

IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*, RSBC 1996 c. 244

Between

KELOWNA DAILY COURIER

(the "Courier" or the "Employer")

-and-

THE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,
LOCAL 2000

("CEP Local 2000" or the "Union")

(Contract Interpretation: Article 18.04)

ARBITRATOR: Kate Young

APPEARANCES: Sean Pihl, for the Employer
Allan Black, Q.C., and Colin Golinski,
for the Union

DATE AND PLACE November 4, 2009

OF HEARING: Vancouver, British Columbia

DATE OF AWARD: December 4, 2009

I. Introduction

The Kelowna Daily Courier (the "Courier" or the "Employer") publishes several newspapers for distribution in Kelowna, Penticton, Vernon, and throughout the Okanagan. The papers are all printed in the pressroom located in Kelowna. The CEP Local 2000 (the "Union"), one of three unions representing employees of the Courier, represents the pressmen who operate the printing equipment in the pressroom.

Article 18.01 of the collective agreement between these parties requires that a minimum number of pressmen be employed for each shift. In November 2008 the parties finalized an amended collective agreement, and the minimum number of pressmen to be employed for each shift was increased from four to five.

The revised collective agreement includes a new clause, Article 18.04, which reads, in part, as follows:

In the event of a significant decrease in the volume of pressroom work the number five (5) outlined above in 18.01, as monitored over a comparative six (6) month period (or shorter period if the parties mutually agree), can be reduced to four (4) members of the union for each shift...

The issue in this case is the interpretation and application of Article 18.04.

Willy Kerntopf, the Vice President of Operations, oversees the pressroom, scheduling the print jobs, and ensuring the newspapers are produced on time. On September 10, 2009 he wrote to the Union stating "Due to continuing significant decreases in business over the last 6 months, it is necessary to enact Section 18.04 of the Collective Agreement and reduce to four (4) members of the union for each shift...".

The Union objects to the reduction, as the Employer must establish a significant decrease in the volume of pressroom work in order to invoke Article 18.04, not a decrease in its business. The Union says that notwithstanding the decline in production at the Courier, there has been no reduction in pressroom work.

The Employer agrees the issue is whether there has there been a significant decrease in the volume of pressroom work as monitored over a comparative six (6) month period, and says that

the decline in business, and the resulting decrease in newspaper production, has significantly decreased the volume of pressroom work.

II. The Facts

The pressroom of the Courier prints the Kelowna Daily Courier, the Penticton Herald, the Vernon Daily News, as well as various smaller publications. Wayne Russell is a journeyman pressman, the charge hand on his shift, and also the Chapel Chair of the Local. Mr. Russell testified as to the work in the pressroom.

Printing of newspapers is done by machines called units. Long rolls of newsprint move through these units, in a continuous ribbon of paper. As the newsprint moves through the units, it is printed on both sides by two aluminum plates mounted on cylinders. The aluminum plates are "burned" with print and images which are impressed upon the newsprint. Each unit prints with either one colour, or black ink. The units are organized into colour leads, so that each page may be printed several times as the newsprint moves through a group of units. The units are powered by one drive shaft which runs the length of the pressroom.

In the middle of the pressroom is a machine called the folder which cuts and folds the stream of newsprint into pages. The entire pressroom occupies an 80 foot long room.

The press room operates seven days a week. There are two crews of five pressmen. Each crew works a four day work week (overlapping on Friday when there is a larger publication demand). The majority of the pressroom work is performed in the late afternoon and evening. One pressman on each shift is the charge hand. The charge hand organizes the work of the shift, ensures the quality of the printing, ascertains whether extra help is required, and helps out the other pressmen.

When the presses are not running there are several tasks to prepare the units for printing. Setting up the units takes about one hour. Rolls of newsprint must be unwrapped, moved into place, and checked to prevent ripping. The two aluminum plates on the cylinders are removed and new plates are obtained. These must be bent before they can be mounted on the cylinders. Each unit

has an ink fountain. The black ink fountains are mechanically filled and the colour units must be manually filled with coloured ink.

