IN THE MATTER OF:

Grievance Nos. 145 I18 24 on behalf of Danilo Sandrino dated February 1, 2024, 146 I18 24 on behalf of Luis Ramos dated February 1, 2024, 147 I18 24 on behalf of Patrick Vargas dated February 1, 2024, 148 I18 24 on behalf of Syed Ashraf dated February 1, 2024, & 167 I18 24 on behalf of Kassaye Gebremariam dated February 6, 2024; and

an Arbitration of the said Grievances;

BETWEEN:

The United Food and Commercial Workers Union, Local 1400,

UNION,

- and -

P&H Milling Group, a Division of Parrish & Heimbecker, Limited, Saskatoon,

EMPLOYER.

APPEARANCES:

For the Union:	Rod Gillies for Danilo Sandrino Ian D. Wagner for Luis Ramos Dawn McBride for Patrick Vargas Patrick A. Thomson for Syed Ashraf Heath Smith for Kassaye Gebremariam
For the Employer:	Robert J. Frost-Hinz

BEFORE:

T. F. (Ted) Koskie, B.Sc., J.D., Sole Arbitrator

DECISION DATE:

December 13, 2024

REASONS

I. BACKGROUND

[1] In Grievance Nos. 145 I18 24 on behalf of Danilo Sandrino ("Sandrino") dated February 1, 2024, 146 I18 24 on behalf of Luis Ramos ("Ramos") dated February 1, 2024, 147 I18 24 on behalf of Patrick Vargas ("Vargas") dated February 1, 2024, 148 I18 24 on behalf of Syed Ashraf ("Ashraf") dated February 1, 2024, and 167 I18 24 on behalf of Kassaye Gebremariam

("Gebremariam") dated February 6, 2024, collectively called the "Grievances,", The United Food and Commercial Workers Union, Local 1400, (the "Union") alleges P&H Milling Group, a Division of Parrish & Heimbecker, Limited, Saskatoon, (the "Employer") unjustly terminated the employment of Sandrino, Ramos, Vargas, Ashraf and Gebremariam, collectively called the "Employees," in violation of the Collective Bargaining Agreement (the "CBA"), any company policy and any applicable legislation.

[2] The Grievances ask that the Employer pay damages with respect to each of the Employees–requested to include "severance as per the CBA up to and including general, aggravated and punitive damages."

[3] The parties were unable to resolve the Grievances and referred same to arbitration. The Union asked the Federal Minister of Labour (the "Minister") to appoint an Arbitrator to hear the Grievances. The Minister appointed me to so serve.

[4] Prior to hearing the Grievances, the Union asked that I order the Employer to produce:

1. International Food Safety BRC Audits just prior to the fire and for the past 5 years.
2. Any documents that relate to the Employer's conclusion that the fire was related to the idling of the equipment.
3. Details of who the maintenance manager was at the time of fire. Details of discipline issued to this maintenance manager as it relates to the fire, if any.
4. Who was the Employer OHA manager at the time of the fire.
5. All OHS minutes for all meetings for the past 5 years.
6. Detailed records of the maintenance/preventative maintenance on the plant equipment that is identified as having been the cause of the fire.
7. A copy of the Employer's Policy on Preventative Maintenance for the plant equipment.
8. Fire Inspector's Report regarding the fire and any previous fire inspections done in the past.
9. Copies of all policies and details regarding the posting of these policies that deal with steps to be taken when equipment repairs are required.
10. Statements of all interviews with witnesses including employees and management related to this fire.

11. Copy of the Employer's Insurance Claim and the Insurer's decision including any insurance adjuster report.

12. Information as to whether any management personnel or out of scope individuals were disciplined or terminated related to the fire, along with any discipline letter provided to these individuals.

13. The schedule for the employees the week of the fire and details of what duties each of the 5 Grievors were assigned that week.

14. Notes of the Preshift/shift changeover meeting the day of fire and day previous.

15. Records of dates and circumstances of all fires in the plant in the last 5 years.

16. Fire inspectors' inspection reports for the past 5 years.

17. Records over the past 5 years of the times and dates that the plant was shutdown and the machines were idling.

18. Discipline records of each Grievor.

19. Discipline for any employee for leaving the machines idling in the past.

20. Training records for these employees respecting the operation of the machines including any specific operation manual for all machines.

