IN THE MATTER OF AN ARBITRATION
PURSUANT TO SECTION 49
OF THE LABOUR RELATIONS ACT, 1995

BETWEEN:

UNIFOR, LOCAL 4207

(the “Union”)

AND

WESCAST INDUSTRIES INC.

(the “Employer”)

RE: Policy Grievance 1117 dated June 15, 2023, and
Policy Grievance 1122 dated April 15, 2024.

BEFORE: Scott G. Thompson
Sole Arbitrator

Hearing Dates: May 21, 2024; June 4, 2024, June 18, 2024; August 13 & 27, 2024; October 21 & 31, 2024, December 9, 2024, & January 17, 2025.
Mediation Dates: March 18, 2025; March 28, 2025, May 29, 2025, & September 29, 2025.
Additional Hearing Dates: August 12, 2025, October 20, 2025, December 15, 2025, February 26, 2026, & April 10, 2026.

APPEARANCES

For the Union:

Tyson Siddall, Spokesperson
Laura Sullivan, Counsel
Joel Sutton, Unit Chair

For the Employer:

Patrick Groom, Counsel
Milana Grahavac, Counsel
Chris Vicheng Gao, Human Resources Manager
Shelley Davidson

DECISION

1. This is a dispute between Wescast Industries Inc. (the "Employer") a subsidiary of Bohong Industries Group, and UNIFOR, Local 4207 (the "Union") over whether the employees, who were laid off from the Employer's casting facility in Wingham, which is known as Wescast Casting Wingham ("WCW"), are entitled to termination and enhanced severance pay in accordance with the collective agreement between the Employer and the Union that had a term from July 1, 2020 to June 30, 2023 (the "Casting Collective Agreement").

2. Policy grievance 1117 is dated June 15, 2023, and alleges that "The Company gave notice of a plant closure without proper notice to its employees. The length of notice is known to exceed what the Ontario Employment Standards Act (ESA) defines as a permanent layoff and therefore the agreed upon language in the Plant Closure or Partial Plant Closure Agreement shall apply." ("Grievance 1117")

3. Policy grievance 1122 is dated April 15, 2024, and alleges that "The Company failed to pay severance and termination pay to employees who elected, following 35 weeks of layoff, as per the Collective Agreement and Ontario Employment Standards Act, including not forwarding the funds to the Director of Employment Standards for employees who indicated maintain their recall rights or WSIB weekly benefits." ("Grievance 1122")

4. On April 30, 2024, the Union applied to the Minister of Labour pursuant to section 49 of the *Labour Relations Act, 1995*, SO 1995, c.1, Schedule A, as amended (the "*Labour Relations Act*") to have these two policy grievances referred to a single arbitrator and on May 3, 2024, I was appointed pursuant to section 49(4) to hear and determine these matters.

5. The Board issued its decision on the merits of the two grievances on February 13, 2025 (the "Merits Decision"), in *Unifor, Local 4207 v Wescast Industries Inc.*, 2025 CanLII 9734 (ON LA). The following paragraphs of the Merits Decision are relevant to this decision.

> 11. Section 22.08 of the Casting Collective Agreement provides as follows:
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> > **22.08** When possible, the Company will advise the Union Plant Committee, up to six (6) months in advance, of a planned shutdown of operations in excess of one (1) month that will result in the termination, lay-off or displacement of employees from their jobs. Such notice shall be in writing and, where practicable, indicate the reason or reasons for such shutdown.
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> The Union alleges that the Employer breached this provision when it failed to give the Union six (6) months advance notice of its intention to shut down the WCW facility by July 30, 2023. As a consequence of this breach, the Union claims that some employees accepted early exit

packages or declined recalls because they were unaware of the pending closure and the Union was unable to advise them of their options for termination and severance pay. The Employer led no evidence and made no argument in response to this allegation.

