IN THE MATTER OF AN ARBITRATION, PURSUANT TO THE
B.C. LABOUR RELATIONS CODE, RSBC 1996 c. 244 (the "*Code")*

BETWEEN:

BRITISH COLUMBIA EMERGENCY HEALTH SERVICES

the "Employer"

AND:

AMBULANCE PARAMEDICS OF BRITISH COLUMBIA
CUPE, LOCAL 873

the "Union"

AWARD RE POSTING/RESCINDING OF POSITIONS

Arbitrator:	Gabriel Somjen, QC
For the Employer:	Ryan Goldvine and Guida Heir
For the Union:	Michael Shapiro
Date of Hearing:	March 23, 24 & 31, 2021 via ZOOM
Date of Award:	April 12, 2021

This grievance arises from a change in the Employer's practise with respect to job posting opportunities for ambulance paramedics.

The Employer operates the BC Provincial Ambulance Service which is a 24/7 service.

The Ambulance Service is comprised of "posts", each covering a geographic area. Posts may have one or more ambulance stations within them. Rural and remote posts generally have a single ambulance station. Larger urban posts often have multiple stations. These larger posts can cover a wide geographic area. For example, the Vancouver post has 22 stations including the area from West Vancouver to Delta, Langley, Maple Ridge and, of course, Vancouver itself.

Each ambulance station typically has four “platoons” of paramedics (A,B,C,D) and each platoon has a different schedule. Within each platoon paramedics work different shift patterns. For example, some work 12-hour shifts (Alpha pattern). Some work 7.5-hour shifts (Delta pattern). Full-time regular paramedics are attached to a particular post, a station within that post and work on a specific platoon with a specific shift pattern.

In addition to regular employees there are also "irregular" employees who may be assigned as needed. These employees do not "own" a particular shift, platoon, or station.

Article 13 of the collective agreement sets out a complex set of procedures for the Employer to fill vacant positions and for employees to apply for such positions. Paramedics can apply for any job posting but are not required to do so. They may apply for postings for a number of reasons including: to improve their skills and training; to earn more income; to move to a more desirable location for that paramedic. The posting and filling of positions is a complicated procedure. Ultimately the positions are filled based on qualifications and seniority.

In addition to applications for positions which may result in offers to the applicant and acceptance by the applicant there is also a process known as a "shuffle" which occurs within the post. In Vancouver, this shuffle occurs among employees before regular job postings. In other parts of the province, the shuffle occurs after the vacant positions are filled within the posts.

This system results in many moves by employees within the Province each year. Employer witness Brendan Cindric testified that each year the Employer posts and seeks to fill about 450 vacancies, give, or take 50. Now, more than ever, there are many vacancies to be filled because recent changes to the collective agreement resulted in creating more regular positions and fewer "Fox" positions (held by irregular employees).

Paramedics who apply for a vacancy and are qualified may be offered a position, depending on their seniority relative to other applicants. Once the offer is made, the employee has 24 hours to verbally accept the offer and a further 24 hours to accept it in writing. Once the offer has been accepted, the Employer usually allows up to 90 days for the employee to transfer to the new position. Sometimes the 90 days can be extended, depending on the circumstances.

Prior to 2020, employees would sometimes rescind their acceptance within the 90-day period.

I heard considerable evidence of examples when this would happen and what the consequences were. The exact number of occasions per year when an employee would rescind their acceptance is not clear, but it happens with some frequency. Prior to 2020 the Employer almost invariably accepted rescissions during the 90-day period, without questioning or rejecting them.

In its particulars the Employer states:

> The employer agrees that it has consistently been flexible in the past in permitting employees to rescind their acceptance of job offers; however, the employer does not agree, at this time, that all employees who asked to rescind their acceptance of a job offer were permitted to do so.

The evidence I heard was that the Employer knows of a single occasion involving a paramedic named Bryan Cox where the employee's rescission request was rejected by the Employer. I will describe that situation in more detail later but, from the many cases of postings and several examples of rescission that I heard, this was the only one where the Employer took issue with the employee's rescission request. Elsewhere in its particulars the Employer refers to its practice of permitting rescission "…as a matter of course…".

