IN THE MATTER OF AN ARBITRATION

BETWEEN

Bell Technical Solutions Inc.

(“the Company” / “the Employer”)

- AND -

Unifor

(“the Union”)

Concerning A National Policy Grievance

Patrick Kelly - Sole Arbitrator

APPEARANCES

For the Union:	Micheil Russell - Counsel
	Mike Snell - Labour Relations Committee Member
	Jim Fling - Labour Relations Committee Member
	Kevin Paddon - Labour Relations Committee Member
	Colum Lynn - Labour Relations Committee Member
For the Employer:	Maryse Tremblay, Counsel (on October 2, 2024)
	Shwan Shaker, Counsel (on October 24, 2025)
	Annie Gazaille, Senior Manager, Labour Relations
	Jessica Mitchell, Senior Consultant, Labour Relations
	Cynthia Zapata-Balladares, Manager, Workforce Management

Hearing held via videoconference on October 2, 2024 and October 24, 2025

Award issued on November 27, 2025

AWARD

1. The Company and the Union are parties to a collective agreement with a term from May 8, 2022 until May 9, 2026 ("the Collective Agreement").

2. In broad strokes, the dispute in this policy grievance can be described as follows. The full-time and part-time technicians covered by the terms of the Collective Agreement are entitled to certain "Statutory Holidays" under Article 18. In 2023, two of those holidays – National Day of Truth and Reconciliation and Remembrance Day – fell on a Saturday. A number of part-time technicians who had been scheduled to work on one of those two holidays were notified by the Company the day prior to the holidays that they would not be required to work (because the volume of work was less than had been anticipated when the eight-week work schedule was initially drawn up). Instead they were given the day off and received their basic rate of pay for the holiday in question, rather than payment at time and one-half their hourly rate plus other compensatory options had they been permitted to work as originally scheduled.

3. The Union contends that the scheduled work on the holidays constituted "guaranteed days of work" under Article 16 of the Collective Agreement and that the Employer was therefore prohibited from "unscheduling" the part-time employees in these circumstances. The Employer disagrees, arguing that it followed precisely the process outlined in Article 18 of the Collective Agreement with respect to the scheduling and unscheduling of the work of employees on statutory holidays. Thus, this is an issue of interpretation of the Collective Agreement.

4. The key provision for interpretation is Article 16.04 e), which reads:

> e) Hours of work of Regular Part-Time employees will be as follows:

i) During the period starting on the Sunday preceding May 15 until the Saturday preceding October 15 of each year, Regular Part-Time employees will be guaranteed four (4) days of work per pay period, scheduled on Saturdays and Sundays, and confirmed seven (7) days prior (DD-7);

• For a Regular Part-Time employee working eight (8) hour shifts as per Article 16.04 (b), the company will schedule six (6) additional nonguaranteed shifts of eight (8) hours in the pay period

• For a Regular Part-Time employee working ten (10) hour shifts as per Article 16.04 (b), the company will schedule four (4) additional non-guaranteed shifts of ten (10) hours in the pay period

ii) During the period starting the Sunday preceding October 15 until the Saturday preceding May 15 of each year, Regular Part-Time employees will be guaranteed two (2) days of work per pay period, scheduled on Saturdays, and confirmed DD-7;

• For a Regular Part-Time employee working eight (8) hour shifts as per Article 16.04 (b), the company will schedule eight (8) additional non- guaranteed shifts of eight (8) hours in the pay period.

• For a Regular Part-Time employee working ten (10) hour shifts as per 16.04 (a), the company will schedule six (6) additional non-guaranteed shifts of ten (10) hours in the pay period

5. I should point out here that while paragraphs (i) and (ii) of Article 16.04 e) stipulate that the guaranteed days of work are to be scheduled on “Saturdays and

Sundays" and on "Saturdays" respectively, Article 16.04 l) entitles RPEs to one weekend off "per quarter", and when RPEs are off on such weekend the guaranteed days are a Monday or a Friday.

6. Article 16.04 e) and other provisions of the Collective Agreement that are relevant (contextually or otherwise) are set out in Appendix "A" attached to this award. I have bolded the provisions that were referred to by the parties in the course of the hearing and/or that refer to guaranteed hours and non-guaranteed shifts, as well as guaranteed hours of work and non-guaranteed shifts and "shaded days". I have excluded from Articles 16 and 18 any provisions that were irrelevant to this dispute and/or which provide no useful contextual information.

The Facts

7. The parties entered into a brief Agreed Statement of Facts ("ASF") that included several documents. The narrative portion of the ASF reads:

> The parties agree to the following facts for the purposes of the current proceedings. The parties will not be limited to the facts set out in this Agreed Statement of Facts and will be permitted to present any additional facts that they consider relevant for the determination of the policy grievance.
>
> 1. This arbitration pertains to grievance no. BTS-ON-2023-005 dated December 4, 2023 (the "Grievance"). The Grievance is a national policy grievance. (Tab 1)
>
> 2. The Employer and the Union are parties to a collective agreement with a term of May 8, 2022, to May 9, 2026, covering the employees mentioned in Article 1.01 of the collective agreement (the "Collective Agreement").

3. The Employer is an affiliate of Bell Canada, specializing in the installation and repair of Bell Canada services, including phone, Internet and Fibe TV. The employees covered by the Grievance are technicians involved in repair and installation.

4. The Employer responded to the Grievance on March 12, 2024. (Tab 2)

5. At the time of the filing of the grievance, there were approximately 2,900 employees in the bargaining unit, composed of approximately 2,140 Regular Full-Time employees and approximately 760 Regular Part-Time Employees.

6. The definitions of Regular Full-Time Employee and Regular Part-Time Employee are found in Articles 8.03 and 8.04, respectively.

7. The employees are attached to a work centre that is within a common locality as defined by the Collective Agreement.

8. Article 16 of the Collective Agreement is entitled Hours of Work and sets out the parties' respective rights and obligations regarding hours of work.

9. Article 18 of the collective agreement is entitled Statutory Holidays and sets out the parties' respective rights and obligations regarding statutory holidays.