Once the colour leads are set up, the drive shaft powering the units is put in gear, and the units begin operating at half speed. After five minutes at the slower speed, the speed is increased for the run of the product.

When in operation, the units must be regularly adjusted. The pressmen view the product at the folder, which is located some distance from some of the operating units. After checking the quality of the product at the folder, the pressmen return to the units to adjust the ink levels and the compensators (which control the movement of the paper through the unit). The quantity of ink determines the quality of the colour. On each side of each unit, twenty four screw keys regulate the flow of ink. These keys must be adjusted at the beginning of the run, and also throughout the process, as the units move and shake and come out of adjustment. If any one of the four sides of the final newspaper page has a colour picture, the entire four pages are run at full colour. The units must be observed to ensure the paper runs smoothly and does not get tangled or torn.

The pressmen perform some maintenance on the units. Article 18.05 of the collective agreement states that: "Maintenance will be done when running time permits". I heard no evidence detailing the maintenance work, nor how much time is normally taken in its performance. Mr. Kerntopf testified it is a small portion of the pressmen's work.

On any given shift, the units may operate only six hours in that shift. Most shifts also have a cushion of time in case there is a problem with one of the colour leads, the paper flow, or the product.

Mr. Russell testified that since the new collective agreement was finalized in November 2008, and the number of the pressmen employed per shift increased from four to five, the pressroom is busier. Thirteen units, organized into three colour leads, operated prior to that date. One of the colour leads was composed of a tower of four units which had been newly installed in August 2008. This tower replaced three units which were moved to a different location in the pressroom and decommissioned. After the collective agreement was amended, the three decommissioned

units were brought back into operation, and sixteen units organized into four colour leads began to operate.

Mr. Russell says that when this occurred there were more plates to retrieve, mount and replace, more ink fountains to fill, colors to maintain, and more adjustments to be made. When the fourth colour lead is operating one pressman is required exclusively to perform that work, to make sure there is colour on both sides of the page, the ink is properly set and the print is in the correct position on each page.

In the years leading up to the negotiation of the current collective agreement, technological changes streamlined operations and reduced the work of the pressmen. One of the changes was the standardization of paper size for all of the publications, which decreased the number of times the pressmen are required to reset the folder. In May 2008, there was a decision to go direct to plate; the pressmen no longer burn the aluminum plates which are mounted on the units. Mr. Kerntopf believed this effectively eliminated the need for one pressman, as that work took up three quarters of the work of one pressman. He acknowledged that there was still a lot of work required to obtain, bend and mount the plates. The pressmen now retrieve the plates from a different location, and there is some waiting time for this. Mr. Kerntopf says the new units installed in August 2008 are more efficient.

Terry Armstrong, the publisher of the Courier, testified that eighty-five percent of the revenues of the Employer are generated by advertising. The editorial/news content of the newspapers is determined by the amount of advertising purchased for publication.

There has been a significant decline in the advertising revenues of the Courier over the last eight to nine months. Mr. Armstrong testified that in November 2008, just as the new collective agreement was finalized, the "tap turned off". At that time all the advertisers in the area suffered a downturn in business and, since that date, advertising and subscription revenues have fallen significantly.

Mr. Armstrong testified that with fewer advertisements and editorials and smaller papers, fewer employees are required. Since March 2009, significant layoffs have occurred in every department at the paper (under the different terms in other collective agreements applying to those employees). Almost twenty percent of the entire employee complement has been reduced.

Only the pressroom remains at its previous staffing level. Mr. Armstrong testified that this has adversely affected morale. Mr. Armstrong believes that the loss of production should be felt equally across every department, and must result in a decrease in the number of pressmen. He says that without cutbacks throughout, the Courier could be put out of business.