This was the Employer's practice for a long time. No one knew exactly how long the Employer had this relaxed policy with respect to rescission but the Union's witness, Jason Jackson, recalls that it has been so for at least the 25 years that he has been an employee. It is likely that this practice existed before that. Throughout this time a number of collective agreements have been negotiated and neither party raised any issue with respect to the Employer's practice in regard to rescission of acceptances.

Employer witness Rachelle Ernst recalled a mediation meeting at the BC Labour Relations Board where a Union member mentioned that the practice of employees rescinding was "bad". Neither the Union nor the Employer suggested the practice should change, nor did they raise the issue in the last round of bargaining for the 2019-2022 collective agreement.

In 2020, the Employer changed its policy with respect to rescissions of job acceptances. The Employer was faced with hundreds of new regular bargaining unit positions and the complicated logistics involved in recruiting in these circumstances. In addition, there had been times when an employee had been required to attend a new position on short notice, in part caused by another employee rescinding a job acceptance.

Therefore, the Employer decided to reduce the number of people rescinding.

On September 28, 2020, the Employer wrote to the Union:

> We write regarding the above noted issue. In the past the employer has offered employees positions from a job posting which the employee accepts, and subsequently advises the employer they are rescinding their acceptance. This has resulted in delays in filling positions and in some cases may have resulted in the employer covering the costs of employees taking days off work to search for housing, only to have them rescind their acceptance without explanation later. In addition to the employer concerns above the union has raised concerns that employees are being disadvantaged by our practice of offering employees last minute opportunities to accept ACP positions and enter orientation. These late offers are also the result of other employees that have rescinded acceptance last minute and the employer attempting to fill the orientation class. The employer has also discussed the impact employees rescinding acceptance of a position would have on the upcoming mass unit chief posting and subsequent SOC positions and have determined a change in practice is required to ensure a smooth and timely filling of positions. After a review of Collective Agreement provisions, we have determined there is no negotiated right for the employees to rescind their acceptance. Based on this we have determined that this issue falls within managements rights to implement a policy or procedure.
>
> Out of an abundance of caution the employer is providing the union with 30 days notice of a change in procedure regarding employee requests to rescind acceptance of a position. Effective with the first position offer made November 1, 2020 and there after, employee requests to rescind will be reviewed on a case by case basis, taking into consideration the reasons provided by the employee for wishing to rescind their acceptance.
>
> Below is the language that will be added to the postings along with the wording being added to the acceptance letters employees sign and return.
>
> **Posting Language:**
> Applicants who sign and accept an offer in good faith are relinquishing their rights to the position they currently hold. Employees will not be permitted to rescind their acceptance or decline the new position unless they can provide a bona-fide reason acceptable to the employer. This change in practice will be effective with all offers made starting November 1, 2020
>
> **Acceptance of Permanent new role:**
> I understand that by signing this offer letter and accepting the new position, I am relinquishing my rights to the position I currently hold which will be posted and filled following Article 13.00 of the collective agreement. Applicants who sign and accept an offer in good faith will not be permitted to rescind their acceptance or decline the new position.
>
> To confirm your acceptance, a signed copy of the attached offer letter must be received by Talent Acquisition at XXXXX within 24 hours to be awarded the position offered.
>
> **Acceptance of temporary new role:**
> I understand that by signing this offer letter and accepting the new position, I am relinquishing my rights to the position I currently hold for the duration of the temporary position. Applicants who sign and accept on offer in good faith will not be permitted to rescind their acceptance or decline the new temporary role.

> To confirm your acceptance, a signed copy of the attached offer letter must be received by Talent Acquisition at XXXXX within 24 hours to be awarded the temporary role offered.
>
> We will be communicating the above information to employees during the week of September 28, 2020.
>
> If you have any questions or concerns regarding this change in procedure, please contact the writer to discuss.

On October 5, the Employer wrote the following brief letter to all paramedics outlining the same new policy.

> Starting November 1, 2020, there will be a change in procedure regarding employee requests to rescind acceptance of a new position. When an employee accepts a new position and signs the acceptance letter, they will relinquish the rights to the position they currently hold and will not be permitted to rescind their acceptance or decline the new position. Exceptional circumstances for rescinding an accepted offer may be reviewed and considered on a case-by-case basis.
>
> Instances of employment offers being accepted and then rescinded negatively impacts our service by way of delayed recruitment, last minute offers then made to other employees, avoidable staffing pressures, lost time, and wasted resources. Notification of this change has been shared with CUPE 873/APAD.
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> All employment offers made from November 1, 2020 onward will have this change applied.