10. Based on forecasts received from Bell Canada and the availability of technicians, the Employer's Workforce Management (WFM) team creates an eight-week schedule for the Regular Full-Time and Regular Part-Time employees in accordance with Article

16 of the collective agreement (the "eight-week schedule"). The eight-week schedule is based on the initial estimate of the number of technicians that will be needed.

11. The eight-week schedule is updated by WFM each day prior to any given work day based on the number of technicians the Employer will require by common locality, taking into consideration the technicians' skills and the appointment intervals for the following day (which the parties refer to as due date minus one, DD-1). On the actual work day, further adjustments may be made due to unexpected unavailability of technicians (due to illness or other reasons) or due to changing demands, such as cancellation of appointments by customers or new appointments. The finalized schedule of the work day is referred to as due date, DD.

12. Attached at Tabs 3, 4 and 5 are the Eight Week, DD-1 and Due Date Schedules for the Belleville common locality for the period of September 17, 2023, to November 11, 2023. HMP is the code used for statutory holidays.

13. Attached at Tab 6 are the SMS log notifications received by a Peterborough employee in relation to November 11, 2023.

8. The parties also called one witness each to give oral evidence. Mike Snell, Labour Relations Committee Member, testified for the Union and was not cross-examined by the Company. Cynthia Zapata-Balladares, Manager, Workforce Management, testified for the Employer and was briefly cross-examined by the Union.

9. The essence of Mr. Snell's unchallenged testimony is that one of the Union's bargaining objectives in past negotiations with the Employer was to

obtain hours-of-work improvements (and, by extension, a more satisfactory "work/life" balance) for regular part-time employees ("RPEs") who comprise approximately 40 per cent of the bargaining unit members[1]. This objective was reached with the introduction in the 2018-2022 collective agreement of provisions in Article 16 pertaining to both "guaranteed days of work" and "non-guaranteed shifts" for RPEs in the 8-week schedule described in paragraphs 10 and 11 of the ASF.[2] As a result, during the Company's peak business period from roughly mid-May to mid-October, RPEs are entitled to four guaranteed days of work in a pay period, to be scheduled on Saturdays and Sundays, and either six non-guaranteed shifts of eight hours each or four non-guaranteed shifts of ten hours each throughout the pay period. In the non-peak business period from approximately mid-October until mid-May, the RPEs became entitled to two guaranteed days of work in a pay period to be scheduled on Saturdays, and six (ten-hour) or eight (eight-hour) non-guaranteed shifts to be scheduled in the pay period. In both peak and non-peak periods, the guaranteed hours of work must be "confirmed DD-7", meaning the Company is required to confirm the guaranteed days of work (including the shift start time and shift duration) seven days prior to the commencement of the guaranteed day of work.

10. Mr. Snell testified that, prior to the circumstances that gave rise to the grievance, if the Company had an excess of scheduled RPEs for the volume of work on a guaranteed day, the Employer would re-assign the RPEs for training or to phone standby to take work assignments as they arose on the guaranteed day. However, for the first time since the introduction of the guaranteed and non-

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[1] Article 16.04 a) of the Collective Agreement, which was signed on May 14, 2022, puts the figure at 35 per cent. Mr. Snell's more current estimate may reflect an increase since the signing of the Collective Agreement, but in any case the difference is immaterial to the outcome in this award.

[2] Article 16.04 e) of the prior collective agreement, from May 6, 2011 until May 6, 2018, required the Company to offer RPEs "minimum days of work", that is, the same number of "guaranteed days of work" for the peak and non-peak business pay periods, two days of which had to be scheduled on a Saturday or a Sunday. There was no requirement for the Company to confirm the guaranteed days of work by DD-7, as there was in the 2018-2022 collective agreement and is in the current Collective Agreement. Moreover, there were no provisions in Article 16 regarding "non-guaranteed shifts" for RPEs.

guaranteed hours of work language, on the day preceding each of two statutory holidays in the fall of 2023, the Company "unscheduled" certain RPEs who were scheduled to work a guaranteed day of work on the Truth and Reconciliation statutory holiday on Saturday, September 30, 2023, and/or the Remembrance Day statutory holiday on Saturday, November 11, 2023, and coded them for holiday pay instead. This unilateral action by the Company on "DD-1" (the day preceding a scheduled day of work; see paragraphs 11 and 12 of the ASF) to change the schedule upset some of the affected RPEs who had been scheduled to work on the statutory holidays, which led to the filing of the grievance in issue.

11. Ms. Zapata-Balladares is currently a Workforce Manager for the Company's Ontario operation. She testified that the eight-week schedule (referred to in paragraphs 10, 11 and 12 of the ASF) is prepared by the Company five weeks in advance based upon the Company's forecast of the number of technicians with the necessary skill sets needed on specific dates and times in specific localities and regions of a given province, as well as the work/day off preferences of the technicians as recorded in the portal of the Company's ORARIO system. Once the 8-week schedule is posted, it is subject to change on a daily basis due to any number of contingencies such as sick leave and other leaves of absence. On DD-1, the Company performs a reassessment of the next day's schedule at three different times in the day (8:00 a.m., 12:00 p.m. and 2:00 p.m.), following which it pages employees on their cell phones with SMS messages offering overtime (when, for example, the volume of customer orders exceed what was anticipated) or time off (when, for example, the anticipated volume of customer orders drops).

12. If on DD-1, the anticipated volume of customer orders diminishes such that there are too many bargaining unit employees scheduled to work the next day, as occurred in this case, the Company offers time off via SMS messages first to scheduled regular full-time employees ("RFEs") in order of seniority, and then to scheduled RPEs, also in order of seniority. In the event there are insufficient numbers of volunteers by RPEs and RFEs to take time off rather than work, the

Company then first unschedules RPEs in reverse order of seniority, following which, if necessary, the Company then unschedules RFEs, also in reverse order of seniority. The amended schedule is then posted at 5:00 p.m. on DD-1.

