

The Trade Union Act

IN THE MATTER OF AN ARBITRATION OF THE POLICY GRIEVANCE regarding Coffee Facilities,
Appliances and Radios PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT

Between:

EVRAZ INC. NA CANADA

- and -

UNITED STEELWORKERS, Local 5890

AWARD

Arbitrator: Francine Chad Smith, Q.C.

Appearances: For the Employer: Jennifer Korchinski, Counsel
For the Union: Sonny Rioux, Union Representative

Date of Hearing: May 7th, 2013 REGINA, Saskatchewan
Date of Decision: June 13th, 2013

INTRODUCTION:

[1] This is a policy grievance involving a change to the long standing practice of having coffee facilities, microwaves, refrigerators and radios on the production floors of the tubular steel mills. These items were all removed in the Spring of 2012. Although the removal of microwaves and refrigerators were included in the grievance, the evidence demonstrated the major concern related to the coffee facilities and radios.

[2] The nature of much of the production in the tubular mills is that once a production run begins it continues through to completion. This prevents the members of the bargaining unit from enjoying pre-set, and indeed on many occasions, any, coffee breaks as are usual in other work places.

[3] The Union seeks a return of the longstanding benefit of enjoying having coffee facilities at hand on the production floor and having radios playing throughout their shifts. It relies upon article 18.02, which states that “[a]ny rights and privileges enjoyed by either party shall be continued and no change shall be put into effect unless mutually agreed to by the Company and the Union. . . .” .

FACTS:

[4] In 2008 the Employer, Evraz Inc. NA, purchased the steel operation from IPSCO. Since that time operations have undergone significant changes in management personnel. An important new initiative was to turn the tubular steel operation into a profitable undertaking. It appears this objective was occurring at or about the same time stricter, or more progressive, safety steps were being considered.

[5] On May 24, 2012 an inter-office memo regarding new work rule practices in the tubular steel mills was posted. It stated:

Please be advised that in order to improve facility safety hygiene practices and remove unnecessary electrical, acoustic and distraction hazards, beginning

immediately, the following will no longer be permitted at plant floor production workstations:

- Coffee Pots or Open-topped Coffee Cups
- Microwaves
- Fridges
- Radios

Going forward, coffee pots, open coffee or beverage cups, microwaves and fridges will ONLY be permitted in lunch rooms or break rooms. Personal radios/MP3 players, etc. will be allowed in lunchrooms as long as the noise created does not annoy others.

As in the past, water coolers will continue to be provided throughout the facility and single-use paper cone cups will available (*sic*) to promote required hydration at the water coolers. Eating at the workstations is strongly discouraged, but snacking on fruit and wrapped items will be allowed. Liquids consumed at workstations must be in sealed containers or "Go Cups" with lids.

. . . .

[6] Ms. Sonja Dirnberger, a professional chemical engineer with a degree in inorganic chemistry, who is the Manager of the two inch and twenty-four inch tubular mills, prepared the memo at the direction of Mr. Hadi, the former Director of Steel Operations Regina. She testified the underlying rationale for the memo was safety, including the minimization of risk.

[7] She has been with the Employer and its predecessor for twenty-one years. In addition to her managerial role, she has been the Director of Safety for all the Canadian operations for the last four years. Ms. Dirnberger testified about the various conditions of the coffee stations throughout the production areas of the steel mills. She stated they were *ad hoc* stations – like pop up shops, they came and went at the will of the employees. Some of them were in immaculate condition, while others were grubby and dirty. She would not personally use the latter ones.

[8] According to Ms. Dirnberger, the radios belonged to the employees. The Employer allowed the one week transition after delivery of the memo to allow the owners of the radios to secure them. She was not cross-examined on the issue of the ownership of the radios. The Union evidence was equivocal on the point. Mr. Protheroe testified he brought in his radio. Mr. Forster, the chief shop steward in the steel mills, who was located in the maintenance shop, testified employees requested radios from the Employer and no requests were denied. He said the radios provided were car radios which could be installed neatly. He also stated that even the overhead crane operators had radios. However, the evidence also demonstrated the

employees in the maintenance shop were not required to wear hearing protection. The third Union witness, Mr. Smith, an electromagnetic (or sonic) inspection operator, testified he had a radio in his station in the spiral mill and all stations in the two inch pipe mill had radios prior to the memo. He was not sure who paid for the coffee pots. He testified they were located in cabinets throughout the steel mill. The cabinets do not have water. Water for filling or cleaning the coffee pots was obtained from the wash rooms or the lunch rooms. He stated, although they are told the air is clean, there is dust in the air on the production floor, on the equipment and on the floor that can get into open containers. Part of the initiative in removing coffee pots from the floor was to have closed travel mugs provided. Lastly he observed there were microwaves and fridges throughout the steel mills.

