School Board Update

Arbitrator has no Jurisdiction Under OECTA MOU in Absence of Renewal Collective Agreement

Date: November 27, 2012

On November 23, 2012, Arbitrator Kevin Burkett issued a significant award in which he found he had no jurisdiction to determine a grievance under the Memorandum of Understanding ("MOU") entered into by the Ontario English Catholic Teachers Association ("OECTA") and the Ministry of Education in July 2012. The grievance was brought by OECTA against the Dufferin-Peel Catholic District School Board (the "Board"), whose collective agreement had expired on August 31, 2012 and had not yet been renewed. Neither the Board nor the Ontario Catholic School Trustees' Association ("OCSTA"), which was named as the respondent to OECTA's grievance, were parties to the MOU.

In so finding, the Arbitrator relied on section M of the MOU, the Dispute Resolution/Enforcement Mechanism, which he found only applied to terms "that are incorporated into a local collective agreement." Since no collective agreement was in place in this case, he had no jurisdiction under the MOU to render a decision. This *FTR Now* discusses the award and its implications for school boards.

BACKGROUND

This award is the first decision containing an interpretation of the MOU as well as the *Putting Students First Act, 2012* ("PSFA").

In the grievance, OECTA alleged that the Board violated section L of the MOU concerning hiring practices by appointing occasional teachers to assignments for the 2012-2013 school year under a process set out in the expired collective agreement instead of under the new procedure in the section L of the MOU.

The grievance was brought under section M of the MOU, the Dispute Resolution/Enforcement Mechanism provision, which states:

For the term of collective agreements within the scope of this MOU, a dispute pertaining solely to any of the terms or conditions specifically agreed upon at the 2012 MOU **that are incorporated into a local collective agreement**, with the exception of matters agreed-to through local bargaining, shall be subject to the following procedures […] (emphasis added)

THE DECISION

Arbitrator Burkett stated that the MOU was an agreement reached between OECTA and the Ministry of Education. Neither OCSTA nor the Board were a party to that agreement, nor did they consent to be bound by it. He therefore concluded that the MOU as a stand-alone document did not confer jurisdiction on him to determine the dispute. His jurisdiction would need to be found in the PSFA or the PSFA read in conjunction with the MOU.

Arbitrator Burkett then held that the scope of section M itself clearly related to "any of the terms or conditions specifically agreed upon at the 2012 MOU that are incorporated into a collective agreement […]." No collective agreement had yet been entered into in this case.

He concluded that if the Legislature "had intended section M to apply in the case of an alleged pre-December 31, 2012 breach of an MOU provision regardless of whether or not the provision has been incorporated into a local agreement, it would

not have expressly made section M applicable to “a dispute pertaining solely to any of the terms or conditions specifically agreed upon in the 2012 MOU **that are incorporated into a local collective agreement** (emphasis added).”” He concluded further that, consistent with the plain language of the PSFA and the MOU, section M only applies to terms “that are incorporated into a local collective agreement” and that these words “admit to no other meaning.” Since section L of the MOU regarding hiring practices had not yet been incorporated into a renewal collective agreement, he had no jurisdiction under section M to determine a grievance relating to a breach of section L.

Arbitrator Burkett did note, however, that OECTA was not without a forum in which to have the dispute considered. By operation of section 13(4) of the PSFA, which states that the PSFA may be enforced as if it formed part of the *Labour Relations Act*, it was open to OECTA to file an application with the Ontario Labour Relations Board in this regard.

IMPLICATIONS

Arbitrator Burkett’s award is significant because it should prevent a number of current local grievances from proceeding to arbitration under the MOU where there is no OECTA renewal collective agreement in force. As Arbitrator Burkett noted in his award, this scenario is necessarily time-limited and boards should therefore carefully consider the provincial dispute mechanism as part of their collective bargaining strategy.

Should have you have any questions regarding the issues raised in this decision, please contact your regular Hicks Morley lawyer.

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