

June 2007

Contract interpretation

When arbitrators interpret collective agreements they are attempting to determine the mutual intent of the parties. The best source for the mutual intent of the parties are the actual words used in the collective agreement.

Apart from the actual language used there are two other main sources for determining the mutual intent of the parties: Things that were said at the bargaining table and how the language has been put into practice in the past. (This is called extrinsic evidence as it is outside or extrinsic to the actual words used in the collective agreement).

Bargaining History

Arbitrators are entitled to turn to what was said at the bargaining table if the language is ambiguous in the sense of capable of two meanings. In reality it is quite common for collective agreement language to be capable of more than one meaning so arbitrators frequently turn to what the parties said at the bargaining table as an interpretative tool.

Remember that the arbitrator is searching for the mutual intent of the parties so evidence of what one party intended the language to mean is not particularly helpful.

An example of mutual intent from bargaining history is the following hypothetical example:

A collective agreement allows for a paid leave for a serious household emergency. An employee has grieved the employer's refusal to allow a day off so that the employee can have a plumber repair a leaking pipe. At the bargaining table when the union made the proposal for a day off

for a serious household emergency the employer asked the union what they meant. The union explained that the proposal would allow employees a day off with pay to prevent damage to their houses. The employer replied that they would agree to a provision that would allow paid leave for that purpose.

Contrast that with evidence of the union simply saying in caucus that the intent of the language is to allow leave to prevent damage to an employee's residence. That would be evidence of unilateral intention and should be rejected by an arbitrator.

A purpose of taking notes of what was said in collective bargaining is to later prove the mutual intent of the parties.

Past Practice

The other main source of the mutual intent of the parties is how the employer has put the language into practice in the past. To establish past practice there must be a long established past practice that a union official or employer representative who is responsible for the administration of the collective agreement was aware of. In the BCGEU structure, the employer would likely have to prove that a staff representative was aware of the employer's practice to support their view of the mutual intent of the collective agreement language in question. Likewise the union would have to prove that an employer representative who is responsible for the administration of the collective agreement was aware of a practice that supported our interpretation of ambiguous language.

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