UNION GRIEVANCE GNWT 93-525

WORKFORCE ADJUSTMENT PROGRAM - SURPLUS EMPLOYEE ENTITLEMENT TO REASONABLE JOB OFFER AND TO STAFFING APPEALS COMMITTEE

This grievance involved a number of issues contained in the UNW/GNWT Workforce Adjustment Program (W.A.P.).

The first issue was whether or not employees who were declared surplus under the W.A.P. are guaranteed a job offer.

The second issue was whether surplus employees on priority status who had not been offered a job had access to the Staffing Appeals Committee established under Section 3(a) of the Memorandum of Understanding between the parties.

The Union sought to lead extrinsic evidence of bargaining history to establish that the wording of the W.A.P. did not correctly reflect or set out the intent of the parties. The Employer argued that extrinsic evidence of bargaining history should not be admitted because there was neither a latent or patent ambiguity in the language of the W.A.P.

The Arbitrator agreed that there was no latent or patent ambiguity and did not allow the Union to lead extrinsic evidence.

The Arbitrator analyzed the two (2) issues. On the first issue, he ruled that the language did not support the proposition that employees on priority one status were guaranteed a job.

On the second issue, whether surplus employees on priority one were entitled to have access to the Staffing Appeals Committee if they were not offered a job, the Arbitrator found that the W.A.P. did not support this proposition. He reasoned that since he had found that the W.A.P. did not provide for guarantee of a job for surplus employees on priority one status, it followed that surplus employees on priority one status who were not offered a job did not have access to the Staffing Appeals Committee.

GRIEVANCE DENIED
MAY 16, 1995

READY, VINCENT

IN THE MATTER OF AN ARBITRATION

BETWEEN:

GOVERNMENT OF THE NORTHWEST TERRITORIES

(the "Employer")

AND:

UNION OF NORTHERN WORKERS

(the "Union")

ARBITRATOR: Vincent L. Ready

COUNSEL: Guy Bisson for the Employer

Chris Dann for the Union

HEARING: April 26, 1995
Yellowknife, N.W.T.

PUBLISHED: May 16 , 1995

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The parties agreed I was properly constituted as a single arbitrator under the terms of their Collective Agreement with jurisdiction to hear and determine the issues in dispute.

The issues in this case arise out of the Work Force Adjustment Program.

The first issue is whether or not employees who are declared surplus under the Work Force Adjustment Program are guaranteed a job offer.

The relevant provision of the Work Force Adjustment Program is Section .09 which reads as follows:

> .09 The Employer shall make every attempt to provide a reasonable job offer within the employee's headquarters.

The second issue is whether surplus employees on priority status who have not been offered a job have access to the Staffing Appeals Committee established under Section 3(a) of the Memorandum of Understanding between the parties which reads as follows:

> 3. The following remedies shall apply to bargaining unit employees:
>
> (a) Disputes arising from competitions involving two or more surplus employees or laid off persons and disputes regarding reasonable job offers shall be

> determined by the Staffing Appeals Committee constituted under the Staffing Appeals Regulation. The committee shall have the authority described in the Staffing Appeals Guidelines. In addition, the committee shall:
>
> (1) Where it finds that the job offer was reasonable, dismiss the appeal; or
>
> (2) Where it finds that the job offer was unreasonable, uphold the appeal and reinstate the full surplus period.

The Union sought to lead extrinsic evidence of bargaining history to establish that the wording of the Work Force Adjustment Program did not correctly reflect or set out the intent of the parties. Put succinctly, the Union said its understanding of the agreement was that all employees declared surplus as a result of government reorganization were to be guaranteed a job offer.

The Employer takes the opposite view and submits that the agreement provides in Section 09 of the Work Force Adjustment Program that the Employer shall make every reasonable attempt to provide a reasonable job offer within the employee's headquarters.

The Employer argues that extrinsic evidence of bargaining history as argued by the Union should not be admitted because there is neither a latent or patent ambiguity in the language of the Work Force Adjustment Program pertaining to the issue in dispute.

After considering the parties' submissions, reviewing the authorities and the provisions of the Work Force Adjustment Program I find, in the circumstances, there was no ambiguity in the relevant language. Therefore I did not admit the extrinsic evidence of bargaining history.

