

In the Matter of an Arbitration

Between:

Sanofi Pasteur

(The "Employer")

-and-

Unifor, Local 1701

(The "Union")

Re: Grievance 2022-025

Arbitrator: Brian Sheehan

Appearances:

For the Employer: John Mastoras - Counsel
Nicole McLean - Counsel

For the Union: Aleisha Stevens - Counsel

Hearings conducted via Zoom on June 12, 2025, and March 30, 2026
Filing of Written Submissions Concluded on June 19, 2026

This Award addresses a preliminary objection advanced by the Employer challenging the arbitrability of a grievance filed by the Union.

Background Facts

The relevant collective agreement language in dispute appears in Schedule B of the collective agreement, which sets out the Employer's obligation pertaining to extended health benefit coverage:

6. EXTENDED HEALTH

Effective the first of the month following the date of signing this agreement, the Employer will pay 100% of the premiums for the Extended Health Care plan.

Effective one month after the signing of this agreement, the Employer will pay 100% of the premiums for a Pre-Administered Extended Health Care plan employing the current benefits.

The above language has been in the collective agreement since at least 1993.

In accordance with the wording of Schedule B, the Employer has contracted with Sun Life Assurance Company of Canada ("Sun Life") for a group benefits plan (the "Plan"). A group benefits booklet (the "Sun Life Benefits Booklet") is provided to members of the bargaining unit and outlines the extended health benefits provided, and the terms and conditions under which they are provided. The parties have in the past negotiated certain additions and improvements to the extended health benefits covered under the Plan and have incorporated changes into the Sun Life Benefits Booklet.

On November 8, 2023, the Union filed a policy grievance alleging the following violation of the collective agreement:

It is understood that there have been some changes in the Benefits that are being managed by Sun Life. It is also the understanding that any negotiated Benefits at the time of ratification of the CLA should not change. The company is responsible for the direction of the management of the benefits that have been negotiated within the CLA and there is sufficient evidence to suggest that the negotiated benefits have not been properly managed.

The remedies sought in the grievance were:

1. The Company ensure that the Benefits that were negotiated in all Collective agreements are established in the Benefits package of the BU employees.
2. The Company continues to manage SunLife in the administration of the Benefits.
3. The Company performs an assessment of the administration of the benefits and determines if SunLife is the best Administrator for the Benefits.

The Employer's response to the grievance included the following observations:

The Union stated it was their understanding that once an agreement is ratified there cannot be any changes to the benefits plan, and that the benefits in place at the time of ratification should remain in place for the duration of the agreement. In its written grievance the Union stated that there was sufficient evidence to suggest that there had been changes to the negotiated benefits.

The Company is able to confirm that all negotiated benefits listed in "Schedule B - Benefits", and more specifically, benefit coverage amounts remain unchanged.

The group benefits available to Union employees as outlined in the "Pasteur Union UTC" employee benefits booklet (available through Sanofi's group contract with Sun Life Assurance Company of Canada), indicates that benefits may be modified after the effective date. It has been customary for certain reasonable and customary administrative changes to occur periodically, based on expert medical opinion and provincial coverage changes.

In the case that the Union highlighted regarding CPAP equipment, there was such an administrative change made. In summary, the Union's position that the Company has made changes to the negotiated benefit coverage detailed in Schedule B is incorrect. The Union's position that during the course of a collective agreement no administrative changes can be made to the group benefits plan available through Sanofi's group contract with Sun Life, is incorrect.

On April 23, 2025, the Employer requested that the Union provide particulars regarding the grievance. By letter dated June 4, 2025, Ms. Stevens, on behalf of the Union, provided the following particulars:

I understand the facts of this case are not in dispute. On January 1, 2021, there was a change made to reimbursement for CPAP machines such that the benefits plan no longer reimbursed for CPAP machines in cases of mild obstructive sleep apnea. Consequently, a Unifor 1701 member L.S.¹ was denied her claim, to her financial detriment. The change was made unilaterally without the agreement of Unifor 1701.

Benefits were similarly disallowed for T.Y. for nitrous oxide, where such claims were previously allowed. The parties agreed to this coverage by way of negotiated settlement on February 6, 2017.

