FTR Now

Mandatory Retirement Legislation For Firefighters Introduced (Age 60)

Date: April 19, 2011

On Monday, April 18, 2011, the Honourable Charles Sousa, Ontario's Minister of Labour, introduced Bill 181, the *Fire Protection and Prevention Amendment Act, 2011*. If passed, Bill 181 will amend the *Fire Protection and Prevention Act, 1997* in two significant areas. First, it will create a framework for addressing the issue of mandatory retirement for firefighters who regularly perform fire suppression duties. Second, firefighters will be protected by new duty of fair representation ("DFR") language requiring their Association to represent them in a manner that is not arbitrary, discriminatory or in bad faith. In this *FTR Now*, we discuss the significant potential ramifications of this legislation for employers.

MANDATORY RETIREMENT

The first key aspect of the proposed Bill 181 amendments to the *Fire Protection and Prevention Act, 1997* (the "*Act*") are amendments providing for the mandatory retirement of firefighters in certain circumstances.

APPLICATION

The mandatory retirement amendments specifically apply to firefighters who are "regularly assigned to fire suppression duties". This definition will only include firefighters who are unionized under the *Act*, and exclude all volunteer firefighters, whether non-union or unionized under the Ontario *Labour Relations Act, 1995*. It will likely also capture Platoon Chiefs and District Chiefs in suppression divisions. However, it will likely exclude those firefighters in the communications divisions, prevention divisions, mechanical divisions and secretarial positions.

It is not clear whether firefighters in the training divisions will be included or excluded, as they are usually involved in the training of suppression firefighters and therefore, may arguably be considered "regularly assigned to fire suppression duties".

FRAMEWORK

If a collective agreement has a provision requiring firefighters to retire at a specified age of 60 or over, then subject to that agreement, the firefighter shall retire at that specific age.

Bill 181 also provides that an employer shall not require a firefighter to retire if the employer can accommodate the firefighter without undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The requirement to accommodate a firefighter in these circumstances may prove challenging, as the scope of the obligation remains unclear. Given that there are very few light duty positions within a fire department, employers may be required to expand their accommodation efforts to cover non-union or other positions which are often organized by CUPE. Moreover, it is unclear to what extent the Association and the individual firefighter must participate in the accommodation process.

All of the above amendments would apply notwithstanding the provisions of the Ontario *Human Rights Code*.

The mandatory retirement provisions would become effective the date that Bill 181 receives Royal Assent.

Finally, on the second anniversary of Bill 181 receiving Royal Assent, any collective agreements that do not presently have a mandatory retirement provision will be deemed to have a mandatory retirement provision at age 60. Subject to the duty to

accommodate described above, firefighters will have to retire at that age.

DUTY OF FAIR REPRESENTATION

In addition to the foregoing, the Bill 181 amendments provide that a Fire Association shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the firefighters in the bargaining unit, whether or not they are members of the Association.

If a member of the Association feels that they have been aggrieved in violation of this duty, an application can be made directly to the Ontario Labour Relations Board (the “Board”). A Labour Relations Officer would then be appointed to inquire into the alleged contravention of the DFR duty by the Association. In the event that Officer is unable to effect a settlement, then the Board may inquire into the complaint, using broad powers to investigate and address this complaint.

If they find that an Association has failed to comply with its DFR obligations, the Board wouldgi determine what, if anything, the Association, the employer or any person should be required to do or refrain from doing with respect to the contravention, despite the provisions of the collective agreement.

Specifically, the Board may issue orders requiring the Association, the employer or any person to:

- cease engaging in the act or acts complained of;
- rectify the act or acts complained of;
- in the case of the bargaining agent, compensate the firefighter for loss of earnings or other employment benefits in an amount to be assessed by the Board against the Association; or
- in the case of an employer, reinstate the firefighter in employment with or without compensation or other employment benefits, or compensating the firefighter for loss of earnings or other employment benefits.

It is interesting to note that these remedial powers are very broad in the context of a DFR complaint. While the Board retains such powers to allow it to address unfair labour practices and other violations of the Ontario *Labour Relations Act, 1995*, it does not specifically define its powers as above for the resolution of DFR complaints.

It remains to be seen under what circumstances the Board will order the employer to reinstate and compensate a firefighter when it has determined that the Association has failed to comply with its duty to fairly represent a firefighter. Similarly, it will be interesting to see if they will order an Association to compensate a firefighter when the Association has violated its DFR.

A number of procedural issues regarding interim orders, expedited enforcement, enforcement of Board orders and other matters are also expressly addressed in Bill 181.

If Bill 181 is passed by the Legislature, this section would only apply to events which occur after December 1, 2011.

CONCLUSION

As outlined in the above discussion, if passed, Bill 181 will have a significant impact on all parties in this sector.

We will continue to monitor the progress of this legislation as it moves through the legislative process, and provide timely updates on our Legislative Blog.

If you have questions regarding Bill 181, contact John Saunders at 416.864.7247, Mark Mason at 416.864.7280, Michael Kennedy at 416.864.7305 or your regular Hicks Morley lawyer.

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