

READING BETWEEN THE LINES – HOW EMPLOYERS CAN MAKE LEGITIMATE CHANGES WHILE RESPECTING THE COLLECTIVE AGREEMENT

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Many unionized employers mistakenly believe that they have no ability to make workplace changes. The recent arbitration decision in *United Food and Commercial Workers Local 175 and Good Humor-Breyers, Unilever* highlights how a careful reading of a collective agreement may reveal a host of legitimate changes available to employers.

Background

Good Humour-Breyers, Unilever (the "**Employer**") operates a manufacturing facility in Ontario, where a dispute arose when the Employer decided to transfer the more limited duties of the lower-paid light labourers to additional machine operators who could perform all functions on the particular line. Even though this required the Employer to hire additional machine operators who were paid at a higher rate, this change was aimed at creating more efficiency and economy by minimizing "lost time" during changeovers.

The Employer's UFCW collective agreement provided that unionized employees were to be laid off in reverse order of seniority in the department affected. The collective agreement also provided that in the event of a permanent reduction of the workforce, the Employer had expanded rights to "displace the most junior employee who would have been retained. The [Employer] will train the remaining employee in his new position."

Dispute and Ruling

The Union grieved the Employer's decision to increase the numbers of machine operators at the expense of light labourers. This change allegedly violated the Employer's obligations regarding staffing at the facility.

The arbitrator hearing the dispute determined that the jurisprudence supported the Employer's ability to transfer duties from one role to another because the transfer of duties was not restricted in the collective agreement. The arbitrator held that even though the machine operators assumed duties formerly performed by light labourers, they did not become light labourers as a result, and the reassignment of duties was the

prerogative of the Employer.

The facts of this case supported the Employer's position that the changes to the line were made in good faith and for legitimate business reasons: to increase efficiency by having all members of the line being capable of completing all the functions on the line and to limit "lost time". Finally, the arbitrator determined that the facts did not demonstrate that this reassignment of duties constituted a permanent reduction in the workforce.

Takeaways for Employers

Employers often fail to consider what is omitted from the collective agreement in addition to what it contains. As *United Food and Commercial Workers Local 175 and Good Humor - Breyers, Unilever* demonstrates, it can be beneficial to employers when the collective agreement is silent on a particular right or obligation. Indeed, many collective agreements confirm that the employer retains broad residual rights to manage their business and organize the workforce. The manner in which employers implement changes with respect to unionized employees contributes to the legitimacy of the end result. This case demonstrates that bona fide changes are often possible by reading between the lines of the collective agreement.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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