutton's evidence and should be preferred. Mr. Fraser said he did not change the Employer position on this issue. As for the third period after April 24, the Employer, primarily through Mr. Fraser, acted on the basis of its understanding. There was no similar evidence of the Union understanding. The Employer evidence was consistent throughout the three time periods and should be preferred to the Union's evidence. The "deal" was as Mr. Fraser described it and I should enforce the parties' true deal.

As for rectification, the Employer said the evidence indicated the parties had agreed that all new hires would receive the new hire rates. The written agreement thus reflected a mutual mistake and I should rectify it. Alternatively, if only the Employer made a mistake the Union was nevertheless aware of the Employer's understanding and it would amount to fraud to allow the Union to rely on this language. Using either approach, the agreement should be rectified.

As for the issue of estoppel, in the negotiation the Employer had made clear its view of the new hire wage provision. It intended it to apply to all grades. The Union said nothing to indicate that it had a differing view. The Union's silence is a representation that it agreed with the Employer. The Employer acted to its detriment in accepting this language and the Union should be prevented from relying on its interpretation.

Finally, the Employer submitted that the evidence of the negotiations could be used to show an ambiguity in the agreement and asked that I resolve that ambiguity in favour of the Employer.

The Employer referred to the Brantford agreement between the same parties in which similar language was interpreted as the Employer intended here.

The Employer relied upon the following authorities: *Public Service Alliance of Canada v. NAV Canada* (2002), 212 D.L.R. (4th) 68 (Ont. C.A.); *Re Hoover Co. Ltd. and United Electrical, Radio and Machine Workers. Local 520* (1982), 7 L.A.C. (3d) 157 (Weatherill); *Re Metro Community Housing Authority and Canadian Union of Public Employees, Local 2305* (2002), 106 L.A.C. (4th) 133 (Kydd); *Re Hallmark Containers Ltd. and Canadian Paperworkers Union, Local 303* (1983), 8 L.A.C. (3d) 117 (Burkett); *Re TRW Canada Ltd. and Thompson Products Employees' Association* (2001), 95 L.A.C. (4th) 129 (E. Newman); and *Re Taggart Service Ltd. and United Food and Commercial Workers' Union, Local P818* (1989), 6 L.A.C. (4th) 279 (M.G. Picher).

V. POSITION OF THE UNION

The Union submitted that the agreement was clear and unambiguous. The Union urged me to apply the usual rules of construction and interpret Letter #1 in the context of the entire agreement. The Union said that if I did so the only reasonable conclusion was that Letter #1 applied only to those new hires in grade 1.

The Union submitted that the real agreement was the one the parties put in writing. My role was not to review the bargaining and decide the parties' "real deal." The evidence was clear that Mr. Sutton did not negotiate in such a manner that I had to search for a special meaning of the words "GRADE 1". That language was clear.

As for rectification, the Union agreed I had jurisdiction to rectify the agreement but said this was not a case where rectification should be used. Neither Mr. Fraser nor Mr. Sutton could recall any of their conversation on new hire rates. Both recalled that the issue was important

to them, and Mr. Fraser said he had not withdrawn the Employer proposal. But after oral agreement was reached, Mr. Sutton drafted the language, it was reviewed by Mr. Fraser, changes were requested by the Employer and made, and the Memorandum was signed. The evidence did not show that Mr. Sutton had orally agreed that the new hire rates applied to all grades. The evidence did not come close to showing a mutual mistake in converting the oral agreement to a written agreement.

Nor did the evidence show a unilateral mistake by the Employer, a mistake known to Mr. Sutton, or the Union, such that it would be unfair to the Employer to allow the Union to have the agreement enforced. Mr. Sutton said he wrote out the arrangement he understood had been reached. The only evidence as to any representation by the Union about this provision is the Memorandum of Settlement itself and it is inconsistent with the Employer view. Thus the Union was not silent on this issue.

The Union said all the Employer submissions failed for a lack of evidence.

