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LAWYERS | AVOCATS

June 23, 2016

Via Courier

Mary-Lou Stewart
Executive Officer
Nova Scotia Labour Board
304 Summit Place
3rd Floor
1601 Lower Water St.
Halifax, NS B3J 3P6

Dear Ms. Stewart:

Re: Complaint of Failure to Bargain Pursuant to Section 35 of the *Trade Union Act*

The following is the response of the Respondents, the Nova Scotia Council of Nursing Unions, the Nova Scotia Council of Health Care Unions, the Nova Scotia Council of Administrative Professional Unions and the Nova Scotia Council of Support Unions, to the complaint filed on behalf of the Nova Scotia Health Authority and the IWK Health Centre dated June 15, 2016.

The Respondents deny they have failed to comply with their duties under Section 35 of the *Trade Union Act*. The Respondents request a hearing of the Board in order to call evidence and make submissions in relation to the complaints.

The Respondents

The Respondents were created by amendments to the *Health Authorities Act* which took effect on April 1, 2015. They are governed by constitutions which were deemed to be Orders of the Labour Board dated April 8, 2015: LB-0959.

Before April 8, 2015, none of the structures or bodies created by the constitutions existed.

When the Board issued Order 0959, the Respondents became the certified bargaining agents for the unionized employees of the Complainants. Before April 8, 2015, those bargaining rights were held by the Constituent Unions making up the Respondents or locals of the Constituent Unions. Before April 8, 2015, none of the Constituent Unions had ever been part of a certified bargaining council.

The Respondents have assumed overall responsibility for 50 collective agreements that are still being administered by the Constituent Unions or Locals of the Constituent Unions. They have

had to implement decisions made by Mediator-Arbitrator James Dorsey, realigning classification groups and the boundaries between the standard, acute care bargaining units. They have also had to respond to requests from the NSHA to transfer employees across the existing collective agreements before the conclusion of province-wide agreements for the new bargaining units.

The demands imposed on the Constituent Unions by the creation of the NSHA and the Bargaining Councils have been without precedent in the history of the Constituent Unions.

Duty to Bargain

The Respondents are acutely aware of their duties and responsibilities under Section 35 of the *Trade Union Act*. In fact, as the complaint states, on April 8, 2015, as soon as they were legally constituted as certified bargaining agents, the Respondents gave the Employers notice that they wished to bargain new collective agreements. Since that time, they have been working hard to prepare to engage in collective bargaining.

The Respondents have created internal structures and selected staff to advance the bargaining process. They have spent many hours reviewing the terms of the 19 unique collective agreements previously negotiated by their Constituent Unions in order to develop common bargaining proposals for the new bargaining units.

The job of developing common bargaining proposals was made more difficult in December of 2015 when the Legislature passed Bill 148, freezing wages for two years, imposing modest wage increases for another two years and ending a long-standing retirement allowance for employees. The Respondents were forced to revise their bargaining proposals to take account of this intrusion into the collective bargaining process.

Recently, the Respondents met with the Employers to discuss how to organize the logistics of collective bargaining.

The *Trade Union Act* and the policies of the Board do more than simply support collective bargaining. They recognize that bargaining agents must be able to engage in effective collective bargaining if the purposes of the Act are to be advanced.

The planning and preparation work done by the Respondents is intended to lay the foundation for effective collective bargaining with the Employers.

Essential Services Agreements

When they became certified bargaining agents in April of 2015, the Respondents also assumed the responsibility to negotiate Essential Services Agreements pursuant to the *Essential Health*

and Community Services Act. Under that legislation, Essential Services Agreements must be concluded before the Respondents can strike or the Employers can lock out to support their position in collective bargaining.

