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● URBAN UNIT ○ RURAL AND SUBURBAN UNIT ○ PRIVATE SECTOR UNITS

March 26, 2013

RETROACTIVITY OF COLLECTIVE AGREEMENT

NATIONAL GRIEVANCE N00-10-00001

On March 1st, the Union issued a national bulletin updating members on hearings regarding the grievance filed on retroactivity, as a result of the back-to-work legislation adopted on June 26, 2011. We informed you that the hearings had been completed and that the arbitrator had taken the case under advisement.

> "On July 21, 2011, the Union filed a grievance on the grounds that the Corporation had refused to comply with several provisions of the collective agreement between May 30th and June 27, 2011. In fact, although the *Act to provide for resumption and continuation of postal services* (Bill C-6) provides for the collective agreement to be retroactive to February 1st, 2011, the employer refuses to recognize the strike and lockout periods. Yet Bill C-6 does not provide for an excluded period in the retroactive application of collective agreement, contrary to the back-to-work legislation passed by the federal government in 1991 and 1997, which did exclude strike periods."

Not only did Bill C-6 in 2011 not provide for excluding the period of the work conflict, but the Federal Court of Appeal had already ruled in the Union's favour on the same issue with respect to the back-to-work legislation passed in 1987. The Supreme Court of Canada had even quashed the employer's appeal of the Federal Court of Appeal ruling.

Delay Tactics

The Federal Court of Appeal wrote as follows on the 1987 legislation, which provided for the resumption and continuance of postal services following the strike that occurred between October 1st and October 17, 1987:

> "[Translation] But even if, as maintained, the Corporation had a legal basis for unilaterally amending employment conditions and for no longer applying the provisions of the expired collective agreement, including those governing the grievance procedure, during the period of October 1st to 17, 1987, the collective agreement could still be revived legislatively and apply provided such application did not result in making certain acts retroactively illegal. The fact of breathing life into corrective procedures such as the grievance procedures could not create such retroactive illegalities."

So there are two possibilities: either the employer was ill-advised by its counsel, which would be surprising since the former at the very least knew about the Federal Court of Appeal ruling, or the Corporation decided to drag the case out. The Union's grievance essentially stems from the fact that, during the strike and lock-out period, the employer had refused to apply the collective agreement and that, once back-to-work legislation was passed, the Corporation, ignoring the legislation adopted on June 26, 2011, simply maintained there was no collective agreement in effect between May 30 and June 26, 2011. That is what led the Union to file a national grievance

and ask the arbitrator to render a decision on the applicability of the collective agreement during the strike and lockout period, so as to avoid repeating this debate in the examination of some 3,000 grievances filed so far regarding that period.

Despite the Federal Court of Appeal's ruling and the Supreme Court's refusal to hear an appeal of the Federal Court, and despite the adoption of Bill C-6, the Corporation maintained that, the collective agreement did not apply during the strike and lockout period, whereas the Union maintained that the collective agreement was fully in effect between May 30, 2011 and June 27, 2011, and that the employer was therefore required to abide by and fully apply that collective agreement.

DECISION AND REASONS FOR DECISION

The arbitrator has stated that Section 6 of the *Act to provide for the resumption and continuation of postal services* is clear, not subject to any ambiguity and provides for no exception to the retroactivity of the collective agreement.

The arbitrator concludes that the collective agreement extended by the *Act to provide for the resumption and continuation of postal services* as of February 1st, 2011, also applied to the strike and lock-out period.

However, retroactivity to the strike/lock-out period 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.

No consideration for members

The Corporation has no consideration for the members of the Union. It could easily have recognized that, given the caselaw, especially the Federal Court of Appeal ruling, it would only be throwing away considerable sums of money to pay wealthy law firms at the expense of workers who toil for their livelihoods and their families'.

The Corporation is talking from both sides of its mouth, when, on the one hand it maintains it has financial problems, while on the other giving legal firms a blank cheque to fight the Union and its membership. What the Corporation has done in this case is nothing other than an abuse of process, all with the blessing of the 12th floor of its Ivory Tower in Ottawa.

The Union will be asking the Corporation if it is ready to settle the 3,000 or so grievances referred to arbitration, or if it prefers going back to the arbitrator.

The struggle continues.

Philippe Arbour
National Grievance Officer

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