[5] The Employer asked that I order:

a) the parties to:

i) engage in mutual disclosure of all documents upon which the party intends to rely (excluding expert reports) no less than fourteen days prior to the commencement of the arbitration proceedings; and

ii) disclose any expert reports–which they intend to rely upon as part of the arbitration proceedings–no less than sixty days prior to the commencement of the arbitration proceedings; and

b) consolidation of the Grievances, or, alternatively, that the Grievances be heard together with any and all evidence adduced in relation to one Grievance to be applicable to all the Grievances.

[6] By agreement of the parties, I heard these applications on August 23, 2024.

II. FACTS

[7] The Grievors all worked at the Employer's flour mill (the "Mill") in Saskatoon, Saskatchewan.

[8] There was a fire (the "Fire") at the Mill, causing significant damage to the facility. As a result, the Employer decided to discontinue operations thereat.

[9] The Employer says each of the Grievors "had behaved negligently and had each contributed to the circumstances giving rise to the fire." Based on that conclusion, the Employer terminated each Grievor's employment.

[10] The Union thereafter filed the Grievances.

III. ISSUES

[11] This decision addresses the following issues:

a) whether the parties are entitled to production of documents as they have requested; and

b) whether the Grievances should be consolidated, heard together or heard separately as five separate matters.

IV. DECISION

[12] I order that:

a) within sixty (60) days of the date of this order, the Employer disclose to the Union all documents upon it each intends to rely in this arbitration, including, but not restricted to the

following:

i) the International Food Safety BRC Audits just prior to the Fire and for the past five (5) years;

ii) any documents that relate to the Employer's conclusion that the Fire was related to the idling of the equipment;

iii) details of whom the maintenance manager was at the time of Fire and details of discipline issued to this maintenance manager as it relates to the Fire, if any;

iv) who was the Employer OHA manager at the time of the Fire;

v) all OHS minutes for all meetings for the past five (5) years;

vi) detailed records of the maintenance/preventative maintenance on the plant equipment that is identified as having been the cause of the Fire;

vii) a copy of the Employer's Policy on Preventative Maintenance for the plant equipment;

viii) the Fire Inspector's Report regarding the Fire and any previous fire inspections done in the past;

ix) copies of all policies and details regarding the posting of these policies that deal with steps to be taken when equipment repairs are required;

x) statements of all interviews with witnesses including employees and management related to this Fire;

xi) a copy of the Employer's Insurance Claim and the Insurer's decision including any insurance adjuster report;

xii) information as to whether any management personnel or out of scope individuals were disciplined or terminated related to the Fire, along with any discipline letter provided to these individuals;

xiii) the schedule for the employees the week of the Fire and details of what duties each of the Grievors were assigned that week;

xiv) notes of the preshift/shift changeover meeting the day of Fire and day previous;

xv) records of dates and circumstances of all fires in the plant in the last five (5) years;

xvi) the Fire inspectors' inspection reports for the past five (5) years;

xvii) the records over the past five (5) years of the times and dates that the plant was shutdown and the machines were idling;

xviii) the discipline records of each Grievor;

xix) the discipline for any employee for leaving the machines idling in the past; and

xx) the training records for these employees respecting the operation of the machines including any specific operation manual for all machines;

b) within sixty (60) days of the date of this order, the Union disclose to the Employer all documents upon which it intends to rely in this arbitration; and

c) no less than sixty (60) days prior to the commencement of the arbitration proceeding, each party disclose to the other all expert reports upon which it intends to rely.

[13] I further order:

a) adjournment of the Employer's application that the Grievances be consolidated or, alternatively, heard together;

b) the Union shall have thirty (30) days following the date the Employer provides the ordered disclosure to it to advise the Employer and me of its position on the application; and

c) if the Union continues to oppose the application, a hearing shall be convened within another thirty (30) days thereafter to hear argument on the matter.

