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

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CAMI AUTOMOTIVE INC.

- The Employer

-and-

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS UNION OF CANADA (CAW- CANADA)
and its LOCAL 88

- The Union

AND IN THE MATTER of a grievance regarding the location of communication meetings

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Ian S. Campbell	- Counsel
Susan M. Nicholson	- Manager, Corporate Affairs & General Counsel
Mark Greene	- Employee Relations
Grahame Wright	- Employee Relations
Dennis Clarke	- Employee Relations

On behalf of the Union:

Mike Reuter	- Plant Chairperson
Kevin Brooke	- Committeeperson
Brian Daley	- Past President

Hearings held November 17, December 10 and December 15, 1998 in Ingersoll, Ontario.

AWARD

I. INTRODUCTION

In 1995 the parties agreed to include in their collective agreement a provision for a four minute paid communication meeting at the beginning of each shift. Until September, 1998 those meetings were conducted in employee rest areas. In September the Employer moved the meetings outside the rest areas. The Union grieved, alleging that the collective agreement required the meetings to be held in the rest areas and, alternatively, that the Employer was estopped from changing the location of the meetings.

II. THE EVIDENCE

The Employer, jointly owned by General Motors and Suzuki Motor, operates an assembly plant in Ingersoll. The Union represents approximately 2,000 production and maintenance employees.

In the 1995 bargaining the Union sought a ten minute increase in the paid break time so that its members would have the same paid breaks as that agreed upon by General Motors and CAW-CANADA. At the same time the Employer wished to negotiate a brief period of time to communicate with members of the bargaining unit during which employees would not perform their normal work. The Employer had adopted a number of practices used by Suzuki and other Japanese auto manufacturers, and it believed that a communication period had been used successfully at a local Toyota facility. While the Employer wished to negotiate a communication period, the Employer did not wish to be seen to initiate a request for an increase in the time employees would be paid to be away from their normal work. The Employer therefore hoped to obtain its communication time in response to the Union proposal on paid break time.

The parties dealt with the Union break time proposal at the end of the 1995 negotiations. In replying to the Union request, the Employer proposed a compromise, a new Article 54 (*infra*) that provided a paid four minute communication meeting and two new paid three minute breaks. The Union agreed to this.

The negotiations concluded on a Saturday. On Sunday the Union held its ratification meeting. At that meeting the Union advised its members of the new Article 54 communication meetings and said that the meetings would be held in the employees' rest areas. When the plant began operating the following day there was confusion and inconsistency about the conduct of these meetings. In some parts of the plant no meetings were held and employees were required to work. The Union grieved that matter and that issue was later resolved.

In addition to dealing with the grievance concerning those employees who had had no meeting, a number of discussions took place within management, and between the Employer and the Union, regarding the implementation of the Article 54 communication meetings. By November, 1995 the Employer had decided how Article 54 would be implemented and issued a memo describing how the meetings would be conducted.

Employees were organised into teams of 8 to 12 employees and most teams had a rest area near their work. The Employer's memo indicated that the meetings would ordinarily occur in the team rest areas but, on occasion, they could be moved to a work location.

Continuous improvement was one of the Employer's core values. As part of its efforts at continuous improvement, the Employer attempted to improve the effectiveness of these Article 54 meetings during 1996 and 1997. In early 1998 the Employer began a review of its entire communication operations and strategy, including the Article 54 meetings.

The parties concluded a new three year collective agreement in May, 1998. No change was

made in Article 54.

The Employer's review of communication was completed in the summer of 1998 and a presentation made to the Employer's Executive Team in August. The presentation included a recommendation to change the location of the Article 54 meetings. The Employer concluded that when the meetings were held in the rest area some employees read, played cards, ate, etc. The Employer believed the effectiveness of the meetings would be improved if they were moved out of the rest areas. The Employer implemented the change in meeting location in September, 1998. The Union grieved, and it is that grievance which is to be resolved in this award.

There was considerable evidence at the hearing about where these Article 54 meetings were held, both during the 1995-1998 agreement and after the change in location in 1998. With some 2,000 employees organised into teams of 8 to 12 employees, it was perhaps not surprising that there has been inconsistency and variability in the operation of the team meetings. The Employer's plan as expressed in its November, 1995 memo was that the meetings would normally be held in the team rest areas. Usually the meetings were held there, although some of the paint shop meetings were held "line side".

The Employer and Union witnesses differed about the negotiations in 1995 and in 1998 with respect to the discussion of the location of the communication meetings.

The 1995 negotiations

Brian Daley was the president of the Union Local in 1995 and was involved in the negotiation of Article 54. He said he understood that the meetings would be held in the team rest areas. He did not indicate how he came to this understanding and, in particular, he did not testify about anything which the Employer had said during the negotiations that led him to reach his conclusion.

