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

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

OPTEC D. D. CANADA INC.
- The Employer

-and-

UNITED STEELWORKERS OF AMERICA,
and its Local 3997
- The Union

AND IN THE MATTER OF a policy grievance regarding temporary transfers

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

D. Brent Labord	- Counsel
Fred Lange	- Optec D. D. Canada
D. Maurich	- Optec D. D. Canada

On behalf of the Union:

Angus Fitzpatrick	- President, Local 3997
Winston Curtis	- Staff Representative

Hearing held June 20, 1997 in Guelph, Ontario.

AWARD

I. INTRODUCTION

This is a Union policy grievance regarding the pay rate for employees who are temporarily transferred from one position to another. When employees are temporarily transferred for more than one shift the collective agreement indicates that the transferred employee may be paid “the rate of the job to which he is transferred”. The parties disagree on the meaning of this phrase as it applies to newly hired employees.

This collective agreement provides a pay rate for each job, referred to as the "job rate". In addition, the collective agreement includes a provision specifying the pay rate for newly hired employees. Most new employees (excluding the skilled trades) begin at $12.00 per hour. After six months of employment the pay rate for those new employees is increased to $12.75 per hour. After one year of employment there is a further increase of $1.00 per hour. After 18 months of employment the new employees move to the "job rate". The job rates currently range from $14.87 to $15.38 per hour, excluding the skilled trades.

The dispute occurs when a newly hired employee is temporarily transferred from one position to another for more than one shift. Currently the Employer pays the transferred employee in accordance with the rate set out in the agreement for newly hired employees. For those transferred employees who are newly hired under the terms of the agreement, the Employer interprets "the rate of the job to which he is transferred" as meaning the new hire rate. In this grievance the Union submitted that "the rate of the job to which he is transferred" means the "job rate". The Union thus sought to have all employees who are temporarily transferred paid at the job rate even if the transfer occurs during the first eighteen months of employment, that is during the new hire period.

The parties made their submissions on the basis of the above facts and called no witnesses.

II. PROVISIONS OF THE COLLECTIVE AGREEMENT

The relevant sections of the collective agreement follow. The provision in dispute is Section 35.01.

SECTION 2 PURPOSE OF AGREEMENT

2.01 It is the intent and purpose of the parties hereto, that this Agreement will promote and improve industrial and economic relationships between the Management and its employees and set forth herein the basic agreement covering rates of pay, hours of work and conditions of employment to be observed by the parties hereto.

SECTION 32 MINIMUM HIRING RATE

32.01 All new employees in Groups 1 - 5 $12.00

Note: The minimum hiring rate in June 1998 will be increased by rolling in accumulated COLA payments on 14 June 1998 (Actual as calculated under Section 39).

32.02 After six (6) calendar months, an increase of seventy-five cents ($.75) per hour on the week next following.

After one (1) calendar year, an increase of one dollar ($1.00) on the week next following (not to exceed job rate).

After eighteen (18) calendar months, increase to job rate on the week next following.

32.03 Groups 6 and 7: New hires into the skilled trades as identified in Groups 6 and 7 will be paid $1.50 below job rate until completion of the probationary period.

32.04 The parties may agree to an acceleration of these rates in specific instances.

. . .

SECTION 35 TEMPORARY TRANSFERS

35.01 When an employee is transferred on a temporary basis for more than one shift, he shall be paid at the rate of the job to which he is transferred or his own rate, whichever is greater. If the transfer is for the convenience of the employee, he will paid the rate of the job to which he is transferred.

A temporary transfer shall be an assignment of thirty (30) working days or less. Any extension of the thirty (30) working day period shall be by mutual agreement of the parties. The thirty (30) working days shall apply to the assignment and not to individuals. In the event that the parties cannot reach a mutual agreement, the assignment may be posted as a temporary vacancy. In cases where a temporary transfer exceeds five (5) working days, written notice will be provided to the Union.

SECTION 38 **SCHEDULE OF WAGES CLASSIFICATION**

	June 15 **1995**	June 15 **1996**	**June 15 1997**
Group 1	$14.45	$14.59	$14.87
Group 2	$14.55	$14.70	$14.99
Group 3	$14.55	$14.70	$14.99
Group 4 Sub A	$14.75	$14.90	$15.20
Group 4 Sub B	$14.80	$15.00	$15.30
Group 5	$14.93	$15.08	$15.38
Group 6	$16.63	$16.80	$17.13
Group 7	$17.24	$17.41	$17.76

. . .