The Positions of the Parties

13. Briefly, the Union's position is as follows. The Union submits that it takes no issue with the Company reaching out on DD-1 to scheduled RPEs to voluntarily take their next scheduled workday as a day off, even if the workday in question qualifies as a guaranteed day of work under Article 16 of the Collective Agreement. However, the Union contends that Article 16 represents a compromise between the right of the Employer to deploy only the necessary resources to meet daily customer service demand (and thereby control its labour costs) and the right of the RPEs to work on the guaranteed days of work and to have some degree of certainty as to when they will and will not be working over the course of a schedule. The Union submits that this balance cannot be unilaterally overridden by the Company to its benefit at the cost of the employee who may be unwilling to give up a guaranteed day of work. The Union sought and achieved hours-of-work improvements for RPEs in order to obtain for them a better work/life balance, and this, the Union submits, is the labour relations context in which Article 16's language should be analyzed.

14. The Union further submits that the plain and ordinary language of Article 16.04 e) means that RPEs are guaranteed days of work, not merely pay, on two Saturdays or four days of Saturdays and Sundays in a pay period, depending on whether the scheduled work falls within the Company's peak or non-peak business period. These guaranteed days are confirmed by the Company no later than the seventh day prior, i.e., DD-7. In the Union's submission, this means that scheduled guaranteed days of work cannot be "unscheduled" on DD-1.

15. In support of its position, the Union relies upon the following authorities: *Ontario Power Generation and Society of United Professionals (OPGI-2018-*

2512), Re, 139 C.L.A.S. 237 ("*Ontario Power Generation and Society of United Professionals")*; *Bruce Power LP and Society of Energy Professionals (BRPW-2016-2555), Re,* 285 L.A.C. (4th) 205 (Surdykowski); *Humpty Dumpty Foods Ltd. v. Milk & Bread Drivers, Dairy Employees, Caterers & Allied Employees, Local 647*, 4 L.A.C. (2d) 163 (H.D. Brown) ("*Humpty Dumpty Foods*"); *Manitoba (Department of Family Services & Housing) v. C.U.P.E., Local 2153* 142 L.A.C. (4th) 173 (Peltz) ("*Manitoba (Department of Family Services & Housing")*; *Sudbury General Workers, Local 101 v. M. Loeb Ltd.*, 14 L.A.C. 97 (Little); *Rossdown Natural Foods Ltd. British Columbia and UFCW Local 1518 (19-0191), Re*, 310 L.A.C. (4th) 181 (Peltz); *Bell Technical Solutions v. C.E.P.,* 104 C.L.A.S. 175; *Bell Technical Solutions and Unifor, Local 46 (Beck), Re,* 302 L.A.C. (4th) 269 (Misra).

16. The Company's position may be summarized as follows. Article 16.04(e) is a guarantee of pay, not work. This is supported by a reading of Article 8.04 of the Collective Agreement, which defines an RPE as "an employee who has Regular Part-Time status and who has a limited guarantee of hours as per Article 16.04 e)." Moreover, as the evidence of Ms. Zapata-Balladares disclosed, the workforce required on any particular day of work is driven by customer service demand and employee availability. This principal is captured in:

- Article 16.01(c), applicable to all categories of employees which states that: "The hours of work may be assigned to a tour of duty on any day of the week depending on the requirements of the job.";

- Article 16.01(d), applicable to all categories of employees, which states that: "The choice of hours of work and days of work of employees in a Common Locality will be established by the Company on the basis of seniority, taking into consideration the requirements of the job and the need of regular employees on all tours."

- Article 16.04(c), applicable to RPEs, which states in part that: "Hours of

> work offered to Regular Part-Time employees shall be equitably distributed within a Common Locality taking into consideration the requirements of the job."

17. According to the Company, the confirmation by DD-7 in Article 16.04 e)(i) and (ii) is a confirmation of guaranteed pay, not confirmation of a guaranteed day of work. If Article 16.04 e) is interpreted as a guarantee that an employee will work, it leads to an absurd, inconsistent or unintended result, namely the scheduling of excess work the performance of which is not warranted based on customer service demand, with the consequence that the Company is liable to RPEs for any applicable premiums to the employees whose guaranteed shift becomes unscheduled. This incongruously puts the RPEs in a better position than the RFEs under a Collective Agreement that generally favours RFEs over RPEs. Furthermore, the Employer points out, Article 18.06 b), which applies equally to RPEs and RFEs, allows them both to volunteer to work on a statutory holiday. And yet, if the Union is correct that a RPEs' guaranteed days of work cannot be unscheduled on DD-1, the RPEs stand to gain a greater benefit than the RFEs.

18. In the Company's submission, the Employer's scheduling decisions are fundamental to the exercise of management rights and can only be divested by clear language.

19. The Employer submits that its reading of Article 16.04 e) is harmonious with Article 18 (Statutory Holidays), and that the Union's interpretation leads to inconsistencies between the two provisions. Article 18.06 b) is the provision by which the Company may seek volunteers from among both FPEs and RPEs to work on a statutory holiday; any such volunteer, whether an FPE or an RPE, who indicates a preference to work on the statutory holiday is prohibited from withdrawing their preference after the eighth day preceding the statutory holiday. Article 18.05, for example, which applies to both RPEs and RFEs, contemplates that when the Company does not require an employee to work on a statutory holiday that falls within the employee's weekly schedule, the employee will be

entitled to receive their basic rate of pay. That was precisely the result that obtained for the RPEs whose scheduled guaranteed shifts on September 30 and November 11, 2023 were cancelled because the Employer did not require them to work. The Union's view of the relevant language in Article 16.04 e), on the other hand, contradicts Article 18.05, and confers a greater benefit on the RPEs (as compared to the RFEs) than the basic rate of pay. That creates a disharmony between the two provisions.

20. The Company also claims that the Union's interpretation of Article 16.04 e) is inconsistent with Article 18.03 which provides that a statutory holiday falling on any day from Monday to Saturday will be included in RFEs' weekly schedule, whereas RPEs scheduled to work on a statutory holiday that also qualifies as a guaranteed day of work must perform work and the Company must pay the applicable premium/compensation. The Company characterizes this as conferring a benefit on RPEs that is not available to RFEs, which is inconsistent with the general thrust of the Collective Agreement in favour of the RFEs.