II. REASONS

A. CBA

[14] In deciding this matter, I have had regard for the entire collective bargaining agreement between the Union and Employer (the "CBA"). However, in particular, I considered the following provisions:

> ARTICLE 1 - PURPOSE
>
> 1.1 The general purpose of this Agreement is to establish mutually satisfactory relations between the Company and its employees, and to provide machinery for the prompt and equitable disposition of grievances, and to establish and maintain satisfactory working conditions, hours and wages for all employees who are subject to the provisions of this Agreement.
>
> ARTICLE 2 - SCOPE
>
> 2.1 This agreement applies to all employees of P&H Milling Group, a Division of Parrish & Heimbecker, Limited working at its flour mill at Saskatoon, Saskatchewan, excluding IT personnel, sales personnel, confidential assistants, casual employees, supervisors and those above.
>
> 2.2 The Company will supply the Union for information purposes, names, job titles and principal responsibilities of supervisory and management personnel.
>
> ARTICLE 3 - RECOGNITION
>
> 3.1 The Company acknowledges that the employees in the unit described above have selected the Union as their sole and exclusive collective bargaining agent, and recognizes the Union or its successor as such for all employees in the said Unit.
>
> . . .

ARTICLE 5 - RESERVATION OF MANAGEMENT RIGHTS

5.1 The Union acknowledges the right of the Company to operate and manage its business in all respects in accordance with its commitments and responsibilities and that it is the exclusive right of the Company to:

a. Maintain order, discipline and efficiency.

b. Direct its working forces and assign duties, to hire, transfer, promote, demote and to suspend or discharge employees for just cause, to decrease or increase the working force of the Company subject to the right of the Union to invoke grievance procedure where an employee feels they have been unjustly dealt with.

c. Generally to manage the industrial enterprise in which the Company is engaged and without restricting the generality of the foregoing to determine the number and location of plants, the products to be manufactured, method of manufacturing, schedules or production, kinds and location of machines and the tools to be used, processes of manufacturing and assembling, the engineering and designing of its products, and the control of materials and parts to be incorporated in the products to be produced.

. . .

ARTICLE 9 - GRIEVANCES

. . .

9.3 Grievance Procedure - It is the mutual desire of the parties hereto that complaints of employees shall be adjusted as quickly as possible. Any disputes, disagreement or complaint arising out of the interpretation, application or alleged violation of this agreement shall be dealt with in the following manner.

. . .

c. If, at Step 2, a settlement to the satisfaction of both parties is not achieved, then either party may, request that the grievance be referred to Arbitration as per Article 10.1.

9.4 General

. . .

d. At any stage of the grievance procedure including arbitration, the conferring parties may have the assistance of the employee or employees concerned and any necessary witnesses, and all reasonable arrangements will be made to permit the conferring parties to have access to the plant to view disputed operations and to confer with the necessary witnesses.

. . .

f. A claim by an employee that they have been unjustly discharged from their employment shall be treated as a grievance if a written statement of such grievance is lodged with the Company office within five (5) working days after the employee ceases to work for the Company. All preliminary steps of the grievance procedure prior to Step 2 will be omitted in such cases. Such special grievance may be settled

by confirming the Management's action in dismissing the employee, or by reinstating the employee with full compensation for time lost, or by any other arrangement which is just and equitable in the opinion of the conferring parties.

. . .

ARTICLE 10 - ARBITRATION

. . .

10.3 The parties will attempt to agree upon the choice of a person to act as Arbitrator within five (5) working days of the date of the request for arbitration. This deadline may be extended by mutual agreement of the parties. Failing that, the Federal Minister of Labour will be requested to appoint the Arbitrator. The Arbitrator shall hear their dispute and the decision of the Arbitrator shall be final and binding upon the parties.

The Arbitrator shall not have any jurisdiction to alter or modify any of the provisions of this agreement, nor to substitute any new provisions in lieu thereof, nor to make any decisions inconsistent with the terms and provisions of this Agreement.

. . .

