

ARBITRATOR REFUSES TO IMPOSE WAGE FREEZE ON UNIONIZED NURSING HOME EMPLOYEES

In a recent interest arbitration award, *Participating Nursing Homes and Service Employees International Union, Local 1 Canada* (an unreported decision of Arbitrator Norman Jesin dated September 15, 2010), an Arbitrator ruled against freezing unionized employee wages of nearly 100 Ontario nursing homes.

The Arbitrator arrived at this decision despite the provincial government's March 2010 Budget Speech, in which the provincial government asked its transfer-payment partners, such as the nursing homes, to freeze compensation in new collective agreements for two years, and stated that government-funded employers would receive no funding for wage increases when re-negotiating expired collective agreements.

The nursing homes (the "Employers") argued that, in light of the economic deterioration brought about as a result of the 2008 financial crisis, and in light of the provincial government's expectations for wage restraint, they were not in a position to offer the Service Employees International Union, Local 1 Canada (the "Union") wage increases when renegotiating their collective agreements. The Union refused to accept the Employers' position, and sought 4% wage increases per annum, a significant amount of monetary increases including significant "catch up" increases for certain nursing homes, benefit improvements, classification adjustments, pension improvements, faster movement through the wage grid and other costly items.

The Arbitrator rejected the Employers' argument that compensation should be frozen as a result of the Budget, particularly because there had been no legislation by the government requiring such a freeze.

The Arbitrator noted that the government specifically agreed to honour all collective agreement wage increases negotiated prior to March 2010, which meant that many employees working in the health care field, including some in nursing homes, would be receiving wage increases for the same period in which the Employers asserted that the government sought a compensation freeze. The Arbitrator concluded that because increases were being found for other nursing home employees, and for some other health care employees, there should be a wage increase in the collective agreements before him.

However, the Arbitrator found that it would be appropriate to award a wage increase that reflected the economic climate, and that was in keeping with the more moderate wage settlements that had recently been agreed to or awarded to other union employees. Accordingly, (with the exception of one nursing home, which received two annual increases of 2% due to unique circumstances) the Arbitrator awarded a wage increase of 2%, retroactive to the commencement date of each collective agreement, and declined to award any further wage or classification adjustments, including any "catch up" increases.

This award will concern provincially-funded employers who anticipate renegotiating collective agreements during the two-year wage restraint period (from March 2010 to March 31, 2012) because the award calls into question their ability to rely on the provincial government's call for no wage increases during that period.

Since the provincial government has made clear that it would not fund collective agreement wage increases negotiated during the wage restraint period, employers who are nonetheless ordered to do so will have to find alternative ways to fund such increases. One promising aspect of the award for employers is that the Arbitrator was at least willing to recognize the effects of the economic downturn and therefore ordered a wage increase that was significantly lower than what the Union sought, and declined to award any further wage or classification adjustments.

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