SECTION 39 **SCHEDULE OF JOB GROUPING**

Group "1"
- Die Service
- General Helper
- Rewinding

Group "2"
- Fine/Intermediate Drawing
- Shipping/Receiving
- Annealing

Group "3"
- Paper Insulating Operator
- Packing

Group "4" Sub A
- Rod Breakdown
- Daglas/Kapton Operator
- Synchro Shaver
- Pathfinder

Group "4" Sub B
- Enamel Operator

Group "5"
- Rolling Operator
- Transpose Operator

Group "6"
- Certified Machinist
- Certified Electrician

Group "7"
- Electrical Maintenance
- Electronics

III. POSITION OF THE UNION

The Union submitted that the temporary transfer clause is specific and indicates what is required of the Employer when an employee is temporarily transferred. The Union submitted that the Employer used the new hire clause, or the Minimum Hiring Rate section of the collective agreement (Section 32), to circumvent the Temporary Transfer provisions.

If a new hire remains in the same job for 18 months, no issue arises. However, the parties have agreed to a temporary transfer clause. Under this clause the Employer may temporarily transfer an employee (or the employee may request a transfer). The Union submitted that there is nothing in the Minimum Hiring Rate Section which indicates that it was intended to override the Temporary Transfer Section and it further submitted that, had the parties intended the Temporary Transfer provisions to be subject to the Minimum Hiring Rate section, one would have expected the parties to have said so. The collective agreement does not specifically so indicate.

The Union submitted that its argument is straightforward. The collective agreement dealing with temporary transfers is clear. There are no hidden words. When the Employer uses the temporary transfer provisions, that language is clear and must be followed. Thus the

Employer must pay the job rate spelled out in Section 38 to all employees who are temporarily transferred, regardless of how long they have been employed.

By way remedy, the Union sought full redress for all new employees who had been temporarily transferred but had not received the job rate.

IV. POSITION OF THE EMPLOYER

The Employer submitted that this was a simple matter of interpretation. The Employer submitted that:

1) the language of the section supports the view of the Employer;
2) if the language of the temporary transfer section would permit both interpretations, then the Employer's interpretation is more consistent with the language of the collective agreement as a whole; and,
3. the Union interpretation results in anomalous and unreasonable results and, faced with two possible interpretations, the interpretation which does not lead to anomalous results - that is the Employer interpretation - should be favoured.

Section 35 "Temporary Transfers" indicates that when the Employer transfers an employee, that employee receives the higher of either his own rate (from the job from which he was transferred), or “the rate of the job to which he is transferred”. In the Employer submission, the rate of the job to which an employee is transferred is the rate which would be payable to the employee had the employee always been employed in that position. At least two pay rates exist for each job. There is the rate payable to employees who have been employed for more than 18 months and there is another rate payable to those who have been employed for 18 months or less. (For the skilled trades in Groups 6 and 7, the probationary period lasts three months and thus the "new hires" rate applies for three months.) Thus the Employer

submitted that for most employees who have been employed for less than 18 months "the rate of the job to which he is transferred" is the rate payable to those who have been employed for 18 months or less.

The Employer noted the introductory language in article 32.01 which indicates “all new employees in Groups 1-5" are to be paid $12.00 per hour. That language does not indicate that employees are to be paid at that rate only in the first job for which they are hired; instead it uses the word “all”. Section 32.02 indicates how "new" employees progress in their pay rate. Section 38 provides the pay rate for those who are no longer “new employees”. A new employee is one who does not receive the maximum, or job, rate.

As an example, the Employer submitted that an employee originally hired for a Group 2 position (see Section 39) who is temporarily transferred after five months into a Group 4 position should receive the same pay as an employee who had been hired at the same time but who had always worked in a Group 4 position. This follows from the statement that the new hire rate applies to all new employees.

The Employer submitted that the Union interpretation leads to anomalies. For example, assume that an employee is originally hired to work in a Group 1 position. After 3 months that employee is temporarily transferred to a Group 5 job. The Union interpretation would require that the transferred employee be paid $15.38 per hour. If another new employee had been hired at the same time, but had always worked in that Group 5 position, that other employee would remain at the $12.00 per hour rate. The higher paid, but recently transferred, employee would have no experience in the Group 5 position. Yet under the Union interpretation that employee with no experience in the Group 5 position would be paid $3.38 an hour more than the employee with 3 months experience in the Group 5 position who had been hired at the same time. The Employer submitted the parties did not intend

that, in a situation of two employees with the same total experience, the person with less experience on a particular job would be paid more. Moreover, in the context of the above example, the Employer submitted that the parties would not have intended that a temporarily transferred new employee would be paid $3.38 per hour more to do a job than he would have been paid if he had always worked in that job.

