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URBAN UNIT | RURAL AND SUBURBAN UNIT | PRIVATE SECTOR UNITS

December 4, 2014

RETROACTIVITY

ARBITRATION DECISION – GRIEVANCE N00-10-00001

An initial decision had established that the collective agreement, as extended by the *Act to Provide for the Resumption and Continuation of Postal Services* (C-6) as of February 1st, 2011, was also in effect during the strike and lockout period. However, the arbitrator specified that the application of provisions relied upon to support a grievance must not result in any absurd, inequitable or unreasonable situation, or render unlawful any act committed legally at the time when the collective agreement was no longer in effect.

The dispute stems from the fact that between May 30 and June 27, 2011, the Corporation imposed a number of working conditions that varied from those outlined in the collective agreement.

Following the initial decision, and six (6) hearing dates between February 14 and May 9, 2014, the national arbitrator finally rendered his decision on the **merits of the dispute** with regard to the retroactivity of the collective agreement during the strike and lockout period, i.e. from May 30 to June 27, 2011.

The Union had suggested that the arbitrator first hear the parties' positions on each disagreement and corrective action sought, and issue directives or declaratory decisions on each disagreement so as to give the parties an opportunity to settle the grievances out of court. If the parties were unable to arrive at a settlement, the grievances would be submitted to the regular arbitration procedure and the arbitrators seized of the matters would resolve the disputes based on the guidelines established by the national arbitrator.

The Union proved to the arbitrator that its dispute with the Corporation had led to the filing of some 3,000 grievances in different regions of the country. We specified that despite the filing of these 3,000 grievances, the national grievance protected the rights of all members who had not filed a grievance at the time because they believed, rightly so, that their rights were protected by the national grievance.

The Union presented an outline of the claims and corrective actions sought for each clause of the collective agreement it believed should have been applied retroactively, i.e. the provisions of articles 5, 6, 8, 9, 13 to 21, 23 to 27, 30, 33 to 35, 38, 39 and 44, as well as Appendices "A", "D", "G", "V(3)" and "RR". However, it specified that the mention of a claim under a given article of the collective agreement did not in any way exclude application of other provisions of the collective agreement with regard to that claim. The Union also specified that some provisions were interrelated, e.g. Article 5 "Discrimination" could also involve Article 54 "Work Reintegration Program."

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FAVORABLE ARBITRATION DECISION

The arbitrator's decision is very largely favourable to the members and will cost the Corporation tens of millions of dollars, not including the interests that continue to apply until all matters are settled or have been decided by an arbitrator.

Since the arbitration decision is 111 pages long, we cannot summarize in a bulletin every impact it will have on the members.

Only a few aspects of the decision are listed below so you can have an idea of the types of claims that were allowed by the arbitrator and the manner in which the disputes will be dealt with:

1. The arbitrator decided that interest calculated at the legal rate must be paid for any remedy entailing monetary payment and that any period of time for which an employee was entitled to payment of wages must be considered as time worked and paid under the collective agreement and for purposes of the pension and benefits plans.

2. From May 30 to June 14, 2011, the Corporation reduced the employees' weekly or daily schedule without providing the required forty-eight (48)-hour notice (Groups 1 and 2 – required notice varies depending on the group) and without paying the required allowances (…).

   Since the notices required for each group were not respected, members will receive the compensation outlined in article 14 of the collective agreement and the premiums will be reimbursed.

   Article 14 provides the definition of a normal work week, while Article 53 states that "regular" employees have job security, i.e. they cannot be laid off.

   The Corporation was obliged to apply the work schedules provided for in Article 14 for "regular" employees. They are therefore entitled to claim the wages and other benefits to which they would have been entitled, had their hours of work not been reduced.

3. Article 18: Members who work in the Province of Quebec must be paid for the June 24, 2011 legal holiday.

4. Clause 38.08: The employer must pay its full share of the British Columbia provincial medical insurance plan.

5. Recovery of the vacation leave credits that the Corporation did not grant for the month of June 2011. The Corporation will also be required to pay **moral damages for each day of annual leave** that was postponed or cancelled during the period of May 30 to June 27, 2011.

   The employer will have to compensate members for costs incurred as a result of the cancellation of their annual leave.

   The annual leave credits will be paid out with interest.

6. Recovery of the sick leave ("top up") credit that the Corporation did not grant for the month of June 2011, and payment of the sick leave days to those who were not paid during the period from May 30 to June 27, 2011 while on sick leave and who had accumulated sick leave credits.

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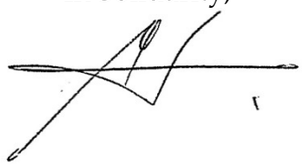
JUDICIAL REVIEW

The Union held brief discussions with Canada Post. However, the Corporation was not prepared to discuss the matter with the Union any further. Instead, on December 1st, 2014, it filed an application for judicial review with the Superior Court of Quebec.

Chopra, President and CEO of Canada Post, and his gang have no consideration for the membership. All they want is confrontation. In fact, one has to wonder whether Chopra was chosen for his skills or simply because he has no backbone and will do the Conservative government's bidding. It's up to Chopra to decide whether he want to let the costs associated with the arbitrator's decision increase as interest accumulates, not to mention the legal fees.

In closing, on behalf of myself and the National Grievance and Arbitration Department, I would like to offer each and every one my best wishes for the holiday season and a Happy New Year 2015.

In Solidarity,



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