UNIONS DO NOT HAVE A GENERAL RIGHT TO NOTICE OF ACCOMMODATION REQUESTS

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Telus Communications Inc. v Telecommunications Workers' Union[1] is an appeal of a British Columbia Supreme Court order quashing the decision of an arbitrator that upheld the Union's grievance that it had the right to receive notice from the employer of all requests made by employees covered by the collective agreement for accommodations to address a medical disability.

Background

The Union grieved that Telus had, among other things, breached the collective agreement between the parties by refusing to involve the Union in the accommodation process of employees seeking an accommodation of a medical disability. The Union's position was that it was entitled to notice, information, and consultation of all accommodation requests. The collective agreement contained no such provision. Moreover, in the last round of collective bargaining the Union had attempted but failed to negotiate the inclusion of a provision in the collective agreement that would have specifically provided it with that right.

Despite this bargaining history and the absence of specific language granting the Union such rights, the arbitrator held that the certificate of bargaining authority gave the Union the right to engage in all requests for accommodation of a medical disability (which the Court of Appeal concluded logically also extended to requests for accommodation for religious and family status reasons).

On judicial review the BC Supreme Court quashed the arbitral award. Telus did not dispute that an accommodation requiring an adjustment to a negotiated term of the collective agreement and cases where the employee asked for Union representation were circumstances in which the Union was entitled to participate in the accommodation process. It argued that many of the employee requests for accommodation such as requests for ergonomic chairs, lighting adjustments, and adjustments to work locations could be resolved without any change to a negotiated term of the collective agreement or without any impact on other employees and did not require the involvement of the Union.

The Union argued that its rights as exclusive bargaining agent meant that the employer lost the right to negotiate different conditions of employment with individual employees covered by the certification and that

it was improper for the employer to communicate directly with the Union members without including the Union. The Union also argued that it should participate in all accommodation requests as the collective agreement incorporated the *Canadian Human Rights Code* and that this would trigger the Union's obligation to participate in the accommodation process, which obligations are set out in *Renaud*.[2] The Supreme Court concluded that the certificate of bargaining authority did not give the Union the rights it claimed and set aside the arbitrator's decision finding it to be unreasonable.

Appeal decision

The Union appealed to the BC Court of Appeal.

The Court of Appeal reviewed arbitral and other authorities and upheld the lower court's decision. The Court of Appeal agreed with arbitral jurisprudence that the Union did not have an inherent right to be present during employer-employee accommodation meetings in the absence of a negotiated general right.[3] The Court confirmed that there is no general obligation on the employer to involve the Union in the search for accommodation, [4] and in day to day operations, the Union's duty only arises when its involvement is required to make accommodation possible and when no reasonable alternative resolution has been found.[5]

The Court of Appeal dismissed the Union's appeal and upheld the Supreme Court's order to quash the arbitrator's decision.

What this means

This decision makes it clear that unions do not have the right, independent of an express term in the collective agreement, to receive notice, information and consultation from the employer of all accommodation requests from employees covered by the collective agreement. The employer's right to manage its business includes the right to deal directly with accommodation requests unless the accommodation requires an adjustment to a negotiated term of the collective agreement, where the union's involvement and cooperation is necessary to effect a reasonable accommodation, or an employee asks for union representation.

There are clearly circumstances where union involvement is advantageous to the employer. In many workplaces collective agreements provide for joint union-employer accommodation committees which have practices and procedures in place for dealing with accommodation. The union can often assist in moving the accommodation process along if the requesting employee has trouble communicating directly with the employer. In many accommodation cases the union may have to consider matters that impact the collective agreement. Therefore, there may be practical reasons why the employer would want to involve the union in requests for accommodations but likely not all the accommodations that are routine to many workplaces.

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[1] *Telus Communications Inc. v Telecommunications Workers' Union*, 2017 BCCA 100.
[2] *Central Okanagan School District No. 23 v Renaud*, [1992] 2 SCR 970.
[3] *National Steel Car Ltd. v United Steelworkers of America Local 7135*, (2005) 136 L.A.C. (4th) 238.
[4] *St. Paul's Hospital v. Hospital Employees Union*, (2001) 96 L.A.C. (4th) 129.
[5] *Vanderhoof Specialty Wood Products v IWA – Canada, Local 1-424*, (2004) 129 LAC (4th) 181.

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.