10.4 No employee shall be discharged or disciplined except for just and sufficient cause. Discharge or disciplinary grievances may be settled by confirming the Company's decision, or by reinstating the discharged or suspended employee with or without full compensation or back pay for time lost, less interim earnings, if applicable, or by any other arrangement which is just and equitable in the opinion of the parties or of the Arbitrator if the matter is referred to it.

. . .

ARTICLE18 - SEVERANCE

18.1 a. In the event of termination of employment on account of the permanent closure of the Flour Mill or a major portion, or a Department of it, and the Company has not offered alternative employment for which the employee is capable and qualified within the Flour Mill, then provided the terminated employee has one (1) year or more of continuous service with the Company, the Company will pay to the terminated employee a severance allowance equivalent to two week's pay for each year of service at the employee's current regular rate of pay.

If a displaced employee is offered alternative employment in a lesser paid position than the one (1) held at the time of displacement, their wages shall not be reduced for a period of one (1) year.

b. When an employee's position is eliminated, he will have the option of selecting another position within the department or he may select the position held by the least senior employee in another department, providing he possesses greater plant seniority than the incumbent in the position.

If the senior employee whose position was eliminated selects a postion within the department, the person that was bumped will have the same opportunity to select another position within the department or bump the position held by the least senior employee in another department.

> When more than one (1) position is eliminated, the senior person that has either had their position eliminated or who has been displaced from their position by a senior employee shall have the first opportunity to select their position.
>
> The junior employees that are laid off from the department, but that have enough seniority to prevent being laid off from the plant, will displace the junior employees in the plant. The most senior employee will have the first choice of the vacant positions available and the second most senior will have the second choice, etc., until all affected employees have been assigned to the positions available.
>
> These placements are subject to the senior employee having the immediate qualifications and being capable of satisfactorily performing the work available.
>
> The bumping as outlined above will be limited to two (2) individuals moving into any one department. The bumping limits referred to in this provision may be waived by mutual agreement with the Company and the Union Negotiating Committee.

. . .

B. LEGISLATION

[15] The relevant provisions of the *Canada Labour Code*[1] (the "*Code*") are:

. . .

Interpretation

Definitions
3 (1) In this Part,

. . .

arbitrator means a sole arbitrator selected by the parties to a collective agreement or appointed by the Minister under this Part;

bargaining agent means

> **(a)** a trade union that has been certified by the Board as the bargaining agent for the employees in a bargaining unit and the certification of which has not been revoked,

. . .

bargaining unit means a unit

> **(a)** determined by the Board to be appropriate for collective bargaining, or

[1] R.S.C. 1985, c. L-2

(b) to which a collective agreement applies;

collective agreement means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters;

. . .

employee means any person employed by an employer and includes a dependent contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations;

employer means

(a) any person who employs one or more employees, and

(b) in respect of a dependent contractor, such person as, in the opinion of the Board, has a relationship with the dependent contractor to such extent that the arrangement that governs the performance of services by the dependent contractor for that person can be the subject of collective bargaining;

. . .

parties means

(a) in relation to the entering into, renewing or revising of a collective agreement and in relation to a dispute, the employer and the bargaining agent that acts on behalf of the employer's employees,

(b) in relation to a difference relating to the interpretation, application, administration or alleged contravention of a collective agreement, the employer and the bargaining agent

. . .

trade union means any organization of employees, or any branch or local thereof, the purposes of which include the regulation of relations between employers and employees;

. . .

Employee status preserved
(2) No person ceases to be an employee within the meaning of this Part by reason only of their ceasing to work as the result of a lockout or strike or by reason only of their dismissal contrary to this Part.

Application

Application of Part
4 This Part applies in respect of employees who are employed on or in connection with the operation of any federal work, undertaking or business, in respect of the employers of all such employees in their relations with those employees and in respect of trade unions and employers' organizations composed of those employees or employers.

. . .

DIVISION II

Canada Industrial Relations Board

Establishment and Organization

. . .

Powers of Board
16 The Board has, in relation to any proceeding before it, power

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Board deems requisite to the full investigation and consideration of any matter within its jurisdiction that is before the Board in the proceeding;

. . .

