

## Union wins damages for employer's failure to consult on restructuring plans

A majority of an Ontario arbitration board has awarded damages to a union as a result of the employer's failure to consult with it on restructuring plans. Article 10.01 of the collective agreement at issue in *West Park Healthcare Centre v. Service Employees International Union, Local 1* (February 9, 2005) provided that, with respect to any operating or restructuring plan that could affect the bargaining unit, "the Union shall be involved in the planning process as soon as practicable and ... in advance of such plans or proposals being finalized."

The restructuring in the case resulted from a need to make the most of staff resources in response to nursing shortages. The plan involved transferring long-term residents to a location in the facility where nursing care could be consolidated. The restructuring resulted in the reassignment of 16 members of the bargaining unit, the acceptance of early retirement by one member and the termination of a probationary employee. The size of the bargaining unit was also reduced by 10 positions.

The employer had sent a memorandum notifying residents, patients, family members, staff and volunteers of its plan, but not the union. After hearing of the plan, the union requested that the decision be deferred until it could be discussed in accordance with the collective agreement. The employer refused, and the decision was implemented shortly after.

### UNION NOT JUST MARGINALIZED, BUT IGNORED

At arbitration, the employer conceded that it was liable for breach of the collective agreement, so the only issue to be decided was the appropriate remedy for the breach. The union argued for a variety of types of damages, including lost wages and union dues and injury to the union's status and reputation as a bargaining agent, while the employer asserted that the remedy should be a declaration that it had breached the agreement. The board held that, because the employer had deliberately breached Article 10.01 of the agreement and persisted in its breach after being warned by the union, a declaration was not a sufficient remedy. It ruled that the union deserved damages for injury to its reputation as an effective bargaining agent:

"The union was not only marginalized; to all intents and purposes, it was ignored. The rights of the union and the employees have intrinsic value and compensation is warranted for their deprivation. Moreover, it is not just the employees who were reassigned who were affected by this deprivation, but all employees in the bargaining unit, to whom the message was clear that the union could not protect them when the need arose."

However, the board tempered its decision because of mitigating circumstances: the employer had not previously breached Article 10.01, had not denied its liability, had settled

related grievances and had promised employees in the bargaining unit that it would respect the role of the union under Article 10.01 in future.

In the result, the board ordered \$10,000 in damages to the union, and \$1,000 to each of the employees, other than the terminated probationary employee and the employee who had taken early retirement.

### In Our View

The employer nominee in this case expressed the view that, if any damages were to be awarded, they should be minimal as there was no legitimate interest to be served by awarding damages against the hospital during a period of restraint. As for the employees, he stated that only those adversely affected should receive any damages. In any event, it is clear that deliberately ignoring the union in the face of a clear collective agreement requirement to consult is a risky proposition for an employer.

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