* * *

71. Furthermore, I am satisfied that the Employer breached article 22.08 of the Casting Collective Agreement when it failed to give the Union advance notice of its planned shutdown of the WCW facility that resulted in the layoff of the active workforce under the Casting Collective Agreement. As a consequence of this breach the employees who accepted the early-exit package made those decisions unaware of the pending closure and the Union was unable to advise them of their options for termination and severance pay. The Employer led no evidence and made no argument in response to this claim by the Union. Those early-exit employees are entitled to the difference between the termination and enhanced severance pay they would otherwise be entitled to under the Plant Closure Agreement minus the early-exit bonus they received.

72. Likewise, I am satisfied that those employees who declined recall or were otherwise terminated may have made decisions as a consequence of the Employer's breach of article 22.08 that they would not have made had they been aware of the pending closure of the WCW facility which the Union was unable to advise them about. The Employer led no evidence and made no argument in response to this claim by the Union. Depending on the individual circumstances of these employees, they may be entitled to termination and enhanced severance pay under the Plant Closure Agreement. To the extent that the parties are unable to resolve any issues with respect to this group, I remain seized.

* * *

80. The Revised Spreadsheet (Exhibit 7.3) lists fourteen employees who declined recall or were otherwise terminated. I remain seized with respect to these individuals if the parties are unable to resolve who would be entitled to termination and enhanced severance pay under the Plant Closure Agreement as a result of the Employer's breach of article 22.08 of the Casting Collective Agreement.

6. Following the Merits Decision the parties met in mediation on March 18, 2025, and reached the following settlement agreement dated March 21, 2025 (the "Settlement Agreement").

1. Attached to this settlement is a new spreadsheet dated March 20, 2025 and titled “Final Termination and Enhanced Severance Pay Calculations”, which the Union and the Employer agree shall become Exhibit 13 before Arbitrator Thompson, that corrects a number of errors that existed in the Revised Spreadsheet (Exhibit 7.3).

2. Attached to this settlement is a new spreadsheet dated March 18, 2025 and titled “Final Termination and Enhanced Severance Pay Calculations for the Early Exit Employees”, which the Union and the Employer agree shall become Exhibit 14 before Arbitrator Thompson, that corrects a number of errors that existed in the Revised Spreadsheet (Exhibit 7.3).

3. It is agreed that the Employer and the Union will provide written submissions on the issue of whether the entitlement of the Early Exit Employees to termination and enhanced severance pay under the Plant Closure Agreement was properly before Arbitrator Thompson. The Employer will provide its written submissions on or before Monday, March 31, 2025; the Union will provide its written response submissions on or before Monday, April 7, 2025; and the Employer will provide any reply submissions on or before Monday, April 14, 2025.

4. In accordance with paragraph 72 of Arbitrator Thompson’s February 13, 2025 award the parties will lead evidence and argument on whether any or all of the employees listed on Schedule A are entitled to termination and enhanced severance pay under the Plant Closure Agreement.

Subsequently on March 28, 2025, and May 29, 2025, the parties met in mediation and mutually agreed to some minor adjustments to Exhibit 13 and Schedule A that are not material to this decision.

7. In accordance with paragraph 3 of the Settlement Agreement the parties made their written submissions on the Early Exit Employees, and the Board issued its decision on that issue on July 4, 2025 (the “Early Exit Employees’ Decision”) in *Unifor, Local 4207 v Wescast Industries Inc.*, 2025 CanLII 62787 (ON LA).

8. This decision addresses whether those employees, referenced in paragraphs 72 and 80 of the Merits Decision and identified on Schedule A of the Settlement Agreement as amended, who declined recall or were otherwise terminated (the “Terminated Employees”), were entitled to termination and enhanced severance pay under the Plant Closure Agreement as a result of the Employer’s breach of Article 22.08 of the Casting Collective Agreement.

9. Commencing on August 12, 2025, the Board heard evidence over four additional hearing days with respect to the Terminated Employees. Although at the commencement of that evidence there were sixteen individuals in dispute, only seven of the Terminated Employees were called to give evidence by the Union. The Employer called no evidence in response.

The Issue to be Addressed:

10. The issue to be addressed in this decision is whether any of the Terminated Employees would be entitled to termination and enhanced severance pay under the Plant Closure Agreement as a result of the Employer's breach of Article 22.08 of the Casting Collective Agreement. A review of the timeline provides the background for the evidence of those individuals who testified.

