

Arbitrator rules on nurses' collective agreement – layoff benefits not automatic

Ontario Arbitrator Frank Reilly recently dismissed a grievance by the Ontario Nurse's Association which alleged that the employer, St. Michael's Hospital in Toronto, violated the collective agreement by failing to include retirement or separation allowances in benefit options presented to nurses subject to a layoff. In *St. Michael's Hospital and the Ontario Nurses' Association* (April 2010), Arbitrator Reilly applied the traditional canons of contractual interpretation to the collective agreement and ruled that the benefits made available to laid-off nurses vary depending on the reasons for the layoffs. In the circumstances, St. Michael's Hospital was not required to provide retirement or separation allowances to the laid-off nurses, and the union's policy grievance was dismissed.

THE COLLECTIVE AGREEMENT

The collective agreement between the Ontario Nurses' Association (the "ONA") and St. Michael's Hospital (the "Hospital") also covers most unionized nurses in the province. It requires hospitals to present a number of benefit options to nurses that are subject to long-term layoffs. Section 10.09 of the collective agreement provides the options that are available to such nurses:

A nurse who has been notified of a long-term layoff may:

- (A) accept the layoff; or
- (B) opt to retire under the terms of the Hospital's pension plan as outlined in Article 17.04; or
- (C) elect to transfer to a vacant position provided that she or he is qualified to perform the available work; or
- (D) displace another nurse in any classification who has lesser bargaining unit seniority and who is the least senior nurse on a unit or area whose work the nurse subject to the layoff is qualified to perform.

Articles 10.13 and 10.14 of the collective agreement also discuss long-term layoffs, however, the layoffs contemplated in these sections are those that arise as a result of integrations. Pursuant to the collective agreement, the meaning of the term "integration" is provided for in the *Local Health System Integration Act* (2006). It states:

"integrate" includes,

- (a) to co-ordinate services and interactions between different persons and entities,
- (b) to partner with another person or entity in providing services or in operating,
- (c) to transfer, merge or amalgamate services, operations, persons or entities,
- (d) to start or cease providing services,
- (e) to cease to operate or to dissolve or wind up the operations of a person or entity,

and "integration" has a similar meaning;

Article 10.14 goes on to provide the specific benefits that are available to nurses subject to layoffs as a result of integrations. These benefits include:

1. offers of early retirement, available to the nurses in order of seniority;
2. where a nurse resigns within thirty days after receiving the notice of layoff, a separation allowance of two weeks' salary for each year of service to a maximum of 16 weeks' pay;
3. where a nurse resigns later than thirty days after receiving the notice of layoff, a separation allowance of four weeks' salary.

Should a nurse elect an early retirement option under article 10.14, the collective agreement states that she or he will receive a retirement allowance of two weeks' salary for each year of service up to a maximum of fifty-two weeks' salary.

THE LAYOFFS

In November 2008, St. Michael's hospital gave notices of long-term layoffs to the union and to seven nurses who held assignments with the I.V. Team at the Hospital. The layoff had been planned due to the streamlining and reassignment of some aspects of I.V. therapy. The parties agreed that the planned displacement of the affected nurses constituted a layoff within the collective agreement. At the time of the layoffs, the hospital was in a recruiting mode and was actively seeking Registered Nurses outside the Hospital to fill vacant positions. The nurses affected by the layoff were eligible to transfer to these positions.

In providing notice of the layoffs to the affected nurses, St. Michael's Hospital presented the nurses with the options listed in article 10.09 of the collective agreement. The options did not include the retirement and separation allowances provided for in article 10.14. The ONA challenged this omission and claimed that the affected nurses should have been offered the retirement and separation allowances as part of their layoff options. It claimed that the Hospital was in violation of the collective agreement and filed a policy grievance.

The Hospital disagreed with the ONA's position. Its position was that it should not be required to pay retirement or separation allowances where there is work available and the Hospital is in recruiting mode. The generous "walking away" money contemplated by article 10.14 was intended for limited circumstances involving long-term layoffs resulting from integrations - not in circumstances of general layoff as contemplated by article 10.09.

Although ultimately the lay-offs were rescinded for various reasons, including scheduling changes and a reduction of casual nurse hours, the parties agreed that the issue raised by the grievance was still in dispute and required a ruling by the arbitrator.

ARBITRATOR'S DECISION

Arbitrator Reilly found that the jurisprudence relied upon by the ONA was of little use in the case at hand. In each arbitration case submitted by the ONA the parties were joined in relation to whether the employees were entitled to offers of retirement options consistent with the article 10.14 language. In each of these cases, there was little information about the reasons for the lay-offs. The application of article 10.14 was neither in dispute nor the subject of the arbitrator's direct attention. None of the cases dealt with the key issue in the case at hand – when are employees entitled to the benefit of article 10.14? In light of the lack of arbitral jurisprudence on the application of article 10.14, Arbitrator Reilly was required to base his decision on an interpretation of the relevant provisions of the collective agreement.

The arbitrator employed the traditional canons of contractual interpretation and read the relevant provisions of the collective agreement in the entire context of the contract. The arbitrator found that the collective agreement language, when read as a whole and when all provisions are given voice, differentiates between long-term layoffs caused by integration, as contemplated in article 10.14, and those caused by other reasons as contemplated by article 10.09.

In support of this interpretation, Arbitrator Reilly noted that in making the collective agreement, the parties agreed to separate articles that provide different entitlements in cases of long-term layoffs. He stated,

“There would be no purpose in the parties having separate and different provisions if the requirement to offer certain retirement benefits as found in one of these provisions, in particular, article 10.14, was triggered in all the cases of long-term layoff, as the Union urges in the case at hand.”

The arbitrator found that the early retirement and separation allowance benefits under article 10.14 were only available where the layoffs arose as a result of integrations. Layoffs arising from other reasons, such as in the case at hand, triggered the requirements of article 10.09 but not those of article 10.14. Since the employer had presented the benefit options required under 10.09, there was no violation of the collective agreement in the circumstances, and the grievance was dismissed.

In Our View

Arbitrator Reilly's decision provides hospital employers with some optimism regarding the lay-off provisions in the ONA collective agreement and the corresponding obligations to pay retirement and separation allowances. Prior to Arbitrator Reilly's decision, arbitrators consistently ruled that once the lay-off provisions in the ONA collective agreement were triggered, a nurse was entitled to a retirement and/or separation allowance, even where vacancies existed elsewhere in the particular hospital. The resulting costs for hospitals have been substantial.

Arbitrator Reilly's decision states, in part, that the requirement to pay retirement and/or separation allowances does not arise in every circumstance. Hospital employers will be able to argue that allowances should not be owed where there are nursing vacancies within the hospital. While the decision is beneficial to employers, it remains to be seen whether it will be followed by other arbitrators.

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