21. In support of its position, the Company cited the following authorities: Brown & Beatty, *Canadian Labour Arbitration*, 5th Edition, §4:20 Introduction, §4.21 Normal or Ordinary Meaning, and §4.22 Presumption that all Words Have Meaning; *Bell Technical Solutions v Communications, Energy and Paperworkers Union of Canada*, 2012 CanLII 99954 (ON LA) ("*BTS and CEP* (Luborksy)"); *Saskatchewan (Government) v Saskatchewan Government Employees' Union*, 1992 CanLII 12738 (SK LA) ("*Saskatchewan (Government)*"); *Bell Technical Solutions Inc.* and *Unifor (Cowan), Re*, 2014 CarswellOnt 14223 (Hayes) ("*BTS and Unifor* (Hayes)"); *Bell Technical Solutions* and *Unifor (CEP-ON-10-05)*, (2014) 118 C.L.A.S. 13 (Luborsky) ("*BTS and Unifor* (Luborsky)"); and *Bell Technical Solutions* and *Unifor (Allen)*, (2014) 118 C.L.A.S. 148 (Sheehan).

22. In reply, the Union submits that what the Company is attempting to do by coding RPEs for holiday pay on a cancelled guaranteed day of work falling on a statutory holiday is to count the holiday pay towards the employee's two or four

guaranteed days of work in a pay period. That conflates two distinct heads of entitlement to the Company's advantage and the RPEs' detriment.

23. The Union submits that Article 8.04, defining "Regular Part-Time" by reference to "a limited guarantee of hours", does not assist the Employer's position. This is because the phrase in the definition does not specify that the limited guarantee is one of hours of *pay*. However, Article 16.04 e) *is* specific – it describes the guarantee as a number (two or four) of "days of work per pay period".

24. The Union disagrees that its reading of Article 16.04 e) creates any inconsistency with Article 18. Article 18.06 b) gives the Company the right to seek volunteers to work on a statutory holiday and to hold them to their commitment. That has no impact on the interpretation of Article 16.04 e). The same is true regarding Article 18.06 c) which permits the Employer to schedule employees to work on a statutory holiday according to a set of rules if there are insufficient volunteers. Again, this creates no contradiction when compared to the Union's interpretation that Article 16.04 e) confers a guaranteed right to work on a specific day that happens to be a statutory holiday, which right cannot be extinguished as late as DD-1 and replaced with less compensation, i.e., holiday pay.

25. Nor is Article 18.05 ("Where an employee is not required to work on a paid statutory holiday included in their weekly schedule, the said holiday shall be paid at the basic rate of pay for that day") inconsistent with this view of Article 16.04 e), the Union submits. According to the Union, the posting of the eight-week schedule did in fact require certain RPEs to work on the statutory holidays in issue. Those required days of work on the statutory holidays were not "shaded" as non-guaranteed shifts for those RPEs in the eight-week schedule (see Articles 16.04 f) and g)). While it is arguable that, under Article 16.04 e), the Company could have unscheduled those RPEs prior to DD-7, it did not do so until DD-1. The Company has the express right under Article 16.04 g) to cancel the

non-guaranteed shifts for RPEs up to 7:00 p.m. the evening before DD-1, but no such right is expressed in the Collective Agreement with respect to the cancellation on DD-1 of guaranteed days of work. Therefore, in the Union's view, the cancellation on DD-1 of guaranteed days of work on the two statutory holidays in issue constitutes a breach of Article 16.04 e), but it does not render Article 16.04 e) in any way inconsistent with Article 18.05.

26. Finally, the Union acknowledges that some provisions of the Collective Agreement provide advantages to RFEs that are not enjoyed by the RPEs. However, there is nothing in the Collective Agreement that says this must be the case in all instances.

Analysis and Conclusions

27. The key disagreement between the parties concerns whether Article 16.04 e) confers upon RPEs a guarantee of work (as contended by the Union) or rather a guarantee of pay (as asserted by the Company). The Company claims it was entitled on DD-1 to unschedule the guaranteed days of work of RPEs on the statutory holidays in issue and pay them holiday pay. In my view, the Union's position must prevail, for the reasons set out below.

28. There is no dispute of substance between the parties concerning the principles of collective agreement interpretation as set out in the arbitral jurisprudence. For example, there is nothing controversial about the observations of the Arbitrator at paragraph 42 in *BTS and CEP* (Luborsky):

> [42] That brings me to my first task in the present analysis, which is to determine the meaning of article 16.13. In interpreting that contractual provision I apply the usual canons of contract interpretation that I referred to in an earlier arbitration between these parties in *Re Bell Technical Solutions Inc. (Belanger Grievance)* at paras. 30 and 31, wherein I directed myself to determine the parties' intention by

> construing the words they have used in their "normal or ordinary sense unless to do so would lead to some absurdity or inconsistency with the rest of the collective agreement or unless the context reveals that the words are used in some other sense", and that "where there is no ambiguity or lack of clarity in meaning, effect must be given to the words of the agreement, notwithstanding that the result may be unfair or oppressive (per Brown, Donald J. M. and David M. Beatty, *Canadian Labour Arbitration*, 4th ed., looseleaf (Aurora, Ontario: Canada Law Book, March 2008) at para. 4:2110)". The authorities have also noted that the meaning of specific clauses in a contract cannot be assessed in isolation, but rather presumes that in the absence of clear language to the contrary the parties would have likely intended there to be internal harmony or consistency throughout their collective agreement; the desire that every word used would have effective meaning; and the avoidance of an interpretation that would give rise to an absurdity from a business efficacy standpoint. See the further discussion on these points in *Canada Labour Arbitration*, *supra*, at paras. 4:2100, 4:2120 and 4:2150

29. In *Ontario Power Generation and Society of United Professionals*, Arbitrator Surdykowski elaborated somewhat on the principles described above, writing that:

> 35 The fundamental presumption is that the parties to a collective agreement purposely chose the language they have used to express their shared intention. That is, it is presumed that the parties wrote what they meant and meant what they wrote.
>
> 36 Therefore, the fundamental rule of collective agreement interpretation is that the words used must be given their plain and ordinary meaning unless it is clear from the structure of the provision read in context that a different or special meaning is intended, or the plain and ordinary meaning result would be illegal or absurd. All words must be given meaning. Different words are presumed to have different meanings. Specific provisions prevail over general provisions. Both the words that

are there and the words that are not there may be significant, particularly when the parties, like the Society and OPG in this case, are sophisticated users of collective agreement language. Words or phrases cannot be either inferred or ignored *unless it is essential to the purposive operation of the collective agreement*.