The Company has justified changes by describing it as "administrative". The Union asserts the change is substantive and affects the rights of its members. The Union asserts the Company cannot unilaterally change benefits provided. In addition and in the

¹ Names of the bargaining members L.S. and T.Y. have been anonymized for privacy reasons.

alternative, the Company is estopped from withholding a previously provided benefit.

On June 6, 2025, the Union advised the Employer of another alleged change regarding benefit coverage involving the “coordination” of benefits for a married couple, both of whom are employed by the Employer, and demanded that the Employer produce “a list of all items in the modified benefit entitlements over the past 4 years.”

The first day of the hearing was held on June 12, 2025. At that time, the parties made opening statements.

The second hearing date was March 30, 2026. After the parties’ unsuccessful attempt to reach a mediated resolution, it was agreed that the Employer’s preliminary objection to the grievance’s arbitrability would be addressed through written submissions.

As set out in the Union’s particulars, the policy grievance was initially related to the denial of two specific benefit claims submitted by members of the bargaining unit. The first sought coverage for nitrous oxide during a basic dental procedure. It is undisputed that the initial denial resulted from an administrative error by Sun Life, and Sun Life confirmed that there had been no change in coverage for nitrous oxide. The second claim sought reimbursement for a CPAP machine for mild sleep apnea. The claimant had previously been covered for a CPAP machine. In denying the claim, Sun Life advised that there had been two “administrative” changes affecting sleep apnea claims. First, effective January 1, 2021, Sun Life would no longer reimburse claims for CPAP machines for mild sleep apnea, in keeping with industry practices and the

Canadian Agency for Drugs and Technologies in Health (CADTH) guidelines, which provide that a CPAP machine is no longer recommended in cases of mild obstructive sleep apnea. Additionally, Sun Life further noted that CPAP coverage for moderate to severe sleep apnea would be up to a “reasonable and customary” limit, less the amount covered by provincial health coverage in Ontario, Manitoba, and Saskatchewan.

Overview of the Submissions of the Parties

One branch of the Employer’s argument relies on the seminal Brown and Beatty Canadian Labour Arbitration four-category schematic regarding the arbitrability of a claim for health and welfare benefits given the relevant language of the collective agreement. That categorization suggests the following:

1. Where the collective agreement does not set out the benefits that are sought to be enforced, the claim is inarbitrable;
2. Where the collective agreement stipulates that the employer is obligated to provide certain medical or sick pay benefits, but does not incorporate the plan into the agreement or make specific reference to it, the claim is arbitrable;
3. Where the collective agreement only obliges the employer to pay the premiums associated with an insurance plan, the claim is inarbitrable; and;
4. Where the insurance policy is incorporated into the collective agreement, the claim is arbitrable.

The Employer asserted that in the case at hand, the general nature of the Employer’s obligation with respect to extended health benefit coverage is limited to paying the premiums for an extended health benefit plan and, therefore, falls within

Category 3 of the above categorization and, as such, grievances associated with a denied claim for coverage are inarbitrable. That is, the relevant wording in Schedule B of the collective agreement speaks to the Employer's obligation to "pay 100% of the premiums for the Extended Health Care plan", and, provided it does so, no collective agreement violation arises if Sun Life decides to deny a particular benefit claim. The wording of Schedule B, it is opined, makes clear that the Employer does not step into the shoes of Sun Life with respect to the administration of the Plan, and that its obligation is only to pay the necessary premiums. Accordingly, any issues pertaining to the administration of the Plan, such as eligibility or individual claim entitlements, are not arbitrable.

Further to the above, it is submitted that the undisputed facts confirm that the only issue that potentially remains outstanding with respect to the grievance is Sun Life's decision to deny the claim for coverage of a CPAP machine. It was stated that the decision concerned Sun Life's implementation of reasonable and customary administrative changes to extended health benefit coverage for the use of such machines, in accordance with expert medical recommendations set out in the CADTH guidelines. It was asserted that Sun Life's discretion to implement or change such a reasonable and customary standard is provided for in the Plan and relates to Sun Life's administration of the Plan. As such, it does not give rise to a violation of the collective agreement.