(b) to administer oaths and solemn affirmations;

(c) to receive and accept such evidence and information on oath, affidavit or otherwise as the Board in its discretion sees fit, whether admissible in a court of law or not;

. . .

(f.1) to compel, at any stage of a proceeding, any person to provide information or produce the documents and things that may be relevant to a matter before it, after providing the parties the opportunity to make representations;

. . .

Provision for final settlement without stoppage of work
57 (1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or employees bound by the collective agreement, concerning its interpretation, application, administration or alleged contravention.

. . .

Request to Minister for appointment of arbitrator or arbitration board chairperson
(4) Where a collective agreement provides for final settlement, without stoppage of work, of differences described in subsection (1) by an arbitrator or arbitration board and the parties or their nominees are unable to agree on the selection of an arbitrator or arbitration board chairperson, as the case may be, either party or its nominee may, notwithstanding anything in the collective agreement, make a written request to the Minister to appoint an arbitrator or arbitration board chairperson, as the case may be.

Appointment by Minister
(5) On receipt of a written request under subsection (4), the Minister shall, after such inquiry, if any, as the Minister considers necessary, appoint an arbitrator or arbitration board chairperson, as the case may be.

Effect of appointment by Minister
(6) Any person appointed or selected pursuant to subsection (2), (3) or (5) as an arbitrator or arbitration board chairperson shall be deemed, for all purposes of this Part, to have been appointed pursuant to the collective agreement between the parties.

Decisions not to be reviewed by court
58 (1) Every order or decision of an arbitrator or arbitration board is final and shall not be questioned or reviewed in any court.

(2) No order shall be made, process entered or proceeding taken in any court, whether by way of injunction, certiorari, prohibition, *quo warranto* or otherwise, to question, review, prohibit or restrain an arbitrator or arbitration board in any of their proceedings under this Part.

. . .

Powers of arbitrator, etc.
60 (1) An arbitrator or arbitration board has

(a) the powers conferred on the Board by paragraphs 16(a), (b), (c) and (f.1);

(a.1) the power to interpret, apply and give relief in accordance with a statute relating to employment matters, whether or not there is conflict between the statute and the collective agreement;

(a.2) the power to make the interim orders that the arbitrator or arbitration board considers appropriate;

(a.3) the power to consider submissions provided in the form that the arbitrator or the arbitration board considers appropriate or to which the parties agree;

(a.4) the power to expedite proceedings and to prevent abuse of the arbitration process by making the orders or giving the directions that the arbitrator or arbitration board considers appropriate for those purposes; and

(b) power to determine any question as to whether a matter referred to the arbitrator or arbitration board is arbitrable.

. . .

Idem
(2) Where an arbitrator or arbitration board determines that an employee has been discharged or disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject of the arbitration, the arbitrator or arbitration board has power to substitute for the discharge or discipline such other penalty as to the arbitrator or arbitration board seems just and reasonable in the circumstances.

Procedure
61 An arbitrator or arbitration board shall determine their own procedure, but shall give full opportunity to the parties to the proceeding to present evidence and make submissions to the arbitrator or arbitration board.

. . .

C. ANALYSIS

1. Production/Disclosure

[16] It is important to note that I am not in this decision addressing the merits of the Grievances. In first instance, I am simply considering the mutual requests for disclosure.

[17] The parties agree that I have the authority to order a party to provide information or produce documents and other items that may be relevant to the matter before me. This authority is grounded in sections 16(f.1) and 60(1)(a) of the *Code*.

[18] The key issue is determining the principles that should guide my discretion in deciding whether to compel production and how those principles apply to the specific circumstances of this case. Both the Employer and Union referred me to a considerable number of decisions–mostly arbitral–in a helpful effort to guide me in that regard. Though most of these decisions may well focus upon one principle more than the other, they really do not conflict. I do not believe I need to review each decision. Suffice it to say, I am of the view they can be best summarized by what has been termed the "Air Canada Factors." They flow from the decision of the Canadian Industrial Relations Board in *Air Line Pilots Association* v *Air Canada, et. al.*[2] There, the CIRB defined the following principles and approach that ought to be adopted when considering whether to exercise a discretion to compel production:

a) requests for production are not automatic and must be assessed in each case;

b) the information requested must be arguably relevant to the issue to be decided;

c) the request must be sufficiently particularized so that one can readily determine the nature of the request, the documents sought, the relevant time-frame and the content;

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[2] [1999] CIRB No. 3

d) the production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;

e) the applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested; and

f) the prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.