The Employer also noted that if an employee had been employed in excess of 18 months, had been working in a Group 5 job, and was subsequently temporarily transferred to a Group 1 job, the employee would keep the same pay rate. However, applying the Union interpretation, if a new employee started in a Group 5 position at $12.00 an hour and then shortly thereafter transferred to a Group 1 job, he would be entitled to receive an increase to $14.87 per hour. The Employer submitted that the difference in treatment of the new employee, who would receive a large increase in pay when transferred, as compared to the employee who had been employed for more than 18 months, who received no pay increase when transferred, would not have been intended.

As another example using the Union interpretation, if a new employee transferred from a position in Group 1 to another position in Group 1, that employee would be entitled to a pay increase. Again the Employer submitted that this was not intended.

Thus the Employer submitted that even if I found the interpretation of the Union to be a reasonable interpretation, I should prefer the Employer position given the anomalies that were created by the Union interpretation.

On a policy basis the Employer suggested that the purpose of the Temporary Transfer section was to ensure that an employee would not be penalized due to a temporary transfer imposed by the Employer. There was no suggestion that the temporary transfer article was intended

to provide an employee with a windfall. The Employer interpretation was consistent with this purpose.

Finally, the Employer noted that the collective agreement provides for only five days for the filing of a grievance and submitted that if I agreed with the Union interpretation, the remedy ought to be restricted in its application to the period beginning five days before the filing of this grievance.

The Employer relied upon the following authorities: Brown & Beatty, *Canadian Labour Arbitration*, 3rd Edition, looseleaf, Section 4:2100 (The Object of Construction: Intention of the Parties)*; Re City of Edmonton and Canadian Union of Public Employees, Local 52* (1972), 1 L.A.C. (2d) 369 (Lefsrud); and *Re Vernon Nursing Home Services Ltd. and United Food & Commercial Workers, Local 175* (1990), 15 L.A.C. (4th) 348 (Fisher).

V. CONCLUSIONS

The resolution of this grievance requires the interpretation of the phrase “the rate of the job to which he is transferred”. At the end of the hearing I advised the parties orally that I had concluded that the Employer interpretation was correct and that I would be issuing written reasons for that conclusion.

In reaching my decision I have used two approaches. The first approach involves interpreting the words used in the context of the other provisions of the collective agreement. The second approach involves a consideration of the results which would flow from the two competing interpretations. I will deal with each approach to the interpretation of the disputed provision in turn.

In interpreting the collective agreement the goal is to determine the intention of the two parties when they agreed on this language. Their intention is to be determined first by looking at the words chosen, not in isolation, but within the context of rest of the collective agreement. (See, for example, Brown and Beatty, *supra*).

The Union interpretation implies that there is only one pay rate for each job. In the Union view, that one pay rate is the "job rate" spelled out in Section 38. The Employer submitted that there are at least two pay rates for all jobs.

A new employee doing a job in any of the groups listed in Section 38 receives a lower pay rate at the start of his employment. Considering all the employees who might be employed in any of the jobs under the agreement listed in Groups 1 through 5, there are actually four different rates of pay possible. Currently, for example, in Group 1 jobs the four pay rates are $12.00 per hour, $12.75 per hour, $13.75 per hour and $14.87 per hour. This is one factor which has to be considered as part of the context in which the disputed words appear.

In addition to the four pay rates, in Section 32.01 the parties agreed that "all new employees in Groups 1 - 5" would receive the "minimum hiring rate". This also has to be kept in mind when interpreting the Temporary Transfers language.

Given that context, I interpret the Section 35.01 phrase “the rate of the job to which he is transferred” to be the rate which would be applicable to that employee based on the duration of that employee’s employment. Thus an employee who is temporarily transferred during the first six months of employment within Groups 1 through 5 would receive as "the rate of the job to which he is transferred" the rate specified in Section 32.01 for someone doing that job who has less than 6 months employment, that is $12.00 per hour. Similarly, an employee who is transferred within Groups 1 through 5 in the period between 6 and 12 months of

employment would receive the appropriate pay rate for someone in that job with that amount of employment ($12.75). Likewise, an employee temporarily transferred after one year of employment would receive the pay rate spelled out in the minimum hiring rate section for an employee with that length of employment.

