

**IN THE MATTER OF AN ARBITRATION UNDER THE  
BRITISH COLUMBIA LABOUR RELATIONS CODE**

**BETWEEN:**

**OVERWAITEA FOOD GROUP (COOPER'S MARKETS)  
(the "Employer")**

**AND:**

**UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1518  
(the "Union")**

**(Pay Grid – Movement-Policy Grievance)**

**ARBITRATOR:**

**Emily M. Burke**

**COUNSEL:**

**Michael Korbin  
for the Employer**

**Donald Bobert  
for the Union**

**DATE AND LOCATION OF HEARING:**

**April 4, 2007  
Kamloops, British Columbia**

**DATE OF AWARD:**

**April 24, 2007**

I. INTRODUCTION

I have been appointed under Section 104(4) of the B.C. *Labour Relations Code* to deal with a policy grievance filed by the Union. The grievance filed on January 10, 2007 concerns the movement of employees between Pay Grids in the collective agreement. The Union maintains the Employer's calculation of the movement between Pay Grids has not been done within a reasonable period of time. As a result, it seeks an order that the calculation of movement between Pay Grids for the employees be done within two to three weeks. In response, the Employer maintains the collective agreement has not been breached. There is no timeline in the collective agreement and no basis in law to propose a deadline. Further, it maintains circumstances establish the calculations have been done within a reasonable period of time.

II. BACKGROUND

Cooper's Markets is one of a number of "banners" operated by the Overwaitea Food Group. There are 12 Cooper's stores located mainly in the interior of British Columbia and 792 bargaining unit members in those stores. The stores became unionized in 1999 after the purchase of the group by Overwaitea Food Group. One collective agreement has been in effect since that time.

The dispute concerns a Letter of Understanding between the parties dealing with the movement of employees between Pay Grids. That Letter of Understanding reads as follows:

**LETTER OF UNDERSTANDING #3 – MOVEMENT BETWEEN PAY GRIDS**

It is understood that 25% of the hours worked will be scheduled to employees in Pay Grid "A", 25% of the hours worked will be scheduled to employees in Pay Grid "B" and 50% of the hours worked will be scheduled to employees in Pay Grid "C".

a) The employees listed in Appendix "A" will continue to be

scheduled in Pay Grid "A" as long as they continue to be employed by the Employer.

- a) The employees listed in Appendix "B" will continue to be scheduled in Pay Grid "B" as long as they continue to be employed by the Employer or until they are scheduled in Pay Grid "A" as described in point c) as follows.
- b) When the hours scheduled in Pay Grid "A" fall below 25%, the Employer will post the required vacancy(ies) to bring the hours back up to 25%. The successful applicant from Pay Grid "B" will receive the next highest wage rate within Pay Grid "A" and progress through the wage schedule based on hours worked. For example, a Clerk Cashier earning \$13.25 per hour in Pay Grid "B", will move up to Pay Grid "A" as a rate of \$14.90 per hour and progress to \$16.77 after another 500 hours of work and so on.
- c) When the hours scheduled in Pay Grid "B" fall below 25%, the Employer will post the required vacancy(ies) to bring the hours back up to 25%. The successful applicant from Pay Grid "C" will receive the next highest wage rate within Pay Grid "B" and progress through the wage schedule based on hours worked. For example, a Clerk Cashier earning \$10.00 per hour in Pay Grid "C", will move up to Pay Grid "B" at a rate of \$10.65 per hour and progress to \$11.95 after another 1000 hours of work and so on.
- d) At the end of each quarter, i.e., February, May, August, November, the average hours scheduled in each Pay Grid will be reviewed to determine movement between the grids for the next quarter. In the event that the hours scheduled in Pay Grid "A" and/or "B" are more than 25%, the most junior employee(s) in the Grid will be moved down to the next Grid, subject to points a) and b) above.

Signed this 20<sup>th</sup> day of January, 1999.

This provision creates a structure requiring 25% of the hours worked per week to be paid at Pay Grid A; 25% to be paid at Pay Grid B and 50% to be paid at Pay Grid C. This does not impact scheduling or the benefits accruing to employees; rather it determines wage rate only. At the end of each quarter, i.e., February, May, August

and November the Employer reviews the average hours scheduled in each pay grid to determine if movement between the grids for the next quarter is necessary. If the hours do not reflect the agreed upon ratio, employees are moved between Pay Grids to ensure the ratio is as close as possible. This calculation also does not affect the classification of the employee but rather the rate the employee is paid. The movement between pay rates is determined on the basis of the ratio of hours worked by employees in each grid. Most of the movement in the pay grid is up. The Employer produces a Pay Grid Report for each quarter that reflects these calculations.

The last quarter ended November 25, 2006. The Union did not receive the calculation and Pay Grid Report reflecting the movement between grids until February 26, 2007. While retroactive pay to the end of the quarter is made, the employees are delayed receiving a raise. The most recent quarter ended February 28, 2007. As of the date of the hearing the Union had not received a Pay Grid Report for that quarter.

