

Arbitration Award Summary

13-P-01594 Policy Grievance Re: Leave for Elected Officers

Case Outline

This grievance falls under the Collective Agreement expiring on March 31, 2016.

The grievance turned on the interpretation of the sentence "... employees shall be offered as a minimum the position they held..." in Article 12.09 (f) of the Collective Agreement.

Article 12.09 deals in general with leave of elected Union officers. Article 12.09(f) deals specifically with an Employee returning to work at the end of his or her term of office at the Union.

LEAVE FOR ELECTED OFFICERS

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12.09 (f) Upon termination of their leave of absence such employees shall be offered as a minimum the position they held with the Employer in the same work site and community before they commenced the leave of absence. When such employees wish to invoke this clause of the Collective Agreement they shall provide the Employer with a three month notice of their intent to do so.
[Underlining is UNW's]

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The grievance was filed as a result of the Employer interpreting Article 12.09 (f) of the Collective Agreement as having fulfilled the "as a minimum" requirement under 12.09 (f) by placing the returning Employee into an "equivalent" position when the Employee's home position is no longer available.

Employer's Argument

The Employer argued that the language of Article 12.09 (f) is clearly ambiguous on its face. The Employer submitted that in negotiations, both parties had in mind that some flexibility, "the equivalency approach", would be applied in terms of dealing with a returning Employee. Accordingly, in the event that the home position of the returning Employee was either no longer available, no longer in existence due to reorganization or if the position was filled due to organizational requirements, the Employer should be able to look for an "equivalent" position to place the returning Employee.

Union's Argument

The Union argued that there are 2 distinct scenarios to be considered in the application of Article 12.09 (f). The first scenario is where a position ceases to exist as a result of a true business reorganization such as a ferry operator's job no longer existing as a result of a newly built bridge replacing the ferry. The second scenario is where the Employer chooses for operational reasons to permanently fill the home position of an Employee on union leave. Each scenario calls for a different approach. There may be a gap in the language of 12.09 (f) but this should not be taken as giving validity to the Employer choosing out of convenience to permanently fill the position of an Employee on union leave. The position the Employee held before going on union leave shall be offered as a minimum when he or she returns.

The Union submitted that it is necessary to interpret Article 12.09 (f) in context of the entire Article. The Article's purpose is to promote individual Employee involvement in internal union politics. "Equivalent" is not a word included in Article 12.09(f) or anywhere else in Article 12.09. Inserting "equivalent" to qualify the word "position" injects uncertainty. This concept of "equivalency" was specifically rejected in a previous negotiation. Determining on a case by case basis what an "equivalent" position is can become a thorny issue. The uncertainty of preserving his/her position on return from union leave will have a negative effect on the individual Employee looking to seek Union office. Finally, the Union argued that under Article 37.22, the arbitrator did not have the ability to modify provisions of the Collective Agreement, such as adding the word "equivalent" in Article 12.09.

Arbitrator's Decision

The arbitrator acknowledged the overall significance of provisions meant to protect the job situations of bargaining unit employees away from work while holding full-time union office. Such provisions are of critical importance both to any union and its members. Under 12.09 (f), the home position remains available to the Employee while he/she is on union leave. The Employee on union leave continues to exercise seniority based rights while the position exists.

The Union needs to encourage talented members to run for office without jeopardizing their jobs. This is reflected in the way Article 12.09 is drafted. The Article maintains pay, pay increments and all seniority rights related to the home position. In short, the Arbitrator found that it is meant to protect the Employee's working situation while he/she is on union leave. He also found it is meant to dissuade the Employer from permanently filling the position of an Employee on union leave as a means to do away with the "as a minimum" obligation to offer the returning Employee's his/her home position. Without the protection of Article 12.09 (f), the returning Employee would be left searching for an alternative position based on supposed equivalencies to be assessed by the Employer. Finding differently would lead to the possibility of mischief which is to be avoided in interpreting the Collective Agreement.

The grievance was allowed.

Notes

Based on the Arbitrator's interpretation of Article 12.09 (f):

1. There is no avenue nor justification for the Employer, for whatever reason, to fill on an indeterminate full-time basis, the same position as the one held by an Employee on union leave.
2. The Employer may comply with its obligation by providing a reasonable offer for a better work situation that is more than just the minimum. However, an offer taking the returning Employee outside the community and same worksite would be in violation of Article 12.09 (f).
3. If the home position no longer exists at the time of return and is not being performed by anyone on a fill-in or back-fill basis, the Employer is free to apply equivalencies in finding a position as good as the extinguished position. However it must be at the same worksite and in the same community.
4. The returning Employee can freely agree on alternate placement, being a variation of a better offer.
5. There is no probationary requirement as a condition of continued employment under this Article, even when the home position no longer exists and an equivalent one is offered.