I am satisfied they are the appropriate principles to guide me.

[19] Before reviewing each of the Air Canada Factors, I will first address the Employer's application that I order each party to disclose to the other all documents, including expert reports, upon which it intends to rely in this arbitration. The Union has not opposed this application. It has only argued that such an order will not ensure it has the documents and information it requires. I therefore find it is only necessary to address the Union's application.

[20] The Employer says the following six (6) of the twenty (20) items listed in the Unions application for production would be included within the production application it made:

a) any documents that relate to the Employer's conclusion that the Fire was related to the idling of the equipment;

b) a copy of the Employer's Policy on Preventative Maintenance for the plant equipment;

c) statements of all interviews with witnesses including employees and management related to this Fire;

d) the discipline records of each Grievor;

e) the discipline for any employee for leaving the machines idling in the past; and

f) the training records for these employees respecting the operation of the machines including any specific operation manual for all machines.

I can therefore infer the Employer does not oppose production of those six items. I therefore will only address the remaining fourteen (14) items.

a. Requests for production are not automatic and must be assessed in each case.

[21] The Union's request for production is clearly being assessed in the context of this case. Neither party has argued to the contrary. This step of the Air Canada Factors has been satisfied.

b. The information requested must be arguably relevant to the issue to be decided.

[22] Based on the authorities, I see the test as being whether the requested information is arguably, potentially or seemingly relevant or having a semblance of relevance.

[23] The Union argues with respect to its request for:

a) "International Food Safety BRC Audits just prior to the Fire and for the past five (5) years," this will assist the Union in addressing the questions of :

   i) whether the Mill was at risk of being shut down prior to the Fire; and

   ii) the condition of the condition of the equipment in the Mill;

b) "details of who the maintenance manager was at the time of Fire and details of discipline issued to this maintenance manager as it relates to the Fire, if any":

   i) issues of safety had been raised with this manager;

ii) the Union believes he was dismissed just prior to the Fire; and

iii) the Union wants to subpoena him to testify at the arbitration;

c) "who was the Employer OHA manager at the time of the Fire":

i) issues of safety had been raised with the Workplace Health and Safety Committee; and

ii) these issues involved equipment issues;

d) "all OHS minutes for all meetings for the past five (5) years":

i) these will reflect issues concerning safety and equipment condition;

e) "detailed records of the maintenance/preventative maintenance on the plant equipment that is identified as having been the cause of the Fire":

i) prior to the Fire, concerns had been lodged with respect to certain equipment;

ii) this will assist the Union in addressing questions related to what problems the Employer was aware of and what maintenance, preventative or otherwise, was followed;

f) "the Fire Inspector's Report regarding the Fire and any previous fire inspections done in the past," "a copy of the Employer's Insurance Claim and the Insurer's decision including any insurance adjuster report" and "the Fire inspectors' inspection reports for the past five (5) years":

i) these will assist the Union in addressing questions related to the cause of the Fire and the Employer's conclusion it was the result of the Grievors' negligence;

g) "copies of all policies and details regarding the posting of these policies that deal with steps to be taken when equipment repairs are required":

i) the Employer is obligated to post same;

h) "information as to whether any management personnel or out of scope individuals were disciplined or terminated related to the Fire, along with any discipline letter provided to these individuals":

i) management personnel were on site at the time of the Fire;

ii) there was ongoing communication between management and employees;

iii) there was no direction from management to employees to shut equipment down; and

iv) these will assist the Union in addressing questions related to what was done and any disciplinary action resulting therefrom;

i) the schedule for the employees the week of the Fire and details of what duties each of the Grievors were assigned that week;

i) though all of the Grievors are described as "millers," they each have different duties;

j) notes of the preshift/shift changeover meeting the day of Fire and day previous;

i) several shifts were involved while waiting for equipment repair;

k) records of dates and circumstances of all fires in the plant in the last five (5) years;

i) the Union believes there have been several fires before the Fire; and

ii) the cause(s) of these fires are relevant to risk and any failure to take steps to address same; and

l) the records over the past five (5) years of the times and dates that the plant was shutdown and the machines were idling;

i) these will assist the Union in addressing the question of whether Employer policy was consistently applied.

