**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

United Food and Commercial Workers Canada Local 1006A (the "Union")

-and-

Plaza Premium Lounge Ontario Limited (the "Employer")

# AWARD

Re: Policy Grievance- Wages

Before: Arbitrator Brian McLean

Date of Award: November 26, 2025

**Appearances:**

For the Union: Micheil Russell

For the Employer: Stephen Shore

This grievance arises out of the parties' collective bargaining of a renewal collective agreement in 2022 and 2023. At bargaining, the parties agreed to terms on which to renew their collective agreement. Those terms were incorporated into a Memorandum of Agreement ("MOA"), which modified the previous collective agreement between the parties. The parties signed and the Union membership ratified the MOA. The Employer prepared a draft renewal collective agreement, which it believed incorporated and applied the terms of the MOA and presented it to the Union. At that time, the Union objected that the wage provisions of the draft collective agreement did not reflect the wage provisions that had been agreed to in bargaining.

The previous collective agreement set out wages in "Schedule A – Wages and Classifications" ("Schedule A"). Schedule A provided for periodic wage increases in fixed dollar amounts. It also included a wage grid, which identified job classifications and probationary and post probationary rates of pay for each classification. Schedule A also had a section titled "Potential Minimum Wage Increase" (the "PMWI"), which automatically raised wage rates in the event of an increase in the statutory minimum wage.

The parties agree the MOA amended the periodic wage increases from fixed dollar amounts in the previous collective agreement to wage increases of 3% in each of the three years of the renewal collective agreement. However, the parties do not agree on whether they agreed to amend other terms in Schedule A of the previous collective agreement.

The parties discussed the issue, were unable to agree, and on February 2, 2024, the Union filed this grievance, alleging that the "Employer failed to apply minimum wage increase language in October 2023." The remedy sought was to "apply the minimum

wage language as outlined in the CBA." The parties were unable to resolve the grievance in the grievance procedure, and I was appointed as arbitrator to hear and determine the grievance. At the hearing, the Union called its representatives at bargaining, Glacier Samuel and Frank Ragni, as witnesses to describe what happened during bargaining. The Employer called its lawyer and spokesperson at bargaining, Matthew Badrov, as its witness. This award determines the grievance.

**The Facts**

The Employer operates a lounge or lounges in Pearson Airport. At the lounge, food and drinks are served to customers. The Employer has a number of employees who provide these services, including assistant supervisors, servers, chefs and hosts. The employees are represented by the Union. Because the employees receive substantial income from gratuities, the base wages provided for in the previous collective agreement wage grid are, in many cases, only slightly above the minimum wage.

**The Previous Collective Agreement**

The previous collective agreement between the parties had a term from December 16, 2019, to October 31, 2022. Article 14.01 of that collective agreement stated: "Wages will be provided in accordance with 'Schedule A' of this collective agreement." Article 11.01 stated: "the Company agrees to notify the Union of any new classifications that may be added to the existing classifications. The Company further agrees to meet the Union and negotiate rates of pay for any such new classifications within the scope of the Agreement. If the Company and Union cannot agree on a rate of pay, then the matter may be referred to arbitration to determine the rate of pay".

Schedule A to the previous collective agreement provided:

Schedule "A" – Wages and Classifications

Upon ratification of the collective agreement the parties agree that the following wage grid shall be implemented and each employee shall receive the greater of the wage associated with their classification or the increase as set out below.

**Ratification Date increase**

The parties agree that each employee will receive the greater of an increase to the classification or an increase of $0.25 on December 16, 2019

**6 Month Increase**

The parties agree that each employee will receive the greater of an increase to the classification or an increase of $0.25 on May 16, 2020

**Year 2 increase**

The parties agree that each employee will receive the greater of an increase to the classification or an increase of $0.50 on November 1, 2020.

**Year 3 increase**

The parties agree that each employee will receive the greater of an increase to the classification or an increase of $0.50 on November 1, 2021.

[A Wage grid listed 15 positions with start rates and "after probation" rates for each of them for the collective agreement's three-year term. The headings and the grid for Lounge Assistants is set out below as an example]

| **Position** | **Start Rate**<br><br>**(December 16, 2029-** | **After Probation**<br><br>**(December 16, 2029-** | **Start Rate**<br><br>**(May 16, 2020-October** | **After Probation**<br><br>**(May 16, 2020-** | **After Probation**<br><br>**(November 1, 2020-** | **After Probation**<br><br>**(November 1, 2021-** |
|---|---|---|---|---|---|---|

| | May 15, 2020) | May 15, 2020) | 31, 2022) | October 31, 2020) | October 31, 2021) | October 31, 2022) |
|---|---|---|---|---|---|---|
| **Lounge Assistant** | **$14.25** | **$14.25** | **$14.50** | **$14.50** | **$15.00** | **$15.50** |

**Potential Minimum Wage Increase**

The parties agree that in the event the Ontario provincial government raises the minimum wage at any point during the term of this agreement, each classification in the wage grid will receive the minimum wage increase to a maximum of $0.30 in addition to the negotiated wage increases as outlined under this schedule "A" wages and classifications. The Schedule A will reflect same and may be amended as necessary.

For example: if minimum wage increases from $14.00 to $14.25, each classification shall receive a $0.25 pay increase on the date that increase comes into effect. If minimum wage increases from $14.00 to $14.35, each classification shall receive a $0.30 paid increase on the date that increase comes into effect.

Schedule A is the only place in the collective agreement which sets out the job classifications.

**2022 Bargaining**

In the second half of 2022, the Union gave the Employer notice to bargain a renewal collective agreement. The Union was represented in bargaining by its servicing representative, Ms. Samuel, its executive assistant to the vice president, Mr. Ragni, and a membership bargaining committee. Ms. Samuel was officially the Union's spokesperson, but Mr. Ragni took the lead on the issues that are in dispute. The Employer's spokesperson was its counsel, Mr. Badrov. An associate of Mr. Badrov was also present and took notes of the bargaining. While the notes are not a verbatim record of what

occurred, I am satisfied that they generally reflect the essence of what was said by Mr. Badrov and Mr. Ragni at bargaining.

