
OLRB rules on public sector restraint wage freezes for unionized workers

The Ontario Labour Relations Board (the “Board”) recently considered whether an employer failed to bargain in good faith under section 17 of the *Labour Relations Act, 1995*, when the employer withdrew its offer of wage and benefit increases following the introduction of the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the “Act”). The Board found that the Act’s prohibition of wage increases for non-bargaining unit employees in the broader public sector, including the Ontario public service, coupled with the Province’s expectation of fiscal restraint in the broader public sector, was a material change in circumstances which enabled the employer to modify its negotiating position. On May 14, 2010 the Board released its decision and held that the employer’s revocation of the offer was not a breach of s. 17 of the *Labour Relations Act* (the “LRA”).

The employer in this case, the Municipal Property Assessment Corporation (“MPAC”) was engaged in negotiations for the renewal of the collective agreement of employees represented by the Ontario Public Service Employees Union (“OPSEU”). MPAC had tabled an offer containing certain wage and benefit increases. During the period in which the offer was still available to be accepted, the Ontario government tabled the 2010 Ontario Budget and introduced the Act. Although the wage and benefit freeze contained in the Act applies only to non-bargaining unit employees, government commentary accompanying the Budget expressed an intent of restraint for unionized employees as well. The government expressed the intent to honour the terms of existing collective agreements, but stated that it would seek two-year compensation freezes in negotiations for new collective agreements. MPAC adopted this approach in its negotiation with OPSEU. It revoked its original offer and tabled a new offer in which wage increases in the first two years were reduced to zero.

MPAC took the position that its approach was consistent with the spirit and intent of the Budget and the Act. In MPAC’s view, it seemed fair to treat union and non-union employees in the same manner. The revised proposal would maintain the relative wage rates between union and non-union employees, and would not create salary compression.

OPSEU took the position that MPAC’s basis for revoking its offer was not reasonable or justified. The union’s arguments focused on the primacy of the legislation, which clearly did not require a wage and benefits freeze for employees in the bargaining unit. MPAC’s reliance on the commentary accompanying the Budget was also challenged by the union. The union argued that no weight should be given to any government statements that were not explicitly reflected in the legislation. In the union’s view, such statements were merely speculative.

OPSEU argued that MPAC’s change in position would frustrate the collective bargaining process and have “the predictable effect of destroying the framework for decision-making at the bargaining table.” Furthermore, the union submitted that the revocation would embarrass the union, and that the new offer was “tailor-made” for rejection by members of the bargaining unit. OPSEU brought an application to the Board under s. 96 of the *LRA* for an order directing MPAC to reinstate its original offer of wage and benefit increases. The application was premised on the allegation that MPAC’s revocation of its original offer was a failure to bargain in good faith. Good-faith bargaining is required by s. 17 of the *LRA*:

“The parties shall meet within 15 days from the giving of notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.”

SECTION 17 ANALYSIS - VOLUNTARISM VS. COMPULSION

In certain circumstances, the withdrawal of agreed-upon wage increases, or simply resiling from a position, has been found to breach s. 17 – even where the offending party did not intend to impede rational bargaining. In such circumstances, it is enough if the conduct falls short of the requirement to bargain in good faith. However the determination of whether the section is breached is often difficult. The Board noted that there is an inherent competition in s. 17 between the element of voluntarism, in which the parties to collective bargaining are each expected to maximize their own self-interest, and the element of compulsion, in which the parties must bargain in good faith and make every reasonable effort to make a collective agreement. The Board stated:

“The element of voluntarism suggests that a party is entitled to resile from a position as a result of a changed assessment of what constitutes its self-interest. The obligation to bargain in good faith, however, means that any such changed assessment must be *bona fide*.”

The Board said determining whether there is a breach of s. 17 will depend on the overall circumstances of the particular case and a consideration of the competing elements of s. 17.

The Board was persuaded by MPAC’s arguments with respect to wage and benefit compression. It noted that the Act did not apply to the bargaining unit employees, but did apply to their managers. It stated that “an increase in wages and benefits for bargaining unit employees will result in a relative reduction in wages and benefits of their managers.” It found this unanticipated result to be an objectively reasonable ground for MPAC to reassess its negotiating position on wages and benefits.

The Board also rejected the union’s argument that the statements accompanying the release of the Budget were nothing more than speculative. It noted that in the decision of *The Board of Education for the City of Hamilton* [1993] a public statement by the Premier that the Province was going to significantly reduce funding to public agencies was found to justify the employer’s decision not to ratify a memorandum of agreement with the union. The Board concluded its analysis with the following summary of its decision:

“While the Budget did not compel MPAC to take the offer off the table, the freeze in compensation and benefit structures for MPAC’s non-bargaining unit employees and the Province’s stated expectation of fiscal restraint on the part of the broader public sector, including MPAC, constituted a material change in circumstances which MPAC was entitled to take into account in recalibrating its negotiating position. As noted, there is no suggestion that MPAC’s actions in doing so were not *bona fide*.”

In Our View

The Board made repeated reference to the fact that negotiations between the parties were ongoing; that MPAC’s offer was not final; and that there was no suggestion that MPAC was not prepared to discuss the possibility of increases to wages during the first two years of the collective agreement, notwithstanding MPAC’s revocation of wage increases. In the Board’s view, the collective bargaining process was not compromised and the change in MPAC’s position was justified.

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