In the absence of the right to strike, the bargaining power of the Respondents is severely limited. The Respondents determined that it would not be in the interest of the members of the Constituent Unions if collective bargaining advanced ahead of the negotiation of Essential Services Agreements. The Respondents began meeting with the Employers in July of 2015 to negotiate Essential Services Agreements and those discussions are ongoing. To date, the parties have focused their attention on framework language that would cover all four bargaining units and on essential staffing levels for the Health Care bargaining unit.

The negotiation of the first, province-wide Essential Services Agreements for the acute care sector has required a substantial commitment of time and resources on the part of the representatives of the Respondents. It is important that they fashion the best possible agreements. If the experience of other provinces is a guide, these first, province-wide Essential Services Agreements will stand as precedents for many years to come.

In most cases, the representatives negotiating Essential Services Agreements are the same individuals who are preparing for and will conduct collective bargaining on behalf of the Respondents. It would not be surprising if the demands of essential services negotiations, together with ongoing responsibilities to the members of the Constituent Unions, had an impact on the timing of collective bargaining with the Employers. However, that does not amount to a failure to make every reasonable effort to conclude and sign a collective agreement.

Health Care Bargaining

The Respondents have identified the Health Care bargaining unit as the priority for collective bargaining. There are several reasons for this. The province-wide Health Care bargaining unit is the most complex of the four units with the largest number of classifications. Bargaining for this unit will likely be the most protracted and difficult of the four units. At the same time, much of the language agreed at the Health Care bargaining table will likely be adopted and applied in bargaining at the other tables.

The work of the Respondents to develop a comprehensive bargaining proposal for the Health Care bargaining unit is well advanced.

Quite apart from the need to negotiate Essential Services Agreements, the Constituent Unions that make up the Respondents simply do not have the resources to bargain collectively at four, province-wide tables at the same time.

Even though they have cooperated with the Respondents by advancing essential services negotiations for the Health Care bargaining unit ahead of the other units, the Employers have

so far resisted doing the same thing in collective bargaining. This is unfortunate and has impeded the ability of Respondents to schedule the start of negotiations.

Contact with the Employers

Since they first gave notice to bargain, the Respondents have been in regular contact with the Employers about collective bargaining. There have been frequent correspondence, telephone discussions and face-to-face meetings.

In March of 2016, the parties agreed to meet formally in order to discuss how collective bargaining would be carried out. It took two months to find a date for the meeting because of the schedules of representatives of the Respondents and the Employers.

The meeting took place on May 27, 2016. At that time, there was a full discussion between the parties about their priorities and objectives in collective bargaining. The Respondents explained the work they were doing to develop bargaining proposals and the processes they were required to follow before the proposals could be formally tabled. The Respondents undertook to respond to the Employers about specific dates for bargaining in the near future.

Less than two weeks after the meeting, the Employers made the bargaining complaints.

The complaints of the Employers are premature and unwarranted. The Respondents are moving forward with their plans for collective bargaining and have sought the cooperation of the Employers to manage the bargaining process with the resources they have available. There is no need for the Board to intervene in the bargaining process at this time.

Conclusion

Although fourteen months may have passed since the creation of the Respondents, it has not been fourteen months of idleness. The Respondents have been working hard preparing for collective bargaining while negotiating with the Employers on Essential Services Agreements. The Respondents expect to canvass dates for collective bargaining with the Employers in the near future.

Whether or not a particular bargaining agent is in compliance with its duties under Section 35 of the *Trade Union Act* can only be assessed in context. The circumstances of this case are unique. These are newly constituted bargaining agents with significant responsibilities for council bargaining and Essential Services Agreements that have never before been exercised in this Province.

The Respondents have not ignored their duties under Section 35 of the *Trade Union Act*. They are complying with those duties and will continue to do so.

The Respondents ask that the complaints of the Employers be dismissed.

In the alternative, the Respondents ask the Board to direct the parties to commence collective bargaining for the Health Care bargaining unit as soon as reasonably possible.

All of which is respectfully submitted this 23rd day of June, 2016.

David J. Roberts
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DJR/km

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