[24] The Union argues:

a) the only information it has is:

i) the termination letters sent to the Grievors;

ii) a two-page "Investigation Report summary"; and

iii) a statement from the Employer that the Mill was at risk of being shut down at time prior to the Fire;

b) there were maintenance issues that predate the Fire that threatened closure of the Mill;

c) "in the past" there have been fires at the Mill and a number of times machines have been idling while waiting for repairs;

d) the Employer has not disclosed the cause of the Fire;

e) the termination letters reference an "internal investigation which included the Fire Department, insurance adjusters, and senior and executive management," but do not provide fire, insurance and management reports and give no particulars with respect to the investigation;

f) the Employer provided the Union with a two-page "Investigation Report Summary" that:

i) advises an investigation was conducted;

ii) only shows the Grievors as witnesses; and

iii) references various documents reviewed;

but gives no particulars;

g) the information requests fall into three categories–investigation documentation, historical maintenance records and how the machines in fact operated–that could each call for expert evidence;

h) it expects it will need to call expert evidence, but has so little information, it cannot make a decision as to what is needed;

i) these are termination grievances–the Employer has the burden to prove that termination of the Grievors' employment was an appropriate remedy;

j) in the case at hand, the union is not privy to matters such as causation and Employer standards; and

k) the information requested is therefore relevant.

[25] The Employer argues:

a) the disclosure it has agreed to is sufficient to "assist in ensuring an efficient hearing while avoiding unnecessary delay throughout the course of these proceedings";

b) the remaining documentation requested by the Union goes "beyond the scope of proper

pre-hearing document disclosure"; and

c) the Union's requests for five years of various records goes far beyond the test for reasonable pre-hearing disclosure.

[26] the Employer lodged an addition argument with respect to the Union's request for:

a) "details of whom the maintenance manager was at the time of Fire and details of discipline issued to this maintenance manager as it relates to the Fire, if any";

b) "who was the Employer OHA manager at the time of the Fire"; and

c) "information as to whether any management personnel or out of scope individuals were disciplined or terminated related to the Fire, along with any discipline letter provided to these individuals."

[27] In connection with these three requests, the Employer argues:

a) they "do not focus on existing documents, but instead demand written responses to evidentiary questions";

b) "the Union's request goes beyond a request for material facts or what might otherwise be referred to as 'particulars'";

c) "the Union is requesting [the Employer] to summarize the evidence it anticipates from its witnesses";

d) "such requests are not appropriate and stray beyond the reasonable scope of pre-hearing disclosure in the arbitration process";

e) "any of the three questions set out above could be asked of [the Employer's] witnesses at the

hearing and answered in kind"; and

f) "none of the questions focuses on facts that could be argued as being material to the key issues arising as between the parties."

[28] My view is that the Employer appears to argue that I should restrict compelling disclosure to documentation and not "information." I do not find that persuasive. I remind that my authority under the *Code* allows me to "compel, at any stage of a proceeding, any person to **provide information** or produce the documents and things that may be relevant to a matter before [me]. (emphasis added)"

[29] I prefer and accept the Union's arguments. I am satisfied the Requested Information is relevant.

c. The request must be sufficiently particularized so that one can readily determine the nature of the request, the documents sought, the relevant time-frame and the content.

[30] The Employer did not challenge the Union's request on the basis of particularization.

[31] I am satisfied the Union's request is sufficiently particularized so that the Employer can readily determine the nature of the request, the relevant time-frame and the content.

d. The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case.