As for the Brantford agreement, the language in that collective agreement is very different. The similar provision there does not specify, as it does here, grade 1 employees. Moreover that agreement has different language regarding 80% starting rates which made it clear the old starting rates did not continue after the new $10.00 rates began.

The Union relied upon the following authorities: Brown, Donald J. M. and David M. Beatty *Canadian Labour Arbitration*, 3rd edition, (Aurora Ontario: Canada Law Book), looseleaf, Section 3:4400 (Extrinsic Evidence) and Section 2:1441 (Rectification); *Re Uniroyal Goodrich Tire Manufacturing and United Steelworkers of America, Local 677* (2000), 92 L.A.C. (4th) 366 (O'Neil); *Re Burns Meats and United Food& Commercial Workers Union, Local 832* (1995), 50 L.A.C. (4th) 415 (Hamilton); *Re United Automobile Workers, Local 112, and De Havilland Aircraft of Canada Ltd.* (1961), 11 L.A.C. 350 (Laskin); *Re*

Canadian Union of Public Employees, Local 883, and Salvation Army Grace Hospital (1971), 23 L.A.C. 305 (P.C. Weiler); and *Re Slocan Group and I.W.A.-Canada, Local 1-424* (2002), 109 L.A.C. (4th) 133 (McPhillips).

VI. CONCLUSIONS

Interpretation of the Collective Agreement

In interpreting a collective agreement an arbitrator normally relies on the words of the collective agreement. An arbitrator's primary role, then, is to determine the parties' intention as expressed through their written words. The particular words are not to be read in the abstract but rather are to be read within the context of the entire collective agreement. Some other part of the collective agreement may shed light on what the parties intended by the disputed words.

If the words of the agreement are clear when read in the context of the entire collective agreement an arbitrator is not normally allowed to examine negotiating history to determine whether another meaning was intended. That is particularly applicable in a case such as this where neither Mr. Fraser nor Mr. Sutton, the only two persons involved in the final negotiations, were able to recall anything of substance about their oral discussions on the disputed matter. However, that same day they did prepare, review, amend and sign a Memorandum of Settlement in which they recorded the results of those discussions. The written Memorandum, the relevant portions of which form part of the collective agreement, is thus the best evidence of the outcome of the parties' discussions that day.

An exception to the admission of evidence on negotiating history is made when a latent, or hidden, ambiguity can only be shown by the evidence of negotiating history. If the evidence shows an ambiguity, that ambiguous provision may then be clarified by that same evidence.

But, in general, an arbitrator is simply to interpret the words of the collective agreement.

Turning to the task of interpretation, I note firstly that Letter of Agreement #1 is to "apply to new employees in GRADE 1, hired after May 1, 2001." In that language the parties' intention seems clear. Had they intended to apply those new rates to new employees other than grade 1 it would have been easy to express that intention clearly. To look at this another way, if the parties had intended to apply this *only* to those new employees in grade 1, the language they used was very appropriate. It is difficult to conceive that these experienced negotiators would have selected the words "the following shall apply to new employees in GRADE 1," to indicate not only their intention that the wages listed would apply to employees in grade 1 but also to indicate their intention that other, unspecified, wages would apply to new employees in grades 2 through 7, but would not apply to employees in grade 8 or grade 9. Yet the Employer said that was exactly what was intended.

Turning to the rest of the agreement, there is the "Starting Rates" provision in Schedule "A" which sets out new hire rates for grades 1 through 7. If Letter of Agreement #1 applied only to grade 1 employees, then the Starting Rates in Schedule "A" would regulate the starting pay for the other grades. Such an approach makes sense, allows both provisions of the agreement to have a purpose, and it allows the provisions to work together.

I note that the language of the Starting Rates section of Schedule "A" is sufficiently general to also apply to grade 1 employees. However, in the face of the more specific provision on new hire rates in Letter #1, that interpretation cannot apply, and the Union did not suggest it. Both parties accepted that grade 1 new hires are covered by the new Letter.

