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By E-mail: Three Pages

## **CUPE 15 v. Vancouver (City): Group Life Insurance Benefits Over Age 65**

### **Issue**

Is the Employer contractually obliged to ensure group life insurance coverage for employees who continue working beyond 65 years of age?

### **Facts**

The City of Vancouver (the City) and the Union entered into a collective agreement with a term from 2007 to 2011, which was extended to 2015. When Article 10.3(a) was initially included in the collective agreement, the mandatory retirement age was 65 and the group life insurance plan provided that termination of coverage would result "on the first day of the month following the date the employee reaches age 65 or the date the employee retires, whichever is earlier."

On January 1, 2008, the British Columbia *Human Rights Code* was amended to extend protections against age-based discrimination to all employees aged 19 years and older. In response to a letter received from the union, the City contacted Sun Life Financial and extended the group life insurance coverage to employees up to the age of 70. The Union was not involved in discussions between the Employer and Sun Life regarding the extension of coverage, but was advised of the changes in a letter dated January 13, 2009.

The Grievor was employed as a regular full time maintenance technician by the City. He reached the age of 70 during the month of February 2013. On January 29, 2013, the City advised Rogers that he would no longer be covered by the group life insurance plan as of March 1, 2013. He was offered the option of converting to an individual plan with the insurer. On February 6, 2013, the Union filed a grievance over the City's refusal to insure the grievor past the age of 70, alleging violation of Article 10.3(a). The grievance requested that Mr. Rogers "remain insured." As a result of uncertainty around his life insurance policy, Rogers took out two life insurance policies on March 12, 2013.

In August 2013, after consulting with Sun Life, the City amended the group insurance plan to apply to members up to the age of 75. Pursuant to this change, the City deducted premiums from Rogers' pay starting in September 2013, and notified him that he would continue to be eligible for life insurance until the earlier of age of 75 or when he is no longer a regular employee of the City.

### **Collective Agreement Language**

#### ▪ Article 10.03 Group Life Insurance

Effective 2007 October 10, effective the first day of the first full pay period worked following the date of hire, employees shall be insured under a group life insurance policy which has been taken out by the employer on behalf of the employees. The group life insurance policy includes, among other benefits, coverage for each of such employees in an amount equal to one and one-half (1 1/2) times the employees' basic annual salary which shall be computed to the next highest \$1,000.00

subject to the terms and conditions of the group life insurance policy. The Employer shall pay seventy-five percent (75%) of the premium and the active employees shall pay twenty-five percent (25%) of the premium.

## Arguments

The City argued that Article 10.3(a) incorporates all benefits and limitations of the group life insurance plan into the collective agreement, including all age-based limitations. The union argued that Article 10.3(a) of the collective agreement required the City to provide group life insurance for each employee, regardless of age.

## Past Awards

In arriving at his decision, Arbitrator Hall referred to past awards addressing benefit eligibility and coverage of employees over the age of 65.

Arbitrator Hall noted that in *CUPE Local 101 v. London (City)*, [2008] O.L.A.A. No. 351 (QL), Arbitrator Gregory Brandt found that to the extent that the insurance plans and policies do not conflict with entitlements under the collective agreement, they remain appropriate documents to which reference may be made. However, they cannot “trump” entitlements which have been bargained by the parties and which form part of the collective agreement. If a provision in a collective agreement or a practice that has been followed under the collective agreement becomes illegal, the parties are obliged to amend the agreement or their practice to reflect the changed legal environment.

Similarly, Arbitrator Hall cited *CUPE Local 107 v. City of London*, [2010] O.L.A.A. No. 347 (QL), wherein Arbitrator Brian Etherington held that “clear and unambiguous language” was required to ground a finding of an intention to discriminate on the basis of age. Arbitrator Etherington stated:

“In short, the amendments to the *Human Rights Code* may enable employers and unions to make distinctions that disadvantage senior workers in their entitlement to benefits, but it does not mandate it or require us to read such a limitation into existing general contract language concerning benefits simply on the basis that workers who are 65 or older were not allowed to work past age 64 prior to December 12, 2006.”

The reasoning in this second *City of London* award was followed by Arbitrator Mary Ellen Cummings in *Strathroy-Caradoc Police Assn. and Strathroy-Caradoc Police Services Board* (2012), 216 LAC (4<sup>th</sup>) 199, where she noted that the parties had not amended their collective agreement after the *Human Rights Code* had been amended, and thus she was “interpreting the parties unchanged agreement against the altered legislative landscape.” In the result, Arbitrator Cummings found the parties had not negotiated an age limitation on benefits, and the employer had purchased an insurance policy with a termination of benefit date at odds with the collective agreement.

Lastly, Arbitrator Hall referenced his award in *BCGEU v. Peace River South School District No. 59*, [2009] B.C.C.A.A. No. 162 (QL), wherein he concluded that the parties expressed a mutual intention to provide benefit coverage with an age restriction by specifically negotiating coverage based on a previous plan that had provided for the termination of most benefits at age 65.”

## Decision

Although Arbitrator Hall acknowledged that Article 10.3(a) of the collective agreement referred to a pre-existing group life insurance policy, he deemed this to be a “neutral factor” in determining the City’s obligations. Arbitrator Hall assessed the plain and ordinary meaning of the language used in Article 10.3(a) and found that it stipulated that all employees were to be insured under a group life insurance policy regardless of their age. Referring to the language in Article 10.3(a), Arbitrator Hall stated:

“The first sentence is directed to eligibility or the general promise of insurance, and the plain and ordinary meaning of the words indicates that all employees shall be insured under a group life insurance policy — there is no limitation or other qualification. This conclusion is reinforced by use of the phrase “each of such employees” in the second sentence. ... [T]he second sentence is directed to the level of benefits, and it is only there that coverage is made “subject to” the terms of the policy. Stated somewhat differently, ... all employees are eligible for life insurance under the group policy, although the level of benefits is subject to its terms and conditions provided those are not inconsistent with the collective agreement.”

Arbitrator Hall rejected the City's argument that it would be impossible to find a group life insurance policy with no termination date, pointing to the Mercer Report which suggested that at least two major insurance carriers would underwrite a basic life benefit with no termination age.

In the result, ruling that “the provision [‘subject to’ in the collective agreement article] applie[d] only to the level of benefits, and [that] general eligibility under the collective agreement [was] not subject to terms and conditions of the group life insurance policy,” Arbitrator Hall upheld the Union’s interpretation of Article 10.3(a) and allowed the grievance.

## Questions

BCPSEA is aware of grievances being filed against several school districts regarding the cessation of benefits at age 70. BCPSEA is managing and coordinating this issue with the assistance of external counsel. If this issue is raised by the local union in your school district, please contact your BCPSEA liaison for guidance.

*BCPSEA Reference CD-04-2014*