

IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act*, R.S. 1995

BETWEEN:

COMMUNITY LIVING WINDSOR

("Employer")

- and -

**CANADIAN UNION OF PUBLIC EMPLOYEES
AND ITS LOCAL 2345**

("Union")

(Grievance of J. Hattar - #02-04-19)

SOLE ARBITRATOR: Jasbir Parmar

On Behalf of the Employer:

Anna Vannelli, Counsel – Kavanaugh Milloy

On Behalf of the Union:

Catherine Barrett, CUPE National Representative

[1] I have been appointed to hear the grievance of Jeff Hattar, alleging his employment was unjustly and unfairly terminated. In the grievance, Mr. Hattar seeks as a remedy to be reinstated and made whole.

[2] On May 11, 2020, I issued an Order (the “May 2020 Order”) requiring both the Employer and the Union/Grievor to produce certain documents.

[3] The Employer has complied with the May 2020 Order. The Union has not, despite the deadline of July 31, 2020 identified in the May 2020 Order.

[4] In an email the Grievor sent directly to me on July 30, 2020, the Grievor acknowledged the production obligations in the Order. In the email the Grievor stated he wished to “bypass” his Union and provide me his evidence directly. Notably, the Grievor did not include in his email any copies of the documents ordered to be produced. I replied to the Grievor’s email that same day, indicating that it was inappropriate for him to communicate with me directly.

[5] The Union advises that it still has not been provided the necessary documents by the Grievor. The Union indicated they continue to make efforts to obtain the Grievor’s cooperation and would like an extension of the deadline for producing the documents identified in the May Order.

[6] The Employer, however, expressed concerns about the fairness of the hearing process given the Grievor’s clear non-compliance. The Employer’s concerns are well-founded. This arbitration is a legal process, and the parties are expected to comply with my Orders. Failing to comply with my Orders is an abuse of process.

[7] Pre-hearing production of documents is a standard process in labour arbitration, as it facilitates a fair and efficient hearing process. The Employer has the onus of establishing just cause for termination, but it is legally entitled to pre-hearing production of documents in the Union’s/Grievor’s care and control that are arguably relevant to the issues in dispute. The documents ordered to be produced in the May 2020 Order are documents that I have determined are arguably relevant to the issues in the dispute.

[8] I have decided to grant the Union’s request for an extension for producing the identified documents until **September 14, 2020**.

[9] The Union is trying to proceed with the Grievor’s grievance, but it simply cannot provide him with full representation without his full cooperation. Whatever concerns the Grievor may have about the Union (as indicated by his attempt to “bypass” the Union), failing to cooperate by not giving them the documents that have been ordered to be produced is unwise and ill-

advised action. I strongly encourage the Grievor to cooperate with the Union. The Union's ability to comply with the May 2020 production order is dependent on his cooperation. The Grievor should also understand that there are consequences if he does not cooperate and comply by producing the documents, because the Employer has indicated that, if there is continued non-compliance, it intends to make a motion asking that I **dismiss the grievance** on a preliminary basis ***without a hearing on the merits***.

[10] There is only one path open to the Grievor if he wants the opportunity to pursue his grievance and have a chance of getting his job back - he should cooperate with the Union and provide them with the necessary documentation so that they can comply with the Order in a timely fashion. As I indicated above, failure to comply with my Orders is an abuse of process, and an abuse of process is a justifiable basis to dismiss a grievance.

[11] The Union is directed to deliver to the Grievor copies of both this Order and the May Order. No later than September 14, 2020 the Union is to advise me whether it has produced the identified documents.

Dated this 31st day of August, 2020.

"Jasbir Parmar"

JASBIR PARMAR