The first day of collective bargaining was November 15, 2022. In its "original proposal", the Union provided the Employer with a number of proposed amendments to the collective agreement, including a wage grid which was the same as the old wage grid except that the starting point of the wages was the "current" wage of the classifications as reflected by the wage increases applied under the previous collective agreement. Under the Union's original proposal, there would be a $1 increase every six months. In addition, the PMWI paragraphs remained in place. The parties agreed that the PMWI increases to wages had been 25, 10, 30 and 30 cents in 2019, 2020, 2021, and 2022, respectively.

The Union's wage proposals and the discussions between the parties occurred in an important context. On the evidence of all three witnesses, the wage grid under the predecessor collective agreement was a "mess" because many employees earned higher wages than the rates which had been negotiated on the grid and there was little consistency between what individual employees earned. For example, Lounge Assistants could earn anywhere from $15.80/hr to $16.96/hr. Three Lounge Assistants earned $16.91, $16.93 and $16.96 per hour, respectively. Meanwhile, according to the grid, the wage rate for Lounge Assistants in the last year of the collective agreement was $16.10/hr. In short, the "wages were all over the place".

Mr. Ragni testified that one of the Union's goals at bargaining was to "normalize" wages by making them more consistent between employees. He testified that he did not know which employees made what wage, which is why the Union asked the Employer for an employee list with corresponding wage rates near the start of bargaining.

In addition, the grid was confusing because, while it set out the nominal wage rates for each year, it did not include the PMWI increases which could be applied annually. In practice, the wage grid was therefore essentially inaccurate. Fixing the wage situation by making rates more uniform through consolidation of rates was a priority for the Union in bargaining.

At the first collective bargaining meeting, Mr. Badrov asked the Union to provide its wage proposal as soon as possible. While the Union agreed to do so, it is apparent that the PMWI clause had resulted in increases in each year of the previous collective agreement, which complicated the Union's decision-making. This had two main effects. First, as noted, the wages set out in the wage grid did not reflect the wages actually earned by employees. Second, the most recent minimum wage increase had occurred on October 1, 2022, shortly before the expiry of the previous collective agreement and the start of this round of bargaining.

Moreover, the Employer was owned and operated by a company in Hong Kong, and it had to obtain approval from Hong Kong on any monetary offers it might make. This circumstance had the potential to complicate reaching an agreement as no one from Hong Kong was at the bargaining table.

On November 15, 2022, the Employer provided its formal response to the Union's original proposal. The Employer took no position on wages at that time, since the Union had not yet made a wage proposal. The Union's response later that day also did not set out a position on wages.

In late December, the Employer provided the Union with data setting out employees' wage rates, including the 30-cent increase given on October 1 as a result of the minimum wage increase for that year. There was a brief discussion on wages reflected in the notes taken at bargaining as follows:

> MB: Yeah, that leads into what we want to raise. Wages last time took us quite a bit of time to finalize for a couple-one, we have a head office in HK so we need to run everything by them. You'll see this in our pass back, it's hard to agree to monetary without knowing what wages look like. If we can get a wage proposal as soon as possible, hopefully we can get that soon. We also think the Zoom makes sense right now but maybe in person is better going forward.
>
> ...
>
> FR: To be able to give you rates of pay what we're looking forward we need rates in clay right now. I'd like to suggest, I'm not leading this, but I'm here to assist. I have an issue around the pay scale. It's very difficult to keep track especially with the 0.30 above minimum wage. If you can show us, nobody can agree to where we should be. We want you to assist us. Tell us where you are. I'd like to do that this morning.

On January 30, 2023, the Union presented a new wage proposal. The essence of the proposal was to create a new wage grid where there would be, more or less, a set wage for each classification, in the same way as exists in many collective agreements in the province. Ms. Samuel described this as a "concept" document which would replace the wage grid, not the entirety of Schedule A. Her evidence was that there was no proposal to delete the minimum wage protection as part of its concept because everyone knew the minimum wage was going to keep going up. The Union proposed a process by which the wage rates would be set by averaging existing rates of pay, with no downside for anyone then earning above that rate, so that everyone in a position would eventually earn the same rate of pay. The Employer responded that it would need to run the Union's proposal past Company officials in Hong Kong. Mr. Badrov acknowledged that the Union never expressly said that if the Company agreed to its proposals on wages, then the PMWI language would be withdrawn; however, he believed that it was implied

by the Union's proposal. Mr. Ragni agrees with Mr. Badrov that if the Company accepted the averaging proposal there would be no need for a minimum wage clause.

On February 16, 2023, the Employer and Union exchanged proposals which did not deal with wages or other monetary issues.

At a bargaining meeting on February 28, 2023, the Employer responded to the Union's wage proposal. Mr. Badrov noted that it was unusual to have a wage increase so close to another increase. He was referring to the fact that there had been a 30-cent PMWI increase on October 1, 2022, and the collective agreement expired on October 31, 2022. The Employer also noted that the Union's proposed new wage grid would result in another 6-7% increase, plus a proposed 4% on top of that. The Employer's proposal was a 1.55% increase in Year 1 which, it asserted, when added to the increase given on October 1, meant 3.25%, and thereafter, a 2% increase in each of Years 2 and 3 of the collective agreement. This is reflected in the Employer's written proposal which stated:

> Company Proposal #3 – Wages:
>
> The Company rejects the Union's proposal to amend the wage grid to the classification average. The Company proposes the wage grid remains status quo (subject to the increases below). Any employees above the grid are red circled and will receive a lump sum payment equal to the percentage increase below on the next anniversary date of the collective agreement.
>
> October 1st, 2022 – Employees received a $0.30 increase (approximately 1.7%).
>
> Y1 – 1.55% (total of 3.25 including October 1, 2022 increase),
>
> Y2 – 2%
>
> Y3 – 2%

I observe that it is clear that the Employer's proposal contemplated keeping the wage grid in the collective agreement. The Employer's proposal was silent on the PMWI

language but did reference the 30-cent PMWI increase given on October 1, 2022, under the terms of the previous collective agreement.