Looking only at the language of the collective agreement I find that the meaning is clear and unambiguous. New hires in grade 1 are to receive the wages set out in Letter of Agreement #1 which is said to "apply to new employees in GRADE 1," whereas the new hires in the

other grades are to be paid under the more general provisions in the Starting Rates part of Schedule “A”.

The Employer submitted, however, that the evidence of negotiating history demonstrated a hidden ambiguity in the agreement. This ambiguity, often called a latent ambiguity, is one which is not apparent from the words of the agreement but is shown only when other evidence is examined.

I have reviewed this submission and the evidence but I do not find in the evidence anything which discloses a hidden ambiguity. The evidence does indicate that the Employer thought the provision had a different meaning than the one which I concluded above is the clear and unambiguous meaning of the agreement, but the mere fact of one party having a different view as to the meaning of an agreement does not mean there is a hidden ambiguity.

In addition, I note that while the Employer made clear during bargaining that its proposal on new hire rates was intended to apply to several grades of employees, the Employer's proposal in bargaining did not include the language now contained in the agreement that it "shall apply to new employees in GRADE 1, hired after May 1, 2001." That phrase was first added on April 24 in the Memorandum of Settlement. If the language had been the same throughout, the evidence might persuade me of an ambiguity, but all the Employer evidence regarding the negotiations before April 24, 2001, was in relation to a provision which was changed during the mediation process.

Rectification

The Employer's principal submission was that the written agreement did not reflect the true agreement of the parties reached in the bargaining. As a result the Employer asked that I rectify, that is correct, the written document so that it accurately reflects the parties' real

agreement.

Although previously some courts said a labour arbitrator could not rectify a collective agreement, that issue has now been resolved in favour of the power to rectify. I thus consider whether this is a situation in which I ought to exercise that power.

The grounds on which rectification can be ordered have recently been set out by the Ontario Court of Appeal in *Public Service Alliance of Canada v. NAV Canada (supra).* At paragraph 44 of the decision in that case, Mr. Justice Catzman, on behalf of a unanimous court, quoted with approval the words of Mr. Justice Binnie in *Sylvan Lake Golf & Tennis Club Ltd. v. Performance Industries Ltd.* 2002 SCC 19, [2002] S.C.J. No. 20 (QL), (2002), 209 D.L.R. (4th) 318, as follows:

> Rectification is an equitable remedy whose purpose is to prevent a written document from being used as an engine of fraud or misconduct "equivalent to fraud". The traditional rule was to permit rectification only for mutual mistake, but rectification is now available for unilateral mistake (as here), provided certain demanding preconditions are met.

The evidence in this case does not show a mutual mistake. While the written agreement may differ from the Employer's view of the oral agreement, there was no evidence at all to suggest that the written agreement failed to reflect the oral agreement as that oral agreement was understood by the Union, or by Mr. Sutton, the Union's chief negotiator.

If anything, the mistake here was a unilateral mistake in which case the four "demanding preconditions" would have to be met before rectification could be ordered. The Court of Appeal set out the four preconditions in their *NAV Canada* decision at paragraph 45, taking them from the Supreme Court ruling. Briefly, the four preconditions which the Employer must meet are as follows:

1. Show the existence and content of the inconsistent prior oral agreement.
2. Show that the written agreement does not correspond with the prior oral agreement

and that permitting the other party to take advantage of the mistake would be fraud or equivalent to fraud.

3. Show the precise form in which the written instrument can be made to express the prior intention.
4. Establish all this on a standard of convincing proof.