Due to the large number of new positions and the delay and potential disruption that can occur because of rescissions, the Employer sought to limit the opportunities for employees to rescind, in contrast to its previous practice of allowing such rescissions within the 90 days before reporting to the job.

This resulted in the Union filing a grievance. The Union's grievance and argument in this arbitration is based on four alternative positions which are set out in the Union's written argument:

> We say that the right to rescind a previously accepted position at any time before starting the position is a reasonable privilege and a concession that has been enjoyed by the Union and by its members for over 25 years (a period spanning many collective agreements). As such, it is an acquired right under article 30.01. We say that the Employer breached article 30.01 by unilaterally abridging this acquired right.
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> In the alternative, we say that the Employer is estopped from discontinuing the practice of consistently and as a matter of course permitting paramedics to rescind previously accepted positions at any time and for any reason prior to starting the positions until the commencement of the next collective agreement.
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> We also say that by requiring successful applicants to agree to relinquish their rights to their positions in order to accept another position the Employer is breaching article

4.02 by making agreements with individual employees that conflict with the terms of the collective agreement.

In the further alternative, we say that the Employer's current rules with respect to rescinding of acceptances of positions are unenforceable because they constitute an unreasonable Employer policy.

There were several reasons given in the examples I heard that would explain why an employee would initially accept an offer to move to a new position but later rescind.

This might occur because the employee found that in the new location and with the new platoon and shift schedule, they were not able to find appropriate accommodation, schooling, or day care for their children, appropriate employment for their spouse, or other similar reasons. In addition, an employee who accepted the offer may find that they had difficulty selling their current home and could not afford to carry that as well as the cost of accommodation in the new location.

This was the situation in the one case that I heard where the Employer refused to accept rescission. Bryan Cox worked at a Victoria station and applied for a position in Kelowna, in 2015. He had difficulty selling his residence and asked for a 30-day extension, which was granted. He still had difficulty selling his home and asked to rescind his acceptance. This request was refused by the Employer. He was told to report after the 30-day extension and reported to Kelowna, although at that point he had not sold his home.

The Union filed a grievance on his behalf. Shortly after, he was able to sell his home and remained in Kelowna. For 3 years the grievance remained dormant because it was moot. The Union withdrew the grievance in 2018, without prejudice and without precedent.

While the Cox case is an exception to the Employer's general practice of allowing rescissions, it does demonstrate the tension between the employee's request to rescind and the Employer's interests in these situations. The employee may have difficulty selling their home and, therefore, rescinds the acceptance, even though they would like to go to the new location. The Employer, on the other hand, wants to fill vacancies quickly and avoid delays going back to the applicant list to find another candidate when an employee rescinds. Rescissions can slow the process of filling vacant positions and can affect a number of employees, not just the employee rescinding, because of the seniority factor.

The employee may suffer serious financial consequences if they are not able to rescind and the Employer demonstrated that there are difficulties for the Employer and potentially other employees when an employee does rescind. Nevertheless, for decades, the Employer was able to work with a certain number of rescissions within its complicated job posting process. There was no evidence that the Ambulance Service was affected or that the Employer suffered any negative consequences of rescissions, other than delay and the administrative burden in filling positions. Both the Union and the Employer agree that filling positions in a timely way is desirable. Both have legitimate interests in these situations.

The change in the Employer's policy in 2020 means that employees who apply for a position and accept an offer are required to report to that position. They may seek to rescind their acceptance, but the Employer now does not, as a matter of course, allow such rescission. Now the Employer examines the employee's circumstances on a case-by-case basis. In addition, the Employer now requires employees to give up their current position if they accept a new one, which is different than the situation previously.

Prior to 2020, an employee who rescinded may not have their prior position to go back to if it had already been filled by the Employer but, if it had not, they would go back to their old position. If it had been filled, they would generally go back to their post and either fill another position or work as an irregular employee. Under the new policy employees may not be able to rescind and may not be able to go back to their previous employment, even if the position has not been filled.

