

ARBITRATOR ORDERS WAGE INCREASE FOR HOSPITAL WORKERS DESPITE WAGE FREEZE*Participating Hospitals and Service Employees International Union*

An interest arbitration board recently ordered that 38 hospitals (the "Participating Hospitals") provide 15,855 employees with a 4 percent wage increase over two years, despite the government's wage freeze initiatives.

Background:

The service employees (housekeeping, maintenance, dietary, patient assistance, etc.) at the Participating Hospitals are represented by three unions: the Canadian Union of Public Employees ("CUPE"), the Canadian Auto Workers ("CAW"), and the Service Employees International Union ("SEIU").

In the fall of 2010, the Participating Hospitals reached agreements in their central negotiations with CUPE and the CAW for a 2 percent annual wage increase. The Participating Hospitals offered the same terms to the SEIU; however, the SEIU demanded a superior economic package, as well as several other non-monetary items. The parties consequently failed to reach a deal.

In March 2010, the provincial government enacted the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the "Act"), which froze compensation for many non-union employees in the Ontario Public Service and across the broader public sector for two years. The Act applies to managers, supervisors and other non-bargaining unit employees working for public hospitals.

While no similar wage restraint legislation was passed for unionized employees, the government issued a number of policy statements suggesting that unions should voluntarily agree to a wage freeze for the same two-year period.

In light of the new legislation and related policies, the Participating Hospitals withdrew their offer to replicate the economic packages negotiated with CUPE and the CAW, and revised their bargaining position to provide for a zero percent compensation increase over a two year term, between October 2009 and October 2011. In March 2010, with negotiations deadlocked, the parties proceeded to interest arbitration before a board of arbitration chaired by Arbitrator Burkett.

Decision:

On November 4, 2010, the arbitration board ordered the Participating Hospitals to pay SEIU employees a 2 percent wage increase effective October 2009 and a 2 percent wage increase effective October 2010. The wage increases were to be paid retroactively within 60 days of the decision. In reaching this conclusion, the board pointed out that the compensation increases for the affected employees had been in lockstep with those provided to CUPE members since 1989, and that any deviation would be inequitable:

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“If we were to be governed by these government pronouncements, absent legislative confirmation, the effect here would be to put these employees at a significant disadvantage relative to their CUPE counterparts doing the same work in the same jurisdiction at the same time when their compensation increases had been identical since 1989. Clearly, this would be an inequitable result that would undermine employee morale and complicate future bargaining.”

In the absence of legislation to the contrary, the board declined to give the government’s policy statements priority over the factors arbitrators are required to consider when making a determination under the *Hospital Labour Disputes Arbitration Act*:

“While there is no doubt that this province has fallen upon difficult economic times, we must consider the full range of relevant economic indicators as they impact upon collectively bargained terms and conditions of employment. Government pronouncements of intent with respect to future funding are not, in and of themselves, sufficient to override what would otherwise be the content of an arbitrated award.”

The board of arbitration ordered the parties to address several of the non-monetary items in the next round of bargaining, noting that the parties would be returning to the bargaining table in less than one year.

Commentary:

Following Arbitrator Burkett’s award, it appears that the government’s current wage restraint policies in respect of unionized employees are unlikely to have much effect. First, the government’s policy is not binding. Second, many collective agreements will not expire until 2012; therefore, no bargaining will take place during the two-year freeze. Third, as seen in this decision, arbitrators appear unwilling to mandate a wage freeze when the government has not legislated such changes.

There has been some speculation that the government may impose wage restraint legislation on unionized employees. While this remains a possibility, it appears unlikely. Not only would it be politically unpopular to enact such legislation, wage restraints that impact collective bargaining may not withstand a challenge under the *Canadian Charter of Rights and Freedoms*, in light of the Supreme Court of Canada’s decision in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, where the Court struck down legislative restraints on collective bargaining imposed in British Columbia on the basis that such restraints were unconstitutional.

This award also draws attention to the difficulties inherent in the implementation of the *Act*. The legislation has effectively created a two-tier pay system that creates administrative difficulties for employers through the compression of wages. The wage restraint also inequitably penalizes managers and other non-bargaining unit employees in the public sector. For instance, bargaining unit employees are likely to receive compensation increases, while their managers and supervisors likely will not. This differentiation will undoubtedly undermine employee morale and affect compensation grids for years to come.

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