37 All interpretation presumptions are rebuttable.

38 The Supreme Court of Canada's decision in *Creston Moly Corp. v. Sattva Capital Corp.*, [2014] 2 S.C.R. 633, 2014 SCC 53 (S.C.C.) (CanLII) makes two things clear. First, an arbitrator tasked with interpreting a collective agreement is not merely a linguistic technician. Second, extrinsic context evidence is always admissible to the extent that it may inform the interpretation of a collective agreement. (Paragraphs 46-50 and 55-60 of the decision of Rothstein J. writing for the unanimous Court are particularly instructive.) The Supreme Court of Canada of Canada has made it clear that an arbitrator must interpret collective agreement language within the context of the agreement read as a whole, and the broader context of relevant circumstantial facts that were or ought reasonably have been known to both parties *when the contract was made* - as established by evidence (*Sattva*, paragraph 47). Extrinsic context evidence is admissible because it may inform the interpretation of a collective agreement by demonstrating the mutual intention of the parties. However, as Rothstein J. put in paragraph 60 of Sattva, context cannot change or "overrule" the meaning of the words used by the parties.

39 It is well established that extrinsic evidence is also admissible as an aid to interpretation in order to establish or resolve an alleged ambiguity.

40 As a practical matter, the arbitrator's task remains what it has always been; namely, to determine the objective contextual labour relations meaning of the collective agreement, with the words used being the most important consideration. When it comes to collective agreement interpretation *the words used matter most*.

> 41 As a general matter, a grievance arbitrator has no jurisdiction to amend a collective agreement (whether or not the collective agreement specifically says so). Article 16.7(i) of the collective agreement in this case specifically prohibits a grievance arbitrator from amending the agreement "save only any policies and procedures which conflict with the terms of this Agreement."
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> (italics in original)

30. When interpreting clauses such as Article 16.04 e) in which a guarantee of work is claimed, the following excerpt from paragraphs 3 and 5 in *Saskatchewan (Government)* is instructive:

> As a starting point, it is generally recognized that management has a right to schedule work unless the collective agreement limits the exercise of that authority. The principles and jurisprudence which are applicable are summarized in the two leading arbitral texts in Canada (see Brown and Beatty, *Canadian Labour Arbitration*, 3d ed. 1992, at 5-40 to 5-46; Palmer, *Collective Agreement Arbitration in Canada* (3rd ed.) 1988 at pp. 574-579).
>
> …
>
> Although there is general residual authority with the employer to schedule work, it is abundantly clear in arbitral jurisprudence that a collective agreement may guarantee a minimum number of working hours. Generally, however, arbitrators have deferred to management's prerogative to schedule hours unless there is clear language in the agreement circumscribing that prerogative. (See for instance, *Re Algoma Steel* (1986), 1986 CanLII 6631 (ON LA), 27 L.A.C. (3d) 113 (Brunner). If a guarantee of work hours is to be found in a collective agreement very explicit language is required. Palmer, in commenting on the jurisprudence in this area, says at p. 576:
>
> > In other words, an arbitrator is unlikely to infer an implicit

> guarantee from general language in the collective agreement. This is especially so where the collective agreement explicitly provides a guaranteed number of hours for certain employees and not for the remainder.

Palmer cites *Kokotow Lumber* (1970), 1970 CanLII 1615 (ON LA), 22 L.A.C. 48 (Shime) as authority for this proposition.

31. This Collective Agreement contains no management rights clause. Nevertheless, I accept the observation of the Arbitrator at paragraph 79 in *BTS and Unifor* (Luborsky) that "even in the absence of such a clause the Company retains its residual right to manage the enterprise and direct its workforce as it sees fit, subject to express terms in the collective agreement providing otherwise…[and] [t]his includes the right to determine at the outset, the nature and amount of work required and the pool of available employees to perform that work, subject to express provisions in the collective agreement limiting those rights".

32. The Employer submits that in order to establish a guarantee of work there must express language to that effect. The Employer says that a guarantee of work is an extraordinary right requiring clear language. By way of illustration, the Employer cites *BTS and Unifor* (Hayes). There, the Union claimed that the Company was prohibited from assigning forced overtime to RFTs in less than eight-hour blocks. In other words, the collective agreement guaranteed RFTs to a minimum of eight hours of overtime if assigned forced overtime. The Arbitrator could not find clear language to such effect, and dismissed the grievance. While I agree with the result and reasoning in that case, the fact of the matter is that there *is* clear language in Article 16.04 e) to support the Union's claim to guaranteed work days. On its face, the plain and simple language of Article 16.04 e) ("Regular Part-Time employees will be guaranteed four (4) days of work per pay period, scheduled on Saturdays and Sundays…"; and "Regular Part-Time employees will be guaranteed two (2) days of work per pay period, scheduled on Saturdays…") is an unambiguous guarantee of days of work. Moreover, the

guaranteed days of work are to be scheduled on specific days of the week. The language does not refer to pay, much less the "basic rate of pay". To parse Arbitrator Surdykowski in *Ontario Power Generation and Society of United Professionals*, both the words that are there and the words that are not there are indicators of the parties' intention, especially when, as here, the parties are sophisticated users of collective agreement language. Based on the plain and simple meaning of the words in Article 16.04 e), read alone, the parties intended to grant RPEs guaranteed days of work to be performed on particular days of the week. Therefore, for the Employer to succeed in its position that Article 16.04 e) reflects some other intention of the parties, for example, that the provision is a guarantee of pay rather than of "days of work", it must show that such interpretation is necessary to avoid an absurd result or to avoid conflict with another provision, or provisions, of the Collective Agreement.