There was a lengthy discussion about the Union's wage proposal and the Employer's counterproposal as follows (according to the notes taken):

> MB: Wages, we took the Union's proposal to HQ in HK. Their rationale they gave back, employees all receive a 30 cent increase on October 1. It's unusual to have an increase so close to the expire, that's a 1.7% increase for the unit. The union proposed the rejig the grid so everybody would be moved up to the average midpoint, when we costed out the majority of cases it led to another 6 -7% increase. The union also just suggested a 4% on top. The Y1 increase from that proposal is anywhere between 11-13% in Y1 and 4% and 4%. We took it to our team, they said we can't agree it's too high and the 4% as well. The instructions we have to resolve on wages is as follows: we suggest the grid stays the same and status quo but to alleviate the union's concerns we can still red circle employees over the grid amount and pay a lump sum. We suggest it be paid on the anniversary date so we know how many hours they've worked. We suggest 1.55% in Y1 which brings up the total increased to 3.25%, Y2- 2%, Y3-2%. That's all the outstanding.
>
> FR: So, we have issues. Major issues. That won't fly but you're a bright individual you know it won't. 0.30 in October you'll penalize us because it's close to the expiration date. Shame on them. 1.5, 2 and 2 won't fly. You need to tell your side either we get serious, if we aren't, then we'll come back with demands that aren't reasonable so I can get my time in for a conciliation, request no board and we'll have a party at your expense. I don't want to waste time. I know when you discuss with HQ, I do not believe for 1 second this is your final offer. So, like I said, I don't want to waste time, give us the numbers you've been given and then I can have a proper discussion with my committee. In regards to what you indicated, you know we're coming back with sick days. The government has what 2 days?
>
> …
>
> MB: I appreciate the comments, when we take 13, 4 and 4 that's not a serious discussion for them. We'll go back, I went back last round with Don. It's midnight there, we won't get approval to increase today but these were the marching orders they gave. If you want to request a conciliation officer we'll be in touch and set a meeting with the officer. You mentioned sick days, they gave us 2. We didn't hold back. This is what we were given.

FR: You need to understand, if I said 2 days as agreeable. I'm stuck with these. You know the game.

MB: yeah and we can do monetary as a comprehensive package. We don't care how it gets spent but this is how they allocated it to us. We hear you on the non-slip, we can talk. But we will not get an increase with a 4. I just want to be up front and clear, they were extremely clear.

FR: I'm not expecting a 4. I don't expect 1.5 and 2 either. So you know where we are. I can't accept 2 and certainly not 1.5. The deal is in between and you know that. Let's get to it. There's a deal but not at these numbers. And a heads up, you have no 10 minute breaks for shifts, shifts greater than 5 hours with unpaid and we want to trade in for 1/2 hour for two 10 minute paid breaks. If I work 8 hours I get two 10 minutes and a half hour unpaid.

…

MB: they don't see it as penalizing the employees, it's the union's proposal isn't giving credit for that. I hear you on the 1.5, you can push them on it, I don't know if we can push them on the twos in Y2 and Y3. We'll take your comments back to them and see what we can do in advance of the next meeting. Do we have a conciliation officer?

…

FR: what do we do today?

MB: You're not prepared to accept what they gave us, I have to go back to them. They also put a new monetary proposal on the table we need to cost out. They'll say we told you our bottom line, table it as a final or here's where we're willing to move.

FR: I was under the impression they gave you numbers and your committee came in with less and get a reaction and would say okay here's the numbers. Are you suggested that isn't what happened?

MB: Frank we said this, we don't want to waste time. It's not easy to explain these concepts to them. We aren't saying we're holding 3% in our back pocket. I told you, we can take a run at them on a few pieces- on being penalized for October 1 and we can say this is how it was perceived.

FR: if the previous person negotiated the agreement and says that 0.30 should've been 8 months prior and the company pushes it out, which is giving the employer the break, now the company comes back and says oh we just gave you an increase - we give you a break and now you use it against us

MB: it's a fair point. They didn't see it that way. I think that gives us something to talk about.

FR: do you want us to respond today? Yes or no?

MB: Sure. But if it's just the same as last time then no. But if he can talk about things that can come off, then sure. I know we just did Manitoba.

…

I am satisfied that the effect of the Company's rejection of the Union's averaging concept and the Union's acquiescence in that rejection was to return the parties to square one. There were no further specific discussions to suggest otherwise.

Later, the Union responded with a written counterproposal on February 28, which provided with respect to wages:

Union Counter Proposal – Wages:

~~The Company rejects the Union's proposal to amend the wage grid to the classification average. The Company proposes the wage grid remains status quo (subject to the increases below). Any employees above the grid are red circled and will receive a lump sum payment equal to the percentage increase below on the next anniversary date of the collective agreement.~~

~~October 1st, 2022 – employees received a $0.30 increase (approximately 1.7%).~~

Y1 – 3.5%

Y2 – 3.5%

Y3 – 3.5%

All employees above the rates of pay will receive the annual percentage increase.

The bargaining notes reflect the following exchange with respect to the Union's wage proposal:

FR: Wages. We're coming at you at 3.5% Y1, 3.5% Y2, 3.5 Y3 and all employees at or above rates of pay receive annual percentage increases. Everyone just gets it.

MB: OK

I note that Mr. Ragni's statement that "all employees at or above rates of pay" would appear to be a reference to employees then earning a wage rate at or above the rates of pay set out in the wage grid". Neither Mr. Ragni nor Ms. Samuel were asked why the Union struck through the Employer's proposal and what that meant.

Ms. Samuel testified that the Union's proposal simply amended Schedule A with respect to the wage increases, without any other changes. Her evidence was that there was no proposal by either side to delete the PMWI language at any time during bargaining. Ms. Samuel's evidence was that the Union never withdrew the PMWI provisions.

Mr. Badrov's evidence was that the Union only talked about annual increases during bargaining. It did not bring up the potential of minimum wage increase at all. He was strongly of the view that the parties had implicitly agreed to remove the PMWI provision in favour of greater annual wage increases.