[32] The Employer argues the Union is on a fishing expedition and is simply attempting to "see what's out there." In support, it argues "the requests go beyond the scope of proper pre-hearing document disclosure."

[33] The Union denies that it is on a fishing expedition. It relies on its arguments concerning relevance.

[34] I am satisfied the requested production is not in the nature of a fishing expedition and will allow the Union to uncover facts and information to support its existing case.

e. The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested.

[35] The Employer did not directly argue there was no probative nexus between its positions in the dispute and the requested information. However, I can only infer it takes such a view because of not only its perceived excessive breadth and time span of the requests. Unfortunately, without more, this argument is not persuasive to me.

[36] The Union maintains there is a nexus. Again, it relies on its arguments concerning relevance.

[37] I am satisfied the Union has demonstrated a probative nexus between its positions in the dispute and the Requested Information.

f. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.

[38] The Employer did not directly argue there was a prejudicial aspect of introducing the evidence that outweighed the probative value of the evidence itself. It did argue some of the documentation and information was already available to the Union and the Grievors. It also argued its perceived excessive breadth and time span of the requests. I also infer the Employer is of the view there is no current practical need to have the requested information produced for these Grievances.

[39] The Union also did not directly argue this factor.

[40] It is my view:

a) the onus is on the Employer to justify its refusal to disclose the requested information;

b) privacy and confidentiality concerns have no application here as the Employer is not a public employer subject to privacy legislation and disclosure of the requested information will be pursuant to an order of a quasi-judicial tribunal and therefore required by law;

c) the requested information would directly or indirectly enable the Union to advance its own case;

d) not having the requested information would potentially make it difficult for the Union to be able to advance its case;

e) even accepting that a party is not required to help bolster the opposing party's case, the requested information is sufficiently important to advancing the Union's case that it should be disclosed; and

f) disclosure of the requested information would ensure that the adjudicative process is fair.

[41] The Employer has not persuaded me it will suffer any prejudice with production of the requested information. Furthermore, I find there is no confidential aspect to the requested information that would cause me to decline to order it production.

[42] I find this an appropriate case to order the requested production.

2. Consolidation

[43] The Employer asks that I consolidate the Grievances or, alternatively, order that they be heard together.

[44] The Employer submits:

> that the authority granted to an arbitrator pursuant to ss. 60(1)(a.2) and (a.4), combined with the Ministerial assignment of all five Grievances to Arbitrator Koskie's jurisdiction, results in a circumstance in which Arbitrator Koskie is undeniably authorized and with jurisdiction to order the

consolidation of the five Grievances into a single grievance or, alternatively, that all five Grievances be "heard together" as that term is generally utilized in the jurisprudence.

[45] The Employer referred me to a number of decisions in a helpful effort to guide me in that regard. I do not believe I need to review each decision. Suffice it to say, I am of the view they not only confirm my authority to order the relief sought by the Employer, they also discuss the principles and approach that ought to be adopted when considering and deciding the manner in which the Grievances ought to be heard.

[46] The Union did not take issue with the Employer's submission with respect to my authority in this regard. However, it has opposed the Employer's application. The Union argues there may be a conflict of interest between the Grievors that could potentially give rise to positions that conflicted with one another as part of a consolidated hearing. However, the Union submitted that it may "concede" consolidation, but that it wanted to defer its decision in that regard until it had an opportunity to see whatever disclosure I ordered.

[47] I am of the view it is reasonable to allow the Union an opportunity to see the disclosure I have today ordered before making a decision on its position with respect to the Employer's application. I am reluctant to analyze and rule upon the Employer's application without hearing the Union's argument if it continues to be opposed. I am therefore going to defer hearing and deciding upon the application.

[48] I am prepared to give the Union thirty (30) days following the date the Employer provides the ordered disclosure to it to advise the Employer and me of its position on the application. If the Union continues to oppose the application, I direct that a hearing be convened within another thirty (30) days thereafter to hear argument on the matter.

Dated on December 13, 2024.

T. F. (Ted) Koskie, B.Sc., LL.B.,
Sole Arbitrator