Alternatively, it was asserted that the Employer's obligation regarding extended health benefit coverage is a hybrid of Categories 2 and 3 of the Brown and Beatty

typology. In that case, provided the Employer pays the premiums for an Extended Health Care Plan that complies with any collective agreement language regarding the specific nature of the benefits to be provided, no collective agreement issues arise with respect to Sun Life's administration of particular claims under the Plan. In relation to this argument, it was submitted that arbitral jurisprudence supports the proposition that administrative changes implemented by the benefit carrier within a reasonable and customary standard are permissible and do not give rise to a violation of the collective agreement. In support of this aspect of its argument, the Employer relied upon the following authorities: Air Canada v Air Canada Pilots Association, 2012 CanLII 92037 (CA LA) (Knopf); Arterra Wines Canada Inc. and TC, Local 1979 (Collective Agreement), Re, [2021] O.L.A.A. No. 329 (ON LA) (Schmidt).

The second branch of the Employer's argument is that the Union has improperly sought to expand the scope of the grievance. It was submitted that the grievance, as filed, and the discussions between the representatives of the Employer and the Union prior to the grievance being filed and during the grievance procedure concerned only the two disputed individual claims. It was asserted that the Union sought to change the nature of the dispute for the first time in its written Response to the Employer's submissions, by raising a broad contractual interpretation argument focused on the phrase "employing the current benefits" in the second paragraph of Item 6 of Schedule B of the collective agreement, asserting that changes to the extended health benefit coverage cannot be made during the life of the collective agreement without the Union's consent. Specifically, it was asserted that faced with the Employer's preliminary objection, the Union improperly sought to transform the issue in dispute into a broad

contractual interpretation dispute relating to the meaning of the phrase “employing the current benefits” in Item 6 of Schedule B. It was emphasized that the Union never once referenced that phrase in the grievance procedure, in its particulars, or during its opening statement. It was further asserted that the email exchanges between the parties underlying the filing of the grievances were limited to two individual claims that were denied by Sun Life, and that the nature of the dispute was clearly crystallized at that time.

It was further submitted that while arbitral jurisprudence accepts the general principle that the wording of a grievance should be given a liberal interpretation, there is a countervailing principle that a party should not be able to raise an issue at arbitration that was not identified in the wording of the grievance or in the discussions during the grievance procedure. Allowing a party to expand the scope of the grievance at arbitration would not only be inherently unfair, as the other party would not know the case it had to meet, but would also fundamentally undermine the underlying purpose of the grievance process.

In support of its submissions, the Employer relied upon the following additional authorities: Donald J.M. Brown and David M. Beatty, Canadian Labour Arbitration, 5th ed. Paras 3.17.80, 4.7, 4.10, 4.20, 4.21, 4.21 and 8.39; Woodstock (City) and Canadian Union of Public Employees, Local 1146.04, 2020 CarswellOnt 4968 (ON LA) (Sheehan); Peterborough (City) v Canadian Union of Public Employees, Local 126, 2016 CanLII 53072 (ON LA) (Stout); Hansraj v. Ao, 2002 ABQB 385; Greater Sudbury Hydro Plus Inc. v. Canadian Union of Public Employees Local 4705 (2003), 121 L.A.C. (4th) 193

(Dissanayake); OSSTF and Toronto District School Board (Wolfe), Re (2020), 144 C.L.A.S. 44 (ON Arb) (Howe); Fish, Food and Allied Workers and St. Anthony Seafoods Ltd. (Spingle), Re (2023) C.L.A.S. 87 (NFL Arb) (Conway).

The Union's response to the Employer's preliminary objection submissions is threefold: (1) the Employer mischaracterizes the nature of the grievance; (2) the Employer's arguments and cited case law are inapplicable; and (3) the grievance is clearly arbitrable.

Related to the above, the Union asserted that the Employer's submissions improperly ventured into the merits of the grievance, which falls outside the scope of the advanced preliminary objection. Accordingly, the Union took the position that it would not respond to that portion of the Employer's submissions.

For the Union, the Employer's preliminary objection sought to narrow the scope of the grievance to denials of individual claims for nitrous oxide used in a routine dental procedure and for a CPAP machine for mild sleep apnea. The Union claimed that the wording of the grievance and the email exchanges between the parties associated with the filing of the grievance confirm that the issue in dispute relates to the broader question of whether the Employer can, during the life of the collective agreement, unilaterally alter the nature of coverage for extended health benefits for members of the bargaining unit. Further to this point, it was noted that the grievance was a policy grievance and that there was no reference in the body of the grievance to individual claims being denied. Additionally, it was emphasized that in requesting the remedy, the Union did not seek relief with respect to any specific individual claim, but rather sought

assurance that the Employer could not unilaterally change the extended health benefit coverage available to bargaining unit members.