I heard considerable evidence about the difficulty employees have in moving to a new position in circumstances where they may not be aware of the precise location, platoon, or shift schedule. In a single station post this is generally not a problem because the employee knows where they are going and what the work schedule will be. However, in a number of larger locations the post will contain multiple stations (for example, Vancouver has 22). When an employee applies and accepts a position they do not know exactly where the station will be or what platoon or shift schedule they will be required to work.

While it is true that employees do not have to accept any position within a post, (they can apply only for the particular stations that they consider desirable) they still may not know for some time after accepting the position exactly where they will work and what the shift schedules will be. During the relatively short 90-day period they must find accommodation, appropriate schooling, daycare, work for a spouse, etc. Sometimes these arrangements are difficult or impossible to make and lead the employee to rescind.

The Employer argued that it recognizes these difficulties, but employees can do their due diligence before accepting a position because they know that certain postings occur on a regular basis (for example 3 times a year in Vancouver).

The Employer does recognize the importance of employees advancing their career and finding desirable locations and shifts. With that in mind, the Employer, even under the new policy, allows employees to accept a subsequent job posting even if they have accepted an offer at another location. The Employer does not consider these to be "rescissions" and recognizes the importance of allowing employees to accept a second, more desirable, position in the interests of their career.

Although the Employer was able to show the delay and administrative difficulties with rescissions, I heard no evidence of employees rescinding for frivolous reasons nor was that suggested by the Employer. I accept the evidence of Jason Jackson that employees who accept an offer generally want to take the new position and only rescind when there is some impediment to them accepting. Furthermore, even under the old practice an employee who accepted a position and later rescinded may find that their old position had been filled, so they were not automatically guaranteed to return to their previous position. This was conceded by the Union in the hearing.

It is clear that the interests of the employees who seek to rescind and the Employer which seeks to fill vacant positions in a timely manner are somewhat opposed. Although I do not look at the practice of allowing rescissions as a standalone proposition, it is part of a complicated scheme that the parties have agreed to and developed over the years that provides for the filling of vacant positions and a posting and application process that allows employees to apply for such vacancies. Rescission has been a part of that process and provides some balance between these competing interests.

II

Article 30.01

The Union's first argument is that the ability to rescind a previously accepted position before starting in it, is a "…reasonable privilege and concession that has been enjoyed…" by the Union and its members for over 25 years, a period spanning several collective agreements. It is, therefore, an "acquired right" under Article 30.01 of the collective agreement, which states:

> 30. PRESENT CONDITIONS AND BENEFITS
>
> 30.01 Continuation of acquired rights
>
> Save as herein contained, all reasonable privileges and concessions enjoyed by either party prior to the signing of this Agreement shall continue in full force and effect and shall not be affected by this Agreement.

This language has been considered in previous arbitrations. For example, in *Emergency Health Services Commission and Ambulance Health Services Commission (Longeway Grievance),* [1997] B.C.C.A.A.A. No. 349 (Ready) the arbitrator concluded that the discontinuance of audiology testing for dispatchers was a breach of Article 30.01 because testing had been in place for Victoria dispatchers for two years, spanning two collective agreements.

In *Emergency Health Service Commission and Ambulance Paramedics of British Columbia,* [1998] B.C.C.A.A.A. (Kelleher), the arbitrator concluded that cancellation of free parking was not a breach of Article 30.01 because the cancellation was done by Surrey Memorial Hospital, not the employer. However, Arbitrator Kelleher went on to say:

> 36 Article 30.01 is an important aspect of the parties' Collective Agreement. That is clear from the Ready Award which is quoted above. But in my view it is not so broad as to encompass privileges or concessions that are extended by persons other than the Employer. For example, it may be possible to park on 96th Avenue, adjacent to Surrey Memorial Hospital. But if the City of Surrey were to take away this "privilege" by erecting parking meters on 96th Avenue, would this be captured by Article 30.01? In my view it would not.
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> 37 Article 30.01 is not irrelevant to the question of parking. The Employer's policy is that if space is available, employees may use that space for parking. The Employer's policy is also not to charge for such parking spaces. Those policies provide "privileges" to some employees. If the Employer were to decide it wished to bring this

