

IN THE MATTER OF AN ARBITRATION

BETWEEN

NEW HORIZON SYSTEM SOLUTIONS

(the "Company")

and

THE SOCIETY OF UNITED PROFESSIONALS

(the "Society")

**POLICY GRIEVANCE #NHSS-2019-0318
RE: RELEASE TIME FOR LOCAL VICE-PRESIDENT**

SOLE ARBITRATOR: John L. Stout

For the Company

Brett Christen - Rae, Christen, Jeffries LLP

Daina Search - Rae, Christen, Jeffries LLP

Peter Watson – Senior Director, Human Resources/Labour Relations

Anne Treacy-Barber – Assistant Director, Human Resources/Labour Relations

Chris Yankov – HR Business Partner

Rick Godin – Senior Manager, End User Services

For the Society

Michael D. Wright – Wright Henry LLP

Brendan McCutchen– Wright Henry LLP

Mary Donnelly - Staff Officer

Benson Tan - Local Vice-President

Audrey Gammon - Unit Director

HEARING HELD IN TORONTO, ONTARIO ON AUGUST 21, 2019

AWARD

1. This dispute concerns a grievance filed by the Society on June 26, 2019 alleging that the Company violated the Collective Agreement by denying paid release time to the current Society Local Vice-President (LVP), Benson Tan. The Society seeks full-time release for Mr. Tan, paid for by the Company, until the end of the current Collective Agreement.
2. The Company asserts that the provisions of the Collective Agreement do not entitle the Society LVP to any paid release time.
3. Prior to the hearing the parties filed extensive written briefs. The matter proceeded to a hearing before me on the evening of August 21, 2019.
4. At the hearing attempts were made to mediate a mutually acceptable resolution. Unfortunately, those attempts were not fruitful. However, the parties did agree to allow me to issue an award based on the written briefs alone.
5. After carefully considering the parties' submissions, I am allowing the grievance.
6. The Society concedes that the Collective Agreement does not include a specific provision providing the Society LVP with full-time release paid for by the Company. Rather, the Society relies on what they assert as being a "clear and consistent practice" of granting the Society LVP with paid full-time release. The Society advises that the practice has been occurring since approximately 2004, which covers a period of nine consecutive collective agreements between the parties.
7. There is no doubt that an arbitrator may, in appropriate circumstances, require an employer to continue a practice until the end of a collective agreement, based on the equitable doctrine of estoppel, see *Centre for Immigrant & Community Services v. Workers United Canada Council (Deluca Grievance)* (2015), 124 C.L.A.S. 222 (Gray).

8. I am satisfied that there has been a clear and consistent practice of the Company providing the Society LVP with full-time paid release. This practice has occurred over a number of successive collective agreements, spanning some fifteen years. I acknowledge that there has been sporadic discussion about the issue of paid release time. However, the Company did not choose to end the practice until June 2019, approximately six months before the end of the current Collective Agreement. As a result, the Society was deprived of an opportunity to negotiate amendments to the Collective Agreement addressing the release time of the LVP.

9. I note that the Society has now clearly been put on notice as to how the Company interprets their obligations under the Collective Agreement. The Company also made it abundantly clear that they are unhappy with the current situation and they feel that the Society has abused release time. The Company has indicated that they will not provide the Society LVP with paid release time in the future unless the language is amended to provide for such payment. Therefore, whether the Society LVP is provided with paid release time after the expiry of the current Collective Agreement is a matter that will need to be negotiated in collective bargaining or awarded at interest arbitration.

10. Accordingly, for all the reasons stated above, I find that the grievance must be allowed, and the Company is estopped from altering the practice of granting the Society LVP full-time paid release until the end of the current Collective Agreement. I remain seized to address any issue fairly raised by the grievance and not addressed in this award.

Dated at Toronto, Ontario this 23rd day of August 2019.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout – Arbitrator