FTR Now

Interest Arbitrator Awards Wage Increase to Unionized Nursing Home Employees

Date: September 21, 2010

On September 15, 2010, Arbitrator Jesin released an interest arbitration award in which he awarded a 2% wage increase to unionized nursing home employees. In his reasons, he considered both the Ontario government's March 2010 Budget and its subsequent directive that, as collective agreements are renegotiated, the government's transfer payment partners and the corresponding bargaining agents should seek collective agreements of at least two years' duration that include no net increases in compensation. In this *FTR Now*, we consider the implications of this award for broader public sector employers.

BACKGROUND

The award involved nearly 100 participating nursing homes and the Service Employees International Union, Local 1 Canada ("SEIU"). Arbitrator Jesin was appointed pursuant to a Memorandum of Agreement to determine the terms of the various collective agreements governing these parties.

The parties had over 50 categories of items in dispute. However, the key issue for the employers was a two-year compensation freeze. This was premised on two arguments: first, any wage increases could not be supported economically due to the overall deterioration of the economy in Ontario; and second, further to the March 2010 provincial Budget, the government's transfer payment partners (including the employers in this matter) had been asked to freeze compensation of bargaining unit employees for at least two years in new agreements.

The SEIU sought a 4% wage increase, as well as other benefit improvements, arguing that certain sectors of the economy—such as nursing home chains—were robust and generating significant profits.

THE AWARD

Arbitrator Jesin denied most of the proposals tabled by the parties, finding that they could be negotiated a year later, when the parties were next scheduled to meet.

With respect to wages, the arbitrator found that there had been a downward trend regarding wage increases and that the evidence of lower settlements before him reflected "the deteriorating economic situation in Ontario since 2008". He noted, however, that the government had not passed any legislation requiring a freeze of public sector union wages, as it had done for the non-bargaining employees. He concluded that he was obligated to consider the conditions of the unionized employees in the case before him to others in comparable settings, and that "given that increases are being found for other nursing home employees and for some other health care employees I accept there should be a wage increase in these agreements".

Arbitrator Jesin awarded a wage increase of 2%, retroactive to the date of commencement of each collective agreement (with an exception given to one nursing home).

IMPLICATIONS

While Arbitrator Jesin declined to freeze the wages in this award, he clearly concluded that given the deteriorating economic condition and the downward trend in settlements, now was not the time "to grant significant benefit or non-wage monetary improvements".

Moreover, as most of the agreements in question expired on April 30, 2010, this was in essence an award covering 16.5 months, which reflects an increase of approximately 1.45% on an annualized basis.

CONCLUSION

Together with the award of Arbitrator MacDowell (as summarized in our August 27, 2010 *FTR Now*), this award reflects a clear and significant downward trend in bargaining and arbitration outcomes in the broader public sector.

For more information about this award or the broader public sector consultation process, please feel free to contact the following lawyers or your regular Hicks Morley lawyer:

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Participating Nursing Homes and Service Employees International Union, Local 1 Canada (15 September 2010, Jesin)

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