> practice to an end and to charge employees for parking, Article 30.01 would likely stand in its way. It would need to take this proposal to the bargaining table. (emphasis added)

Similarly, in *Inter-Provincial Steel and Pipe Corp. v. United Steelworkers of America, Local 5404 (Prescription Safety Lenses Grievance)*, [1986] B.C.C.A.A.A. No. 292 Arbitrator Larson found a breach by the employer of a similar clause (see below) because the employer ceased a practice of allowing employees to mount employer-supplied safety lenses on frames of the employee's choosing:

> 17.06 Established practices: Any rights and privileges enjoyed by the employees prior to the execution of this agreement shall be continued and no change shall be put into effect unless mutually agreed to by the Company and the Union. This clause shall not take precedence over any of the provisions of this agreement." (at pg.3)

At paragraph 16 he concluded:

> By the words of Article 17.06 it is only necessary to show that a right or privilege has been enjoyed by virtue of a practice prior to the execution of the agreement. If such a practice existed, that clause requires that it be continued and that no change may be effected except by mutual agreement. It is not necessary under that provision to prove a representation by words or conduct, that it was intended to affect the legal relationship of the parties, and in particular, a detrimental reliance as in: School District No, 24 (Kamloops) and Canadian Union of Public Employees, Local 900 (1980) 29 LAC (2d) 93 (Weiler); Shaughnessy Hospital and Hospital Employees' Union, Local 180 (1982) 5 LAC (3d) 172 (Vickers). A singular exception is stipulated in Article 17.06 that no practice can be enforced against any express term of the collective agreement. [Emphasis added]

The Union argues that the term "privilege" has been given broad meaning. For example, in *J.S. McMillan Fisheries and United Fisherman and Allied Workers' Union*, [1997] B.C.C.A.A.A. No. 128 (Gordon) the arbitrator stated:

> 39 In determining that the grievors did indeed enjoy a "privilege" to work beyond age 65 the arbitrator reviewed an earlier decision of the Ontario Labour Relations Board which defined privilege broadly:
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> > ... The term "privilege" is extremely broad and extends to all of those benefits which an employee is accustomed to receiving but to which he is not legally entitled, and which cannot, therefore, be considered a "right". In order to determine whether a particular benefit, or aspect of the employment relationship, has become a privilege, it is necessary to examine the circumstances of each particular case since privileges can arise from established custom, practice, or policy. The question is an evidentiary one for, by definition, the Board's consideration must go beyond strictly legal incidents of the relationship (rights) and include those aspects of the relationship which give rise to "privileges"
> >
> > In order to demonstrate the existence of a privilege, it is not necessary to establish a contractual right, a formal written policy, or an expressed promise. It is sufficient if there is an established, and well entrenched, course of conduct

> which gives rise to a reasonable expectation that a benefit, previously given, will be continued. [Emphasis added]

Furthermore, the Union argues that the word "concession" means: "an act or an instance of conceding (as by granting something as a right…)" (Merriam-Webster dictionary).

In addition to the long-standing practice of the Employer, these parties negotiated an exception to it in an agreement that states:

> In-post applicants who have submitted a post shuffle preference form will not be permitted to rescind their application or decline the new position after the close of the posting.

The Union argues that there would be no need to negotiate this language if the Employer already had the right to prevent rescission.

III

The Employer argues that the practise of allowing rescissions is not a right found anywhere in the collective agreement. The change to that practise is an exercise of management rights. The Employer has not reverted to the strict language of the collective agreement; there is no such language. There is no freestanding right to rescind.

Contrary to the cases relied on by the Union, the Employer referred to another decision between these parties: *British Columbia Emergency Health Services and Ambulance Paramedics of British Columbia CUPE, Local 873 (Victoria Post Central Reporting Station Deployment) Re,* 2013 Carswell 1869. The employer changed the deployment model in Victoria, which led to a new station being built. The employer directed that crew quarters would then be shared between paramedics and other BCEHS employees. The union argued that private crew quarters for paramedics was a privilege or concession under Article 30.01.

