FTR Now

Three Recent Decisions, Three Different Results – An Update on the 24 Hour Shift in the Fire Sector

Date: November 25, 2011

INTRODUCTION

In recent years, the issue of whether or not to adopt a 24 hour shift schedule has become one of the top demands that fire associations are seeking at the bargaining table and at interest arbitration. Fire associations have sought the 24 hour shift regardless of the size of the department, population served or full-time/volunteer composition of the department. Many municipalities have continued to vigorously resist this demand.

This *FTR Now* discusses three recent interest arbitration decisions that have addressed the issue of whether or not a 24 hour shift should be awarded at interest arbitration.

HISTORY

The issue of 24 hour shifts is not new to Ontario. A handful of departments have had the shift for decades. However, as fire associations have pressed the issue over the last three years it has become hotly debated in the municipal sector. At the present time, approximately 30% of Ontario fire services which employ full-time fire fighters (either exclusively or as part of a composite staffing model) are currently scheduling on the basis of a 24 hour shift schedule. However, when all 460 fire departments that provide fire and emergency services across Ontario are considered, regardless of composition, less than 5% of all departments operate on a 24 hour shift. At its narrowest point, the debate over 24 hour shifts hinges on the association claims of improved fire fighter moral and personal health through better sleeping patterns versus employer concerns regarding overall fire fighter health and safety, optimal public service and management's right to determine appropriate workplace schedules and staffing patterns.

In the past, arbitration awards have resulted in the creation of a workplace committee to study the feasibility and merits of implementing a 24 hour shift. Furthermore, several municipalities have voluntarily entered into agreements to schedule a 24 hour shift on either a trial or permanent basis. Many others, however, have not reached such an agreement and instead have decided to litigate the matter at interest arbitration.

Three recent interest arbitration awards again address the 24 hour shift issue.

CITY OF QUINTE WEST

In the *Corporation of the City of Quinte West and Quinte West Professional Fire Fighters' Association, Local 1328*, a decision released November 4, 2011, the majority of a Board of Arbitration chaired by Arbitrator Starkman dismissed the Association's request for a 24 hour shift (along with a repeated demand for improved contracting out language).

The City of Quinte West employs 15 full-time suppression fire fighters on a standard shift rotation. They are supplemented by 124 volunteer fire fighters, working out of seven fire stations in total.

Throughout the negotiation and interest arbitration process, the City was steadfast in its opposition to the Association's request for the implementation of a 24 hour shift. The City was also opposed to the creation of a committee to study the issue further or any other form of continued discussions on the topic.

During the interest arbitration process, the Association made its standard and stock arguments in support of its request for a 24 hour shift. For example, the Association asserted this shift should be awarded as the majority of fire fighters (not necessarily fire services) in Ontario work a 24 hour shift, which reflects a growing trend. The Association also cited several general health articles pertaining to shift work and circadian rhythm, as well as a study conducted in the 1990s for the Toronto Professional Fire Fighters' Association (the "Glazner Report"), in support of its assertion that a 24 hour shift is safer than other shift schedules.

In response, the City, represented by Mark Mason and Michelle Alton of Hicks Morley, challenged the Association's assertions. First, the City noted 24 hour shifts are not actually normative in Ontario as the majority of fire services do not operate under such a shift. The City also questioned the validity of the Association's scientific data and argued that better scientific studies support the conclusion that 24 hour shifts can be dangerous. Finally, the City strenuously argued that scheduling is a traditional management right that should not be interfered with except in the clearest cases of a demonstrated need for change.

Arbitrator Starkman accepted the City's position that a 24 hour shift schedule should not be implemented and, for the Board majority, dismissed the request completely without commenting on the issue (akin to the Board's treatment of a request by the Association for a lieu time bank). Furthermore, in contrast to other decisions where the parties have been directed to form a workplace committee or to undertake a study pertaining to the implementation of a 24 hour shift, the majority of this Board did not award any ongoing obligations or commitments with respect to the issue of 24 hour shifts.

This is very positive outcome for those municipalities which continue to disagree with the concept of 24 hour shifts, whether for health and safety reasons or for the protection of management rights pertaining to scheduling in the workplace.

CITY OF CAMBRIDGE

In contrast, in the *Corporation of the City of Cambridge and the Cambridge Professional Fire Fighters' Association*, a decision released November 8, 2011, a Board of Arbitration chaired by Arbitrator Burkett ordered that a "mutually agreed upon 24 hour shift for fire suppression staff be implemented for a two year trial period as soon as reasonably practical."

Troubling in this case is the fact the City of Cambridge's position was the same as that of the City of Quinte West: the City of Cambridge was completely opposed to the introduction of a 24 hour shift and requested its outright rejection. In earlier discussions during mediation the City was also clear that in the event that a 24 hour shift was to be implemented, some benefit needed to be derived from it and the City would require concessions/savings in other areas of the contract, none of which were ultimately awarded.