Kevin Brooke, a Union Committeeperson, was involved in the 1995 negotiations. He testified that he understood that the meetings were to be in the rest area. However Mr. Brooke was not present when this issue was discussed; he relied on what others had told him of the discussions.

Mike Reuter, the Union Plant Chairperson, attended the meeting at which this Article was agreed upon. He testified that there was discussion about where the meetings would be held. He recalled discussion that the meetings would occur in the rest areas, with occasional meetings near a particular work problem. When informed that Employer witnesses would say that there was no such discussion of location, Mr. Reuter affirmed his recollection. However he did not indicate what the Employer witnesses said during these discussions.

Bert Rovers, a National Representative of the Union, was present for the 1995 negotiations. He testified that the Employer sought a period of time away from the assembly line for training and that location had been discussed - the meetings would be in the rest areas. As had Mr. Daley and Mr. Reuter, he testified in very general terms.

Walt Bordian, the Employer's Director of Employee Relations, Safety and Security, was involved in the 1995 negotiations. He said that there was no mention of the location of the meetings. He had taken notes of the discussions which he reviewed during his testimony. Those notes do not reflect any discussion of location.

Rick Jess, the Employer's Vice President-Personnel, was the Employer's chief negotiator in 1995. He testified that there had been no discussion of the location of these meetings and that location had never come up in the 1995 negotiations.

The 1998 negotiations

Mr. Brooke testified that Article 54 was not discussed at all in the 1998 negotiations.

In his cross examination Mr. Reuter agreed with Employer counsel who suggested that during the 1998 negotiation Mr. Reuter had commented that the Article 54 meetings were not working. It was then suggested to him by Employer counsel that Mr. Bordian had indicated his agreement and had advised that the Employer planned to improve the meetings, but Mr. Reuter recalled that Mr. Bordian had responded that the meetings were very effective.

Mr. Bordian recalled his response to Mr. Reuter's comment as one of agreement that the meetings were not working. Mr. Bordian testified that he had then said that the Employer was going to fix the process.

Mr. Jess recalled Mr. Bordian replying that the Employer would make the meetings work.

John Lawson, the Employer's Assistant Director of Production and Maintenance, was involved in the 1998 negotiations. He recalled Mr. Bordian's response as agreeing that the meetings were not working but he remembered Mr. Bordian then saying that the Employer did not know what to do to fix them.

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The following are the relevant provisions of the parties' collective agreement:

3. MANAGEMENT RIGHTS

. . .
The Union further recognizes the right of CAMI to operate and manage its business in all respects, to maintain order and efficiency in its plant, and to determine the location of its plant, the products to be manufactured, the scheduling of its production and its methods, processes, and means of manufacturing.
. . .

54. COMMUNICATIONS

At the start of each production shift, a paid four (4) minute communication meeting will be scheduled for all employees. In areas where production priorities require continuous flow of operations, alternate methods and schedules will be determined by the section(s).

IV. POSITION OF THE UNION

The Union submitted that Article 54 was not clear as to the meeting location but the implication was that these meetings would be held in the rest areas. In addition, the Union submitted that the evidence of negotiation history and past practice should be used to resolve any ambiguity in favour of the interpretation that the meetings must be held in the rest areas.

In the alternative, the Union relied on the principle of estoppel. The Union submitted that the Employer was estopped from exercising its right to move the meetings out of the rest areas. The Employer had led the Union into a false sense of security about the meeting location through its practice from 1995 through 1998, together with its statements during the two negotiations. The Union had relied on those representations to its detriment, as it could have negotiated a change in the collective agreement if it had known the Employer intended to move the meeting location.

The Union referred to the following cases: *Re National Grocers Co. Ltd. and Teamsters Union, Local 91* (1991), 20 L.A.C. (4th) 310 (Bendel); and *Re Canada Post Corp. and Canadian Union of Postal Workers* (1987), 28 L.A.C. (3d) 210 (Christie).

V. POSITION OF THE EMPLOYER

The Employer submitted Article 54 was silent on meeting location. The location of the meeting was thus a matter left to management under Article 3.

As for the issue of estoppel, the Employer submitted that the Union bore the onus of

establishing a representation by the Employer that it would not exercise its right to move the meeting location and of establishing detrimental reliance on that representation by the Union, such that it would now be unfair to allow the Employer to move the location of the meetings.