On March 29 the parties bargained again. The Employer presented the following proposal regarding wages, which it characterized as its "final proposal":

> Company Proposal #3 – Wages:
>
> The Company rejects the Union's proposal to amend the wage grid to the classification average. The Company proposes the wage grid remains status quo (subject to the increases below). Any employees above the grid are red circled and will receive a lump sum payment equal to the percentage increase below on the next anniversary date of the collective agreement.
>
> October 1st, 2022 – Employees received a $0.30 increase (approximately 1.7%).
>
> Y1 – 3% (total of 4.7% including October 1st, 2022 increase)
>
> Y2 – 2%

Y3 – 2%

There is no doubt that there were two issues being discussed at this time. The first is the percentage increases. The second is whether all employees had their wages increased by the percentage (as the Union was proposing) or whether employees earning above the grid rate had their wage rate remain the same and received the wage increase as a lump sum payment (as the Employer was proposing).

The Employer's notes state that Mr. Badrov described the Employer's proposal as follows:

> Big one is wages, we went back to HK. We said 1.7% increase October 1st. For year one, retro to expiry which is November 1st we proposed 3%. In year 1, with October plus increase it's 4.7. Year two, 2%. Year three, 2%. So close to 10.5 over 3 years when you factor close increase in.

I note that the Employer had dropped the idea that employees above the grid rate would receive a lump sum in lieu of a percentage wage increase.

Later, Mr. Ragni and Mr. Badrov discussed the Employer's proposal. Their exchange with respect to wages is reflected in the notes as follows:

> MB: Let us know if the rest works.
>
> FR: No it doesn't. The key is the wages and it isn't going to work. You can spin 4.7 or 3 as you want, but it says 3. What you did last year is last negotiations. The employer or union can take a position on it, it should've been up front. 3% 2% 2%. Your client needs to understand we're getting numbers triple that. We're getting SSP, HMS, 16% up front. You're asking 3, 2, and 2? This says final offer. I don't want to respond. I'd like to get the conciliation officer. Schedule our next meeting and for the sole purpose of one thing and one thing only. While we wait for that date I'll ask for a strike mandate from the committee and the employees and when we have that I'll ask for a no board. Let's move on.

MB: Will you give them this to vote on?

FR: Absolutely not. Everyone told us they won't accept it. I need to get my strike mandate. I will ask them to reject it and give me a strike mandate. When we meet everybody understands the stakes. Somebody needs to shake the tree.

MB: To be fair it was 1.5, 2, 2 and now it's up. We don't have to go back and forth. Copy me on the e-mail to the conciliation officer

FR: My job is to convince your employees to give me a strike mandate and to convince them if we aren't able to get a proper wage increase to do what we have to do. Don't take it as a threat, this is our right and we'll exercise it.

Mr. Badrov testified that this was the Employer's "final" proposal. In his mind, it was 4.7% in the first year and then 2% in each of the next two years. He testified that he did not make any reference to a minimum wage increase because he understood that the parties were no longer talking about that. He understood the concept they were discussing was straight annual increases, which together totalled approximately 10.5% over about three years.

On June 20, 2023, Mr. Badrov emailed Ms. Samuel and Mr. Ragni, and attached an "agreed to items" document. The email also set out the parties' last proposals on four items that remained outstanding, one of which was wages. With respect to wages, he wrote:

Wages

Wages (Note the Union's last proposal was 3.5% each year).

Y1 – 3%

Y2 – 2%

Y3 – 2%

On June 20, 2023, the parties met in conciliation with two conciliators and agreed to wages of 3%, 3%, 3%. There was no discussion of other terms. Ms. Samuel testified that

the following notes were made to help her explain the agreement to the Union's membership: "When we do the CBA under the wages, we have to put in language explaining the 3% increase applies to whatever your current rate is because the rates are all over." Her notes continue:

> Show the grid with the lowest rate plus 3%.
>
> …
>
> All employees at or above the rates of pay in schedule "A" will receive a 3% per year increase.

Mr. Ragni's evidence was that the Union did not agree to delete the PMWI language. He testified that if the parties were deleting the minimum wage protection, they would have "spelled it out".

Mr. Badrov testified that both parties knew that the minimum wage was planned to be increased each October 1 due to the government's announcement. However, the parties never discussed it. It was "crystal clear" to him that the parties had discussed and agreed upon a straight increase to existing wages without a wage grid or minimum wage increase protection.

Under cross-examination, Mr. Badrov agreed that there had been a wage grid in the predecessor collective agreement and that this proposal said that the grid should "remain status quo." He also agreed that it did not say the wage grid was deleted or that all classifications were deleted, and it also did not say "delete all minimum wage rules." However, his recollection was that they had discussed the deletions with the Union. Neither Mr. Ragni nor Ms. Samuel agree with that recollection. He further acknowledged that the Employer's "final proposal" on March 29, 2023, which was its final written proposal on wages, was identical to the previous proposals except for the changes to the

percentage increases. It therefore included a wage grid and was silent on the PMWI language.

On that day, the parties signed the MOA, drafted by the Employer and dated June 20, 2023, which states in part:

> The Parties agree as follows:
>
> The terms of this Memorandum of Agreement constitute full and final settlement of all matters in dispute, subject to ratification by the Union.
>
> …
>
> All articles and amendments to articles set out below form part of this Memorandum of Agreement. All proposals not included in this Memorandum of Agreement are withdrawn.
>
> The renewal collective agreement shall include the terms of the previous collective agreement which expired on October 31, 2022, and the amendments to articles set out below unless specifically provided for otherwise.
>
> **…**
>
> **1. The Parties agree to the following amendment:**
>
> 8.01 An employee will be considered on probation and will not be placed on a seniority list until after they have completed the probationary period. The probationary period shall be three (3) months for **full time employees and six (6) months for part-time employees.** Upon completion of the probationary period, a new employee shall have their seniority dated back to the date they were last hired.
>
> …
>
> **8. The Parties agree to the following amendment:**
>
> 18.01 Definitions:
>
> a) Full Time employees shall be defined as those employees scheduled to work a minimum of ~~38~~**32** hours or more per week.
>
> ~~b) Flex Full Time employees shall be defined as those employees scheduled to work a minimum of 30 hours per week.~~

~~c)~~**b)** Part-Time employees shall be defined as those employees scheduled to work less than ~~30~~**32** hours per week.