The Union noted that the grievance's wording expressly sets out the Union's position that "any negotiated Benefits at the time of ratification of the CLA should not change." The Union also referred to email exchanges between Mike Hill, President of Local 1701, and Employer representatives around the time the grievance was filed, in which, the Union asserted that extended health benefit coverage could not be unilaterally altered during the life of the collective agreement.

It was submitted that based on the documentary record and the parties' submissions, there is indisputably a live issue between the parties regarding the interpretation of Schedule B; specifically, whether the extended health benefit coverage may be modified during the life of the collective agreement without the Union's consent.

The Union further asserted that if the issue raised by the grievance is ambiguous, then the wording of the grievance should be interpreted liberally in accordance with arbitral jurisprudence. It was opined that this liberal approach to interpreting grievances is based in part on the understanding that grievance wording is not pleadings and is not drafted by legal professionals.

The Union submitted that this was not a "category" case. That is, the Employer's attempt to characterize the dispute solely in terms of the Brown and Beatty four-category typology is misguided because the dispute concerns whether, pursuant to the wording of Schedule B of the collective agreement, the nature of the benefits to be provided can be

unilaterally altered during the life of the collective agreement. If, however, the dispute is to be framed by the Brown and Beatty typology, the Union asserted that Category 4 would be the relevant category, as the Sun Life Benefits Booklet, through the wording of Schedule B, is incorporated into the collective agreement. On this point, reliance was also placed on the Employer's acknowledgment that the parties bargain with respect to the contents of the Sun Life Plan, and that any changes are reflected in the Sun Life Benefits Booklet.

In the alternative, the Union asserted that even if the grievance was limited to the nitrous oxide and CPAP machine matters, an arbitrable dispute remains between the parties. The Union, as clearly set out in the particulars provided to the Employer, asserted that the changes in coverage implemented by Sun Life were not "administrative" but substantive, and, as such, constituted a violation of the collective agreement. The Union further asserted that the Employer was estopped from withholding a previously provided benefit.

In support of its submissions, the Union relied upon the following authorities:
Dare Foods Ltd. v Bakery, Confectionery & Tobacco Workers' International Union, Local 264 1995 CarswellOnt 5756 (McLean); Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters & Joiners of America, Local 2486 (1975), 8 O.R. (2d) 103; Communications Union Canada and Bell Canada, (1976) 13 O.R. (2d) 570 (Div. Ct.); Toronto District School Board and Canadian Union of Public Employees, Local 4400 (2013-D-3222), 2017 CarswellOnt 9087 (Sheehan); Becker Milk Co. and Milk and Bread

Drivers, Dairy Employees, Caterers and Allied Employees, Local 647, 1994 CarswellOnt
6314 (Haeffling).

Disposition

Upon reviewing the parties' submissions, the cited authorities, and the relevant documentary background, it is concluded that the Employer's preliminary objection should be dismissed.

Analysis

At one level, the Employer's position is entirely understandable. There is no dispute that the events triggering the grievance were two separate claims by members of the bargaining unit. One claim concerned the denial of coverage for nitrous oxide during a routine dental procedure. That denial resulted from an administrative error by Sun Life, which was rectified, and there are no ongoing issues with respect to such a claim. The second dispute concerned Sun Life's position that coverage would no longer be extended for a CPAP machine for mild sleep apnea. From the Employer's perspective, Sun Life's decision was a reasonable and customary administrative change to the benefit coverage under the Sun Life Plan, consistent with expert medical recommendations, and such changes do not give rise to an arbitrable issue.

While fully appreciating the Employer's perspective, it is my view that it is unnecessary to go beyond the nature and wording of the grievance and the Employer's grievance response to conclude that there is an arbitrable issue between the parties. Paramount to that conclusion relies on this being a policy grievance rather than an

individual grievance. Significantly, the wording of the grievance contains no specific reference to the two denied claims, or, arguably more importantly, any claim for relief with respect to those claims. Moreover, the nature of the policy issue in dispute is clearly identified as “any negotiated Benefits at the time of the ratification of the CLA should not change.” The Employer’s response ostensibly confirms that the policy issue in dispute was joined. Specifically, the second paragraph of that response, which for clarity's sake, is reproduced below, encapsulates, in my view, the nature of the arbitrable issue between the parties:

The Union stated it was their understanding that once an agreement is ratified, there cannot be any changes to the benefits plan, and that the benefits in place at the time of ratification should remain in place for the duration of the agreement. In its written grievance the Union stated that there was sufficient evidence to suggest that there had been changes to the negotiated benefits.