The Employer submitted that the evidence did not demonstrate a representation by the Employer that it would always hold meetings in the rest areas or that it would never move the meetings. The evidence regarding the 1995 negotiations indicates that, at most, the Union negotiators understood that meetings were to be in rest areas. There was no clear or cogent testimony that the Employer negotiators advised the Union to that effect. The Employer evidence and their notes suggest there was no discussion of location.

As for the 1998 negotiations, there were differing recollections of a brief exchange regarding the effectiveness of the meetings but no clear or cogent evidence that the Employer represented that the meetings would remain in the rest areas.

As for a representation by practice, the Employer had circulated a memo in November, 1995 indicating that the meetings would be in rest areas, as the Employer believed that there should be a measure of uniformity in this matter. But consistent with the Employer's core value of continuous improvement, the Employer had made a number of changes in the meetings as it tried to make them more effective. Following its general review of communications in 1998, the Employer moved the meetings outside the rest areas to enhance effectiveness. In any event, evidence of a representation by practice must be particulary clear and consistent and the practice must be of long standing. Here the practice has been generally to hold meetings in rest areas but the practice was not uniformly consistent through the plant as the paint department held some of its meetings line side.

The Employer referred to the following cases: *Re United Steelworkers, Local 2847, and General Steelwares Ltd.* (1966), 17 L.A.C. 304 (Lande); *Re Royal Ontario Museum and Ontario Public Service Employees' Union* (1983), 12 L.A.C. (3d) 207 (P.C. Picher); *Re*

Civic Employees Union, Local 43, and the City of Toronto (1967), 18 L.A.C. 273 (Arthurs); *Re Domglas Ltd. and United Glass and Ceramic Workers, Local 203* (1980), 26 L.A.C. (2d) 94 (Burkett); *Re Canadian Freightways Ltd. and Office and Technical Employees Union, Local 15* (1980), 26 L.A.C. (2d) 58 (Greyell); *Re Corporation of the City of Brampton and Amalgamated Transit Union, Local 1573* (1982), 8 L.A.C. (3d) 147 (Devlin); *Re Rothmans of Pall Mall Canada Ltd. and Bakery, Confectionery and Tobacco Workers' International Union, Local 319T* (1983), 12 L.A.C. (3d) 329 (M.G. Picher); *Re Elan Tool and Die Ltd. and United Automobile Workers, Local 127* (1985), 18 L.A.C. (3d) 17 (Weatherill); *Re Smoky River Coal Ltd. and United Steelworkers of America, Local 7621 et al.* (1985), 18 D.L.R. (4th) 742 (Alberta Court of Appeal); *Re Certified Brakes, Division of Lear Siegler Industries Ltd. and United Steelworkers of America, Local 14831* (1986), 25 L.A.C. (3d) 418 (Davis); *Re Pharma Plus Drugmarts Ltd. and United Food and Commercial Workers, Local 175* (1990), 14 L.A.C. (4th) 303 (Stanley); *Re National Grocers Co. Ltd. and Teamsters Union, Local 91* (1991), 20 L.A.C. (4th) 310 (Bendel); *Re Crestbrook Forest Industries Ltd. and I.W.A.-Canada, Local 1-405* (1993), 38 L.A.C. (4th) 89 (McEwan); and *Re Canadian Pacific Hotels Regional Laundry and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local D331* (1994), 46 L.A.C. (4th) 81 (Moreau).

VI. CONCLUSIONS

I begin with Article 54 of the collective agreement. While the Article addresses when the communication meeting is held, who attends, and how long it lasts, it does not address where it will occur. The Article is silent on that issue.

Evidence of negotiating history and past practice is sometimes of assistance in interpreting an ambiguous provision. Nothing in Article 54 can be said to be ambiguous as to location - it is silent. There is nothing in Article 54 regarding location which needs to be interpreted. In my view, I would be adding to the Article if I found that it dealt with location, rather than interpreting the Article. Thus the evidence of negotiating history and past practice is of no

assistance here as there is no ambiguity in the Article.

As Article 54 is silent on this issue, I agree with the Employer that the location of the meeting is a matter left to the Employer under Article 3, the Management Rights Article.

Having found that the matter of location is one governed by the Management Rights Article, I would ordinarily conclude the Employer could make this decision to move the location as an exercise of its rights (see, for example, the *General Steelwares* and *Royal Ontario Museum* cases, *supra*). But the Union said the Employer was estopped from moving the meetings outside the rest areas. The estoppel argument was the main thrust of the Union submissions, and I thus turn to that claim.

Estoppel is a doctrine of fairness. In simple terms, its operation requires three elements:

1. A contractual relationship,
2. A representation by one party to the contract that it will not exercise its right under that contract, and
3. Detrimental reliance by the other party on that representation.