[9] Ms. Dirnberger also testified regarding the noise levels in the steel mills, the use of hearing protection, and the audible safety warning signals. There was a time when hearing protectors were not used as regularly as they should have been. However, that situation has now improved and it is rare that anyone has to be disciplined for not wearing their hearing protectors. Nevertheless, the decibel level in the production areas continues to be assessed from time to time and posted to allow employees to select the correct type of hearing protectors depending upon the noise levels and their personal preferences. The Employer's noise level assessments are based only on the operation of their equipment. They know that a radio, or other noise source increases the baseline such that employees moving around can easily move from a space requiring single hearing protection to another space requiring double hearing protection. Even without radio noise or other external sources of noise, some of the areas require double hearing protection. The Employer has received complaints from some employees that the noise level is too irritating and distracting. In response and in keeping with the new initiatives, some areas have been enclosed with walls and insulation baffles. She also stated that appropriate hearing protection has been a subject of discussion at tool talks.

[10] According to Ms. Dirnberger, sometimes the radios were blasting at work stations. Sometimes she could not have a conversation with employees until the radio was turned down. She appreciates the noise concerns because she also handles claims from employees who require hearing aids. While noting some noise - such as radio noise, can be controlled, much of the noise in the production area cannot be. The added radio noise level makes it harder to hear warning signals, and is thought to contribute to more shut downs, which impact upon profitability.

[11] The radio noise also presents a problem during mill tours for prospective clients. While the protocol was to have all radios off during scheduled tours, the protocol was not always followed. In addition,

customer inspectors appear at unscheduled times to inspect specific operations. On occasion, and frequently during the night shifts, some employees decide to broadcast the radio transmission through the P.A. system for the benefit of all. The PA system is to be limited to production purposes and emergencies. The misuse of the systems cannot be traced, which makes it difficult to monitor the problem. Apparently the “radio broadcasts” have even occurred during some tours.

[12] Ms. Dirnberger testified when tours are being conducted it is imperative “to put our best foot forward”. Radios playing and unsightly coffee and eating sites throughout the production area detract from being able to do so, and present an unprofessional image to prospective customers. She stated Evraz wants to demonstrate it is a responsible producer that makes a quality product.

[13] Mr. Amit Baghel, the current Director of Operations for tubular steel in Regina, also testified. His predecessor was Sam Hadi. Mr. Baghel has a Masters degree in engineering. He explained the tubular steel operations in Regina had three divisions: two inch pipe, twenty-four inch pipe and spiral pipe.

[14] Although he had been at the plant for only ten months, he testified there has been a dramatic change in management. The biggest managerial changes are to make the organization leaner, safer, and to instil accountability. The Regina tubular operation had previously been operating at a loss. That trend has been broken; however, the Employer is now trying to ensure the tubular operation is efficient and productive every day. To achieve that objective there have been significant changes to the work areas to facilitate access to equipment and improve maintenance. All the storage areas in production have been re-organized to have labelled storage for specific parts and equipment; the maintenance areas have also been re-organized with specific places created and labelled for all tools and parts; the work stations on the production floors have also been re-organized with labelled places for supplies; and all the lunch and coffee rooms have been upgraded with paint, new cabinets and new appliances – including radios. One coffee dispensing area on the production floor of the two inch pipe mill has been maintained. This was to allow the electromagnetic inspection operator to have coffee. He must remain at his station at all times, otherwise the production run has to be stopped. The coffee station has been installed in a cabinet with closing doors.

[15] Mr. Baghel testified there is smoke and dust in the air of the production floors, and that investment money has been set aside to put in new air circulation and filtration systems to address the air quality.

[16] Although tours only average about one per month, Mr. Baghel said they always have three person inspection teams in who are employed by their customers. Those inspectors have access to all the

Employer's records. He stated it is important to present a professional appearance to them at all times. Many are interested in the safety records and the fact that our workplace is a safe environment for employees.

[17] Mr. Baghel was not yet employed at the plant when the May 24 memo was issued. However, he was familiar with it and stated it related to how we present our workforce and to providing a safer, cleaner work place in the tubular production area. It was also part of the new initiative to work smarter and more efficiently. When he arrived the monthly production rate was around 14 to 15 tonnes; now it is at 27 tonnes. The first time welds were around 8 to 9%; now they are at 40 to 50%. The injury frequency rate was close to 4.5% and is now lower than 2.5% since the focus has changed to preventing injury.