11. In mid March 2023 the Employer offered an early exit package to employees in the bargaining unit based on a lump sum payment of $30,000, which was significantly less than the employees, who accepted it, would be entitled to receive under the termination and enhanced severance pay provisions of the Casting Collective Agreement. In late March 2023 the Employer laid off a number of junior employees effective in early April 2023.

12. On May 1, 2023, the Employer's customers received an email from the Employer notifying them that the Employer was "temporarily suspending production as of July 30^{th} this year [2023]." The Union became aware of this temporary suspension of production through a customer shortly before sending an email on May 18, 2023, to the Employer demanding to know why the Union had not been directly informed of the Employer's intentions. The Employer's written response stated: "As is common when information does not come directly from the source, it is not entirely accurate. The plan is not simply that we will be 'closing operations in July of 2023'. . . ."

13. The termination date for the employees who had accepted the Early Exit Package was May 20, 2023. Some additional employees were laid off in early June 2023.

14. On June 12, 2023, the Employer and the Union met in negotiations to renew the Casting Collective Agreement. On that first day of negotiations the Employer gave a PowerPoint presentation to the Union bargaining committee which contained a timeline for the 2.5-year relaunch program for the WCW casting facility that estimated that the Employer would not be in a position to re-open the WCW casting facility before January 2026. This was the first time the Employer confirmed to the Union the significant length of what it termed a "temporary suspension of production".

15. By letters dated July 17, 2023, the employees of the casting facility were given notice that their last shift would be Thursday, July 27, 2023, and that they were being placed on temporary layoff effective Friday, July 28, 2023. Friday, March 29, 2024, marked the conclusion of the thirty-five weeks of their temporary layoff under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended (the "ESA").

16. The evidence before the Board is that the Terminated Employees either declined recall, quit or were otherwise terminated prior to the temporary layoff on July 28, 2023. All of the Terminated Employees who testified declined recall. For those Terminated Employees the issue is whether there is an evidentiary basis to conclude

that they would have reached a different decision and accepted recall, but for the Employer's breach of Article 22.08 of the Casting Collective Agreement.

17. In support of its position the Employer relied upon the following authorities: *Ontario Hydro v CUPE Local 1000*, 1994 CarswellOnt 7384; *Community Lifecare Inc. v. U.F.C.W., Local 175*, 2008 CarswellOnt 7799; *Molson Breweries and Brewery Workers Union, Local 325, Re*, 1998 CarswellOnt 7454; *Bell Canada and Unifor (Menezes) Re*, 2021 CarswellOnt 2291; *Pharma Plus Drugmarts Co and UFCW Local 175 Re*, 1991 CarswellOnt 6612; *Ontario Power Generation v. Society of Energy Professionals*, 2011 CarswellOnt 14373; *Hamilton Health Sciences and ONA (Lawson), Re*, 2012 CarswellOnt 11299; *Ontario (Ministry of Children and Youth Services) and OPSEU (Rozario), Re,* 2014 CarswellOnt 1145; and *O'Neil v Ontario (Ministry of Government and Community Services), Re,* 2019 CarswellOnt 3463.

18. The authorities relied upon by the Employer are not helpful because they do not focus on the issue before the Board. All of the cases relate to individual grievors who either accepted a voluntary exit package or resigned or retired and then grieved, because circumstances had changed, and they wanted to rescind their earlier decision and revert to their earlier status. In those circumstances arbitration boards are reluctant to allow the grievor to change their mind and reverse their earlier decision. This is not surprising. However, the grievance under Article 22.08 is not based on an affected individual's request to change their prior decision or status. The issue is whether the affected individual is entitled to damages or another remedy because they would have reached a different decision, but for the breach of Article 22.08 by the Employer. The Union is only seeking damages for the breach of Article 22.08. The Union is not seeking to change the status of the affected individuals and any damages awarded would not change the status of any individual who is entitled to damages.