There has been a decline in the production of the pressroom when the period February to August 2009 is compared to the same seven month period in 2008. The Courier records its production on a monthly basis and has determined the difference between the production in each month February to August, 2009, and the same months in 2008. At the hearing, charts were introduced showing the decrease per month in percentage terms. The copies produced in the pressroom have declined from between 4 and 18 percent per month between 2008 and 2009, the number of pages for production has also declined from between 8 and 35 percent per month between the same periods, and the colour pages for production has declined from between 0 and 16 percent per month (ten percent overall) between the two periods.

Both Messrs. Armstrong and Kerntopf testified that the reduction in the number of pages and colour pages printed results in a decrease in the volume of work in the pressroom. They testified that with the decline in both advertisements and editorial content, and with less production of newspaper pages, there are fewer rolls of newsprint to unwrap and to mount; fewer plates to locate, bend and mount on the cylinders; fewer ink fountains to fill; and fewer pages to review for quality. No records or documents were produced to confirm or quantify the asserted decrease in the use of newsprint, aluminum plates, or ink, between the comparable months in 2008 and 2009.

Messrs. Armstrong and Kerntopf objected to the amendment to the most recent collective agreement to increase the number of pressmen per shift from four to five, and stated their objection to the negotiators for the Employer. At that time Mr. Kerntopf thought that four pressmen were sufficient to carry out the work, "it was not lean with four". It was Mr. Kerntopf's observation that with the fifth man the crew had time to walk around and socialize, although he acknowledged he seldom is present during the pressmen's shifts.

Mr. Russell acknowledges that in the past under a previous collective agreement three pressmen ran the same number of units that are currently operating, but this lasted only a very short time

and almost immediately a fourth pressman was employed. The charge hand is not assigned to operate a particular colour lead and is present to direct and assist as "the flow guy, to make sure things run smoothly". He agrees that if there are fewer pages overall and fewer colour pages to print, the time the units operate during the shift would be reduced. No details were elicited respecting the relationship between the amount of material to be printed, and the time the units operated, nor did the Employer lead any evidence respecting this issue.

Notwithstanding the decline in revenue and production, the Courier continues to operate all four colour leads, albeit not all the time. The witnesses disagree on the amount of time the four colour leads operate.

Mr. Russell says the fourth colour lead operates more often than not, but all the colour leads do not operate for the full shift. He is present for four days out of seven and cannot testify directly concerning the operation of the colour leads on the other shift, although he thought the other shift was busier.

Mr. Kerntopf testified that the fourth colour lead operates only a small percent of the time; most of the time the four colour leads are not run. He agreed that on four out of seven days the fourth colour lead operates, but it could operate for less than two hours. Mr. Kerntopf acknowledged he was not in the pressroom for any significant period during the pressmen's shifts. There is no evidence to indicate the Employer maintains any records of the periods of time the units or colour leads operate during any shift.

Mr. Kerntopf was asked why he did not consider operating with only three colour leads as production demands are low. He answered that the Courier must be in a position to respond to an increase in demand.

III. Positions of the Parties

The Union says the Employer has not established a significant decrease in the volume of pressroom work and is not entitled to reduce the number of pressmen from five to four per shift. Mr. Russell's evidence describing the work was unchallenged. Any technological changes were introduced before the new collective agreement was negotiated. Notwithstanding those

technological changes, the Employer agreed to an increase in the number of union members from four to five in the new collective agreement. The Union points out that since the new collective agreement, there are now four colored leads, instead of three, and an additional three units are working. The work has thus increased. The fact that employees have been laid off in other Departments does not establish the right to lay off in this Department. It is inadequate for the Employer to establish a decline in its business, as this is not the language which was negotiated in Article 18.04.

The Employer argues that it has provided the best evidence available to establish a decrease in the volume of pressroom work. Counsel asks me to accept that there is a direct correlation between the volume of printed pages and the work in the pressroom. If there is no business, there is no pressroom work. The Employer argues the evidence of Mr. Russell is suspect. The Employer says it agreed to increase the number of pressmen from four to five because the Company anticipated continued growth, and this never materialized. The addition of the units and colour leads did not add to the pressmen's work, as frequently less than all four color leads are used, sometimes only one or two are in operation.

