FTR Now

Arbitrator Upholds Right of Fire Department to Alter Service Levels During Statutory Freeze

Date: November 18, 2010

On November 8, 2010, Arbitrator Chauvin issued a significant award which confirmed a fire department's right to manage its operations by determining staffing levels. Arbitrator Chauvin also concluded that the statutory freeze imposed by the *Fire Protection and Prevention Act, 1997* ("*FPPA*") preserved this right and permitted the City to make changes to service levels during the freeze period.

This *FTR Now* discusses this award and its implications for employers.

THE AWARD

In *Corporation of the City of Windsor and Windsor Professional Firefighters Association* (8 November 2010, Chauvin) the parties were engaged in negotiations that ultimately led to an impasse and resulted in interest arbitration. During this period of negotiation, the City unilaterally removed a fire truck from service, which had the effect of reducing the minimum daily staffing requirements of firefighters in the service and permanently abolishing a number of positions. The Association alleged that the removal of the fire truck from service and the consequent reduction of staffing levels was a "change in operating methods or organization, affecting employees" and therefore was subject to the collective agreement's technological change clause. The Association also alleged that the unilateral removal of the fire truck from service was a violation of the statutory freeze under the provisions of the *FPPA*.

In his award, Arbitrator Chauvin found that the removal of a fire truck was more appropriately characterized as a change in service levels, as opposed to a change in operating methods or organization. Therefore, instead of being governed by the restrictive technological change clause, the removal of a fire truck fell within the City's "exclusive right to manage the offices and departments, direct the working forces, and to…determine…the methods, processes, and means of performing the various works", as set out in the management rights clause.

Arbitrator Chauvin also held that the removal of a fire truck from service and the consequent reduction in service levels was not a violation of the statutory freeze provisions of the *FPPA*. In determining whether the statutory freeze had been violated, Arbitrator Chauvin considered the reasonable expectations of the parties. He noted that the statutory freeze provisions of the *FPPA* not only serve to preserve the rights of employees, but also to lock in those rights enjoyed by the employer at the time of the imposition of the freeze. Since the removal of a fire truck and reduction in service levels was an exercise of management's rights, Arbitrator Chauvin held that it should have been within the reasonable expectations of the parties that the City would continue to enjoy that right during the statutory freeze period.

On the unique circumstances of the case, Arbitrator Chauvin found that an estoppel arose from a representation made by the City to the Association that they would attempt to resolve the issue of the removal of the fire truck through collective bargaining.

IMPLICATIONS FOR EMPLOYERS

The *Corporation of the City of Windsor and Windsor Professional Firefighters Association* award serves as a strong acknowledgement of an employer's right to manage its operations. More particularly, it affirms a municipality's right to determine the appropriate levels of service.

Arbitrator Chauvin's award was the first to consider the implications of the statutory freeze provisions of the *FPPA*. In so doing, the Arbitrator came down strong on preserving a fire department's right to continue to manage its operations during the freeze period.

This case was successfully argued on behalf of the employer by John Saunders of Hicks Morley's Toronto office. If you have any questions about this award, please contact John Saunders at 416.864.7247, Joseph Cohen-Lyons at 416.864.7213 or your regular Hicks Morley lawyer.

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