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Limitations on specifically bargained benefits can exist outside of the express terms of the collective agreement

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A recent arbitration decision confirms that there can be external limitations on collectively bargained benefits coverage. In *Ottawa Professional Firefighters' Association and The City of Ottawa* (September 2019), Arbitrator Brian Keller determined that the collective agreement in question did not provide an all-encompassing, comprehensive benefit plan. Instead, he agreed with the employer's position that standard limitations and conditions set out in external documents, such as the master contract with the insurance carrier, may be valid if employees are not deprived of the benefit negotiated in the collective agreement. It is noteworthy that the employer in this arbitration was expertly and successfully represented by Emond Harnden's own Sébastien Huard, Lauren Brecher, and Alanna Twohey.

By way of background, the Ottawa Professional Firefighters' Association (the "Association") commenced 11 grievances alleging that the employer, the City of Ottawa (the "City"), violated the collective agreement by failing to provide certain of the benefits set out in the collective agreement. A case management conference was held at which the parties agreed on a number of preliminary questions to be determined by the Arbitrator prior to proceeding with the merits of the 11 individual grievances.

The preliminary issues included whether the collective agreement was intended to set out a comprehensive benefit regime, and in turn, whether limitations to the collective agreement benefits could exist outside of the express terms of the collective agreement, such as in the master contract with the insurance carrier.

The starting point for resolving these issues was a 2008 interest arbitration award that dealt with several issues including benefits. In the 2008 arbitration, the Association wished to have benefit coverages set out in the collective agreement. The City took the position that the full extent of benefits did not belong in the collective agreement. The 2008 award included the following order:

> A brief description of each of the existing coverages [as amended by this award] be set out in the collective agreement and, in addition, that the Association be provided annually and whenever it is amended with a copy of the master contract with the carrier. We leave it to the parties to specify and describe the coverages but remain seized to deal with any issues that may arise in this regard.

Following this award, the parties agreed to revised language in the collective agreement that included a list of eligible expenses. This list was accompanied by the following provisions:

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> Reasonable and Customary Fee Schedules are developed by the benefits carrier by comparing and studying the range of charges for comparable services in the same geographic area [Ontario]'s [*sic*]. Published fee schedules and surveyed responses from practitioners are utilized in establishing these amounts. The Reasonable and Customary Fee Schedule is updated annually by the benefits carrier.

and

> <u>Restrictions and Limitations</u> it is understood that the Employer's obligation under this Article is restricted to contracting with the insurer(s) for the coverages specified here in [*sic*] in [*sic*] payment of its portion of the premiums necessary to provide the employee's the specific benefits and entitlements set out in this Article.

Ultimately, however, the parties disagreed on the interpretation of these provisions. The Association took the position that, notwithstanding the use of the words "briefly describe" in the 2008 award, what was set out in the collective agreement was thorough and complete. Furthermore, the Association argued that there could not be any restriction on benefits unless expressly provided for in the collective agreement.

The employer argued that the parties had briefly described the parameters of the health care benefits within the collective agreement to clarify the basis upon which the City would continue to negotiate with the insurance carrier for coverage. It was clear from the negotiated and awarded provisions that the collectively bargained benefits could be provided under an external plan, which plan would be relevant for interpreting employee rights under the collective agreement. This was notwithstanding that the external plan was not incorporated by reference in the collective agreement.

Arbitrator Keller agreed entirely with the employer's position. He highlighted that the 2008 award required the parties to briefly describe the existing coverages. If the intent of that award was to include all elements of the benefits and coverages, the words "briefly describe" would not have been used.

The Arbitrator was further swayed by the fact that the City was required to provide to the Association a copy of the master contract with the carrier annually, or whenever the master contract was amended. Arbitrator Keller noted that this requirement would not have been needed if the description in the collective agreement was to be comprehensive.

Arbitrator Keller further stated:

> I also point out that the various external documents and internal documents made available

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> both to the Association and employees over many years, have clear expressions of limitations and at no time has any document or any statement by the employer indicated that what is expressed in the collective agreement is either exhaustive or without limitations or terms and conditions.

The Arbitrator also cited article 12.07 of the collective agreement, which was amended in a May 2017 interest arbitration award to provide as follows:

> The Employer will provide the Association with a copy of the master agreement(s) with the carrier(s) annually or whenever it is amended and any other documents or materials that may exist from time to time that would provide for any limitations on coverage.

This provision, Arbitrator Keller opined, served as a "clear recognition that limitations on coverage can exist."

Finally, although reserving judgment on the validity of particular coverage limitations, Arbitrator Keller indicated that this question was one that would have to be determined in accordance with "applicable jurisprudence." Arbitrator Keller also affirmed that "the arbitral jurisprudence is clear that there can be reasonable and customary limitations as long as they do not deprive employees of negotiated benefits."

Having ruled in favour of the employer on these issues, the parties were asked to reconvene in an attempt to narrow any remaining differences between them.

In our view

This is a very positive decision for employers. Of note, the collective agreement at issue in this case did not expressly state that the benefits set forth in the collective agreement would be "subject to the terms and conditions" of the applicable benefit plan or plans. The decision thus serves as useful confirmation that, even in the absence of such a provision, arbitrators will, in appropriate circumstances, be willing to find that external limitations can apply to collectively bargained benefits. Indeed, provided that employees are not deprived of negotiated benefits, external limits to collectively bargained benefits, including reasonable and customary limitations and other standard limitations, may be valid.

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