In a very short decision, without reasons (similar to Arbitrator Starkman's approach), Arbitrator Burkett ordered the implementation of a 24 hour shift on a trial basis. The City and the Association were directed to agree on the specific 24 hour shift schedule to be followed and such discussions are now ongoing. The outcome of those discussions and the resolution of all of the issues regarding the implementation of such a shift, either though agreement between the parties or a subsequent order of the Arbitration Board, will be important to this overall process.

CITY OF KINGSTON

Finally, on November 23, 2011, a Board of Arbitration, also chaired by Arbitrator Burkett, released the *Corporation of the City of Kingston and the Kingston Professional Fire Fighters' Association* decision which again contemplates the appropriateness of the 24 hour shift.

In this case the Collective Agreement between the parties had expired on December 31, 2008. The City of Kingston had previously agreed to conduct two separate trial processes examining the appropriateness of the 24 hour shift for the City of Kingston Fire Department. In October 2010, outside of the bargaining process, the City's Fire Chief informed the Association that the 24 hour shift trial period would be extended for an additional year. The Association responded that an extension of the trial was not acceptable and that they wished for the 24 hour shift schedule to be formalized within the Collective Agreement. In light of the Association's position, and in accordance with a Letter of Understanding between the parties regarding the 24 hour shift trial, the City had no choice but to inform the Association that the trial would end on January 7, 2011.

The first day of the interest arbitration hearing between the parties took place on November 29, 2010. At that time, without any advanced notice or prior discussions, the Association made a proposal to the Board that the 24 hour shift be formalized within the Collective Agreement. In response, the City reiterated that it would be discontinuing the 24 hour shift trial and reverting to the previous shift arrangement for suppression fire fighters in accordance with the Letter of

Understanding.

In an interim decision, the Board ordered the trial to continue until the issue could be determined in the final interest arbitration decision.

In its November 23, 2011 final decision, the Board ordered that the new Collective Agreement would be operative from January 1, 2009 to December 31, 2011. Furthermore, the Board ordered that the 24 hour shift trial be continued for the duration of the Collective Agreement and for any statutory extension of the Collective Agreement.

The Board stated that although there “may be support on the merits for ending the 24 hour shift trial and formalizing the 24 hour shift arrangement for suppression,” the Association’s demand for the 24 hour shift was late. In order to underscore the “requirement for certainty in the bargaining process” the Board refrained from ordering that the shift be incorporated into the Collective Agreement and instead continued the 24 hour shift trial. In its decision, the Board stated that this would then give both parties a “full opportunity to deal with the matter, without any misunderstanding, in the next round of bargaining.”

Municipalities across Ontario which have been awaiting this decision may be frustrated with its outcome, as the Board did not provide a decision on the merits of the appropriateness of the 24 hour shift.

It should be noted that the parties agreed during negotiations that the relevant fire service comparators for the City of Kingston are Barrie, Burlington, Cambridge, Guelph, Niagara Falls, Oshawa, St. Catharines, Sudbury, Thunder Bay and Waterloo. Of interest is the fact that the majority of these departments do not currently operate under a 24 hour shift. As the new Collective Agreement between the parties will expire shortly (December 31, 2011), the 24 hour shift will most likely be a major issue when these parties next begin to bargain. Other municipalities will no doubt be watching the negotiations closely.

[NOTE: Although not related to the issue of 24 hour shifts, the Board awarded year end wage rates in excess of local police rates on the basis of comparability with the relevant fire comparators. However, the Board did so through split increases to ensure that the “in year” salary received by the fire fighters was equivalent to that of the Kingston police.]

CONCLUSION

Interest arbitration boards have now treated the 24 hour shift in three different manners. It has been awarded, rejected and deferred to the next round of bargaining based on the continuation of a trial period. This should be of concern to those municipalities which continue to resist the 24 hour shift. Unfortunately there is no easy way to reconcile these different decisions.

The 24 hour shift schedule is still far from the norm in Ontario, with less than one-third of its municipalities employing full-time fire fighters using such a shift. It is important for municipalities to distinguish between the number of services and the number of fire fighters on 24 hour shifts.

It may be that arbitrators will place a heavy value on comparator results when considering the 24 hour shift issue (as apparently was the case in *Cambridge*), similar to general benefit and compensation issues. Municipalities need to be prepared to dispel this approach and produce evidence of operational differences to distinguish such comparisons.

It is clear, however, that local associations will continue to seek the 24 hour shift at interest arbitration if they are not able to obtain this shift through collective bargaining, regardless of the size of the municipality and the fire department concerned. Furthermore, several cases remain ongoing at interest arbitration (in some cases the municipalities will lead oral expert evidence in opposition to the requests). Accordingly, further clarity with respect to the treatment of this issue by interest arbitration boards may be forthcoming in 2012.

Municipalities and fire management must be prepared for these types of requests in order to best address the needs of the particular municipality involved. In defending against such requests it is imperative that municipalities arm themselves with the necessary background information to make informed decisions at the bargaining table and to think strategically in assessing the proper approach to defending against such claims if litigation is necessary.

For more information about these decisions and their implications, please contact either John W. Saunders at 416.864.7247, Michael J. Kennedy at 416.864.7305 or Mark H. Mason at 416.864.7280.
