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Canada Industrial Relations Board orders binding arbitration in unfair labour practice complaint

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In an unusual decision, the Canada Industrial Relations Board has ordered an employer to offer a union binding arbitration to resolve any outstanding issues necessary to settle a collective agreement. The decision, *Telus Communications Inc. v. Telecommunications Workers Union* (January 28, 2004), concerned the union's complaint that the employer had breached an undertaking made before the Board that it would not raise collective bargaining issues at certain scheduled meetings with its employees until the Board had rendered a decision on an earlier unfair labour practice complaint filed by the union. The earlier complaint had also related to union allegations that the employer's communications with its employees undermined the union's position during bargaining.

In the new complaint, the union alleged that the employer had persisted in raising collective bargaining issues with its employees, breaching its undertaking not to do so. The key element complained of by the union was a communication entitled "Telus responds with the Facts!" which focused on the way managers should reply to union statements to its members.

EMPLOYER'S CONDUCT "INSIDIOUS"

The Board held that the content of the communication went beyond the standards permitted to employers during collective bargaining:

> "The comparative column of "Telus responds with the the Facts!" is replete with editorial comment about the union's position: "The [union's] claim is not true", "The [union's] claims are wrong and misrepresent the facts". Other comments about the [union's] position at the bargaining table include "No further detail was provided" or that proposals are incomplete or do not represent the employer's point of view. Such selective comments undermine the union's position vis-a-vis its members, that the union is misleading them."

The Board also observed that one of the employer's communications sought to give employees advance notice of the employer's negotiating position before the union itself was notified. This, the Board stated, was "an insidious way of keeping negotiations off balance" and caused a loss of face for the union's representatives at the bargaining table.

By way of a remedy, the Board ordered that the employer offer the union binding arbitration to settle the collective agreement, which the union was free to accept or reject.

In Our View

The order of binding arbitration is unusual but not unprecedented. Presumably, the Board in this case was influenced by the fact that the employer's conduct arose in the context of a pre-existing complaint by the union of improper communications, and followed an undertaking made to the Board itself to refrain from such communications.

The standard for permissible communications during negotiations was stated by the Board as follows:

- communications should be factual, informing the employees of the employer's position or stance;
- communications should be balanced and avoid editorial comment about the union's position;
- communications should not suggest that the union adopt a more malleable position at the bargaining table;
- there should be no overt or obvious components of the communications designed to circumvent the collective bargaining process with the recognized bargaining agent.

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