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**[Indexed as: Saskatoon (City) and P.S.A.C., Loc.
40404 (Re)]**

**Re City of Saskatoon and Public Service Alliance
of Canada, U.C.T.E. Local No. 40404**

132 L.A.C. (4th) 367

Canada

File No. 2650

W.F.J. Hood

Heard: April 29, 2004 and April 30, 2004

Decision rendered: September 21, 2004

Arbitrators -- Jurisdiction -- Grievance framed as violation of Canada Labour Code -- Substantive issue whether overtime provisions of collective agreement fall below statutory threshold -- Arbitrator has jurisdiction over dispute -- Canada Labour Code, R.S.C. 1985, c. L-2.

Arbitrability -- Concurrent jurisdictions -- Exclusive versus concurrent jurisdiction models -- Grievance alleging violation of Canada Labour Code -- Inspector/referee's jurisdiction under Part III not exclusive -- Jurisdiction of arbitrator not ousted -- Canada Labour Code, R.S.C. 1985, c. L-2.

Arbitrators -- Jurisdiction -- Retention -- Arbitrator has power to retain jurisdiction to determine quantum of damages at later date, absent consent of both parties.

[See Brown & Beatty, 1:4000; 1:4100; 2:2100; 2:4100; 3:2620]

Cases referred to A.U.P.E. v. Lethbridge Community College (2004), 238 D.L.R. (4th) 385, [2004] 1 S.C.R. 727, 11 Admin. L.R. (4th) 1, 2004 C.L.L.C. Para. 220-032, [2004] 7 W.W.R. 1, 321 W.A.C. 1, 26 Alta. L.R. (4th) 201, 248 A.R. 1, 319 N.R. 201 sub nom. Alberta Union of Provincial Employees v. Lethbridge Community College, 130 A.C.W.S. (3d) 311, 2004 SCC 28 Alberta and A.U.P.E. (Jeffrey) (Re) (1992), 29 L.A.C. (4th) 446, 28 C.L.A.S. 365 Beach Foundry Ltd. and U.A.W. (Re) (1974), 7 L.A.C. (2d) 313 Cadillac Fairview Corp. v. Saskatchewan (Human Rights Code Board of Inquiry)

(1999), 173 D.L.R. (4th) 609, 14 Admin. L.R. (3d) 1, 42 C.C.E.L. (2d) 57, 34 C.H.R.R. D/133, 99 C.L.L.C. Para. 230-010 sub nom. Regier and Wolff v. Cadillac Fairview Corp., [1999] 7 W.W.R. 517, 199 W.A.C. 126, 177 Sask. R. 126, sub nom. Cadillac Fairview Corp. v. Human Rights Commission (Sask.), 87 A.C.W.S. (3d) 985 [leave to appeal to S.C.C. refused 183 D.L.R. (4th) vi] Canada Forgings Inc. and C.A.W.-T.C.A. Canada, Loc. 275 (Re) (2002), 113 L.A.C. (4th) 79, 71 C.L.A.S. 18 Consolidated Aviation Fueling of Toronto Ltd. and I.A.M. (Re) (1972), 1 L.A.C. (2d) 377 Consumers' Gas Co. and International Chemical Workers' Union, Loc. 161 (Re) (1974), 6 L.A.C. (2d) 61 [page368] Dominion Bridge Inc. v. Routledge (1999), 173 D.L.R. (4th) 624, 42 C.C.E.L. (2d) 34, 99 C.L.L.C. Para. 220-051, [1999] 7 W.W.R. 547, 199 W.A.C. 114, 177 Sask. R. 114, 87 A.C.W.S. (3d) 1132 sub nom. Dominion Bridge Inc. v. Saskatchewan (Labour Standards Branch Director) [leave to appeal to S.C.C. refused 183 D.L.R. (4th) vi, 240 W.A.C. 77n, 203 Sask. R. 77n, 254 N.R. 397n] General Foods Ltd. (Re), Kennedy, 1976 Inmet Mining Corp. (Winston Lake Div.) and U.S.W.A., Loc. 4464 (Mosley) (Re) (1998), 78 L.A.C. (4th) 175, 55 C.L.A.S. 203 McLeod v. Egan (1974), 46 D.L.R. (3d) 150, [1975] 1 S.C.R. 517, 74 C.L.L.C. Para. 14,220 sub nom. United Steelworkers v. Galt Metal Industries Ltd. 2 N.R. 443 sub nom. R. v. Macleod, 5 L.A.C. (2d) 336n Metropolitan Toronto Board of Police Commissioners and Metropolitan Toronto Police Assn. (Re) (1977), 14 L.A.C. (2d) 1 Motor Transport Industrial Relations Bureau of Ontario and General Truck Drivers' Union, Loc. 938 (Re) (1973), 4 L.A.C. (2d) 154 New Brunswick v. O'Leary (1995), 125 D.L.R. (4th) 609, [1995] 2 S.C.R. 967, 95 C.L.L.C. Para. 210-028, 163 N.B.R. (2d) 97, 183 N.R. 229, 56 A.C.W.S. (3d) 96 Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324 (2003), 230 D.L.R. (4th) 257, [2003] 2 S.C.R. 157, 7 Admin. L.R. (4th) 177, 31 C.C.E.L. (3d) 1, 47 C.H.R.R. D/182, 2003 C.L.L.C. Para. 220-062, 177 O.A.C. 235, 308 N.R. 271, 67 O.R. (3d) 256n, 125 A.C.W.S. (3d) 85, 2003 SCC 42 Quebec (Attorney General) v. Quebec (Human Rights Tribunal) (2004), 240 D.L.R. (4th) 609, 2004 C.L.L.C. Para. 230-024 sub nom. Quebec (Charette) v. Quebec (Attorney General), 321 N.R. 335 sub nom. Commission des droits de la personne et des droits de la jeunesse (Que) v. Quebec (Attorney General), 131 A.C.W.S. (3d) 492 sub nom. Quebec (Procureur General) v. Quebec (Tribunal des droits de la personne), 2004 SCC 40 Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General) (2004), 128 L.A.C. (4th) 1, 240 D.L.R. (4th) 577, 2004 C.L.L.C. Para. 230-023 sub nom. Quebec (Morin) v. Quebec (Attorney General), 321 N.R. 290, 131 A.C.W.S. (3d) 494 sub nom. Commission des droits de la personne et des droits de la jeunesse v. Quebec (Procureur General), 2004 SCC 39 Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners (2000), 183 D.L.R. (4th) 14, [2000] 1 S.C.R. 360, 50 C.C.E.L. (2d) 1, 2000 C.L.L.C. Para. 220-027, [2000] 4 W.W.R. 149, 216 W.A.C. 23, 189 Sask. R. 23, 251 N.R. 16, 95 A.C.W.S. (3d) 385, 2000 SCC 14 St. Anne-Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219 (1986), 28 D.L.R. (4th) 1, [1986] 1 S.C.R. 704, 86 C.L.L.C. Para. 14,037, 73 N.B.R. (2d) 236, 68 N.R. 112, 38 A.C.W.S. (2d) 3 Weber v. Ontario Hydro (1995), 125 D.L.R. (4th) 583, [1995] 2 S.C.R. 929, 30 Admin. L.R. (2d) 1, 12 C.C.E.L. (2d) 1, 24 C.C.L.T. (2d) 217, 95 C.L.L.C. Para. 210-027, 30 C.R.R. (2d) 1, 82 O.A.C. 321, 183 N.R. 241, 24 O.R. (3d) 358n, 56 A.C.W.S. (3d) 94