A similar result would apply to Group 6 and 7 employees who are dealt with in Section 32.03. Employees hired to positions in the skilled trades (machinist, electrician, electrical maintenance, and electronics) are paid $1.50 below the job rate until the completion of the probationary period and, as noted above, the probationary period is three months. I understand from the submissions of the parties that there are few temporary transfers of these employees. However, if there were to be such temporary transfers, then the same result occurs. Thus if a probationary employee in Group 6 or 7 is temporarily transferred he would continue to receive the "new hire" pay rate.

Continuing with the skilled trades, if an employee were transferred by the Employer from a group 7 position to a group 6 position the employee would be subject to the first sentence of Section 35.01 and remain at "his own rate" as it is greater than the new hire rate of the job to which he is transferred; if transferred from a Group 6 position to a Group 7 position an employee would receive the Group 7 new hire rate as it is greater than the rate paid to him in his old job.

Thus by examining the words used by the parties within the context of the other related provisions of the agreement, I conclude that the Employer interpretation is correct.

I now move to a second approach to interpretation. My conclusion on the meaning of the disputed phrase is strengthened by a consideration of the results if the Union interpretation were correct. In my view acceptance of the Union position would lead to anomalous results.

In interpreting a provision in a document which grammatically might be given either of two different meanings, but one interpretation or meaning would lead to anomalous or unusual results, then it is common to adopt the interpretation which does not lead to such anomalies. The basis for this common approach to interpretation is a presumption that the parties intended a measure of consistency in the outcome.

This approach to interpretation is particularly appropriate when interpreting a collective agreement as one of the main concerns of the union movement has been to ensure that there is fairness and consistency in the treatment of employees. In this agreement these parties have stated in Section 2 that:

> It is the intent and purpose of the parties hereto, that this Agreement will promote and improve industrial and economic relationships between the Management and its employees. . .

An interpretation of the Section 35 language which would be more likely to promote harmonious industrial relationships would thus seem to have been intended by the parties. (On this general approach to interpretation, see for example, *Re City of Edmonton* and *Re Vernon Nursing Home Services, supra*).

Assume, for example, that two employees, A and B, are hired the same day. Both employees are originally assigned to Group 1 positions - employee A starts as a "general helper" and employee B starts work in "dye service". Both A and B thus receive $12.00 per hour. Assume that after one week of employment employee A, the person originally assigned as a general helper, is temporarily transferred by the Employer to work in dye service. How much should A be paid? A has no experience in dye service and only one week of employment in total. The Employer says A should be paid $12.00, that is the new hire rate for his new job (and also the new hire rate for his old job). The Union interpretation would have employee A move from a pay rate of $12.00 per hour to a pay rate of $14.87 an hour. Both parties agree that Employee B, who has the same period of employment as A but one

week of experience in dye service, would remain at $12.00 per hour.

I do not believe the parties would have intended the Union result. I do not see fairness or consistency of treatment in this result. I do not think such a result would promote or improve harmonious relationships. In my view, the result which would flow from the Union interpretation in this example would be anomalous, unusual or irregular and, where there is another reasonable interpretation which avoids such a result, then it should be preferred. The Employer interpretation is reasonable, avoids this anomalous or unlikely result, and is thus preferred.

In its submission the Employer gave other examples, reproduced earlier, in which it submitted that the Union interpretation led to anomalous results. I agree with the Employer's position in those examples, but will not repeat the examples here.

Thus I interpret the phrase “the rate of the job to which he is transferred” for a newly hired employee to mean the pay rates specified in the Minimum Hiring Rate section, that is in section 32 of the collective agreement. An employee who is covered by the minimum hiring rates and is temporarily transferred, remains covered by the Minimum Hiring Rate section. (If the employee is temporarily transferred by the Employer from a higher paying job, then his actual pay will of course be the pay from the job from which he is transferred.)

It was implicit in the agreed facts and in the submissions that the Employer has consistently applied the collective agreement in the way that it submitted was correct and which I have accepted is the proper interpretation. Thus I understood that if I were to agree with the interpretation of the Employer, there would be no need for any remedial order. However, in the event that I may have misunderstood the parties on this point, I retain jurisdiction to

deal with any matters which may arise in the implementation of this award.

Dated at London, Ontario, this 15th day of July, 1997.

_____

Howard Snow, Arbitrator