To Bargain Or Not To Bargain? That Is Not The Question Under A Section 54 Analysis

Previously printed in the LexisNexis Labour Notes Newsletter.

Under section 54 of the B.C. *Labour Relations Code* (the "**Code**"), if an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies, the employer must provide notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and after notice has been provided, the employer and trade union must meet, in good faith, and endeavour to develop an adjustment plan.

The recent decision of the B.C. Labour Relations Board (the "**Board**") in *Tolko Industries Ltd. -and- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local No. 1-2017*, 2024 BCLRB 3 reaffirms what it means to meet in good faith in the context of a section 54 adjustment plan.

The employer in *Tolko Industries Ltd.* operates the Soda Creek Mill in British Columbia. The union represents a bargaining unit of employees at the mill (the "**Soda Creek Bargaining Unit**"). The employer also operates another sawmill, the Lakeview Mill. The union represents a separate bargaining unit of employees at the Lakeview Mill (the "**Lakeview Bargaining Unit**").

In April 2023, the employer provided section 54 notice to the union in respect of the Soda Creek Bargaining Unit. As a result, the parties met, on more than one occasion, to endeavour to develop an adjustment plan.

The employer's proposed adjustment plan included, among other things, a provision that provided the employer with the ability to assign employees in the Soda Creek Bargaining Unit and the Lakeview Bargaining Unit at either mill (the "**Fluidity Clause**"). The union did not agree to the Fluidity Clause and proposed revisions. Ultimately, the parties did not agree on the terms of an adjustment plan.

The union filed an application with the Board and took the position that the employer breached section 54 of the Code by failing to bargain an adjustment plan in good faith. The union said that the employer's insistence on the Fluidity Clause as part of section 54 discussions was inconsistent with collective bargaining on a

certification-by-certification basis and alleged that the employer engaged in bad faith bargaining, both in terms of collective bargaining and obligations under section 54 of the Code.

The employer's main argument was that the union was attempting to import collective bargaining principles into the section 54 analysis when the clear language of section 54 requires parties to "meet" in good faith and endeavour to develop an adjustment plan. The employer also argued that section 54 did not require the parties to reach an agreement on an adjustment plan.

The Board confirmed the following principles arising out of the section 54 jurisprudence:

- section 54 is a substantive provision of the Code and is to interpreted broadly and liberally;
- the primary purpose of section 54 is to encourage discussion on an adjustment plan to ameliorate the impact of a change to which the provision applies but the section does not impose on an employer an obligation to agree to an adjustment plan in whole or in part; and
- the requirements imposed on parties under section 11 of the Code with respect to good faith collective bargaining do not necessarily translate into the requirements under section 54 to meet in good faith and endeavour to develop an adjustment plan.

The Board was not persuaded that the requirement under section 11 of the Code to refrain from taking certain proposals to impasse, including proposals related to the format of bargaining or the scope of bargaining rights, applies under section 54.

Ultimately, the Board found this was not a case where the employer did not turn its mind, at all, to the union's view that the Fluidity Clause should not apply. Rather, this was a case where the parties simply disagreed on that point. This did not, in the Board's view, mean that the employer failed to meet in good faith and endeavour to develop an adjustment plan as required by section 54 of the Code.

The union's application was dismissed.

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