~~d~~**c)** On call employees shall be defined as those employees in the Meet and Greet department who are not regularly scheduled, but called in on an as-needed basis to escort clients. The Company will follow current practices regarding scheduling on call employees.

**Note: this amendment also includes the removal of all reference to "flex full time" throughout the collective agreement.**

**…**

**12. The Parties agree to the following amendment:**

**Wages:**

**Y1 – 3%**

**Y2 – 3%**

**Y3 – 3%**

The members of the bargaining unit ratified the MOA.

Following the execution of the MOA, an associate lawyer at the Employer's law firm incorporated the terms of the MOA into the previous collective agreement. On September 8, 2023, the associate emailed the amended collective agreement to Ms. Samuel, under cover of the following message:

> Please find attached a collective agreement with tracked changes for your review. There are a few minor things that have been flagged as administrative questions or oversights for discussion in the comments.
>
> Please let me know if you have any questions or revisions.

Article 14.01 of the draft collective agreement provided that "wages will be provided in accordance with Schedule A of this Collective Agreement." Schedule A provided:

Schedule “A”-WAGES AND CLASIFICATIONS

**Year 1 increase**

The parties agree that each employee will receive a general wage increase of 3% on November 1, 2022

**Year 2 increase**

The parties agree that each employee will receive a general wage increase of 3% on November 1, 2023

**Year 3 increase**

The parties agree that each employee will receive a general wage increase of 3% on November 1, 2024

Mr. Badrov could not recall whether he saw the draft collective agreement before it was sent to the Union. He agreed that Schedule A was left in the draft collective agreement because there was no agreement to delete it. He also agreed that Schedule A to the draft collective agreement was substantially the same as the Schedule A to the previous collective agreement except that the wage grid and PMWI was deleted. He further agreed that the result of deleting the wage grid was that the list of classifications was also deleted. He acknowledged that none of these deletions were set out in the MOA.

He was asked about the fact that, without the PMWI, there was no guarantee that the wage rates of some classifications would not fall below the minimum wage. He agreed that it was hypothetically possible, although he believed it was extremely unlikely.

Ms. Samuel was busy, and it took her some time to review the proposed collective agreement. On October 11, Employer counsel followed up. On October 12, Ms. Samuel responded that they had not finished reviewing the final draft yet.

In the meantime, employees were asking questions about the new collective agreement. It quickly became apparent that there was a dispute between the parties as to whether any minimum-wage-related increase was applicable. On October 19, 2023, a union steward, Jamal Alfonso, wrote the Employer an email as follows:

> On October 1st 2023, Ontario's minimum wage increase to $16.55/hour and according on our first agreement Schedule A-Wages and Classifications which are still effective that the parties agree that in the event the Ontario provincial raises the minimum wages, each classification in the wage grid will receive the minimum wage increase to a maximum of $0.30 in addition. Unfortunately it was missed again and none of the staff receive the said increase in our paystub today for the pay period from September 23rd-October six. Please expect emails coming from staff in regards to this wage increase. (Sic)
>
> We also wanted to remind you that starting November 1, 2023 we will have another 3% wage increase as per the new agreement, we are hoping that this wage increase will not be missed again for the upcoming pay period. Please advise, thank you!

On October 20, the Employer responded:

> In reference to your question below, when the CBA was ratified, the $.30 increase was no longer in effect. The new collective agreement replaces the old one and is in effect- the new agreement only speaks to a 3% general wage increase. The next scheduled wage increase is a 3% increase on November 1st, 2023.

The Union steward Mr. Alfonso responded that day:

> If you review the new agreement that we have, it does not say that the old one will be replacing with the new one. Please see attached file of Memorandum of Agreement signed on June 20th, 2023 stating that “The renewal collective agreement shall include the terms of the previous collective agreement which expired on October 31st, 2022 And the amendments to articles set out below unless specifically provided otherwise”.
>
> As per our Union during our second bargaining, whatever the old contract that we have will be carried forward to the new one except for the changes that has been agreed upon of both parties. (sic)
>
> @Glacier Samuel please confirm, thank you!
>
> ‘

The Employer responded:

> I am merely stating what was proposed in bargaining. @Glacier Samuel can you please chime in here.

Ms. Samuel did “chime in” that day and stated:

> I don’t recall a discussion about the 30 increase, specifically about removing it. From what I recall it stays in the cba and still applies.

On October 26, 2023, F. Jamil, from the Employer’s human resources department, wrote Ms. Samuel and advised that they needed to “close the loop” on the 30-cent (minimum wage) increase. The Employer advised her that the minimum wage clause was still an issue. Ms. Samuel emailed Mr. Badrov: “Do you have a minute to talk about the minimum wage clause in the cba?”

Mr. Badrov responded by email:

> I’m tied up today and Friday- but I can chat Monday afternoon. Does that work for you.
>
> Let me know if there is something specific you want me to look into in advance of our call. There is no minimum wage clause in the new collective agreement- we removed the old wage structure and replaced it with a 3% general wage increase each year.

Ms. Samuel responded:

> We don’t have any documentation stating that clause was removed, if you have anything can you send it over.

Mr. Badrov wrote back:

> All the proposals and the MOA set out the changes to the Schedule A Wages. Those passes and the MOA (and our discussions) replace the entirety of the Schedule A. There was never any discussion or agreement the minimum wage clause from the prior collective agreement would continue. In fact, it was the opposite, the entire discussion

was about moving away from the old structure and simply providing a general wage increase annually.

Ms. Samuel testified that she disagrees with Mr. Badrov that the amendments "replace the entirety of Schedule A". Her evidence was that the Union never proposed or agreed to removing the wage language. The Union proposed that the wage rate be the average, but the Employer never agreed to that. In her view, thereafter in bargaining they stayed with the existing wage grid and only the percentage increases changed.

On October 31, Ms. Samuel met with the Employer and provided a draft collective agreement that included the PMWI language and wage grid. The Employer received the document and advised that it would consult.

Ms. Samuel's evidence was that once the Employer rejected the Union's proposal to average the wage rates, the parties were thereafter only talking about changes to the wage rates on the grid and did not discuss removing the remainder of Schedule A. In other words, when either party proposed a percentage increase in each of the three years of the collective agreement, that was simply an amendment to the wage grid (which is in Schedule A) and did not change anything else about Schedule A.