(Emphasis added)

It is recognized that there is an argument for the need of a factual foundation underlying the assertion that the “policy” violates the collective agreement or a relevant statute. That is, it would arguably be contrary to sound and constructive labour relations, potentially leading to unnecessary acrimony and the expenditure of resources, to have arbitration proceedings pertaining to purely theoretical arguments about the interpretation of a collective agreement. Labour arbitration is for good reason, generally not about inquiring into hypotheticals or what-ifs. That being said, in certain circumstances, a resolved factual dispute may reveal a fundamental difference between the parties regarding the interpretation of the collective agreement that may have ongoing relevance. In such circumstances,

there is a strong argument that a union is entitled to file a policy grievance to obtain clarity as to the disputed language. Section 48(1) of the Ontario Labour Relations Act sets out that the underlying purpose of binding and compulsory arbitration is to resolve differences between the parties. Further to this point, there is support in arbitral jurisprudence for the proposition that an arbitrator should be cautious to dismiss a grievance on the basis of mootness, if there remains a fundamental difference between the parties regarding the interpretation or application of the collective agreement, notwithstanding that the matter that gave rise to the grievance is resolved.

In the case at hand, there is no need, however, to address the issue from a purely theoretical perspective, as there is the clear outstanding dispute regarding the change in coverage for the CPAP machines, as the Union has not accepted that the change in question is permissible given the language of the collective agreement. The Employer ostensibly outlined the nature of this outstanding dispute that remained between the parties in its grievance response:

The Union's position that during the course of a collective agreement no administrative changes can be made to the group benefits plan available through Sanofi's group contract with Sun Life, is incorrect.

The particulars provided by the Union reiterated the assertion that such an "administrative" change was not permissible under the collective agreement, and it was also claimed that the Employer was estopped from permitting such a change in coverage.

Regarding the Employer's assertion that the Union improperly transformed the nature of the dispute from the denial of the two particular claims identified by the Union before the filing of the grievance and during the grievance procedure into a broad contractual interpretation argument, it is accepted that the Union expressly relied on the specific phrase "employing the current benefits" in Item 6 of Schedule B for the first time in its Response to the Employer's submissions on its preliminary objection. That point noted, the Union's reliance on that phrase at that stage of the proceedings does not, in my view, represent a change in the scope of the grievance or make it, in any way, improper. As previously outlined, there can be no doubt that the Union asserted from the outset of the dispute that the language of the collective agreement prevented unilateral changes to extended health benefit coverage during the life of the collective agreement. Should the Union, in its opening submissions on day one of the hearing, have referenced the specific language of the collective agreement it relied upon to support its argument? Arguably, yes. However, the parties provided relatively brief opening statements. Moreover, the purpose of opening statements is to provide a general outline of the nature of the dispute and the parties' respective positions. Ostensibly, in the case at hand, that is what both parties' opening submissions did. More importantly, the Employer cannot claim that it is surprised that the wording of Item 6 of Schedule B of the collective agreement would be potentially relevant to the dispute. This is also not a scenario where the Employer has been in some way prejudiced by the Union not referencing the specific phrase "employing the current benefits" in Item 6 of Schedule B in the supplied particulars or during its opening statement, as the Employer is now fully

aware of the Union's position prior to the evidentiary portion of the hearing commencing.