Decision on the Terminated Employees

19. Only seven of the Terminated Employees gave evidence of the circumstances with respect to their decision to decline recall. For those Terminated Employees who did not testify there is no evidentiary basis to conclude that they are entitled to any damages. For the seven Terminated Employees who did testify the evidence does not support the conclusion that they would have reached a different decision at the time of recall and would have returned to work but for the Employer's breach of Article 22.08 of the Casting Collective Agreement. Even though some of the employees who testified, over two years after the time when they made their decision to decline recall, that they would have made a different decision, if they knew they would be entitled to termination and enhanced severance pay, this subjective evidence was not compelling when assessed in the context of the facts of their individual circumstances at the time they made their decision to decline recall.

20. Michael Schwehr testified about the circumstances of his layoff, recall and decision to decline recall. He was given notice of temporary layoff on April 3, 2023, and his last day of work was April 6, 2023. On May 10, 2023, he was recalled with a reminder to respond by May 12, 2023. On May 14, 2023, he responded "Thank you for the call back. I have started a new job and will not be returning to Wescast. Thank you for the opportunity." He testified that he started his new job shortly before being recalled by the Employer. He testified that he was offered the job with the new employer because of family connections with a member of management. In explaining his decision Michael Schwehr testified that he was doubtful that full-time employment with the Employer would be on a consistent basis, and he was concerned that he would be laid off and recalled by the Employer, so he decided to stay with his new employer. In cross examination he confirmed that he didn't accept the recall because he wasn't sure the Employer could offer him steady employment and he didn't want to be laid off and recalled repeatedly. He acknowledged that he had no knowledge about severance when he declined recall and that, given that he gained his new job through family and friends, he did not want to leave them in the lurch. On redirect he stated that if he had accepted recall he probably would not have been subsequently rehired by his new employer because he would have betrayed their good word, which would have left a bad taste in their mouth. Based on this evidence I am satisfied that, if Michael Schwehr had been fully aware of the Employer's plans for the casting facility when he declined recall, he would not have made a different decision, and therefore he is not entitled to any damages based on the Employer's breach of Article 22.08 of the Casting Collective Agreement.

21. Catherine Boyle testified about the circumstances of her layoff, recall and decision to decline recall. She was given notice of temporary layoff on March 29, 2023, and her last day of work was April 6, 2023. In early May 2023 she was recalled. On May 18, 2023, she responded by email with the subject line reading "RE: Not returning from lay off." She testified that she started a new job on April 18, 2023. In explaining her decision to decline recall Catherine Boyle testified that she had a decision to make and the recall notice gave no indication of what her position would be or how long she would be employed if she went back. In addition, she had car payments to consider. In cross examination Ms. Boyle admitted that she declined recall because she didn't know how long she would be employed. Based on this evidence I am satisfied that, if Catherine Boyle had been fully aware of the Employer's plans for the casting facility when she declined recall, she would not have made a different decision, and therefore she is not entitled to any damages based on the Employer's breach of Article 22.08 of the Casting Collective Agreement.

22. Tiffany Struthers testified about the circumstances of her layoff, recall and decision to decline recall. She was given notice of temporary layoff on April 3, 2023, and her last day of work was April 6, 2023. On May 10, 2023, she was recalled with a reminder to respond by May 12, 2023. On May 12, 2023, she responded to Lauren Smith "As much as I'd love to continue to work with you I don't think I'd like to continue to work with them and have this kinda happen again. So thank you but I'm going to decline. And wish you all the best in that hell hole." She testified about the

fact that she had been laidoff and recalled multiple times and that there were supply issues for basic necessities. Although she didn’t have another job when she declined recall, she got one soon after. In explaining her decision to decline recall when she didn’t have another job, she testified that “It’s easier to find other work than get screwed around.” Her testimony reflected her frustration with the Employer that was also reflected in her written decision to decline recall. Based on this evidence I am satisfied that, if Tiffany Struthers had been fully aware of the Employer’s plans for the casting facility when she declined recall, she would not have made a different decision, and therefore she is not entitled to any damages based on the Employer’s breach of Article 22.08 of the Casting Collective Agreement.