In that regard see Re Industrial Family (Hamilton) Credit Union Ltd. and Office & Professional Employees International Union, Local 343, May 8, 1992, 26 L.A.C. (4th) (Hunter):

> I agree with the union's submission. In Collective Agreement Arbitration in Canada, 3rd ed. (Butterworths, 1991), at p. 74, Professor Palmer notes that "...authority is vast and unanimous that recourse can only be had to such evidence -- called extrinsic evidence -- when the words sought to be interpreted are ambiguous; if the words are not, they must bear their clear meaning, notwithstanding that the parties may have had a different opinion at the time the agreement was made.
>
> In the instant case, I hold that there is no ambiguity, latent or patent, in the words "March 1990" which would warrant admitting evidence of negotiating history.
>
> The employer's position, briefly stated, is that the doctrine of rectification is available to assist one party, the employer, who made a unilateral mistake. In my judgment neither case-law, nor sound labour relations policy, supports that position.
>
> To admit extrinsic evidence to "rectify" an unambiguous collective agreement would open the door to endless disputes; in the words of Beetz J. in Metropolitan Toronto Police Assn. v. Metropolitan Toronto Board of Comm'rs of Police (1974), 45 D.L.R. (3d) 548, [1975] 1

> S.C.R. 630, 74 C.C.L.C. para. 14,223 (at p. 572): "The use of this particular type of extrinsic evidence, if it became accepted, would render finally drafted and executed agreements perpetually renegotiable and would destroy the relative security and the use of the written form."
>
> (at 34)

Turning now to the first issue - does the Work Force Adjustment Program provide a guarantee of a job offer to surplus employees?

I will start with a brief analysis of the Work Force Adjustment Program itself. The Program has been well thought out by the parties. It is designed to deal effectively with the many facets and fallouts resulting from reorganization at the work place. Sections .01 and .02 of the Work Force Adjustment Program read as follows:

> .01 This Program is created to address the human resource planning concerns that arise due to Government reform initiatives. It is part of a cohesive strategy to ensure all factors, including human resources, are considered in implementing organizational change. The Program will apply when a Department Head decides that the services of one or more employees are no longer needed beyond a specific date as a result of organizational changes due to consolidation of departments or restraint initiatives.
>
> .02 Employees who are affected by workforce adjustment situations are valued members

> of the Public Service. Therefore, it is the responsibility of Departments to ensure that affected employees are treated equitably and given every reasonable opportunity to continue their careers as Public Service employees. Effective human resource planning at a departmental level will minimize the impact of workforce adjustments.

Of significance to this dispute are the following definitions contained in the Workforce Adjustment Program:

> (4) Priority 1 Status means eligibility for appointment restricted to surplus or affected employees in accordance with the Government's Staffing Guidelines. Surplus employees are given priority over all other potential candidates including non-surplus affirmative action candidates in the hiring process.
>
> (5) Reasonable Job Offer means an offer of indeterminate employment within the Public Service, normally at an equivalent level Where practicable, a reasonable job offer shall be within the employee's headquarters.
>
> (8) Surplus Employee means an employee whose current position is no longer required due to organizational changes resulting from consolidation of departments or restraint initiatives. A surplus employee includes an employee whose status is altered (e.g., full-time to part-time, full-time to seasonal etc.).
>
> (9) Surplus Period means the three month period following the date the employee is formally notified that their current position is no longer required.

Under the procedural provisions of the Workforce Adjustment Program the following provisions are germane to the case at hand:

.06 Employees whose current positions are no longer required shall be transferred with Priority 1 status through the hiring process to a vacant position for which they are qualified or for which they would be able to qualify with retraining.

.09 The Employer shall make every attempt to provide a reasonable job offer within the employee's headquarters.

.11 Surplus employees shall have Priority 1 status for all appointments including term and casual. Where a surplus employee accepts an appointment which is not indeterminate, they retain their surplus status for the length of the appointment plus three months. No term employee shall receive a payment under the Workforce Adjustment Program which exceeds the remainder of the term.