[18] He also spoke about the significance of quality of their product. He noted if one pipe blows up in an oil well the Employer can be "out of business". He said they have based their business on the quality of their product.

[19] The production floors are noisy because of the equipment and all the safety beeps, honks, sirens, and backup warnings and because of strobe lights and flashing lights. These features are distracting for employees. Safety protocols require wearing hearing protection at 80 decibels; and the manufacturing equipment noise level alone is up to 130 decibels.

[20] According to Mr. Baghel the employees continue to have access to coffee at all times. However, they must now get it from the lunch room and use covered coffee mugs, which the Employer supplies, if they wish to bring the coffee onto the production floor. The coffee is available in the lunch rooms, which for most employees are located close to the production floor. However, there are some employees who would have to make a twelve to fourteen minute return trip to get coffee.

ISSUE:

[21] The issues to be addressed are:

1. Whether the Employer has violated the collective bargaining agreement by removing coffee pots, other appliances and radios from the production floors of the tubular steel mills.
2. Whether the Employer is estopped from removing the coffee facilities, other appliances and radios from the production floors of the tubular steel mills.

ARGUMENT:

The position of the Union:

[22] The Union relies upon article 18.02 of the collective agreement regarding established practices continuing unless otherwise mutually agreed to by the Company and the Union.

[23] The evidence was clear that the practice of having coffee pots and radios located throughout the production floors had been a longstanding one. The matter of these coffee pots and radios had not been raised during the last round of bargaining. Without any consultation with the Union, the Employer issued the May 24, 2012 memo and shortly thereafter all coffee pots and radios were removed from the tubular steel operations production floors.

[24] In addition to relying upon article 18.02, the Union also relied upon the Letter of Understanding regarding coffee breaks and the following case authority: *Re Beatrice Foods Inc. and R.W.D.S.U. , Local 440 (Policy Grievance re Holiday Pay/Rights)* (1994), [1994] O.L.A.A. No. 1274, 37 C.L.A.S. 181 (ON – R.O. MacDowell); *Granet Lake Logging Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-71*, [1993] B.C.C.A.A. No. 410 (BC – K.J. Glasner); *United Food and Commercial Workers Union, Local 832 v. Buntwood Regional Health Authority (Paid Travel Days Grievance)*, [2008] M.G.A.D. No. 23 (MB – M. D. Werier); *British Columbia Maritime Employers Assn. and International Longshoremen's and Warehousemen's Union, Canadian Area*, [1997] C.L.A.D. No. 671 (Canada – R.S. Keras); and *Re Explosives Technologies International and Explosive Workers Independent Union*, [1996] O.L.A.A. No. 862, 44 C.L.A.S. 446 (ON – M.B. Keller, D. Sheehan and J.D. McManus).

The position of the Employer:

[25] The Employer relied upon the full wording of article 18.02 and the management rights contained in article 3.02. Its position was the removal of the coffee pots and radios from the production floors were justifiable pursuant to the management rights based upon safety. Furthermore, it submitted coffee remained available to the members of the bargaining unit throughout the work period from the lunch rooms located throughout the operation. Radios were also provided in the lunch rooms for the benefit of the employees.

[26] The operational changes were justified based upon considerations of safety and professionalism on the production floor. Management is entitled to make reasonable rules and regulations pursuant to

article 3.02. While article 18.02 does provide for continuation of rights and privileges subject to agreement, that right is “not to take precedence over any of the provisions in [the] Agreement.”

[27] Counsel for the Employer relied upon the following case authority: *London (City) and C.U.P.E.*, Loc. 107 (1997), 64 L.A.C. (4th) 337, 48 C.L.A.S. 472 (ON – Williamson); *Spruce Falls Power & Paper Co. and O.P.E.I.U.*, Loc. 166 (1988), 1 L.A.C. (4th) 418 (ON – Haefling); and *Glades Lodge Ltd and C.U.P.E.* Loc. 1259 (1988), 1 L.A.C. (4th) 257, [1988] N.S.L.A.A. No. 11 (NS – Veniot, Tynes and Veinotte).