Mr. Ragni also disagrees that the parties had agreed to eliminate the wage grid. The Employer's February 28 proposal specifically referenced the grid as it "remains status quo". He also noted that the wages were "still all over the place" as they were before.

In cross-examination, Mr. Ragni was asked about the fact that there was a lot of government focus on raising the minimum wage and that it had gone from $9 to $14 very quickly. This had an impact on many of the Union's members, some of whom also

worked at grocery stores where they were not paid much above minimum wage. At this workplace, there were employees in that position, but there were also employees who made much more than the minimum wage and much more than the existing wage grid. He agreed there was also confusion because, in each of the previous three years, there was a regular salary increase plus a minimum wage "bump up," so it was difficult to know what the correct wage was, as the grid did not reflect that.

The parties were unable to resolve their disagreement and on February 2, 2024, the Union filed the grievance that is before me. It requests as a remedy that the Employer "Apply the minimum wage language as outlined in the CBA".

**Arguments in Brief**

**Union**

The Union's argument starts with the clause in the MOA which states:

> "The renewal collective agreement shall include the terms of the previous collective agreement which expired on October 31st 2022 and the amendments to article set out below unless specifically provided for otherwise".

It notes that paragraph 12 of the MOA provides only the following:

> **12 The Parties agree to the following amendment:**
>
> **Wages:**
>
> **Y1 – 3%**
>
> **Y2 – 3%**
>
> **Y3 – 3%**

At its most basic, the Union's argument is that the parties entered into an MOA which provided that the terms of the previous collective agreement remained in place unless the amendments "set out below" (including paragraph 12) specifically provided otherwise. Here, as can be seen, the only amendment under paragraph 12 was to the wage increases and there was nothing else in the MOA which dealt with Schedule A. Therefore, everything else in Schedule A must remain in place in accordance with the MOA.

The Union submits that the MOA is clear and unambiguous. There is therefore no need to consider extrinsic evidence. In the alternative, if I find ambiguity, the extrinsic evidence supports the Union's interpretation, since there was, on the facts, no meeting of the minds for any other interpretation. Mr. Badrov's evidence was that they never explicitly discussed the elimination of the wage grid or PMWI language. The Union witnesses agreed with that.

**Employer**

The Employer argues that the Union misses something important about this dispute. In its submission, the evidence discloses what really happened and what the parties actually agreed. The Employer's position is that its wage proposal was comprehensive. There were no other wage increases contemplated and no need for a wage grid because every employee got a 3% wage increase every year of the collective agreement. To quote Mr. Ragni: "They just get it".

It relies on *UFCW 1006A and Ryder Truck Rental Canada Ltd.* (Rogers), 2024 CanLII 3367. In that case, as here, the parties concluded a memorandum of agreement at the end of

collective bargaining. The MOA provided for a "uniform allowance," but there was a dispute about what items qualified as a "uniform" and therefore for reimbursement. Since there was no guidance in the MOA, the provision was ambiguous. Arbitrator Rogers found, based on the bargaining evidence, that there was a mutually intended interpretation of the provision. That determination was based on an evaluation of the proposal exchanges and other communications between the parties during bargaining. He found it absurd, as the union argued, that the employer would simply have agreed to allow employees to be reimbursed for any clothing they wanted, including clothing unsuitable for the workplace.

The Employer argues that, in that case, as here, it was not simply a matter of blindly following the MOA. What was required was an interpretation based on everything that happened and the application of common sense to those facts.

The Employer argues that it was responding to a comprehensive proposal by the Union on wages which only had percentage increases. If the Union's proposal was accepted, there would be no wage grid or PMWI language. In addition, the Employer proposal only mentioned the wage grid as remaining "status quo"; it did not reference the PMWI language. The fact that it was silent about the PMWI clause makes it clear that it was not part of the Employer's proposals. This is particularly the case given that the proposals reference the PMWI adjustment made in October which applies to year 1 of the collective agreement (implemented at the end of the term of the predecessor collective agreement) but make no reference to the PMWI in years 2 and 3. This is a clear indication that the PMWI does not apply in those years. The Employer's proposals were comprehensive as Mr. Badrov made clear when he said to the Union "we can do monetary as a comprehensive package. We don't care how it gets spent but this is how [Hong Kong] allocated it to us". The Union did not disagree with that idea and thereafter only made proposals that referenced wage increase percentages.

At no time did the Union correct Mr. Badrov or raise the fact that the wage proposals could be modified as the minimum wage was increased. Instead, Mr. Ragni's comments all related to the percent increases. To emphasize this point, on February 28, 2023, at 2:30 pm the Union made a counterproposal on wages. As part of the counterproposal, the Union struck through the Employer proposal that provided in part "the wage grid remain status quo (subject to the increases below)."

**Decision**

Before turning to an assessment of the parties' arguments, it is useful to describe the circumstances under which this collective agreement was bargained. Those circumstances include the fact that the employees in this bargaining unit are service employees who work at a bar/restaurant at Pearson airport. Because the employees receive substantial income from gratuities, the base wages provided for in the predecessor collective agreement wage grid are, in many cases, only slightly above the minimum wage.

In 2014, the Government committed to raising the minimum wage by the rate of inflation every year and codified that commitment in the *Employment Standards Act*. Nevertheless, such commitment is not a guarantee. It is always possible that during the life of the collective agreement, the Government will either legislate a lower minimum wage increase than inflation or a higher one or no increase at all. In any event, the parties recognized the likelihood of a minimum wage increase and provided for up to a 30-cent increase in the wage rates, in addition to any already negotiated wage rate, if the minimum wage is raised.