Arbitrator Dorsey denied the union's grievance. At paragraph 288 he states:

> Article 30.01 does not prevent operational changes or entitle employees to prevent the employer from implementing a method of operation that is not otherwise restricted in the collective agreement. It does not trump and must be read in harmony with Article 2.01.

The Employer also notes that the new policy does not prohibit rescission but provides for case-by case consideration. Also, paramedics who have accepted a position are still allowed to accept a subsequent position; this is not considered "rescission" by the Employer.

IV

I agree that the Employer is entitled to make operational changes, subject to limitations in the collective agreement. Here, the Employer had legitimate interests in limiting rescissions and changed its policy, in good faith, to accomplish that goal.

I also agree with the Employer that rescission is not a free-standing right, taken out of context.

However, the policy change was not merely an operational change. The previous policy of allowing rescission was more than an indulgence to paramedics. It was a privilege or concession that was reasonable in the context of other factors; it was part of a balanced system of posting and filling vacancies.

The Employer requires paramedics to accept an offer within 48 hours and generally requires that they report for the new position within 90 days. In some cases, the employee knows the location and shifts they will be working but, in other situations, they may not know this at the time of acceptance of an offer.

The employee has this time to find new accommodation, etc., and to ensure that they can make the move in a viable manner.

The ability to rescind was a counterbalance in the event the move turned out to be impractical or even impossible. It was not a stand alone right but a privilege or concession that was reasonable and allowed employees to apply for postings within the timeframes required by the Employer. It balanced the interest of the Employer in getting positions filled in a timely way, while allowing the employee a fallback if their acceptance of an offer became difficult or impossible.

I conclude that within this system of postings, the timelines and other criteria for acceptance, the ability to rescind prior to taking a new position is a reasonable “privilege” and a “concession” that has been enjoyed by employees for many years. It is, therefore, an “acquired right” pursuant to Article 30.01 of the collective agreement. That right can be negotiated in collective bargaining but cannot be unilaterally altered.

V

While this conclusion is dispositive of the grievance, in the interest of completeness and in the event I am wrong in this conclusion, I will address the Union's estoppel argument.

The doctrine of estoppel has existed for many years and has evolved in labour relations matters in BC to what is now referred to as the “modern doctrine of estoppel”, as in *Simon Fraser University v. Canadian Union of Public Employees, Local 3338,* [2004] B.C.C.A.A.A. No. 224 where Arbitrator Hall stated:

> 43 ... At least for present purposes, I prefer to adopt what has been said more recently by our Labour Relations Board. Under the modern approach, the traditional compartmentalization of equitable remedies and their strict requirements have given way to a broad principle designed to avoid inequitable detriment. An estoppel may arise where: (a) intentionally or not, one party has unequivocally represented that it will not rely on its legal rights; (b) the second party has relied on the representation; and (c) the second party would suffer real harm or detriment if the first party were allowed to change its position. The requirement of unequivocal representation or conduct is a question of fact and may arise from silence where the circumstances create an obligation to speak out. The notion of reliance must be assessed from the

> perspective of the party raising the estoppel. In the labour relations context, the element of detriment may be satisfied by a lost opportunity to negotiate.

While this doctrine requires certain elements to apply, in the end, it is an equitable remedy. It is intended to avoid unfairness in circumstances where one party has unequivocally represented that it will not be relying on its legal rights; it would be unfair to allow it to change that position in circumstances where the other party has relied on the representation to its detriment.

The Employer argues that a mere practice may not be the foundation of an estoppel and refers to the case of *Bramalea Pritzker & Associates (Hyatt Regency Hotel) -and- Unite Here, Local 40 (Section 104-Case No 202*0-00974) Re Staff Meals (February 24, 2021), unreported, (Rogers), in which the arbitrator concluded that it was not sufficient to create an estoppel that the employer had in the past provided meals to employees at a discount but later discontinued the practice or that meals that were to be provided to other employees would be made by bargaining unit staff.

The statement Arbitrator Rogers makes at page 8: “Past practise alone cannot create a basis for estoppel” would support the Employer’s argument.

