

IN THE MATTER OF AN ARBITRATION

BETWEEN:

The Corporation of the City of London

and

CUPE, Local 107



Before: William Kaplan
Sole Arbitrator

Appearances

For the City: Kelly M. Dawtrey
Legal Counsel
City of London

For the Union: Michael Klug
Watson Jacobs McCreary
Barristers & Solicitors

The matters in dispute proceeded to a hearing in London on September 24, 2018.

Introduction

On April 13, 2015, the parties entered into Minutes of Settlement (hereafter "the Minutes") resolving two grievances. The relevant portions of the Minutes are as follows:

Subject to approval through the City's internal processes, the Corporation shall post ten (10) permanent full-time labourer positions on or before June 1, 2015.

...the parties acknowledge and agree that the Corporation shall be entitled to assign temporary employees to perform the duties of any classification in Schedule "A" of the Collective Agreement (as may be amended from time to time), subject to the provisions of the Collective Agreement applicable to temporary employees and these Minutes of Settlement.

As required by the Minutes, the ten temporary positions were posted and the employer assigned temporary employees to perform the duties of any classification in Schedule "A" – a previously contested matter.

However, on September 25, 2015 another grievance was filed. It asserted a violation of the collective agreement; in particular, a breach of Article 8 – Staff Changes, Additions and Promotions – and of a specific provision requiring the employer to post certain vacancies in certain conditions after four months. The employer raised a preliminary objection to this grievance taking the position that a similar, albeit not identically worded grievance, had been settled by the April 13, 2015 Minutes. The union disagreed and that dispute proceeded to a hearing held in London on September 24, 2018.

Position of the Parties

In brief, the employer asserts that the matter raised in the September 2015 grievance was resolved by the April 2015 Minutes. The fact of the matter was that there was no violation of the collective agreement. The employer was hiring temporary employees in accordance with the Minutes and the provisions of Article 23 that allowed it to do so for up to 26 weeks. Article 8 had nothing to do with this, and this very same claim was, in any event, asserted in one of the grievances that was settled by the Minutes. Indeed, the wording of the two grievances was, in the employer's view, similar while, more importantly, the issue was identical further supporting its position that the matter had been resolved. Accordingly, the employer asked that the current grievance be dismissed.

For its part, the union took the position that the April 2015 Minutes did not, in its words, or in the intention of the parties, foreclose the current grievance. It was true enough that the union agreed that the employer could hire temporary employees in any Schedule "A" classification, but it never agreed that it was to be prohibited in the future from asserting a violation of the collective agreement and, in particular, the posting requirements of Article 8. The Minutes of Settlement made no mention of this. In fact, the Minutes specifically contemplated that the settlement would continue to be governed by the terms of the collective agreement. Whether the current grievance succeeded or failed on the merits was another matter – but it was one that was separate and apart from the ability of the union to file a grievance and have it heard.

Award

Having carefully considered the submissions of the parties, I am of the view that the grievance may proceed. The employer's preliminary objection is, therefore, dismissed.

While the merits of the union's case are not immediately apparent – Article 23 appears to confer specific entitlements respecting the engagement of temporary employees – up to twenty-six weeks – the fact of the matter is that there are numerous collective agreement provisions that relate, one way or another, to temporary employees. The Minutes do not specifically deal with this issue, and the fact that one of the grievances resolved by the Minutes was comparable to the one at issue in this case is not sufficient, in and of itself, to preclude the union from pursuing its case. Indeed, it would take very clear and specific language in with prejudice minutes of settlement – not these Minutes – to foreclose a union from asserting future collective agreement violations.

Put somewhat differently, if the parties had wanted not just to settle the two grievances but to formalize an agreement to govern the future interpretation of the collective agreement, they would have needed to do so clearly and unambiguously. The Minutes do not illustrate that intention. Moreover, when the Minutes are considered the bargain reached seems self-evident: creation of some new positions in return for acknowledgment of a broader temporary employee hiring scope.

Accordingly, and for the foregoing reasons, the employer's preliminary objection is dismissed, and the case to be scheduled for a hearing on the merits.

DATED at Toronto this 28th day of September 2018.

"William Kaplan"

William Kaplan, Sole Arbitrator