In reply, the Union says the added units increase the amount of work. There is uncontradicted evidence that more units equal more work and that even one page of color means there must be a color set up. The Union says Mr. Russell's first-hand evidence that the volume of work in the pressroom is either the same, or has increased, must be believed unless he is found to be untruthful.

IV. Decision

In November 2008 the parties finalized a collective agreement which increased the minimum number of pressmen employed per shift from four to five. As I have said, at that time, a new clause was included in the renewed collective agreement, which reads, in part, as follows:

Article 18.04: In the event of a significant decrease in the volume of pressroom work the number five (5) outlined above in 18.01, as monitored over a comparative six (6) month period (or shorter period if the parties mutually agree), can be reduced to four (4) members of the union for each shift...(emphasis added)

The issue in dispute is whether there has been a significant decrease in the volume of pressroom work, as monitored over a comparative six month period, which justifies the Employer's decision to reduce the number of pressmen per shift from five to four. The Employer communicated its intention to make this reduction to the Union on September 10, 2009.

The Courier's contention is that as its production of advertisements and newspaper pages is down over the last six to seven months, over the comparable period in 2008, and fewer people are producing a lesser volume of colour and black and white pages for printing, there must be a decrease in the "volume of pressroom work".

The Union says that, notwithstanding the decrease in the overall production of newspapers, the Employer has increased both the number of units operating in the pressroom, and the number of colour leads from three to four, and that the work of the pressmen has increased since November 2008.

There is no dispute that there has been a decrease in the number of both coloured and black and white newspaper pages printed by the Courier when the six month period before September 10, 2009 is compared to the same months in 2008. This decrease in production is consistent with the decline in advertising revenues reported by the publisher, Mr. Armstrong. The Union accepts the validity of comparing the period February to August 2009, with the period February to August 2008.

The Employer's argument is compelling. There is an attractive logic to determining the volume of pressroom work by quantifying the volume of printed material produced in the pressroom. However, the weakness in the argument is that, since November 2008, despite the reduction in overall newspaper production, the Employer has increased the number of units and colour leads operating. The evidence is that the work of the pressmen increases, as the number of operating units and colour leads increase.

In the six month period before September 2009, when the Employer gave notice of the reduction of pressmen, five pressmen operated four colour leads. The Courier continues to operate the four colour leads. The requirement for the fourth colour lead may develop at any time with little notice, and it remains operational even if all the colour leads are not used on every shift or for a

full shift. The Employer has concluded that the current volume of pressroom work justifies the continued operation of the fourth colour lead, albeit not on a continual basis.

Mr. Russell's evidence regarding the nature of pressmen's work was uncontradicted. The work of the pressmen is to ensure that the paper moves through the units smoothly, the ink fountains are filled, the plates are obtained, bent and mounted on the unit, and adjustments as required are made. A second important role of the pressmen is to observe the units and colour leads, monitoring them to anticipate and address problems which may affect the quality of the product. In order to achieve the desired quality for the product, each colour lead is monitored during start up and during production. The normal practice has been to assign at least one pressman to each operating colour lead. Accordingly, when all four colour leads are operating, each must be monitored.

The Employer's witnesses stated that the fifth pressman is not needed now and was not needed when the Employer agreed in bargaining to increase the minimum number of pressmen employed per shift from four to five. The Employer says technological changes, which occurred prior to the negotiation of the current collective agreement, reduced the requirement for pressmen. Nevertheless, the Employer agreed to increase the number of pressmen employed per shift. The parties are bound by the bargain they reached respecting the number of pressmen required in the pressroom. The issue before me is not what the optimal manning levels were at the time the contract was negotiated, or currently.