No issue is taken with the analysis set out in the authorities relied upon by the Employer regarding the scope of the grievance argument. In Greater Sudbury Hydro Plus Inc., *supra*, Arbitrator Dissanayake set out a thorough analysis of the interplay between the principle that the wording of the grievance should be given a liberal reading, and the principle that a party should not be able to raise an issue that was not raised at all prior to the arbitration hearing. In particular, it was noted:

I find two countervailing principles in the foregoing statement by the Court of Appeal. The first is that, where on a liberal reading of the grievance an issue, although not articulated well, is inherent within it, an arbitrator ought to take jurisdiction over that issue, despite any flaws in form or articulation. However, there is also a countervailing principle to the effect that an arbitrator ought not, in the guise of "liberal reading", permit a party to raise at arbitration an issue which was not in any manner, even inherently, joined in the grievance filed. To do that would be to defeat the very purpose of the grievance and arbitration procedure. In *Liquid Carbonic Inc. v. U.S.W.A.* (1992), 25 L.A.C. (4th) 144 (Ont. Arb.) (Stanley), the arbitrator wrote at p. 147:

The whole process of grievance arbitration, and grievance procedure, is designed to permit the parties at the earlier stages to resolve the dispute between themselves. Hence, collective agreements invariably contain grievance procedure provisions so that grievances are funneled to an arbitration board only after the parties have had a chance to resolve the matter. It is our view that the comments of Professor Laskin and the decision in the *Re Blouin Drywall* case attempt to accommodate both values. If the issue raised at the arbitration hearing is in fact part of the original grievance, a board of arbitration should not deny itself jurisdiction based on a technical objection as to the scope of the original grievance. To do so would deny the value of flexibility and would be to compel the parties to draft their grievances with a nicety of pleadings. On the other hand, if the issue raised by one of the parties is not inherent in the original grievance, for the board to permit the party to raise that issue as part of the original

grievance would be to deny the parties the benefit of the grievance procedure in an attempt to resolve the issue between themselves. In fact, it would be to permit one party to substitute a new grievance for the original grievance.

The issue in this case then becomes, was the allegation that the grievor was demoted in contravention of article 3.06 inherent even on a liberal reading of the grievance, or is it a new issue not inherent in the grievance filed.

(Emphasis added)

As suggested, it is clear that the Union's assertion, relying to a large extent on the specific phrase "employing the current benefits" in item 6 of Schedule B, that the extended health benefit coverage cannot be unilaterally altered during the life of the collective agreement, is inherently connected to the grievance as filed and in no manner can be viewed as a new grievance.

With respect to the Employer's reliance on the Brown and Beatty four-category typology, there is no doubt that the nature of the Employer's obligation(s) in relation to the benefit coverage to be provided, given the wording of the collective agreement, will be a relevant part of this case. However, as suggested by the Union in its submissions, this is not necessarily, in my view, a "category case" concerning whether a particular claim for benefits is enforceable against the employer or the contracted benefit carrier, but rather a claim that the Employer improperly permitted a change in benefit coverage during the life of the collective agreement. In this regard, the facts of this case are significantly different from those in the City of Woodstock, *supra*, case. That case involved an individual grievance regarding Manulife's (the contracted LTD benefit carrier) decision to deny the grievor continued LTD coverage. The parties in that case

sensibly agreed to address the arbitrability issue as a preliminary matter before delving into the facts surrounding Manulife's decision to deny the grievor continued LTD coverage. The question of whether the denial of LTD benefits was a claim enforceable against the employer was a fundamental jurisdictional issue that the parties agreed should be decided at the outset. In the case at hand, the issue is not whether a particular denial of a claim for benefits can be enforced against the Employer or Sun Life, but whether a change in benefit coverage without the Union's consent is permissible during the life of the collective agreement.

Another aspect of the Employer's scope-of-grievance argument addresses the Union's claim that Sun Life had altered the ability of a married couple, both of whom are employed by the Employer, to coordinate or combine their coverage. The Union raised the issue with the Employer in the June 6, 2025, correspondence from Ms. Stevens. On June 9, 2025, Mr. Mastoras responded on the Employer's behalf, stating that the Employer objected to the Union's attempt to "widen" the grievance, and that the matter had not been processed through the grievance procedure.

The Employer's argument that the appropriate way for the Union to address that claim was to file a new grievance, allowing the parties to address the facts and issues associated with that claim through the grievance process, is appreciated. Further to this point, it is a trite observation that absent an employer's agreement, a new claim arising after a grievance is filed, even if it asserts the same type of breach in a similar factual scenario, typically requires the filing of a new grievance. For example, if a grievance asserting a denial of an overtime opportunity has been

referred to arbitration, the appointed arbitrator does not necessarily have overarching jurisdiction to address the denial of an overtime opportunity involving that employee, or similar circumstances involving other employees, arising after the date of filing of the original grievance. That viewpoint reflects the institutional importance placed on the grievance process and the parties' ability to resolve the dispute on their own.

