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10509-XR-13



IN THE MATTER OF AN ARBITRATION

BETWEEN

THE CORPORATION OF THE TOWN OF KINGSVILLE

(THE EMPLOYER)

AND

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(THE UNION)

AND IN THE MATTER OF THE GRIEVANCE OF
ERNESTO MARQUES - GRIEVANCE No. 11 - 28 - 13

ARBITRATOR: K. A. HINNEGAN

APPEARANCES:

FOR the EMPLOYER

COUNSEL - PATRICK F. MILLOY

CHIEF ADMINISTRATIVE OFFICER - DAN DIGIOVANNI

FOR the UNION

COUNSEL - KATHERINE FERREIRA

BUSINESS REPRESENTATIVE - BRIAN MANNINGER

HEARING HELD at WINDSOR, ONTARIO, on JANUARY 20, 2014

AWARD

This grievance, submitted November 28, 2013, alleges that " the Employer has improperly laid off and/or terminated the employment of Mr. [Ernesto] Marques, contrary to the Collective Agreement. "

The Grievor was employed in the Public Works Department with a seniority date of June 20, 2011, making him the junior employee on the bargaining unit seniority list. He was laid off from that position on June 28, 2013. On that date, he moved into a Seasonal Employee position by displacing the junior employee in that position pursuant to the bumping procedure set out in article 11.01 of the collective agreement. The terms and conditions of employment applying to seasonal employees are set out in the " Letter of Understanding Re Seasonal Employees " attached to the collective agreement. In that letter, the parties agreed that seasonal employment will be from April 1 through November 30 annually. Accordingly, the Grievor's seasonal employment, along with that of the other seasonal employees, ended on November 30, 2013, by operation of that letter of understanding. However, in mid-November, the Employer offered the Grievor " work in a part-time non-union position at the Arena commencing December 2, 2013," at the same hourly rate as his previous seasonal employment. The Grievor accepted that offer of part-time non-union work and then filed this grievance on November 28th. By the grievance, he is claiming entitlement to enough of the hours now being worked by the other six or seven part-time non-union employees at the arena to give him 40 hours a week, being full-time hours. It is alleged in the grievance that not giving the Grievor full-time hours at the arena doing non-union work is a violation of the collective agreement covering this bargaining unit.

On its face, the claim that a collective agreement covering a particular bargaining unit and protecting identified bargaining unit work entitles a laid-off bargaining unit employee to claim non-bargaining unit work is, in my view, somewhat of a 'head-scratcher' as a starter.

The Union submitted as the basis for this claim that the end of the Grievor's seasonal employment on November 30th constituted a 'lay-off' within the terms of the collective agreement triggering the lay-off provisions in the agreement.

Article 11.01 defines a layoff under this collective agreement as including "... a reduction in the normal daily or weekly hours of work of one or more full-time employees." In the event of a layoff, article 11 then goes on to set out the procedure which applies, including the bumping procedure under subsection (d). As noted, that is the procedure used by the Grievor to obtain seasonal employment. However, on the express terms of the parties' agreement, article 11 has no application here.

The Letter of Understanding Re Seasonal Employees commences with, "... unless specifically referenced in this letter of understanding, the Collective Agreement does not apply and the following terms and conditions of employment shall apply to seasonal employees. . . ". There is no reference, express or implied, to article 11 in that Letter of Understanding; and, therefore, it clearly does not apply. Further, there is no reference of any kind in that Letter of Understanding to layoff, or a layoff procedure, with respect to seasonal employees. The Letter simply sets out November 30th as the annual cessation date of seasonal employment. Accordingly, there was no further layoff of the Grievor on November 30th. Rather, his seasonal employment simply ended, along with all of the other

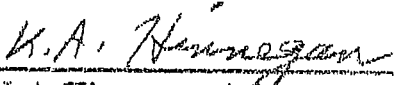
seasonal employees, at the end of the seasonal employment period. That becomes readily apparent, in my view, when it is noted that the Grievor did not attempt to initiate the layoff procedure under article 11, as he did in March to bump into a seasonal employee position. Clearly, he did not obtain his part-time non-union job at the arena through any collective agreement layoff bumping procedure. Rather, it was gratuitously offered to him by the Employer upon the expiration of the seasonal employment period.

The Union also made reference to article 2.02 of the collective agreement in support of the Grievor's claim of entitlement to full-time hours at the arena. Again, there is no reference, express or implied, in the Letter of Understanding Re Seasonal Employees to article 2.02. Therefore, it does not apply to seasonal employees by express agreement of the parties.

At the hearing, the Union alluded to the Grievor being an 'atypical' seasonal employee of some kind by virtue of having bumped into that position. However, it was left unexplained as to where that is found in the collective agreement or the letter of understanding or how that would somehow give him some type of special status entitling him to full-time hours in a job outside the bargaining unit after the end of the seasonal employment period.

In the result, as there was no violation of the collective agreement here, the grievance is denied.

Dated: February 17, 2014


K. A. Hinneegan - Arbitrator