23. Tyson Willis testified about the circumstances of his layoff, recall and decision to decline recall. He was given notice of temporary layoff on March 29, 2023, and his last day of work was April 6, 2023. On May 10, 2023, he was recalled, which he declined on May 12, 2023, because he had another job landscaping that he got through a family friend. At the time he was aware of rumors that the casting plant would close. In cross examination in response to why he didn’t accept the recall, he responded “With the rumours I couldn’t afford to go back. I couldn’t afford not to have a job further down the road if that was the case.” He admitted that he declined the recall because he was concerned that the plant would soon shut down permanently. Based on this evidence I am satisfied that, if Tyson Willis had been fully aware of the Employer’s plans for the casting facility when he declined recall, he would not have made a different decision, and therefore he is not entitled to any damages based on the Employer’s breach of Article 22.08 of the Casting Collective Agreement.

24. The following three Terminated Employees who testified were all recalled on June 28, 2023, after the Union became aware of the extent of the Employer’s plans on June 12, 2023. Although there was a dispute over whether the Union was in a position to advise these three Terminated Employees about the Employer’s plans at the time of their recall, it is not necessary to address this issue given the testimony of these three Terminated Employees about the facts of their individual circumstances at the time they made their decision to decline recall.

25. Douglas Fahner testified about the circumstances of his layoff, recall and decision to decline recall. He was an electrician in the maintenance department. He was given notice of temporary layoff in early June, and his last day of work was June 9, 2023. He was recalled on June 28, 2023, to return to work on July 10, 2023. He was required to respond to the recall notice by June 30, 2023. Prior to the recall he had been hired for a new job that was starting on July 4, 2023. He did not respond to the recall notice, but when he received a phone call from a representative of the Employer, he told her he was not returning because he had another job. He testified that he wasn’t certain about the future of the casting plant and he wasn’t interested in staying because of the uncertainty. He stated that given the uncertainty he figured he should be moving on. Based on this evidence I am satisfied that, if Douglas Fahner had been fully aware of the Employer’s plans for the casting facility when he

declined recall, he would not have made a different decision, and therefore he is not entitled to any damages based on the Employer's breach of Article 22.08 of the Casting Collective Agreement.

26. Jordan Van Camp testified about the circumstances of his layoff, recall and decision to decline recall. He was a millwright in the maintenance department. He was given notice of temporary layoff in early June, and his last day of work was June 9, 2023. He was recalled on June 28, 2023, to return to work on July 10, 2023. He was required to respond to the recall notice by June 30, 2023. He testified that when he was laid off, he contacted his prior employer and started working there the following week. He testified that he declined the recall because he had heard the casting plant was closing and he felt the recall was temporary. He stated that he wouldn't leave a stable job for a few weeks of employment. Based on this evidence I am satisfied that, if Jordan Van Camp had been fully aware of the Employer's plans for the casting facility when he declined recall, he would not have made a different decision, and therefore he is not entitled to any damages based on the Employer's breach of Article 22.08 of the Casting Collective Agreement.

27. Alex McKee testified about the circumstances of his layoff, recall and decision to decline recall. He was a millwright in the maintenance department. He was given notice of temporary layoff in early June, and his last day of work was June 9, 2023. He was recalled on June 28, 2023, to return to work on July 10, 2023. He was required to respond to the recall notice by June 30, 2023. He found new employment as a millwright prior to his recall. He was aware of rumors that the plant would shut down. He testified that he didn't respond to the recall because he had new employment and he had already transitioned to his new employer, because he had a mortgage to pay. In cross examination he testified that to leave a newly acquired job to accept recall was not a good financial decision for him and his family. Based on this evidence I am satisfied that, if Alex McKee had been fully aware of the Employer's plans for the casting facility when he declined recall, he would not have made a different decision, and therefore he is not entitled to any damages based on the Employer's breach of Article 22.08 of the Casting Collective Agreement.

Conclusion:

28. In conclusion, the Union's claims for damages on behalf of the Terminated Employees, who are referenced in paragraphs 72 and 80 of the Merits Decision and identified on Schedule A of the Settlement Agreement as amended, are dismissed.

Dated at Toronto this 25th day of May 2026.

Scott G. Thompson