33. To the Employer's point that the Collective Agreement grants advantages to RFEs over those of RPEs, this is true, but to a limited extent. RFEs appear to have superior bumping rights. Involuntary overtime and involuntary work on a statutory holiday are borne first by the RPEs. The overtime threshold is different for RPEs then for RFEs. The RFEs enjoy short-term sick pay benefits, whereas the RPEs do not. However, most of the provisions of the Collective Agreement apply equally to both RFEs and RPEs. The hourly rates, for example, are identical. RPEs with greater seniority can outbid lower seniority RFEs on job postings. Most, if not all, of the non-monetary terms and conditions (dealing with discipline, health and safety, grievances, transfers, tools and so forth) make no distinction between RPEs and RFEs. Interestingly, Article 16.03 d), which applies to RFEs, protects guaranteed days of work by RPEs from being distributed as work opportunities to RFEs whose weekly hours of work have been reduced. All this to say that, in my view, there is nothing jarring or inconsistent in the fact that RPEs enjoy the benefit of two or four guaranteed days of work in a pay period, whereas the RFEs – whose basic hours of work are eight hours per day, 40 hours per week - cannot lay claim to the same benefit. There certainly is no language in the Collective Agreement prohibiting such a result or guaranteeing

RFEs, at a minimum, equal benefit of the same terms and conditions as their RPE counterparts. Moreover, the unchallenged evidence led by the Union was that the RPEs have been keen to obtain guaranteed days of work (in tandem with non-guaranteed shifts) in order to bring about a greater element of certainty and work/life balance.

34. The Employer claims that the Union's interpretation of Article 16.04 e) creates a conflict with Article 18, and in particular Article 18.05 which provides for the payment of an employee's basic rate of pay in circumstances where the Employer does not require the employee's services on a statutory holiday that falls within the employee's weekly schedule. However, this view of Article 18.05 is, in my opinion, misconceived. Such a reading of Article 18.05 assumes that the Company is free at any time to unschedule (effectively cancel) the scheduled guaranteed days of work of RPEs that fall on a statutory holiday if the work they were originally scheduled to perform is no longer necessary. Article 18.05 contains no such language, express or implied. There *is* shift-cancellation language applicable to RPEs elsewhere in the Collective Agreement, in Article 16.04 g). It expressly permits the Company to cancel (or modify the start and end times of) a scheduled shift of RPEs, but such cancellation only applies to "shaded days" i.e., *non-guaranteed* shifts. Moreover, any such cancellation must be communicated by no later than 7:00 p.m. the night before DD-1. There is no similar provision in the Collective Agreement applicable to the cancellation of RPEs' guaranteed days of work.

35. In the *Humpty Dumpty Foods* award, article 20 under the heading of "Wages and Job Classifications" in the collective agreement provided that the grievor's classification was entitled to a specified percentage "commission" of gross sales "with a guaranteed minimum of $100.00 a week". Under article 13, dealing with statutory holidays, the employer was obligated to pay $22.00 per holiday to employees who worked the full working day immediately preceding and following the holiday (with some stated exceptions). During the relevant period in 1972, Christmas Day (December 25) and Boxing Day (December 26)

fell on a Monday and Tuesday respectively. The grievor worked on December 27, 28 and 29, and earned a total commission of $77.48. To this figure, the employer added $44 holiday pay, for a total of $121.48, on the basis that this satisfied the minimum guarantee of $100 a week. The union claimed in the grievance that the grievor was owed the $100 weekly guaranteed minimum *plus* the holiday pay, for a total of $144. The majority of the board of arbitration chaired by H.D. Brown agreed with the union. The majority found that the language of article 20 was unambiguous, and reasoned that the "guaranteed minimum" was in reference to "commission" found under the heading that included the term, "Wages". The majority therefore concluded that, in the absence of any interconnecting language in the collective agreement, article 20 and article 13.02 were "distinct and separate heads of entitlement" (paragraph 9).

36. A similar result obtained in *Manitoba (Department of Family Services & Housing*. There, the collective agreement in article 14.04 obligated the employer to "guarantee hours to all permanent employees as per their most recent letter of employment." Article 15.03 a) required the employer to "provide a guarantee for the number of hours of work assigned per week", with a minimum of at least 20 hours per week for employees in In-Home Support, of which the grievor was one. In return, article 15.03 b) required the employee to accept all assignments, to work in all areas of the municipality, and to be prepared to work at least 50 per cent of hours during evenings and weekends. A Letter of Understanding in the collective agreement stipulated that the employer was to draw up new letters of employment for all bargaining unit members, and that in respect of permanent employees, the employer was to "provide a minimum number of guaranteed hours based on the employee's average regular paid hours of work."

37. The grievor was a permanent employee whose most recent letter of employment indicated that she had a guarantee of 64 hours bi-weekly. In accordance with its general practice, the employer counted hours of holiday pay towards her 64-hour bi-weekly guarantee. This led to the grievor's complaint.

38. The employer argued that the references to "guaranteed hours" in both article 14.04 and the Letter of Understanding contained no reference to hours *of work*. Nor did the grievor's letter of employment. This, the employer submitted, evinced an intention by the parties to include all paid hours, including holiday pay, as part of the guarantee.

39. Arbitrator Pelz rejected the employer's interpretation. While giving consideration to all of the relevant collective agreement provisions, he gave the greatest weight to article 15.03 a)'s guarantee of "hours of work". The other provisions which merely referred to "guaranteed hours" he interpreted as the parties' shorthand for "hours of work" in article 15.03 a). Accordingly, he accepted the union's position that holiday pay was a separate issue and should not be treated as an offset against the guarantee of assigned work. (Ultimately, however, he found that the union was estopped from asserting its legal rights under article 15.03 a) until after the collective agreement's expiry.)

40. The Company says that the award in *Humpty Dumpty Foods* does not apply here where, in its submission, the Union's interpretation leads to an inconsistency between Articles 16 and 18. However, I have found no such inconsistency. Article 16 confers a right to a number of guaranteed days of work. Article 18 does not provide the Employer with an unfettered right on DD-1 to cancel a scheduled guaranteed day of work that falls on a statutory holiday and replace it with holiday pay. Such a result does not put Articles 16 and 18 into conflict with one another.