Dave Archibald, a Union representative explained the operation of the Grid and its importance to the employees. Pay Grid C is the lowest pay rate with the wage rate increasing from Pay Grid B to A. The latest Pay Grid Report for the fourth quarter 2006, reflects the typical movement of employees between pay grids. A letter of February 21, 2007 which sets out the Pay Grid changes indicates the changes are effective the pay period beginning November 26, 2006 and would be paid no later than March 16, 2007. Retroactive adjustments would be paid at that time. Six of the Cooper's food stores experienced no movement of employees between pay grids. A number of other stores did. As an example, changes in Store # 106 were noted as follows:

...Store # 106 was at 23.88% in Grid "A". Therefore Susan Doyle will need to be moved from Grid "B" into Grid "A". Grid "B" was at 19.89% therefore Lee Dance and Jewel Lane will need to be moved from Grid "C" into Grid "B".

Similar notations were made with respect to employees in seven other stores. Typically, as the letter reflects, more employees move up the pay grids than down. Where an employee is moved down a pay grid, the Employer does not claim back the wages paid while the calculations and report are prepared.

Archibald pointed out the membership was upset as in their view the delay in compiling the report had increased. The issue was important as the employees were uncertain about the amount the employee would be paid. In addition, Archibald said employees were aware another store under the Overwaitea banner Urban Fare provides these calculations and the Pay Grid Report to the Union and employees within two weeks of the end of a quarter. Indeed, the collective agreement between Urban Fare and the Union refers to Cooper's Markets in its provision dealing with the "Movement between Pay Grids" as follows:

(c) At the end of each quarter, i.e. February, May, August, November, the average hours scheduled in each Pay Grid will be reviewed to determine movement between the grids for the next quarter. In the event that the hours scheduled in Pay Grid "A" and/or "B" are more than 25%, the most junior employee(s) in the Grid will be moved down to the next Grid. *It is agreed the practices established between the Employer and the Union at Cooper's Foods on managing the movement between pay grids will be followed in this Agreement.*

(emphasis added)

Nash Huntley, a temporary Union representative services both Urban Fare and a number of other stores including the Cooper's store in Port Coquitlam. He testified the payroll system based out of the Langley head office of Overwaitea Food Group is the same in both stores. Huntley confirmed the most recent Pay Grid Report for Urban Fare was finalized and provided to the Union within two weeks of the last quarter; in particular, within two weeks of the end of the February 26, 2007 quarter.

The Employer stipulated in the proceeding that Urban Fare and the Union have a "trouble-shooter without prejudice process" with Arbitrator Taylor. As part of that process, both sides have agreed to endeavour to have the Urban Fare Pay Grid Report finalized within two or three weeks after each quarter. Any problems that arise return the matter to Arbitrator Taylor.

The Union had a meeting with the Employer on December 5, 2006. A number of issues including the delays in the Pay Grid Report were raised. There was some dispute about whether Tony Piwek, the Director of Retail Operations for Cooper's Foods had committed in this December 5, 2006 meeting to the Pay Grid Report being provided to the Union within two to three weeks. Both Archibald and Tony Evangelista, a Union representative based in Kamloops, recalled Piwek in the meeting indicating it should take only two to three weeks to provide the Pay Grid information. Evangelista's view was that Piwek was providing a commitment this would occur. Evidence was presented on this including the testimony of Piwek, who denied this statement occurred. A review of the evidence establishes the delay in providing the Pay Grid information was raised in this meeting, comments were exchanged between the parties but a commitment was not provided. Even if Piwek made this statement, it could not realistically be considered a commitment that the Pay Grid calculation would be provided to the Union within two to three weeks. While the Union viewed it as a particular concern, it was raised in general discussion in the context of a range of issues to be dealt with that day. Further, Piwek was not the individual undertaking the process nor was he familiar with it. Gord Johnson, the individual charged with that responsibility was at this meeting. The Union knew Johnson was the responsible person. Accordingly it would be unrealistic to view a comment of Piwek in this context as a commitment.

Gord Johnson is the Labour Relations Specialist, East Region Overwaitea Food Group and responsible for compiling the Pay Grid Reports. Johnson has been employed for 24 years with Overwaitea. He has held the position of Labour Relations Specialist since January 2006. In that position, he is responsible for the

12 Cooper's stores located mainly in the Okanagan with two stores in the Lower Mainland, 16 Overwaitea Food stores and one Bulkley Valley store. He is the Labour Relations Specialist for 29 stores. Johnson's main office is located in Kamloops and he works out of that office one day a week. He is on the road servicing stores the rest of the week. Prior to becoming a Labour Relations Specialist, Johnson held several positions in the retail operations, including store manager.

Johnson's responsibilities as a Labour Relations Specialist are to support the stores in labour relations and human resources including any work to do with the collective agreement; assist with grievances in the stores; deal with harassment issues; and other human resource issues as they occur. Johnson explained the Pay Grid Letter of Understanding requires him at the end of each quarter to undertake certain calculations to ensure compliance with the agreement of the parties that 25% of the hours worked per week are paid at Pay Grid A, 25% at Pay Grid B and 50% at Pay Grid C. The first quarter is from November to February; the second quarter from February to May; the third quarter from May to August; and the fourth quarter from August to November.