Dealing with the first precondition, does the evidence disclose an inconsistent prior oral agreement? It was clear that Mr. Fraser and Mr. Sutton reached an oral agreement on all items including the new hire wage rates before the Memorandum of Settlement was prepared and signed. However, when they testified both Mr. Fraser and Mr. Sutton relied primarily on their notes of negotiations as to what took place and, even with their notes, neither of them was able to recall precisely what the nature of their oral discussions had been, nor did they recall precisely what their oral agreement had been. Each testified as to what his intention was, as to what he thought the Memorandum of Settlement meant, but neither could say with any measure of certainty what the two of them had agreed to orally before committing it to writing. Mr. Fraser thought he was getting one thing. However, Mr. Sutton thought otherwise and Mr. Sutton said he followed his usual practice of writing in clear language what he thought had been agreed. The Employer, including Mr. Fraser, reviewed the Memorandum, sought and obtained changes, and signed the Memorandum. I am unable to conclude that there was an inconsistent prior oral agreement.

As for the second precondition, there was no evidence to persuade me that to allow the Union to rely on the written collective agreement would be fraud or equivalent to fraud. The evidence did not indicate that either Mr. Sutton, or the Union, knew, or ought to have known, at the mediation of any Employer mistake or of the Employer's view as to the meaning of the agreement.

Finally, turning to the fourth precondition, the Employer has shown neither of the first two

preconditions on a standard of convincing proof.

The Employer's request for rectification thus fails.

Estoppel

The Employer also sought to have me apply the doctrine of estoppel. Estoppel is another equitable remedy. In simple terms, where one party to an agreement has led the other party to believe that it will not rely on its strict rights under that agreement and the second party has relied upon that assurance to its detriment, the first party may be prevented, or estopped, from asserting its strict rights.

What has the Union done here to lead the Employer to believe it would not be relying on its rights? During the negotiations the two parties understood the Employer wanted new lower starting rates to apply to all grades. But the Employer knew the Union wanted higher starting rates to apply to those same grades of employees. Then, in the session held April 24 a resolution was achieved. As noted, neither Mr. Fraser nor Mr. Sutton was able to recall the details of their discussion. Mr. Fraser was able to say that certain things were *not* said by Mr. Sutton, but he did not testify about anything that Mr. Sutton did say that day about this provision.

Very few negotiators achieve all which they hope to achieve in collective bargaining. It seems that there was some measure of compromise on both sides on April 24, 2001. A deal was reached. Clearly the Union did not achieve its desire for an increase to 85% starting rates, and it appears the Employer did not achieve what it had originally sought.

The Union did not point out to Mr. Fraser that he had achieved less than 100% of his goals. But there is no positive obligation on a party in collective bargaining to remind the other

side that it has changed its position. There was nothing in the evidence which would persuade me that Mr. Sutton, or anyone else for the Union, said or did anything, or failed to say or do anything, such that it would now be unfair for the Union to assert its rights under the collective agreement. The request for estoppel is thus denied.

Looking at this matter more generally, Mr. Fraser and Mr. Sutton, two very experienced negotiators met and reached an oral agreement. Neither remembers what was said prior to the oral agreement and neither remembers how the oral agreement was expressed. But before leaving that day a written record, that is a Memorandum of Settlement, was drafted. Mr. Sutton prepared most of it, including the first draft of the disputed Letter #1, and Mr. Fraser prepared the rest. But the drafts were then reviewed by the other side, and in particular the Employer reviewed the draft Letter. Amendments were requested and made, including some to the draft Letter. The revised Memorandum was signed and converted into a full collective agreement. It has long been understood that parties' rights under a collective agreement are to be found in that written agreement and not in the arguments or rationale made in the negotiations that produced that agreement. While on occasion equitable doctrines such as rectification and estoppel will be needed to prevent an unfairness, the evidence of unfairness needs to be clear.

In summary, the Union is successful in its grievances. I declare that while new employees in grade 1 are to be paid in accordance with Letter of Agreement #1, new employees in other grades are to be paid in accordance with the "Starting Rates" section of Schedule "A".

The parties did not lead any evidence as to the amounts which would be owing if I found in favour of the Union on the underlying issue of interpretation, but instead agreed that I would remain seised to deal with any outstanding issues. I will thus remain seised to deal with any issues which may arise in the implementation of this award.

Dated at London, Ontario this 16th day of October, 2003.

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Howard Snow, Arbitrator