There is, however, an acceptance in the jurisprudence that a policy grievance may raise issue(s) of a continuing nature such that it may be appropriate to allow for post-grievance evidence associated with the initial claim to be addressed as part of the adjudication of the grievance. It is my view that the policy grievance filed by the Union ostensibly constitutes such a grievance of a continuing nature. Through the policy grievance, the Union effectively put the Employer on notice that any change in benefit coverage during the life of the collective agreement not approved by the Union would be viewed as a violation of the collective agreement. On this point, reference is made to the following excerpt from Fish, Food and Allied Workers and St. Anthony Seafoods Ltd., *supra*:

There is generally a prohibition on the use of post-grievance evidence for the purposes of establishing a violation of a collective agreement. An exception to this is in relation to policy grievances of a continuing nature. This was summarized at Paragraphs 21-23 of *Queen's University v Public Service Alliance of Canada, Local 901*, 2022 CanLII 57995 (ON LA).

In *Maple Leaf Pork*, the union challenged an attendance policy. It filed a policy grievance at the inception of the attendance policy. At the arbitration, approximately five months later, the Union also sought to introduce evidence regarding the implementation of the attendance policy. The Union argued that the employer's application

of the policy gave meaning to the text and was relevant to determining whether the policy was reasonable.

Arbitrator Abramsky relied on the following passage from C.E.P., Local 141 v. Bowater Mersey Paper Co. (1998), 1998 CanLII 30079 (NS LA), 76 L.A.C. (4th) 411 ("Bowater"):

[A]s a general rule, evidence of post-grievance events is inadmissible for the purpose of establishing a violation of the collective agreement. However, there is little justification for excluding such evidence in relation to policy grievances of a continuing nature. It would serve no useful purpose to refuse to consider the post-grievance evidence in such circumstances and to do so would encourage unnecessary multiplicity of proceedings. In the case at hand, I am satisfied...that the grievance does raise the policy issue of whether the Employer has unilaterally implemented a modified duties program. To the extent, therefore, that [the post-grievance evidence] sheds any light on this issue, evidence concerning it is admissible for this purpose but not otherwise. Manifestly, this evidence cannot be used to establish new or different breaches of the collective agreement.

In the case before her, Arbitrator Abramsky concluded that the post-grievance evidence was admissible, but only regarding the validity of the attendance policy. To the extent that any post-grievance evidence raised new or different breaches of the collective agreement, separate grievances would be required. Notably, Arbitrator Abramsky considered the employer's "legitimate concerns" about a never-ending proceeding, indicating that post-grievance evidence could be excluded if it unduly delayed or burdened the proceeding. In the case before her, however, Arbitrator Abramsky held that admitting the post-grievance evidence (which spanned a period of approximately five months) would not be unfair, nor would it unduly delay the hearing.

As suggested by Arbitrator Abramsky, when assessing whether it is appropriate to allow a Union to rely on such post-grievance evidence, the Employer's legitimate concerns regarding the admission of such evidence must be considered. In this case, it would not appear that including the coordination of

benefits issue would unduly prolong the hearing. The evidence pertaining to that matter would likely be primarily documentary in nature, and there would appear to be no prejudicial impact on the Employer's ability to factually respond to the additional claim.

In fairness to the Employer, bypassing the grievance procedure leaves the Employer without the specific facts associated with the Union's claim. In relation to this point, the information provided by the Union regarding the alleged change in the coordination of benefits appears rather limited, aside from identifying the married couple involved. Accordingly, the Union is ordered to provide the Employer with full particulars with respect to its assertion that there has been a change in coverage.

In conclusion, the Employer's preliminary objection regarding the arbitrability of the grievance is dismissed. Additionally, it has been determined that the Union's assertion that an improper change in coverage affecting a married couple's ability to coordinate or combine their benefits coverage will be part of the proceeding. The Union must, however, provide the Employer with full particulars regarding that assertion.

Counsel are to coordinate scheduling further dates in this matter with my office.

This Award is issued in Mississauga on this 11th day of August 2026.

"Brian Sheehan"

Brian Sheehan