The Employer provided a listing of the time periods it has taken to compile Pay Grid Reports from 2004. Those time periods are set out below:

	<b><u>Time Period</u></b>
Quarter 4/06 Quarter ends: November 25/06 GRIDS posted: February 27/07	<b>3 Months</b>
Quarter 3/06 Quarter ends: August 26/06 GRIDS posted: October 26/06	<b>2 Months</b>
Quarter 2/06 Quarter ends: May 27/06 GRIDS Posted: July 25/06	<b>2 Months</b>

Quarter 1/06 Quarter ends: February 25/06 GRIDS posted: April 18/06	<b>2 Months</b>
Quarter 04/05 Quarter ends: November 26/05 GRIDS posted: December 9/05	<b>2 Weeks</b>
Quarter 3/05 Quarter ends: August 20/05 GRIDS posted: September 2/05	<b>2 Weeks</b>
Quarter 2/05 Quarter ends: May 21/05 GRIDS posted July 23/05	<b>2 Months</b>
Quarter 1/05 Quarter ends: February 19/05 GRIDS posted: April 7/05	<b>7 Weeks</b>
Quarter 4/04 Quarter ends: November 20/04 GRIDS posted: December 23/04	<b>1 Month</b>
Quarter 3/04 Quarter ends: August 21/04 GRIDS posted: October 19/04	<b>2 Months</b>
Quarter 2/04 Quarter ends: May 29/04 GRIDS posted June 27/04	<b>1 Month</b>
Quarter 1/04 Quarter ends: March 6/04 GRIDS posted: March 29/04	<b>3 Weeks</b>

Johnson explained the process. He starts the process by compiling the data reports associated with the approximately 800 employees. Johnson set out a summary of the process as follows:

**Cooper's Quarterly GRID Review & Reports (as of March 2006)**

Existing stores: A 25% / B 25% / C 50% GRID ratios

**New Stores: A 25%/C 75% GRID ratios**

- Coopers #126, #160, #165
- Must be using 25% in GRID A
- EE bump into GRID B when reaching 4680 experience hrs
- Once GRID B is full (25%) then bumping stops

**Quarterly Review Process:**

- 1) Print Store Summary and EE Summary reports for Quarter
  - a. PeopleSoft>Overwaitea>Labour Relations>Report
  - b. Coopers Store GRID Files>Select Run Control (OF\_LR010)
  - c. Select Quarter>Run>OK/Process Monitor>Refresh until posted
  - d. Select details to access reports
- 2) Review EE Summary
  - a. Identify and correct wrong information (i.e. EE seniority, Pay Grid, Store Grid totals, etc.)
  - b. Put together a "logic check" email to payroll
- 3) Do changes and reprint reports
- 4) Print 4680 report from PeopleSoft
- 5) Check store % by GRID
  - a. Identify if movement should take place
  - b. Check "Appendix A" or "B" for excluded names
  - c. Move EE from GRID A to B if required in next Q
  - d. Project new total for GRID B in next Q.
  - e. Move appropriate EE from GRID B to GRID C
- 6) Call Store managers to advise of changes and confirm
- 7) Send out this information:
  - a. FAX to UFCW Business Agents (Burnaby, Kelowna & Kamloops)
  - b. Send Hard Copy to Tony Evangelista
  - c. Email all Coopers, Dennis Pedersen, Tony Piwek, Peter Willick
  - d. Email Labour Specialists: Kevin Waites, Heidi Ferriman

In reviewing this matter, Johnson described his calculations once the raw data was condensed to the necessary format. As part of the consideration of

whether an individual moved up or down in the calculations, if the total hours of the person to be moved up do not completely fit within the prescribed ratio, that individual would not be moved up, as per the practice and understanding between the parties. Overall, Johnson indicated the total task uninterrupted took between 14 and 16 hours. He works approximately 60 hours a week.

Johnson testified the particulars of his workload in the time period in question affected whether he could provide the reports in a shorter time period. In explaining his time limitations, Johnson reviewed his workload subsequent to be quarter ending November 2006. It is sufficient to say he has many obligations servicing 29 stores in different locations. Those included dealing with a variety of issues including an arbitration hearing, mediation, training and a four-day harassment investigation. These demands coupled with significant travel time result in heavy workload. In addition, technical problems affected the initial data reports and ultimately the final report. Johnson was unable to commence the necessary calculations until January 18, 2007. These factors all contributed to the length of time to produce a report.

In cross-examination, Johnson reiterated the amount of time taken to complete the Pay Grid Report was predicated upon what other matters he was required to deal with. A matter such as harassment investigation or other similar issues might take up precedence over the Pay Grid Report and delay matters. Johnson agreed given his 60 hour work week, the task of 14 – 16 hours took up 2% of his work time. Given his commitments however, Johnson said there was little likelihood of providing the reports in a shorter time frame.

### III. ARGUMENT

The Union maintains the two to three months the Pay Grid review and report has taken to produce over the last two to three years is unreasonable. Urban Fare, another company controlled by the same conglomerate, has entered into a without