DECISION:

- 1. Whether the Employer has violated the collective bargaining agreement by removing coffee pots, other appliances and radios from the production floors of the tubular steel mills:**

The provisions of the collective agreement:

[30] The relevant provisions are article 18.02 and article 3, which provide:

Article Management

Article 3.01

The Union recognizes that it is the function of management to manage the affairs of the business and to direct the working forces of the Company, subject to the terms of this Agreement.

Article 3.02

Such management functions shall be:

...

- (b) To maintain discipline of employees, including the right to make reasonable rules and regulations, providing however, that any dispute as to the reasonableness of such rules and regulations or any dispute involving claims of discrimination against any employee in the application of such rules and regulations shall be subject to the grievance procedure of the Agreement

...

Article 18.02 Established Practice

Any rights and privileges enjoyed by either party shall be continued and no change shall be put into effect unless mutually agreed to by the Company and the Union. This clause shall not take precedence over any of the provisions of this Agreement.

Discussion:

[31] There is no doubt over the years the practice of placing coffee pots or coffee making equipment, and radios, throughout the production floors of the tubular steel mills has existed. I accept the evidence of Ms. Dirnberger that the coffee facilities were not provided by the Employer and they simply “popped up” at the behest of the employees, without any positive steps being taken by the Employer. The evidence regarding the radios was not as clear. Ms. Dirnberger thought the radios were owned by the employees; Mr. Protheroe testified he brought his radio in; and Mr. Forster testified the Employer supplied car radios – at least in the maintenance shops. Accordingly, while the Employer may have supplied some radios where no hearing protectors were required, the evidence did not demonstrate on the balance of probabilities, that the Employer supplied radios throughout the production areas of the tubular mills. There was no evidence regarding how the microwaves and refrigerators came to be on the production floors.

[32] Accordingly, overall the Union has not demonstrated the Employer took any positive steps to provide or permit the appliances (including the radios) on the production floor. In so concluding I distinguish the maintenance shop as being separate from the production floors as it appears to be a distinct location that does not require hearing protection. Having so concluded, it is also fair to say the Employer did not take issue with the “popping up” of these appliances on the production floors and that their presence was of some standing.

[33] An argument can be made that the practice does not amount to a “right”, “benefit” or “privilege” as those terms have been considered in the *Glades Lodge Ltd.* because the Employer had not engaged in a positive act regarding the existence of appliances on the production floors. (See para. 57.) The evidence does not demonstrate a positive act by the Employer with respect to the coffee facilities, microwaves or fridges. While the Employer may have supplied radios to maintenance shops, the Union has failed to prove it supplied radios throughout the production floors of the tubular steel mills, being the largest areas and the areas occupied by the greater number of employees in each mill.

[34] Counsel for the Employer has suggested that even if the presence of coffee facilities, microwaves, and fridges in the tubular mills was considered to be a privilege, the Employer has not eliminated the privilege, but rather has simply changed the location of coffee machines to lunch rooms located in the mills.

More specifically, the Employer has not restricted the employees' right to drink coffee, or presumably other cold beverages, on the production floors; however, it has stipulated such beverages must be in a cup with a lid, which the Employer provides. If we follow this line of logic, we may then have to consider whether the change amounted to a change in the working conditions, which was a matter also addressed in the *Glades Lodge* case. There the collective agreement not only precluded the employer from unilaterally changing any right, benefit and privileges, but also precluded a unilateral change to any working conditions. (See paras. 63 and 64.) The agreement at hand does not preclude any unilateral changes to working conditions generally. Accordingly, that argument would not be valid.

[35] The *Spruce Falls* case also lends support to the requirement of a positive act on behalf of an employer to create a right or privilege. There the employer decided to cease to designate specific parking spaces to employees, while still continuing to provide free parking – but now the spaces would be selected daily by employees on a first come basis. In that case there was a similar provision that there be no reduction in existing privileges, and there had been discussions of parking during negotiations which the arbitrator concluded constituted a representation that no changes were contemplated. There, the arbitrator concluded the test was “whether the union could reasonably believe the company was obligating itself to act in the same manner for the foreseeable future regardless of the circumstances”. Given the discussions at negotiations the Arbitrator concluded this took the situation outside that of a usual long term practice where nothing has been held out. (See paras. 22 and 23.) At para. 24, Arbitrator Haefling accepted the definition of privilege from the *Sisters of St. Joseph Diocese* case, [1979] O.L.R.B. Rep 795 at p. 800, which stated, among other things:

In order to demonstrate the existence of a privilege, it is not necessary to establish a contractual right, a formal written policy or an express promise. It is sufficient if there is an established, and well entrenched, course of conduct which gives rise to the reasonable expectations that a benefit, previously given, will be continued.

