

Court has no jurisdiction to block hospital layoffs

When will a court intervene to grant an injunction in a dispute that is being heard by an arbitrator or other tribunal? This issue arose in *Ontario Nurses' Association v. Toronto Hospital*, a decision of the Ontario Court, General Division released November 4, 1996.

In mid to late 1996, the Toronto Hospital gave layoff notices to 387 Registered Nurses, effective November 8, 1996. The move was part of the Hospital's efforts to reduce costs through implementation of a staffing model that made increased use of Registered Practical Nurses and unregulated health care aides. The union went to court seeking to block the layoffs.

At the time, the union and the Hospital were in the process of having their new collective agreement settled by an arbitration board, which had the power to make any terms of the agreement retroactive. The parties had already agreed on several enhancements to job security, but not the date on which they would become effective. On October 18, 1996, the union asked the arbitration board to issue a partial final award that would make the new job security provisions apply to the most recent round of layoffs. The board reserved its decision, considering whether it had the power to issue such an interim award.

As well, the union had filed a complaint with the Ontario Labour Relations Board, alleging that the new staffing model and layoff notices were illegal, and had launched grievances against the Hospital's initiatives.

Before the court, the union argued that, although the arbitration board had exclusive jurisdiction to rule on the issues and could make any ruling retroactive, the court should intervene to preserve the status quo. This was because, in the union's view, it would be difficult to implement a retroactive order once nurses had been laid off and bumping rights exercised. Accordingly, the union requested an injunction suspending the layoffs until the arbitration board rendered a final decision.

UNION HAD AN ADEQUATE ALTERNATE REMEDY

In refusing to grant the injunction, the court noted that it did not have concurrent jurisdiction with the arbitration process. It had only a residual jurisdiction in circumstances where the statutory scheme which governed the parties' relationship did not provide an "adequate alternate remedy".

Here, the court ruled, there were such alternate remedies. Specifically, the union had raised the matter before the arbitration board, asking it to make a partial final ruling. Even if the board were to find that it had no jurisdiction to grant such an interim award, it still had the power to make its final order retroactive. Therefore, the court concluded, on either scenario, the board did have jurisdiction over the timing of the layoffs, which was the very subject of the injunction the union was requesting.

UNION HAD NO EXISTING RIGHT TO BE PRESERVED; INJUNCTION WOULD ALTER STATUS QUO

The union had relied heavily on the Supreme Court of Canada's decision in *Canadian Pacific Ltd. v. Brotherhood of Maintenance of Way Employees* (July 4, 1996). In that case, the employer changed its work schedule so that employees would not have Sundays off. The union grieved the change on the ground that it violated the collective agreement. Because neither the applicable legislation nor the collective agreement provided arbitrators with the power to issue an interim order to secure the postponement of the implementation of a new schedule pending arbitration, the union went to court to seek an injunction. The injunction was granted, and this result was upheld by the Supreme Court.

In distinguishing the case before it from *Canadian Pacific*, the court noted that "there must ... be an existing right that is being pursued ... In other words, there must be a foundation of substantive rights or a "justiciable right" on which to base an injunction". While in *Canadian Pacific* the union was requesting that the status quo be preserved until the matter could be resolved by the arbitrator, here, the court observed, the job security issues being pursued by the union were new rights it was seeking to create, not existing rights it was trying to preserve. The status quo was the collective agreement itself, which gave the Hospital the exclusive right to decide if and when staff were to be laid off.

The court also rejected the union's argument that the existing right it wanted to preserve was the right to "meaningful arbitration". Accepting the union's position, the court stated, would have the effect of freezing one party's rights under a collective agreement when an arbitration is pending. Even if it had the jurisdiction to intervene, the court added, it would not have done so because there was no existing right to preserve.

IN OUR VIEW

To be successful in securing an interim injunction from a court, the applicant will have to meet the standard tests for the granting of injunctive relief. However, if the application occurs in the context of a labour relations dispute, the applicant will also have to demonstrate that adequate relief is otherwise unavailable under the statutory labour scheme. Moreover, even if, as in *Canadian Pacific*, there is such a gap in the statutory framework, the court may still refuse to exercise its residual jurisdiction to intervene where, as in this case, the applicant has no existing rights to be preserved, or the injunction would alter the status quo.

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