

ARBITRATION AWARD UPDATE - NOVEMBER 2014

Article 27.01 & 27.02 (b) - SUN/SAHO Collective Agreement

Vacancy – Improper Posting



FACTS:

The incumbent went on a 12 month Maternity Leave; her position was a permanent full-time (PFT). The Employer posted the vacancy for 120 or more hours only as a temporary part-time (TPT) position with 120 hours in a six week period when it should have been a full-time temporary (TFT) posting.

ISSUE:

Was the Employer required to post the temporary vacancy created by the maternity leave? If so, was the employer required to post the position for a full-time temporary vacancy?

FINDINGS:

The majority of the Board concluded that “in the absence of an express provision restricting the Employer...the Board finds that the decision to determine the hours of work for this temporary vacancy was within the scope of management rights expressly reserved in the Collective Agreement.”

SUN’s legal opinion is that the Collective Agreement does limit management rights with respect to posting and the filling of postings, under Articles 27.01 and 27.02. The starting point is that, although we may not like it, the jurisprudence is clear that no matter what the language says, a requirement to post vacancies only becomes actionable where there is adequate work, in the opinion of the Employer, to justify the filling of that position.

SUN believes the unreserved management right is to determine whether there is a job of work to be done; once objectively determined that the job of work exists, it must be posted. In addition, Article 27.01(d) sets out the limited circumstances where the Employer can choose not to fill the posting - it does not set out an ability to give notice of an intention to reduce hours. The Region could have done what it ultimately did and not have been challenged, had it given notice that it was not posting the temporary full-time vacancy and then given notice that it was posting a new part-time temporary position. That is not what the Employer did.

The Board’s Award was received on November 12, 2014, and the grievance was dismissed.