[36] Having concluded there was no evidence to establish the Employer engaged in a positive act regarding the development of the coffee pop up stations, or the existence of microwaves and fridges throughout the tubular mills, I am not inclined to find the existence of those facilities throughout the mills was a privilege within the meaning of article 18.02. On the other hand, should I be wrong in that conclusion, there are other problems in successfully asserting the privilege must continue.

[37] The matter of the change in how employees can now access coffee, and those other facilities, is not as clear as perhaps it could have been. While there is some merit to the Employer's position that the employees can still access coffee randomly throughout their shifts and even bring coffee, and presumably other beverages, onto the production floors in covered containers, this is a workplace that does not have the usual scheduled or precise rights regarding coffee breaks because of the nature of the operations. The parties have entered a Letter of Understanding regarding coffee breaks, which forms part of the collective agreement, which reads:

Letter of Understanding

RE: COFFEE BREAKS

The most agreeable concept is for an employee not to wait for a specific time during a shift to obtain coffee, etc., but the employee can in most cases, utilize the nearest vending machine as often as he wishes as long as there is no interruption of operations as a result of his action. There will be certain times, tasks or locations where the above may not apply, in which case the Supervisor will schedule a break. In such cases, common sense shall prevail on both parties.

The availability of refreshments is not intended for groups of employees to utilize the foregoing "as often as you wish" concept and also have the same groups voluntarily and simultaneously stop work at some predetermined time.

[38] The evidence demonstrated the electromagnetic inspection operator could not leave his station while production was underway, and because of that an enclosed coffee station was located nearby. The Union evidence demonstrated that some employees in the spiral steel mill would require approximately twelve minutes to travel from their location to the lunch room and back to get coffee. The Employer's evidence in response was that in most of the operations there are a sufficient number of employees on each shift to permit reasonable intermittent access to coffee. However, the specific matter of those employees who have to travel approximately twelve minutes, or any other long period, to get coffee and return to their work was not commented upon. Accordingly, the right of these employees to have reasonable intermittent access to coffee was not sufficiently responded to. Nevertheless, the Letter of Understanding states that in such cases the Supervisor shall schedule a break, with "common sense" to prevail.

[39] In my view the Letter of Understanding has established the basic or fundamental rights of the members of the bargaining unit to have "coffee breaks". Is having coffee machines located on the production floor a privilege as contemplated by article 18.02? It is my view article 18.02 was to address

something other than matters specifically addressed in the collective agreement. Although the heading reads “Established Practices”, only rights and privileges are commented on in the body of article 18.02. But more importantly, the article also states, “This clause shall not take precedence over any of the provisions of this Agreement.” The Letter of Understanding regarding coffee breaks, while contemplating repeated access to coffee, does not contemplate immediate and/or an uninterrupted flow of coffee for employees. It merely gives a right for employees to access the nearest “ ... machine” or in the case of some employees, to request the supervisor schedule a break.

[40] I appreciate the members of the bargaining unit enjoyed the more direct access to coffee that they had prior to the new protocol. While I don't want to undermine the desirability of a more direct access to coffee and related refreshments, I have not been persuaded article 18.02 was intended to apply to what is not a removal or a general restriction of the right to access coffee and related refreshments, but is a relocation of where employees must go to pick up their coffee as part of a more comprehensive re-organization and re-structuring of work spaces. While undoubtedly the employees, or at least a number of them, will have to travel greater distances to access coffee, no restrictions upon their time to do so, or the frequency of times they may do so, have been introduced. The re-organization and re-structuring was part of a comprehensive program to make the workplace more efficient and professional looking, with a view to improving business. There were also some sanitation issues associated with a number of the coffee stations, however, that did not appear to be the significant factor in the Employer's decision regarding the “pop up” coffee stations on the production floor.

[41] But perhaps the best argument to support the change in the location of the appliances is the twofold rationale: that the continuation of rights and privileges not conflict with other provisions of the collective agreement such as management rights (art. 18.02); and that the Employer's decision to change the practice was part of its overall program to reorganize and establish a more efficient and professional production floor, which was not only reasonable in keeping with the article 3.02 management rights, but a positive change in its business operation.

[42] Lastly, and although I would prefer not to, reliance may be placed upon the rationale in *Glades Lodge* and *Spruce Falls Power* cases discussed earlier. That is, a privilege cannot accrue unless the Employer has acted in some positive manner in the creation of the alleged privilege.