Statutes referred to Act respecting income security, R.S.Q., c. S-3.1.1 s. 78 s. 81 Act respecting the Commission des affaires sociales, R.S.Q., c. C-34 s. 21(a) [page369]

Canada Labour Code, R.S.C. 1985, c. L-2 s. 57(1), (2), (4) s. 58(1) s. 60(1)(a.1), (b) s. 168(1), (1.1) a. 169(1)(a), (3) s. 174 a. 197 s. 249(1), (2) s. 251(1), (2) s. 251.1(1), (2) s. 251.11(1) s. 251.12(1), (2), (4) Human Rights Code, R.S.O. 1990, c. H.19 Labour Relations Act, 1995, S.O. 1995, c. 1, Sch. A s. 48(12)(j) Labour Standards Act, R.S.S. 1978, c. L-1 Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1 Trade Union Act, R.S.S. 1978, c. T-17 s. 25(1)

PRELIMINARY AWARD concerning jurisdiction of arbitrator.

G. Chochla, for the union.
P.J. Warwick, for the employer.

PRELIMINARY AWARD

I. Introduction

[1] This award involves the Employer's preliminary objection to the authority of the arbitrator; firstly, the jurisdiction to determine the grievances, and secondly, the power to retain jurisdiction for quantum, absent the consent of all parties.

[2] The grievances are framed as a violation of the Canada Labour Code, R.S.C. 1985, c. L-2 (the "Code"), rather than a breach of the collective agreement between the Employer and the Union (the "Collective Agreement"). The Employer submits that the grievance procedure in the Collective Agreement is not available to resolve a dispute when the essential nature of which is the breach of the Code and not the Collective Agreement. At the root of the grievances is the claim by the Union and its members for overtime pay determined pursuant to the provisions of the Code. The Employer submits that such claim falls to be resolved exclusively by the procedure set forth in Part III of the Code.

[3] The Union claims that the power of the arbitrator to settle employment disputes is not limited to violations that fall squarely [page370] within the four corners of the Collective Agreement, but also includes the jurisdiction to settle disputes under employment legislation such as the Code.

[4] Assuming I have the requisite jurisdiction to determine the dispute, the Union prefers to not present evidence on quantum, but leave the issue of quantum to be resolved with the Employer, if the grievances are first sustained. The Union requests that I remain seized as arbitrator and retain jurisdiction to finally resolve the issue of quantum if the parties are unable to do so. The Employer is not prepared to consent to splitting the case between liability and quantum and insists that the Union present any evidence relating to the quantification of the alleged damages before there is a determination on liability. The Employer does not consent to my retaining jurisdiction on the issue of quantum after determining the merits of the grievances.

II. Facts

[5] The grievances claim that the Employer did not pay overtime at the rate of one and one-half for work in excess of standard hours and on statutory holidays. Three types of grievances were tendered. The January 21, 2003 grievance made by Brian Smith ("Smith"), Jody Ruest ("Ruest"), Peter Katarynych ("Katarynych"), Steve Foreman ("Foreman"), and David Abraham ("Abraham") states:

Acting Chief Fawcett

City of Saskatoon

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