The parties agree that they have a collective agreement. However, they disagree about what the terms of that collective agreement are and, in particular, what Schedule A provides. There is no dispute that the collective agreement consists of the terms of their previous collective agreement plus whatever modifications to that collective agreement were agreed to during bargaining. The starting point is clearly the MOA which the parties executed at the conclusion of bargaining, the relevant parts of which I repeat here for ease of reference:

> **The Parties agree as follows:**
>
> > The terms of this Memorandum of Agreement constitute full and final settlement of all matters in dispute, subject to ratification by the Union.
> >
> > …
> >
> > All articles and amendments to articles set out below form part of this Memorandum of Agreement. All proposals not included in this Memorandum of Agreement are withdrawn.
> >
> > The renewal collective agreement shall include the terms of the previous collective agreement which expired on October 31, 2022, and the amendments to articles set out below unless specifically provided for otherwise.
> >
> > …
> >
> > **12. The Parties agree to the following amendment:**
> >
> > **Wages:**
> >
> > **Y1-<u>3%</u>**
> >
> > **Y2-<u>3%</u>**
> >
> > **Y3-<u>3%</u>**

There is no dispute that the agreement with respect to "Wages" in paragraph 12 of the MOA are an amendment to Schedule A, and form part of the renewal collective agreement. However, there is a dispute about whether the renewal collective agreement includes the other terms in Schedule A to the previous collective agreement.

On its face, the MOA supports the Union's argument. The MOA states that the terms of the previous collective agreement are included in the renewal collective agreement unless the parties specifically provided otherwise. This must mean that on a strict reading of the MOA, the wage grid and PMWI paragraphs remain in Schedule A because they were not specifically excluded. Moreover, in the MOA, where the parties agreed to delete text from the collective agreement, they indicated that by striking through the text (such as in section 8 of the MOA, excerpted above on page 17). However, the wages amendment at issue in section 12 contains no strike through of any paragraphs of Schedule A. Further, while the MOA states that the annual wage increases are an "amendment", it also does not say that they replace almost everything in Schedule A, or that the wage grid and the PMWI are deleted as the Employer alleges the parties agreed to do.

However, that is not the end of the matter. In *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53 the Supreme Court of Canada held that in interpretation cases, the context of contract negotiations can be important in ascertaining the intent of the parties. In passages that are frequently referred to by arbitrators, the Court discussed that evidence of the surrounding circumstances at the time the contract was made may be relied on:

> ..the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" (*Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21 (CanLII), [2006] 1 S.C.R. 744, at para. 27 per LeBel, J.; see also *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4 (CanLII), [2010] 1 S.C.R. 69, at paras. 64-65 per Cromwell, J.). To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning.

> No contracts are made in a vacuum: there is always a setting in which they have to be placed…In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction. (Reardon Smith Line, at p. 574, per Lord Wilberforce)
>
> at paras. 57-58:
>
> While the surrounding circumstances will be considered in interpreting the terms of a contract they must never be allowed to overwhelm the words of that agreement [authorities omitted]. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract [authority omitted]. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement [authority omitted].
>
> The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract [authority omitted], that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man' [authority omitted]. Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.

The surrounding circumstances in the negotiation of the collective agreement before me include the fact that the minimum wage was set to increase in each year of the collective agreement and, while, as noted above, that increase was not guaranteed, there was no particular reason to think that the minimum wage would not be increased. This fact makes it more likely that the Union would want to retain the PMWI provisions

in Schedule A to ensure the gap between the minimum wage and wage rates did not shrink. However, it is also possible that the prospect of a minimum wage increase could have been accounted for in the percentage increases agreed to by the parties. Here, therefore, there is nothing about the "surrounding circumstances" which would lead to one or another interpretation.

The Employer argues that I should take into account extrinsic evidence in interpreting the MOA. I agree that I can and should do so. Paragraph 12 of the MOA is minimalist and ambiguous. It is clearly a sort of shorthand and cannot be interpreted without context, even to flesh out the most basic details of the parties' agreement such as what the 3% relates to and when it is to be paid.

The extrinsic evidence that the Employer relies on includes the proposals and dialogue made in bargaining. It also asserts that its interpretation is supported by the implicit "logic" of the positions the parties took in the back and forth during negotiations.

I have carefully considered the chronology of what occurred and what proposals were made at what times in assessing the parties' positions. I do not accept the Employer's position with respect to the wage grid. A wage grid was specifically part of all of the Employer's written proposals up until conciliation on June 20, 2023. In addition, while there is no dispute that the Union's "averaging" proposal, if accepted, would have superseded the entirety of Schedule A, that proposal included a wage grid, and in any event, was rejected by the Employer and the parties returned to the status quo (which included a wage grid).

On the evidence before me, it is clear that, following the rejection of the Union's averaging proposal, at no time did the Employer or the Union specifically state that the wage grid would no longer be part of Schedule A. There is no doubt that the Union's Response #3-Monetary delivered to the Employer on February 28, 2023, is difficult to understand. In that proposal the Union struck through a paragraph from the Company's proposal earlier that day which included a sentence (in the context of other language) which provided: "The Company proposes the wage grid remains status quo (subject to the increases below)". However, that is not a clear indication that the Union wanted to do away with the wage grid altogether.

Moreover, the Employer's next proposal, its "Final Proposal", presented to the Union on March 29, included all the language struck through by the Union, indicating that the Employer wished to have a wage grid. The Union responded to that proposal verbally, stating that it was inadequate, did not make a counter proposal and made no mention of the wage grid. I see no way to conclude that the parties had agreed at that point to delete the wage grid.

Accordingly, if the parties did agree to delete the wage grid, that agreement must have occurred during the conciliation meeting on June 20, 2023. Immediately prior to the meeting, the Employer sent an email to the Union noting that wages remained outstanding and indicated that its last proposal was Y1-3%, Y2-2%, Y3-2%. It did not mention that its last proposal included the wage grid (as it did) or, alternatively, that the parties had agreed to delete the wage grid. In addition, the deletion of the wage grid was not included in a document which contained all the agreed to items.

Mr. Badrov and Mr. Ragni met in the hallway. Mr. Badrov made a verbal proposal on wages ("3,3,3") as part of a package which included proposals of "no RRSP, employer

premium as is, and 2 personal days". There was some back and forth on the nonwage items and eventually the parties reached an agreement. Less than half an hour later, the parties signed the MOA.

I accept Mr. Badrov's evidence that he understood the parties had agreed to delete the wage grid. However, there is no objective evidence to confirm his understanding. There is no evidence of a discussion about the issue. In my view, had such a discussion taken place, there would almost certainly be notes about it or, at a minimum, the witnesses would have specific recollections about it.

