

Conifer Arbitration Report

AR No. 01/24

RE: SRI HOMES. AND UNITED STEELWORKERS UNION, LOCAL 1-423

Re: Critical Importance of Recognition of Union as Bargaining Agent

Via E-mail

TO: All Member Companies

Please find attached arbitration case for your information and reference.

In brief, the Company was engaged in negotiations to renew the Collective Agreement with the Union in 2022. The Company initially tabled a proposal in negotiations to collapse the lowest wage category into the next highest wage category in order to enhance recruiting efforts to ultimately hire more new employees in the operation. The impact would have been a higher starting wage rate for new hires. The union resisted the proposal in negotiations unless an equivalent adjustment was made to the higher categories in the wage table. The Company outlined that would be too expensive and withdrew their proposal in negotiations.

Subsequently, the Company proceeded to advertise, hire, and pay new employees at a higher hourly rate than the initial wage category in the collective agreement, effectively implementing what they had otherwise proposed in collective bargaining (latterly withdrawn). The Company asserted they felt they had the agreement (via non-response) from the Union to proceed as they had.

The arbitrator concluded otherwise.

“85. For these reasons, I do not accept that the breach was an innocent one based on a misunderstanding. The question then, is how to address what I find to be a deliberate breach.

86. I find the breach in this case to be particularly serious. In my view, it strikes at core principles of collective bargaining. Key to collective bargaining is the honest exchange of proposals that are considered, accepted, modified, or rejected. Although the parties to a collective agreement approach negotiations with different goals and hopes, one must not lose sight of the very purpose of the exercise, that is, to come to an agreement as to the terms and working conditions that both sides can live with and honour. Fundamental to the integrity of the collective bargaining process is that each party must be able to trust that the other intends to abide by what they have agreed to at the bargaining table.

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89. Yet as soon as the bargaining was completed, in the manner discussed earlier, the Employer essentially implemented the scheme it had earlier proposed and subsequently withdrawn in bargaining.”

The arbitrator ordered payment of \$1,500 to every employee who had not been paid at a rate higher than was listed in the collective agreement AND ordered a \$30,000 payment to the UNION for failure to recognize the Union as the exclusive bargaining authority.

The key principles to keep in mind, reinforced by this case:

- The UNION is the official bargaining agent for the employees in the bargaining unit.
- Any decision to unilaterally (without agreement from the Union) to vary the terms and/or conditions of employment outlined in the collective agreement invites the risk of a grievance of this nature, and a risk of an order awarding damages, including payment directly to the Union.

Perhaps the Company in this case was of the view they were in the safe zone by proceeding as they did because the effect of their initiative was to pay a group of employees MORE than what they were otherwise entitled to under the collective agreement. That is not a defense to a unilaterally initiated variation from the collective agreement.

Please feel free to contact the office if you have any questions.

Sincerely,



Cam Meroniuk,
Manager, Employment Relations

January 18, 2024