41. The eight-week schedule posted by the Employer tells employees the days that they will be required to work. The RPEs who looked at the eight-week schedule covering the fall of 2023 would have observed that they were scheduled to work their guaranteed days on Saturday, September 30 and/or Saturday, November 11, 2023 (except any RPEs who might have been entitled to a weekend off pursuant to Article 16.04 l). By DD-7, they would rightly have expected to

earn premium pay for working on the statutory holiday day and to receive additional compensatory relief as described in the Collective Agreement. Under Article 16.04 j), the Employer must confirm the start time and shift duration for any guaranteed day of work seven days in advance of same. Again, assuming this was done, the RPEs scheduled to work guaranteed days on September 30 and/or November 11, 2023 would reasonably have expected to work the duration of the shift specified by the Company on the statutory holiday. For the first time since the introduction of guaranteed days of work and non-guaranteed shifts, after canvassing for (and failing to find an adequate number of) volunteers to take the guaranteed day of work on September 30 and November 11, 2023 as a day off, the Company cancelled the guaranteed day of some RPEs on DD-1 because it determined that the volume of customer orders on the guaranteed day of work did not warrant the number of scheduled RPEs. As the guaranteed day fell on a statutory holiday, the Employer paid each RPE affected by the shift cancellation holiday pay, taking the position that this is all that was required by Article 18.05 ("Where an employee is not required to work on a paid statutory holiday included in their weekly schedule, the said holiday shall be paid at the basic rate of pay for that day."). As the Union points out, the Company is essentially asking for an interpretation of the Collective Agreement that allows it to substitute one employee entitlement (statutory holiday pay) for another (a guaranteed day of work). I agree that such a result should be avoided.

42. The Collective Agreement expressly provides the Employer with the right to cancel non-guaranteed shifts as late as 7:00 p.m. the night prior to DD-1 (Article 16.04 g)). There is no parallel language applicable to the unscheduling of guaranteed days of work on DD-1. This suggests that the Employer's flexibility to make last-minute scheduling decisions concerning guaranteed days of work is not limitless.

43. For all these reasons, the grievance is allowed. The issue of remedial relief is remitted back to the parties. In the event they cannot resolve that issue, I remain seized.

DATED at TORONTO on November 27, 2025

Patrick Kelly
Arbitrator

Appendix "A"

ARTICLE 16

HOURS OF WORK

16.01 a) "Basic Hours of Work" means the number of hours worked per day and per week as established by this Article.

b) The arrangement of hours for all tours of duty shall be composed of consecutive hours and established by the Company. Such hours and tours will be posted on an eight (8) week schedule.

c) The hours of work may be assigned to a tour of duty on any day of the week according to the requirements of the job.

d) The choice of hours of work and days of work of employees in a Common Locality will be established by the Company on the basis of seniority, taking into consideration the requirements of the job and the need of regular employees on all tours. At least fifteen (15) days prior to the start of the eight (8) week schedule, the Company will schedule a call with all Local Chief Stewards in order to review issues that may arise.

e) Subject to the conditions stated in Article 17, no employee shall work more than twelve (12) consecutive days against their will.

f) For tours of duty beginning between six o'clock (6:00 a.m.) and twelve noon (12:00 p.m.), the meal period shall be of one (1) hour unpaid and taken at or around the middle of the tour unless agreed upon differently between the employee and their Operations Manager. If the Company is offering overtime, the employee may take a thirty (30) minutes lunch upon authorization from their Manager. For tours of duty starting after noon (12:00 p.m.) but before six o'clock

(6:00 a.m.) a meal period of twenty (20) minutes shall be considered as part of the day's normal working hours.

g) At the request of the employee, and if approved, the meal period shall be a thirty (30) minute unpaid period and taken around the middle of the working day. Such request will be made during the preparation of the 8-week schedule and granted by seniority, according to the requirements of the job. h) An employee shall be granted a relief period of no more than fifteen (15) minutes around the middle of each half tour of duty.

FULL-TIME EMPLOYEES

16.02 a) **The basic hours of work for a Full-Time employee shall be eight (8) hours.** However, when job requirements dictate, a Full-Time employee may work ten (10) hours per day when mutually agreed upon by the employee and their Operations Manager.

b) **The basic hours of work for a Full-Time employee shall be forty (40) hours per week on the basis of five (5) days.** However, the basic hours may be averaged over a two (2) week period on the basis of ten (10) days totaling eighty (80) hours. Whenever four (4) days of ten (10) hours are scheduled as per Article 16.02 (a), the basic hours may also be spread over a two (2) week period consisting of eight (8) days of ten (10) hours.

c) The Company must give seven (7) calendar days' notice before changing the basic work schedule of a Full-Time employee.

…

16.03 a) The Company may reduce the hours of work to thirty-six (36) hours per week for Full-Time employees in a given Common Locality.

b) The Company shall always give a seven (7) calendar days' notice before reducing the hours of work to thirty-six (36) hours per week. The Company shall give seven (7) calendar days' notice whenever it intends to return to the normal work week. However, if the Team agrees the Company may return to the normal work week without the seven (7) calendar days' notice.

c) Where the Company decides to reduce or go back to normal hours of work, it shall do so for a period of two (2) weeks.

d) i) While the hours of work are reduced in the application of Article 16.03, the Company shall offer available hours of work to Full-Time employees before offering hours to Regular Part-Time employees **providing that Regular Part-Time employees have worked their guaranteed hours according to Article 16.04 e)** and that the offering of such hours does not generate overtime.