Much of the Union's evidence relates to why the pressroom requires a full complement of pressmen, particularly during any shift when the four colour leads operate simultaneously. Again, the issue here is not whether the work is organized by the Employer in such a way that the pressroom requires the presence of the five pressmen which were agreed to in the last set of negotiations. If the parties had intended the minimum number of pressmen to turn on the number of colour leads operating at any time, they would have said so in their agreement. Indeed the Union, while arguing that the four colour leads require the presence of at least the full complement of pressmen, did not concede that a reduction in the number of colour leads would necessarily lead to a decrease in the volume of pressroom work.

Mr. Russell agreed that as there are fewer newspapers produced in the pressroom, the time that the colour leads operate is shorter. But Mr. Russell was not asked to calculate or compare the length of time the units and colour leads now operate, against the time they previously operated. Nor did the Employer adduce evidence to establish the length of time the presses operate now, as compared to the previous six month period.

On the basis of the evidence before me, I could assume that printing three thousand pages takes more time than printing two thousand pages, but I have no evidence before me to determine what that difference might be. And even if I were to assume that printing three thousand pages involves more pressroom work than printing two thousand pages, I cannot quantify the difference on the basis of the evidence. Additionally, the volume of pressroom work turns, in part, upon how the Employer chooses to print the pages, that is, how many colour leads are used to produce the printed pages. I cannot rely upon assumptions or guesses to make a determination respecting the volume of pressroom work. Further, the clause requires a significant decrease in the volume of pressroom work. The use of this word makes it clear that there must be a comparative measure of the volume of pressroom work, and proof of a significant decrease.

This is the first interpretation of a newly negotiated clause in the collective agreement. Neither party adduced any evidence of bargaining history evincing the parties mutual intention for the terms used. As it is a new clause, there is no past practice to assist in its interpretation. The parties take different approaches to the meaning of the language, but both agree the clause requires a determination of what constitutes the work of the pressroom, and this turns upon what work the pressmen perform. If the parties had intended the clause "volume of pressroom work" to be synonymous with the volume of pressroom product, they could have more clearly stated that. Equally, if the parties intended to link the volume of pressroom work directly to the colour leads operating at any one time, they would have used different language.

The Employer asks me to draw an inference that with fewer pages to print there must be a decrease in the volume of work. While the decrease in production is established, no direct relationship between the newspaper production of the pressroom, and the volume of work performed by the pressmen is established. I cannot conclude that the five pressmen are performing a lesser volume of work, than four pressmen performed in the comparative six month period in 2008. I have no evidence respecting the hours in which the units and colour leads

operate, or whether the hours have decreased between the comparative periods. I have no evidence as to how the hours spent in setting up the units, monitoring the units or maintaining the units may have changed over the comparative periods. I have no evidence of a reduced number of aluminum plates installed, or paper and ink used.

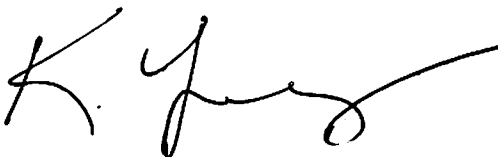
Article 18.04 requires proof of a significant decrease in the volume of pressroom work as monitored over a comparative six month period. The term "significant" must be given meaning, as noted above. The term "monitored" satisfies me that the Employer cannot rely upon inferences, or assumptions to establish a decrease. That is effectively what I am asked to do here. The Employer has not measured the volume of pressroom work, nor established a significant decrease.

On the evidence before me, I cannot find a significant decrease in the volume of pressroom work which entitles the Employer to reduce the number of pressmen employed for each shift.

V. Conclusion

The requirements of Article 18.04 of the collective agreement have not been met. The grievance is successful. The notice sent September 10, 2009 to reduce the number of pressmen for each shift is set aside.

Dated the 4th day of December 2009

A handwritten signature in black ink, appearing to read 'K. Young', with a long horizontal flourish extending to the right.

Kate Young, Arbitrator