[43] Accordingly, for all of the reasons noted above, I find there has been no violation of the collective agreement as a result of the Employer's direction to have the coffee pots, microwaves and fridges removed

from the production floors of the tubular steel mills. However, I do note the water coolers with disposable cups in cylinder protection do remain throughout the tubular mill production floors to ensure employees can maintain proper hydration while working.

[44] While all of the same arguments can be made with respect to radios, that situation is very different. The Employer has presented this as primarily a safety based issue arising from noise levels generally and hearing protection, but also as a matter that can have safety repercussions because of its potential to be distracting. In these highly industrial production areas, there can be no doubt that safety should be a paramount consideration. Accordingly, I have no hesitation in concluding any intended rights prescribed in article 18.02 could not have been intended to, nor do they override the Employer's right, not to mention duty pursuant to legislation, to make rules and regulations – including new ones, for improving safety in the workplace. Article 3.02 clearly allows the Employer to make reasonable rules and regulations. Rules that are based totally or partially on safety considerations are undoubtedly reasonable, and hence within the prerogative of the Employer.

[45] Regardless of how the practice developed, and who supplied the radios and coffee pots that were used, this is a case where the Employer determined to change the practice. The Employer's reasons for changing the practice were not arbitrary. It had sound safety reasons for removing the radios from the production floors. In addition it wished to present a more professional or business like environment to persons touring the operations, especially the customer inspectors who were there on a regular basis. It was clear from the evidence of Mr. Baghel that the steel industry is competitive and that the Employer relies upon the quality of its product to secure sales. I have no doubt that when prospective purchasers are in the market, and all other factors are equal, they would be more inclined to purchase product from an operation that not only produces a good product, but also presents as running a professional production operation. Accordingly, the decision regarding the radios in my view is totally reasonable, and therefore well within the management rights contained in article 3.02 of the collective agreement.

[46] Having so noted I certainly appreciate members of the bargaining unit would have enjoyed the privilege of listening to the radio – such as might have been possible on the production floor. However, article 18.02 limits the continuation of that privilege so that it not take precedence over other provisions of the Agreement. Accordingly, that privilege was at all times subject to the Employer's right to make reasonable rules and regulations regarding the workplace.

[47] This workplace has undergone significant changes – a new owner, new management, and changes to business objectives and hence operations. While it is not always easy to accept changes, provided the changes to existing privileges were driven by legitimate business reasons, and reasonable, the Employer's right to make those changes takes precedence.

[48] While the case regarding safety relating to the coffee stations located throughout the tubular production areas was not as clear, and could have been readily addressed by means other than removal of the coffee stations, I find the Employer's reliance upon an efficient and professional looking work place is also reasonable under the circumstances to change the protocol for accessing coffee. The change did not remove the right to enjoy drinking coffee on the floor; rather it relocated the place for coffee to be obtained and required all coffee on the production floor be in coffee mugs with lids.

[49] However, there is one aspect regarding the coffee that appears problematic. From the evidence presented it appears that some employees in the spiral mill would have to spend somewhere in the vicinity of twelve minutes to secure coffee from a lunch room. Appreciating that the electromagnetic inspection operator cannot leave his station during production, a coffee station in an enclosed cabinet has been provided for his benefit. In the event other employees in the spiral mill are also constrained by reason of the length of time required to travel to and from the lunch room to get coffee, or these employees are not afforded sufficient breaks in their shifts to get coffee, and in the event arrangements to have coffee brought to them cannot be made, they should be entitled to have an enclosed coffee station cabinet installed in the proximity of their work location. That way, the nature and location of their work does not detract from the coffee privilege enjoyed by the balance of the members of the bargaining unit.

[50] I shall retain jurisdiction to address the issue of accessing coffee by those employees who are far removed from the lunch rooms for 120 days, to allow the parties to see how the situation unfolds, to engage in discussions, and to try out some options.

2. Estoppel:

[51] Mr. Rioux relied upon a number of cases where it was argued, and in some of them found, an employer was estopped from changing an unwritten benefit or privilege. However, there was no evidence of a representation by the Employer that no changes would be made regarding the radios or the pop up coffee stations in the tubular mills. Therefore, no relief is available to the union on that basis.

[52] Accordingly, subject to my retention of jurisdiction for the limited purpose stated, I must dismiss the grievance.

DATED at Saskatoon, this 13th day of June, 2013.

Francine Chad Smith
Francine Chad Smith, Q.C.
Arbitrator