Case In Point

Appellate Court Finds National Day of Mourning Not a Paid Holiday Under Collective Agreements

Date: November 13, 2023

The issue of whether the National Day of Mourning is considered a “holiday” under a particular collective agreement has been the topic of recent arbitral decisions. On November 7, 2023, the Divisional Court weighed in on the issue and found that the National Day of Mourning is not a paid holiday under the applicable collective agreements before it.

Background

On September 13, 2022, the Governor General “directed that a proclamation be issued requesting that the people of Canada set aside September 19, 2022, as the day on which to honour the memory” of the Queen. On the same day, the Prime Minister issued the following statement: “The National Day of Mourning is an opportunity for Canadians from coast to coast to coast to commemorate Her Majesty. It will be designated a holiday for the public service of Canada, and other employers across the country are also invited to recognize the National Day of Mourning.”

The National Day of Mourning was not designated a holiday under the *Canada Labour Code*, the *Holiday Act*, the Ontario *Employment Standards Act*, *2000*, or any other legislation.

A number of Ontario arbitrators have found that the National Day of Mourning should not be recognized under a collective agreement as a paid holiday (some of these awards were discussed in our recent article, “The Importance of Clear Collective Agreement Language: Holiday Entitlements”).

The Divisional Court Weighs In

In *Ottawa Police Services Bd. v. Ottawa Police Assn.*, the Divisional Court reviewed a decision of Arbitrator Waddingham which found that the National Day of Mourning was a paid holiday under the applicable collective agreements.

The collective agreements between the Ottawa Police Services Board (OPSB) and the Ottawa Police Association (OPA) (pertaining to civilian members and police personnel) contained provisions that any day proclaimed by the Governor General or the Lieutenant Governor in Council shall be a statutory holiday, in addition to the stipulated statutory holidays.

The OPA had argued before the Arbitrator that the language in the agreements was clear that a day proclaimed as a holiday shall be included as a paid statutory holiday. The Arbitrator agreed, finding that the parties had bargained broad language into their collective agreement with respect to the designation of additional statutory holidays and it must live with the wording it agreed to.

The OPSB sought judicial review of this decision. The Divisional Court held that the Arbitrator’s interpretation was unreasonable, namely, that any proclamation would entitle OPA members to an additional paid holiday day in the year of the proclamation and, in some cases, annually thereafter. This would create an accumulating and significant expense for which the OPSB, as employer, could not plan or budget.

The application for judicial review was allowed and the grievances were dismissed.

Going Forward

Employers should take note of these decisions and evaluate the holiday provisions in their collective agreement to ensure it does not provide any unintended entitlements.

If you have any questions about these decisions, please contact your regular Hicks Morley lawyer.