…

REGULAR PART-TIME EMPLOYEES

16.04 a) Regular Part Time (RPT) employee as defined in Article 8.04 represents thirty-five percent (35%) of the employees in each Common Locality

b) **The Company shall determine the hours of work per day and days per week for all Regular Part-Time employees.** These hours per day should be spread over a shift of eight (8) consecutive hours or a shift of ten (10) consecutive hours as per the needs of the Company. Excess hours, beyond the ten (10) hour shift, may be worked upon an agreement with the employee.

c) Hours of work offered to Regular Part-Time employees shall be equitably distributed within a Common Locality taking into consideration the requirements of the job. The equitable distribution of hours will be evaluated over a period of

eight(8) weeks and shall include worked and offered hours

.

d) Notwithstanding Article 16.04 c) a newly hired Regular Part-Time employee will not be included in the equitable distribution of hours during the time of the initial basic training period, which encompasses in-class training and one on-one mentoring. Once a new hire has completed transition to their Operations Manager and they start working independently, article 16.04c) will apply. All further skills upgrades will be subject to equitable distribution of hours.

e) Hours of work of Regular Part-Time employees will be as follows:

i) During the period starting on the Sunday preceding May 15 until the Saturday preceding October 15 of each year, Regular Part-Time employees will be guaranteed four (4) days of work per pay period, scheduled on Saturdays and Sundays, and confirmed seven (7) days prior (DD-7);

• For a Regular Part-Time employee working eight (8) hour shifts as per Article 16.04 (b), the company will schedule six (6) additional nonguaranteed shifts of eight (8) hours in the pay period

• For a Regular Part-Time employee working ten (10) hour shifts as per Article 16.04 (b), the company will schedule four (4) additional non-guaranteed shifts of ten (10) hours in the pay period

ii) During the period starting the Sunday preceding October 15 until the Saturday preceding May 15 of each year, Regular Part-Time employees will be guaranteed two (2) days of work per pay period, scheduled on Saturdays, and confirmed DD-7;

• For a Regular Part-Time employee working eight (8) hour shifts as per Article 16.04 (b), the company will schedule eight (8) additional non-guaranteed shifts of eight (8) hours in the pay period.

• For a Regular Part-Time employee working ten (10) hour shifts as per 16.04 (a), the company will schedule six (6) additional non-guaranteed shifts of ten (10) hours in the pay period

f) The additional non-guaranteed shifts per week scheduled above the guaranteed hours of work for a Regular Part Time employee will be identified and referred to as «shaded days».

g) The Company may, according to the requirements of the job, cancel or modify the start and end time of the «shaded days» by no later than seven o'clock (7:00 pm) the night before (DD-1).

h) The Company may also, according to the requirements of the job, offer additional hours of work to Regular Part Time employees. These additional hours of work will be equitably distributed and will be subject to the following: Additional hours of work will be offered to all Regular Part-Time employees in a Common Locality. Regular Part Time employees will have two (2) hours to volunteer to do the work:

• If a Regular Part-Time employee is selected to work based on their availability, these hours will be calculated in the number of offered hours.

• If a Regular Part-Time employee provides no response to the offer of hours within two (2) hours, those hours will be considered as offered.

• If a Regular Part-Time employee volunteers to do the work and is not selected, these hours will not be considered as offered.

…

i) A Regular Part-Time employee who accepts an offer of work for the same day,

shall be paid a minimum of four (4) hours. However, if they are notified beforehand, they shall be paid a minimum of eight (8) hours.

j) Start time and shift duration of guaranteed days of work shall be confirmed seven (7) days in advance.

k) For each posted eight (8) week schedule, a Regular Part-Time employee will be allowed two (2) scheduled rest days per week. Once per pay period, the two (2) scheduled rest days will be consecutive. These scheduled rest days will be confirmed DD-7.

l) Notwithstanding Article 16.04 e), every Regular Part Time employee shall have one (1) weekend off per quarter. A newly hired Regular Part Time employee must have worked thirteen (13) days in the quarter to be eligible to the weekend off. When the Regular Part-Time employee is scheduled a weekend off, it is understood that the guaranteed days of work will be a Monday or Friday.

…

ARTICLE 18
STATUTORY HOLIDAYS

18.01 **The following days shall be recognized as paid statutory paid holidays and employees shall be paid according to the provisions under the present Article**:
1. New Year's Day
2. Good Friday
3. Victoria Day
4. Canada Day
5. Civic Holiday
6. Labour Day

7. **National Day of Truth and Reconciliation**
8. Thanksgiving Day
9. **Remembrance Day**
10. Christmas Day
11. Boxing Day

18.02 Where a paid statutory holiday falls on a Sunday it is observed on the following day.

18.03 Where a paid statutory holiday falls on a day from Monday to Saturday inclusively it is included in the weekly schedule of all Full-Time Employees for that week. Where the paid statutory holiday falls on the Saturday prior to a week of vacation as outlined in article 19.11, it is banked.

…

PAYMENT OF A PAID STATUTORY HOLIDAY

18.05 Where an employee is not required to work on a paid statutory holiday included in their weekly schedule, the said holiday shall be paid at the basic rate of pay for that day.

PAYMENT FOR WORK ON A HOLIDAY INCLUDED IN THE WEEKLY SCHEDULE

18.06 a) Where an employee works on a paid statutory holiday he shall elect one of the following options:

i) They shall be paid the overtime rate as per Article 17.08. In addition, they shall be entitled to payment according to Article 18.05, or

ii) They shall be paid at the overtime rate as per Article 17.08. The Company

shall schedule a substitute holiday, by mutual agreement with the employee, with pay according to Article 18.05 within the following twelve (12) months. Substitute holiday not taken by the end of the twelve (12) month period will be paid.

b) The Company will seek volunteers to work on a paid statutory holiday. Employees will be able to indicate their preference to work on a paid statutory holiday up to eight (8) days before said paid statutory holiday. Employees may not remove their preference from working a paid statutory holiday after the eighth (8th) day preceding said paid statutory holiday.

c) In the event an insufficient number of volunteers are available, the Company will schedule Part-Time Employees to work. If, after having scheduled all the Regular Part-time Employees to work on a paid statutory holiday, there are still an insufficient number of employees scheduled to meet workload requirement, the Company can schedule no more than 20% of the Regular Full-Time Employees by reverse order of seniority. In the event that less employees are required to work on the paid holiday on DD-1 or before, the Company will first offer Regular Full-Time Employees to be unscheduled on the basis of seniority. It is further understood, the total number of volunteers will be applied and count towards the 20% of Regular Full Time employees scheduled to work on a paid Statutory holiday.

…