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Collective Bargaining

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Legal Duties Related to Bargaining



Bargaining in Good Faith

- What is the “duty to bargain in good faith”?
 - s. 27/43 and the right to “bargain collectively”
 - s. 1 “collective bargaining” defined
 - s. 11 “requirement to bargain in good faith”
 - Subjective intention to bargain in “good faith”
 - Objective standard of making “every reasonable effort”



Bargaining in Good Faith

- How does the Labour Board decide if a party has failed to bargain in good faith?
 - LRB generally does not evaluate the substantive positions
 - Examines the entire context of bargaining history
 - Has the party adopted a tactic which, when considered against the backdrop of collective bargaining postures to date, unreasonably inhibits the conclusion of the CA?

Bargaining in Good Faith

- Bargaining does not require proportionate movement
- What is Hard Bargaining?
 - Sticking to your position knowing that you may need a labour dispute in order to move the other party's position on that issue
- What is Surface Bargaining?
 - Using bargaining tactics which may appear to be legitimate in isolation to disguise the real intention not to conclude a collective agreement at all.

Are There Limits On What Can Be Bargained?

- Impermissible subjects of bargaining
 - Provisions contrary to the *Code* or other laws
 - Removal of Just Cause
 - Removal of Joint Labour Management Meetings
- Permissible, but cannot be taken to “impasse”
 - inclusions/ exclusions
 - statutory bargaining structure
 - Proposals which take away statutory rights: e.g. employer free speech, removal of strikes/lockouts



Are There Limits On What Can Be Bargained?

- What does “taken to impasse” mean?
 - The demand was a contributing factor towards the breakdown of bargaining
 - The demand is part of a package which is used to support a strike or lockout



Are There Limits On What Can Be Bargained?

- *PELRA* structure
 - Provincial matters must be bargained provincially
 - Local matters must be delegated to local parties
 - Parties must agree on split of issues – App A
 - Cost items must be provincial
 - Local proposals on provincial matters are contrary to *PELRA*



Information Sharing

- What does the “duty to provide information or disclose information in collective bargaining” mean?
 - Must disclose information necessary to foster informed and rational discussion of issues between the parties
 - Purpose of disclosure is to minimize the potential for disputes through being in a position to evaluate the reasonableness or bona fides of proposals
 - Employer has a duty to provide information where the union makes a specific request
 - Union cannot say receipt of information is a precondition to commencing bargaining



Information Sharing

- Refusal without sound business reason to provide information the union needs to fulfil its statutory obligation will be a breach of s. 6 (interference)
- Employer is required to provide information relating to terms and conditions of employment, for example,
 - Employee information
 - Wages
 - Benefit costs
 - Classification structures
- What if request involves third party information (insurance contracts)



Information Sharing

- Employee information
 - Union is entitled to information sufficient to facilitate efficient communication with employees (PIPA and FIPPA allow it)
- Employer must provide information if union could indirectly calculate the information but doing so would be time consuming and prone to error and it can be provided with minimal effort
- Union does not have to establish it cannot obtain information through other methods
- Employer is not required to produce reports that do not already exist



It Takes Two to Bargain



Us and Them

- Establishing the relationship between the two Bargaining Teams
- Understanding the Union team's proposals/positions
- But I just want to say “No!!”
- The two “Cs” – Compromise v. Compulsion



Just Us

- We are all members of a Bargaining Team
- Use of Caucus





The Spokespersons



**Everyone
is Different**



Practical Tips

**With
Prejudice or
Without
Prejudice**

Communication

**Past
Practice**



Practical Tips

**Understanding
internal union
dynamics**

**Renewal of
LOUs**

**Dealing with
emotions
and fatigue**

Practical Tips

**Don't put
your principal
in the room**

**Verbal
representations
and
understandings**

THANK
YOU

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