However, that proposition must be taken in context. I do not take it to apply to all cases of past practise. Arbitrators and the BC Labour Relations Board have concluded that the existence of a practice may sometimes be the basis of an estoppel, as in *Vancouver (City) (Re),* BCLRB No. B12/2008 at para. 18:

> There is no principle of the Code that a practice cannot found an estoppel. To the contrary, in Harbour Cruises Ltd., BCLRB No. B181/2004, the Board held:
>
> > ... the existence of a practice may be sufficient to found an estoppel as a representation need not be made by words, and can be made by conduct. In order to establish an estoppel by past practice, there must be clear and unequivocal commitments (either oral, in writing or by conduct) made from one party to the party claiming estoppel. Further, the other elements necessary for a finding of estoppel must be present: 1) the representation was intended (or was reasonably construed as intended) to affect the legal relations between the parties; 2) the party to which it is directed places some reliance in the form of some action or inaction on the representation; and 3) detriment results therefrom. (para. 44; emphasis added)

In the present case, the practice is sufficient to be the basis of a representation required for an estoppel. The practice has been long-standing for at least 25 years. It has been well known to employees and the Union. It has been nearly invariable, with the one exception of Mr. Cox. It has not been raised by either party in collective bargaining over the course of several collective agreements.

In addition, the Employer has a published policy with respect to relocation of employees who have accepted a position. This policy is also incorporated into the collective agreement by reference (Article 13.06(b)). This policy allows employees who accept a position, to take up to five days of paid leave at the new location to find accommodation.

It also states: "…if, after taking the house hunting trip you decide that you do not want to take the job; all expenses for this trip become your responsibility…".

While it does not specifically say that the employee has a right to rescind, the policy is consistent with that proposition. An employee or the Union, reading this policy, could reasonably understand it as confirming the ability of the employee to rescind acceptance of an offer.

The long-standing and consistent practice, together with this relocation policy, establish the representation required for an estoppel.

The Union argued that it relied, to its detriment, on this representation because it did not have any indication that rescission by employees was an issue that the Employer wished to change, until after the current collective agreement had been concluded. Jason Jackson testified that, had the Union known the Employer would change its long-standing practice in this regard it would have tabled bargaining proposals to deal with such a change.

While, in some cases, a missed opportunity to negotiate may not amount to detrimental reliance, I conclude that in this case it does. (See *Simon Fraser University*, supra, at paragraph 63). For decades, and spanning several collective agreements, the Union understood the Employer's policy and had no indication that it would resile from it until after the current collective agreement had been negotiated.

The Employer argued that the Cox case in 2015 was one where the Employer refused to allow an employee to rescind, and the Union grieved. The Employer argues that the Union was, therefore, aware of the Employer's concern with rescission. However, in that case the employee took the new position and, shortly thereafter, was able to sell his home, so the issue of rescission became moot. The grievance was in abeyance for a few years until it was withdrawn by the Union in 2018, without prejudice and without precedent.

There was no further issue taken by the Employer with respect to rescission, either before or after the Cox case. In those circumstances, I find that it was reasonable for the Union to continue to rely on the Employer's practice and representation with respect to rescission. In this case, the lost opportunity to negotiate this issue over the course of several collective agreements is sufficient to satisfy the requirement of detrimental reliance by the Union.

I, therefore, conclude that all the elements of an estoppel have been satisfied. The Employer's practice and relocation policy confirm the ability of employees to rescind prior to taking a new position and the Union relied on that representation to its detriment.

In view of these conclusions, there is no need for me to consider the Union's third and fourth arguments which related to a breach of Article 4.02 of the collective agreement and the reasonableness of the Employer's current policy with respect to rescission.

I make the following orders:

> I declare that the ability of paramedics to rescind a previously accepted position, up to the time for starting in it, is an acquired right under Article 30.01 of the collective agreement.
>
> I declare that the Employer is estopped from discontinuing its practice of consistently and, as a matter of course, permitting paramedics to rescind previously accepted positions before the time for starting, until the commencement of the next collective agreement.

The Union also sought an order that all members affected by the Employer's breaches be made whole, with the issue of specific remedies to be remitted to the parties. As there was no evidence before me about any harm to employees, I remit that issue to the parties to determine and agree. If they are not able to do so, I remain seized.

Dated at Vancouver, British Columbia this 12th day of April 2021.

" Gabriel Somjen "

Gabriel Somjen, QC
Arbitrator