Where those three elements are present, the doctrine of estoppel can be used to prevent the "representing" party from retreating from its representation in any situation where it would be unfair or inequitable to the other party to allow it to do so.

In this case the parties differed with respect to the second and third elements. The Union said the Employer had, by its words and/or by its conduct, represented to the Union that the Employer would hold meetings only in the rest areas. Moreover the Union said that the Union relied upon the Employer's representation to its detriment. The Employer disagreed on both points.

Many cases of estoppel involve representations made during bargaining. The Union said that representations made during their negotiations in 1995 and 1998 supported its claim. I begin

with an examination of those negotiations.

It is not surprising that the 1995 negotiation of Article 54 left the negotiators with differing perceptions. The Union sought a paid rest break. The Employer sought a paid communication meeting but wished to obtain it by way of a response to the Union request, rather than raising it itself early in negotiations. When the Employer finally did make its proposal near the end of a long round of bargaining, the two parties came at the issue from very different perspectives. The Union believed it was negotiating a paid rest break and those rests breaks are normally taken in the many team rest areas located throughout the plant. The Employer had a different purpose and understanding.

While the evidence disclosed what the Union negotiators had concluded about the location of the meetings, the evidence of the Union witnesses did not indicate that their conclusion came from any representation made by the Employer negotiators. None of the Union witnesses testified as to particular Employer statements about the location of these meetings. Mr. Reuter and Mr. Rovers testified that there had been a discussion but neither gave any indication as to what was said - each testified only as to the conclusions which he had drawn from the discussion. The Employer witnesses said there was no discussion of location and the Employer's notes taken at the bargaining gave no indication of location having been discussed. While I accept that the Union negotiators believed there was agreement that the meeting locations would be the rest areas, the evidence does not indicate that their conclusion was based on an Employer statement to that effect.

Regarding the 1998 negotiations, the witnesses agreed that comments on Article 54 were made in passing at a time when neither party had made any proposal regarding Article 54. Again it is not surprising that the testimony as to precisely what was said differs greatly - Mr. Brooke had no recollection; Mr. Reuter recalled nothing until prompted by Employer counsel and Mr. Reuter remembered Mr. Bordian as saying the meetings were effective; Mr. Bordian recalled saying the meetings were not working and would be fixed; whereas Mr. Lawson

recalled the Employer saying it did not know how to fix the meetings.

Again the question is: Did the Employer say something in the 1998 negotiation about location which would now make it unfair for it to move the meetings? I can find nothing which would suggest such an Employer comment. Mr. Reuter's testimony came only in cross examination. Even if I were to accept Mr. Reuter's testimony on this issue in its entirety (and the Employer witnesses disagreed), it does not lead to a conclusion that the Employer represented to the Union that the rest areas would remain as the location of the meetings.

While most representations by a party that it will not exercise its rights come in the form of statements, the representation can take the form of conduct. It is often said that actions speak louder than words, and one party's actions may communicate to the other party that the first party will not be exercising its rights under their contract. The Union submitted that this had occurred here.

In November 1995 the Employer distributed a memo indicating that the meetings would generally be held in the team rest areas. The Employer, in fact, conducted most meetings in rest areas. Does this conduct support a claim of estoppel?

I concluded above that the Employer's right in this instance was one under Article 3, the Management Rights Article. In essence, the Union argued that because the Employer exercised one of its management rights in a certain fashion it had thereby represented to the Union that it would always exercise it that way, that it would not change its approach. Such a claim would need the clearest of evidence, as otherwise any long standing employer practice might lead to a claim of estoppel. (See, for example, *Rothmans of Pall Mall* and *Re Elan Tool and Die, supra.)*

Looking at the facts before me, I cannot conclude from the Employer's memo on the implementation of this Article, nor from the Employer's actual implementation, nor from the

two together, that the Employer had represented to the Union that meetings would always be held in the team rest areas or that it was forgoing its right to relocate the meetings. This is particularly so in a plant where witnesses agreed that the Employer holds continuous improvement as one of its core values and regularly changes its manner of operating. While the Union does not wholeheartedly support this Employer value, there was no doubt that the Union was well aware of it, and was well aware that the Employer has made frequent changes in its operations. As the Employer's conduct did not represent that the Employer would not exercise its right to determine and change meeting location, there is no basis for estoppel.

In summary, I conclude that:

1. Article 54 does not regulate the location of the communication meetings, leaving location to be dealt with under the Management Rights Article; and,
2. There was no representation by the Employer which would support the Union's claim for an estoppel to prevent the Employer from changing the location of the meetings.

The grievance is therefore denied.

Dated at London, Ontario this 14th day of January, 1999.

Howard Snow, Arbitrator