.15 Before a position is filled by the Employer, all surplus employees and laid-off persons who are qualified shall be given an opportunity to be interviewed for the position. in order to accomplish this, the Department of Personnel will be provided with the names of surplus employees, pay level, step, job classification and job title at least one week before the employee is to receive the notice. The Department of Personnel will provide the Union with a list of affected employees in the bargaining group at the same time.

The employing department shall inform the surplus employee or laid-off person of:

(1) their surplus status;
(2) the rationale behind the recommendation to declare the position surplus;

(3) period of notice, including effective dates of surplus status;
(4) surplus employees priority status for vacancies and competitions;
(5) the name and telephone number of the Department of Personnel staff member who will be working with the employee to explain the workforce adjustment program and to assist in locating an alternate job.

Counsel for the Union argues that when the Workforce Adjustment Program is read as a whole, the logical conclusion to be drawn is that all employees declared surplus are to be guaranteed a reasonable job offer.

The Employer, as stated earlier, relies on the plain wording of the agreement which, Counsel says, does not contain a guarantee of a job offer. Rather, the program is designed to ease the pain of lay-off, in that it provides opportunities and a commitment that, where practical, job offers will be made to surplus employees.

DECISION RE THE FIRST ISSUE

As I stated at the outset, the Workforce Adjustment Program was carefully designed so as to manage to the extent possible, the reorganization of the workforce. The Program establishes an elaborate code of human resource management designed to provide

alternate employment in some cases; retraining in some and severance in other cases.

On its face, employees who are declared surplus are given priority 1 status. That status is defined as follows:

> (4) Priority 1 Status means eligibility for appointment restricted to surplus or affected employees in accordance with the Government's Staffing Guidelines. Surplus employees are given priority over all other potential candidates including non-surplus affirmative action candidates in the hiring process.

Clearly it is intended that employees who hold priority status are to be given priority for other work in certain circumstances. But the issue here is whether it gives them a job guarantee?

The language of Section .09 of the Workforce Adjustment Program states: "The Employer shall make every attempt to provide a reasonable job offer within the employee's headquarters."

That language, in my view, is only capable of one interpretation. That is, that the Employer shall make every attempt to provide a reasonable job offer to a surplus employee holding priority 1 status. It does not provide a guarantee of employment.

I so find. It is so awarded.

I turn now to the second issue which is: whether surplus employees on priority 1 status who have not been offered a job have access to the Staffing Appeals Committee established under Section 3(a) of the Memorandum of Understanding.

When read as a whole Section 3(a) provides for the Committee to deal with (1) disputes arising from competitions involving two or more surplus employees or laid off persons; and (2) disputes regarding reasonable job offers.

The first portion of Section 3(a) contemplates a dispute between two or more employees who have participated in a competition for a position. The second part deals with whether or not a reasonable job offer has been made.

It flows from the language that if no job offer has been made the Staffing Appeals Committee would be without jurisdiction to determine the issue.

Having found as I have that the Workforce Adjustment Program does not provide for the guarantee of a job to surplus employees on priority 1 status, it follows that surplus employees on priority 1

status who have not been offered a job do not have access to the Staffing Appeals Committee.

That being said, what is necessary in this case is to address the real issue which may conceivably arise. That is, what relief does an affected employee have if he/she feels or alleges that a reasonable attempt has not been made to provide a reasonable job offer as contemplated in Section .09 (set out above) of the Workforce Adjustment Program.

In those circumstances, the affected employee(s) may seek relief through the grievance procedure of the Collective Agreement. The issue would be whether the Employer has, in the circumstances of each case, met its obligation under Section .09 above. Each case would have to be determined on its own merits.

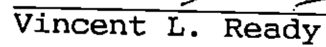
In summary, I find:

(1) There is no guarantee of a job offer for surplus employees with priority 1 status.

(2) Surplus employees with priority 1 status who have not been offered jobs do not have access to the Staffing Appeals Committee.

(3) Employees who allege that a reasonable attempt has not been made to provide a reasonable job offer may seek redress under the grievance procedure of the Collective Agreement.

Dated at Vancouver, British Columbia this 16th day of May, 1995.



Vincent L. Ready