Can Employer Change Investigation Standard During Union Boycott of JHSC?



SITUATION

An employer and union agree in the collective agreement that any changes to investigative standards must be agreed to jointly through the JHSC. The JHSC identifies problems relating to the timeliness of workplace inspections and investigations, which are creating a backlog of investigations relating to safety incidents. For unrelated reasons, worker members of the JHSC, who are also union members, begin boycotting committee meetings. During this boycott, the employer JHSC members implement a new standard for investigating minor incidents in an effort to speed investigations and reduce the significant backlog of cases already identified. The union JHSC members then end their boycott and refuse to use the new investigation standard, demanding that the old one be reinstated. The union argues that the employer violated the collective agreement by unilaterally implementing the new standard. The employer argues that the union's boycott of the JHSC violated the collective agreement and forced it to act unilaterally. It further notes that the investigative standard did successfully reduce the backlog and improve the speed of dealing with safety issues.

QUESTION

Must the employer reinstate the old investigative standard’

A. No, because the union breached the collective agreement when its members boycotted JHSC meetings.

B. No, because the JHSC can impose any standard it deems appropriate to protect worker safety.

C. Yes, because the employer is bound by the terms of the collective agreement requiring joint action.

D. Yes, because if there isn’t consensus among employer and worker members of a JHSC, the jurisdiction’s workers’ comp board must intervene.

ANSWER

A. The union boycott breached its obligations under the collective agreement, requiring the employer to act unilaterally to address workplace safety and implement the new investigation standard.

EXPLANATION

This hypothetical is based on a BC arbitration in which the arbitrator upheld a new investigative standard unilaterally imposed by the employer while union members were engaged in a boycott of JHSC meetings. The arbitrator explained that under both the applicable OHS law and the collective agreement, the employer was ultimately responsible for ensuring worker health and safety, and retained its management rights to ensure that it complied with the OHS law. Workers also have OHS duties and the JHSC requirements make health and safety a ‘shared responsibility.’ So the union’s boycott of committee meetings violated both the OHS law and the collective agreement. And because of this violation, the employer was not only permitted to take steps to address the investigative backlog but also legally required to do so, concluded the arbitrator. In addition, the new investigative standard, which was effective

and consistent with the OHS law and agreement, had to be implemented quickly to address a backlog of investigations and to avoid danger to workers, added the arbitrator. Rescinding the new standard and reinstating the old one would be inconsistent with the law and collective agreement.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because the JHSC doesn't have unlimited freedom to impose any standards or measures it chooses under the guise of safety. In fact, JHSCs don't actually have the power to impose safety standards. Generally, under the OHS law, *employers* have the duty and authority to implement safety measures. A JHSC has several functions, including to make reasonable safety recommendations to an employer, which must consider but isn't required to implement those recommendations unless the recommended action is required by law. So although in this case in particular, the collective agreement required the union and employer to jointly agree to safety policies and programs through the JHSC, it's the employer that ultimately imposes the agreed upon safety standards.

***Insider Says*:** For more information about JHSCs, visit the Joint Health & Safety Committee Compliance Centre.

C is wrong because although the collective agreement did require both parties to jointly agree to safety standards, the union violated the agreement by boycotting committee meetings. That breach relieved the employer from the agreement's requirement that both parties agree to changes in safety standards, such as the investigative standard. More importantly, however, no agreement can trump the obligations imposed under OHS law, which require the employer to ensure workers' health and safety. The backlog of investigations and delays needed to be addressed and the new investigative standard addressed the problem successfully. If the employer didn't act on its own, it could be in violation of the OHS law and thus, its actions were justified.

D is wrong because it simply isn't true that the workers' comp board *must* step in when worker and employer members of a JHSC can't reach agreement. If a JHSC is unable to resolve a disagreement, it may ask the worker's comp board for assistance in reaching an agreement. But the board isn't required to intervene. Further, in this case, it wasn't that the union and employer members couldn't reach an agreement'the union refused to participate in JHSC meetings at all.

SHOW YOUR LAWYER

Rio Tinto Alcan Inc. v. Unifor, Local 2301 (Grievance 300-1625 OHS Program), [2014] B.C.C.A.A.A. No. 111, Oct. 9, 2014