Such a proposal would have come out of the blue for the Union since up until that point, the Employer was clearly discussing a wage grid. Moreover, it would surely have been contentious. The deletion of the wage grid would have meant the end of a Union agreed to set starting and post probationary period wage rate for new employees. It would also have meant the elimination of the list of job classifications. It would have an uncertain impact on the provision of the collective agreement (Article 11) that deals with new job classifications. There was no evidence before me about any consideration or discussion about any of this.

For all of these reasons, I am not satisfied, on a balance of probabilities, that the parties agreed to delete the wage grid from the collective agreement. I am also not satisfied that it is implicit in the positions taken by the parties that the wage grid was deleted.

I turn next to the PMWI language. If the Employer is correct that the parties agreed to remove the PMWI language, it is remarkable how little actual discussion there was about this provision during bargaining. Both parties were focused on the wage rates and

the increases to them. In fact, so far as I can tell from the evidence, the only references to the minimum wage and the PMWI paragraphs were in relation to the previous collective agreement. For example, on November 5. 2022 Mr. Ragni noted it was "difficult to keep track of rates of pay especially with the .30 above minimum wage. You give us the rates, and we will give you the wages". These difficulties were an impetus for the Union's averaging proposal which would have made rates more consistent.

Thereafter, there was no discussion about the PMWI during bargaining. After bargaining was concluded, when it became apparent the parties likely had a dispute about what they agreed to, Mr. Badrov emailed Ms. Samuel that: "all the proposals and the MOA set out the changes to the Schedule A Wages. Those passes and the MOA (and our discussions) replace the entirety of the Schedule A." Ms. Samuel disagreed with Mr. Badrov's summation of what had occurred, noting that there was no such agreement.

Mr. Badrov's position at this time was, unsurprisingly, similar to the Employer's position before me. In this regard, during their email discussion, Mr. Badrov told Ms. Samuel, "there was never any discussion or agreement the minimum wage clause from the prior collective agreement would continue". I note that there was equally no discussion or agreement, after the Union withdrew its averaging proposal, that it would be removed. Similarly, there is no evidence to support Mr. Badrov's next statement to Ms. Samuel that the "entire discussion was about moving away from the old structure and simply providing a general wage increase annually". Again, there is no evidence that following the rejection of the averaging proposal that any such discussions occurred. In fact, until conciliation, the Employer's proposals were based on a wage grid and were silent about the PMWI.

I also see no reason why the provisions agreed to and the discussion around those provisions inherently means that the parties had agreed to delete the PMWI provision. The provision provided an important benefit to the Union and its members. On October 1, 2022, alone, the employees had received an approximately 1.7% wage increase as a result of the provision. It is difficult to imagine the Union giving up that benefit with no discussion about it.

The Employer's position that its offer was only the annual percentage increases, while subjectively entirely possible, is difficult to accept on an objective basis. In other words, I accept that it was the Employer's intention to have its percentage wage increases comprise its entire offer; however, it is not at all clear how the Union was to know that. At no time did the Employer specifically advise the Union that it was proposing that the PMWI paragraphs be deleted from Schedule A.

This is a very different case from *Ryder*. There, Arbitrator Rogers found it would be absurd to find that the Employer abandoned all concerns about how the clothing allowance would be spent. There were discussions around the fact that it would be winter gear and that there were four items which were agreed to, along with safety shoes. There was direct evidence about which winter items qualified for the uniform allowance.

By contrast, on the facts before me, there is no evidence of specific and direct discussion about removing or retaining the PMWI language. It is not also absurd to consider that the parties would have agreed to such wage increases given the inflationary pressures at the time. The Employer's case rests entirely on implications or inferences about the proposals and the statements made around those proposals during bargaining. The Union case rests in large measure on the absence of the kind of specific discussion about

proposals that one would expect if the parties agreed that important provisions (which had just resulted in a 1.7% wage increase) were going to be removed from the collective agreement.

While it might be said that the Union's position is also based on somewhat thin evidence, it is the Employer which bears the onus to demonstrate that there was more to the parties' agreement than was set out in the MOA it drafted. The evidence is that the only time the Union mentioned the PMWI language in bargaining was at the start, as a lead up to trying to change the wage grid to reflect an average of what employees actually earned. On January 30, 2023, the Union presented the Employer with a new wage grid as part of its averaging proposal. The Union did not mention the PMWI, and it seems likely that if that proposal would have been accepted, the PMWI language would have been unnecessary given that its proposal constituted a reasonably significant wage increase for the lowest paid employees.

However, on February 28, the Employer rejected the Union's averaging proposal. Thereafter, the averaging concept was not discussed and the Union moved on from it. There was no further discussion about the PMWI language, except in the context of how the October 1, 2022, PMWI increase impacted the Company's wage proposal for the first year of the new collective agreement. I find no basis to conclude that the Union had unilaterally withdrawn the PMWI language once its averaging proposal was no longer on the table.

I also agree with the Employer that Mr. Badrov's statements during bargaining that it was presenting a "comprehensive proposal" might have caused the Union to ask questions about the PMWI. On the other hand, given the absence of specific discussions, the Union had no particular reason to think that the Employer's proposals

eliminated the PMWI. Obviously, the MOA could not have alerted the Union to the fact that Schedule A was to be gutted.

In the end, I find that while I entirely believe and accept Mr. Badrov's evidence about the Employer's positions at bargaining, I also believe the evidence of the Union's witnesses. The Employer's position was never specifically conveyed to the Union which, as a result, had no reason to think that the Employer was proposing a stand-alone wage increase with no wage grid and no PMWI language. What objectively occurred here was that the Union dropped its averaging proposal and, in doing so, thereafter all wage proposals were made in connection with the existing language in Schedule A, including the wage grid and PMWI provision.

For all the foregoing reasons, I find that the MOA did not remove the wage grid or the PMWI language from the collective agreement, and there was no other agreement to do so. It therefore remains. The grievance is allowed. The matter is remitted to the parties, and I remain seized to determine an appropriate remedy, if necessary.

Brian McLean

Brian McLean
November 26, 2025
Toronto, Ontario