FTR Now

Ontario Government Tables Legislation Impacting Bargaining and Interest Arbitration in the Fire Sector

Date: November 15, 2018

On November 15, 2018, the Ontario government introduced Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018* (Bill 57), omnibus legislation giving effect to initiatives found in its 2018 Ontario Economic Outlook and Fiscal Review. If passed, Schedule 18 of Bill 57 will amend the *Fire Protection and Prevention Act, 1997* (FPPA) to, among other things, address collective bargaining and interest arbitration in the sector, and enhance protections for volunteer firefighters engaged in “two-hatting.”

In this *FTR Now*, we specifically discuss the proposed FPPA amendments which represent a new opportunity for Ontario’s municipalities to explore ways of strategically managing the ever escalating cost of delivering fire suppression services.

Note that other legislative initiatives found in Bill 57 will be addressed in a separate *FTR Now*.

Collective Bargaining and Interest Arbitration in the Fire Sector

If passed in its current form, Schedule 18 of Bill 57 will make a number of substantive and procedural changes to the interest arbitration process in Ontario’s fire sector, which changes are expected to be helpful to municipalities. These changes include the following:

1. Elimination of Boards of Arbitration

Effective upon Royal Assent, any interest arbitration that has not already commenced will be conducted by a single arbitrator mutually agreed upon by the parties or appointed by the Minister. This change will bring the fire interest arbitration process more in line with that which occurs under the *Police Services Act*, and may serve to expedite the interest arbitration process by alleviating scheduling conflicts that can otherwise delay the hearing and decision-making process.

2. New Legislative Criteria

Schedule 18 of Bill 57 fundamentally reforms the statutory criteria under the FPPA which must be considered by an interest arbitrator when fashioning an award. The new statutory criteria proposed by the legislation are as follows:

- A comparison, as between the employees and other employees in the public and private sectors, of the terms and conditions of employment.
- A comparison of collective bargaining settlements reached in the same municipality and in comparable municipalities,

including those reached by employees in bargaining units to which the *Labour Relations Act, 1995* applies, having regard to the relative economic health of the municipalities.
- The economic health of Ontario and the municipality, including, but not limited to, changes to labour market characteristics, property tax characteristics and socio-economic characteristics.
- The employer's ability to attract and retain qualified firefighters.
- The interest and welfare of the community served by the fire department.
- Any local factors affecting the community.

Notably, the legislation will no longer require an interest arbitrator to consider a municipality's "ability to pay" – a statutory criterion that many Ontario municipalities believed interest arbitrators were quick to dismiss. Instead, more concrete criteria including labour market, property tax and socio-economic characteristics will have to be considered by the arbitrator, along with purely local factors including the interest and well-being of the community.

Furthermore, prior reference to the "nature of the work performed" by the employees and comparable employees in the public and private sectors has been omitted. In its place, arbitrators will be required to consider other collective bargaining settlements reached within the same municipality, along with those in comparable municipalities while having regard to their differing economic circumstances.

While it remains to be seen how these new criteria will be interpreted and applied by interest arbitrators, the new criteria focus more significantly on local circumstances and settlements. As such, they present employers with a new set of tools for use in collective bargaining and interest arbitration, which may lead to more similarity in wage increases as between the various employee groups within a municipality.

3. Other Procedural Changes

Schedule 18 makes a number of other important procedural changes to the interest arbitration process, including:

- A requirement that the arbitrator keep the Minister advised of the progress of the arbitration so that, if a decision is not rendered within the timelines under the legislation, the Minister may issue any order they consider necessary to ensure that the award is rendered within a reasonable period of time;
- A requirement that written submissions be exchanged in advance of the hearing date set by the arbitrator; and
- A requirement that the arbitrator provide written reasons, demonstrating their consideration of the statutory criteria under the legislation, upon the request of either party.

Enhanced Protections for "Two-Hatters"

Schedule 18 will also strengthen protections for "two-hatters" by:

- Prohibiting fire associations from penalizing or otherwise disciplining a firefighter because they have worked, are working or intend to work as a volunteer, even if the work is within the jurisdiction of the association or otherwise adversely affects its interests. Prohibited activities include denying a person membership within the association, suspending or expelling a member, or fining or attempting to collect fines from firefighters.
- Prohibiting civil actions against firefighters who have worked, are working or intend to work as a volunteer firefighter, where the civil action is an attempt to collect a fine or other monetary penalty from the firefighter, or to enforce or give effect to any decision by the association that is prohibited by the legislation (on account of it being a penalty against the firefighter for having worked, working or intending to work as a volunteer).
- Rounding out these provisions is a mirror restriction prohibiting municipalities from refusing to employ a firefighter, discharging a firefighter, or refusing to assign a firefighter because they have worked, are working or intend to work as a volunteer firefighter.
- Where parties to the collective agreement have negotiated "closed shop" language into their collective agreements, associations will be prohibited from requiring the employer to refuse employment to a person as a firefighter,

discharging a firefighter or refusing to assign a firefighter because they have been expelled, suspended or refused membership in the association because:

- the firefighter was or is a member of another trade union or association;
- the firefighter has engaged in activity against the association or on behalf of another association or trade union;
- the firefighter has engaged in reasonable dissent within the association, *including in respect of the individual's work, past work or intended work as a volunteer firefighter;*
- the association has discriminated against the firefighter with respect to the application of its membership rules, *including in respect of the person's work, past work or intended work as a volunteer firefighter*;
- the firefighter has refused to pay unreasonable initiation fees, dues and assessments levied against them by the association; or
- *the firefighter has worked, is working or intends to work as a volunteer firefighter, even if that work is within the jurisdiction of the association or adversely affects its interests.* (Note that the italicized provisions show the Schedule 18 amendments.)

Associations with "closed shop" language in their collective agreements will still be permitted to require employers to discharge firefighters who have engaged in "unlawful activity" against the association. If passed in its current form, Schedule 18 clarifies that working as a volunteer firefighter will *not* constitute "unlawful activity." Accordingly, associations will not be permitted to require employers to discharge firefighters because they have, are or intend to work as a volunteer firefighter.

Schedule 18 will prohibit any penalties and discipline levied against a volunteer firefighter by the association after November 15, 2018.

Conclusions and Next Steps

As readers can appreciate, if passed in its current form, Schedule 18 of Bill 57 has the potential to significantly impact interest arbitration, and therefore collective bargaining, in the fire sector. The legislation's enhanced protections for two-hatters are expected to provide all workplace parties – both associations and employers alike – with much needed clarity on their rights and responsibilities towards volunteer firefighters in relation to this important and longstanding issue.

Municipalities are encouraged to carefully review these proposed amendments in advance of the commencement or continuation of fire collective bargaining.

Hicks Morley will continue to monitor this legislation and will report on its progress.

If you have any questions related to this *FTR Now*, please contact Julia Nanos at 416.864.7341, John Saunders at 416.864.7247, Craig Rix at 416.874.7284, Mark Mason at 416.864.7280 or your regular Hicks Morley lawyer.

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