

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

2532612 ONTARIO INC.
(“the Company” or “ReVital”)

-and-

**INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
UAW LOCAL 251**
(“the Union”)

**AND IN THE MATTER OF
POLICY GRIEVANCE #8/17 (WAGES)
AND POLICY GRIEVANCE #14/17 (VACATION)**

Arbitrator: **Randy L. Levinson**

For the Company: **Andrew Reynolds -Counsel**

For the Union: **Laurie Kent -Counsel**

Introduction

1. In the spring of 2017, several disputes arose between the parties. Grievance #8/17 dated April 20, 2017 concerns wages. Grievance #9/17 dated April 20, 2017 concerns benefits. Grievance #14/17 dated May 9, 2017 concerns vacation. I was appointed by the parties to hear these grievances.

2. The first grievance to proceed to hearing and final argument was the benefits grievance (#9/17). Both parties argued the LOA was clear and supported their respective interpretations. On that basis and given that no estoppel argument was raised regarding bargaining history, I ruled that I did not consider it appropriate to admit extrinsic evidence of negotiating history, after considering the parties' representations, in that regard. The grievance was unsuccessful, as I concluded that the affected employees must complete 60 shifts with ReVital, before becoming eligible for benefits. See ***Re 2532612 Ontario Inc. and UAW, Local 251 (#9/17)***, 2019 CarswellOnt 13157, 141 C.L.A.S. 115.

Grievance #8/17 (Wages) and Grievance #14/17 (Vacation)

3. In the present matters, the parties disagree about how to calculate wages and vacation pay and vacation time for the affected employees.

4. The Union seeks to introduce evidence of negotiating history on two grounds. The first is for the purpose of interpreting the collective agreement in support of its argument that the collective agreement is ambiguous. The second is for the purpose of estoppel.

5. The Company argues the Union is precluded from introducing evidence of negotiating history based on res judicata, issue estoppel or abuse of process, given the Union's arguments for the benefits grievance (#9/17). Rather, the present matters should proceed to argument based on the collective agreement wording and without hearing evidence of negotiating history.

The decision

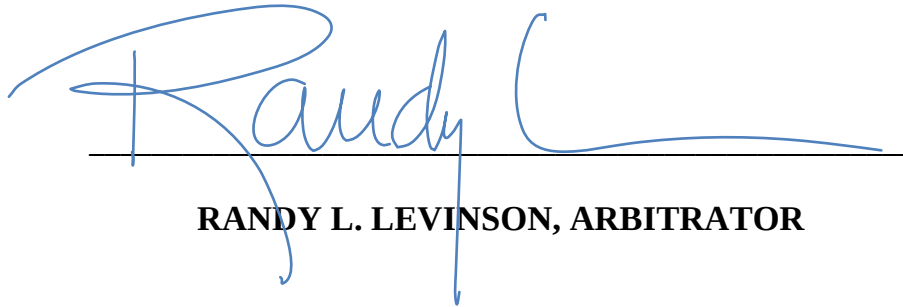
6. At this juncture, I conclude it is appropriate to reserve my determination on the Company's arguments. These arguments can be considered, after receiving evidence of negotiating history and after hearing the parties' final arguments on all issues.

7. In my experience, when a party objects to the admission of evidence of bargaining history for the purpose of interpreting a collective agreement and the other party also seeks to rely on such evidence for the purpose of an estoppel, the parties typically agree that I receive the evidence and decide all necessary issues after hearing final argument. This generally makes practical sense, as there would appear to be little utility to do otherwise, given the likelihood of the same bargaining history being relied on for both purposes.

8. From what I understand, the situation here will be much the same. Moreover, at this procedural stage, it appears unclear how similar or how different the bargaining history for the wages and vacation grievances may be from the benefits grievance, where the Union did not raise an estoppel argument. Accordingly, I am not satisfied at this stage that the Union should be precluded from calling evidence in support

of an estoppel argument, which will be considered after hearing the parties' final arguments on all issues.

DATED at Ancaster, this 15th day of June, 2020.



RANDY L. LEVINSON, ARBITRATOR