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Collective Bargaining Case

Document – Union



As representatives of the union SEEP, you have analyzed the interactions between the employer with the organization's other union, SEES. You noticed that despite Plastiques ABC Inc.'s impressive sales and acquisition and expansion projects, the company's financial means remain limited.

The engineers and biochemists in your group are trying to establish influence due to the labour shortage in their field of expertise. Your goal is to get the most benefits possible for the largest number of people possible because you don't want to breach your duty of fair representation.

You are aware of the current labour shortage and the pressure that it is putting on the company. Plastiques ABC Inc. cannot afford to lose employees to the competition. The purchase orders are backed up, and the acquisition and expansion projects will require all hands on deck.

You wish to obtain a 5% salary increase. Considering that SEES has made numerous compromises without ever being granted a salary increase, you hope that SEEP will still be able to benefit from an increase. However, you would like to avoid a strike. You are aware that a strike could weaken the company and prevent it from completing its projects (purchase of new equipment to facilitate employees' work and improve productivity, acquisition and expansion projects).

As representatives of the union, you truly want to negotiate a salary increase for your members.



You are willing to make concessions and look for creative solutions to come to an agreement that benefits your members.

Here are a few comments that can guide your thinking on the main topics identified:

1. WORK HOURS

Your goal is to regularize the situation so that all employees get the same thing. You want to make the same gains for SEEP that SEES has obtained, particularly with regard to flexible schedules and a summer schedule. You have already prepared a draft flexible schedules clause to be added to the collective agreement (Appendix B). You will submit it to the employer representatives for discussion.

2. ANNUAL VACATION

You wish to increase the number of annual vacation days. Employees currently have twelve (12) days of vacation per year. You wish to obtain five (5) additional vacation days, but you will be open and flexible when handling the employer's offer on this matter.

3. RETIREMENT

It's up to you to decide whether this is a priority for you, depending on the profile of the labour force you represent.

4. OVERTIME

You want to increase the overtime hourly rate to \$25 per hour. Employees can work a maximum of ten overtime hours per week.

5. RETENTION ALLOCATION

You want the allocation for retention offered to engineers to be extended to biochemists, to ensure equity between the professionals in the factory.



6. NON-STANDARD WORK SCHEDULE

Currently, engineers are paid for a 40-hour work week, but they only work 35 hours per week as a competitive benefit intended to attract qualified labour in an in-demand field of expertise.



APPENDIX A

Union duty of fair representation¹

A union association has exclusive authority to represent all employees in the bargaining unit it is certified for, which is why the duty of fair representation is enshrined in the *Labour Code* (sections 47.2 and subsequent sections). This duty prohibits the union from acting in bad faith or in an arbitrary or discriminatory manner or showing serious negligence in respect of employees comprised in this bargaining unit.

This conduct is prohibited with regard to action taken by unions in the performance of their duty to represent employees in relation to their employer. These actions generally involve the application and negotiation of the collective agreement. Accordingly, the Commission des relations du travail may not take complaints about a union's breach of its duty of fair representation if the complaints concern actions other than those taken in the performance of this duty.

WRONGFUL CONDUCT IN A REPRESENTATIVE CAPACITY

The duty of fair representation prohibits four types of conduct: bad faith, arbitrary conduct, discrimination and serious negligence. The recourse provided under sections 47.2 and subsequent sections of the *Labour Code* is therefore not intended to address general dissatisfaction with a union's decisions or conduct. Employees who wish to file a complaint must prove that the union breached its duty of fair representation by engaging in at least one of the four prohibited types of conduct.

1. http://www.crt.tat.gouv.qc.ca/recours/rerelations_du_travail/plainte_dun_salarie_contre_son_syndicat/le_devoir_syndical_de_juste_representation.html (French only)



Bad faith

Acting in bad faith presumes malicious, fraudulent, spiteful or hostile conduct. It involves intent to harm or oppressive conduct on the part of the union. In the past, the Commission has found an association to have acted in bad faith and in a discriminatory manner for having filed a grievance in an untimely manner because of the animosity of some union officers toward the employee (2003 QCCRT 0588(117 KB)).

Arbitrary conduct

Arbitrary conduct means that even where there was no intent to harm, an employee's claim was processed in a superficial, careless or unreasoned manner. Arbitrary conduct also applies to a union decision that is made without a real evaluation of the matter or after insufficient investigation. A serious investigation is not necessarily an in-depth investigation. Employees have the right to a reasonable examination of the situation to identify key aspects of the issue at hand, as much in terms of the fact as their rights.

Examples of arbitrary conduct may include adhering to a previously developed idea, wanting to refrain from filing a grievance or take it to arbitration without justification, or not giving the employee a chance to tell their side of the story.

Discrimination

Discriminatory conduct is any attempt to put an individual or group at a disadvantage where this is not justified by the labour relations situation in the company. This may manifest as treating an employee differently from other employees or differentiating or excluding a claim made by an employee or group of



employees when processing the claim. For example, refusing to process an employee's grievance on the grounds that the employee is not a member of the association constitutes discriminatory conduct. Race, religion, sex, sexual orientation and age are grounds of discrimination that are prohibited by charters of human rights and freedoms.

Serious negligence

Serious negligence means one of the union's representatives has committed a gross error or grave fault in processing a grievance (e.g., an unforgivable oversight, an inexcusable lack of knowledge, a clear lack of ability, carelessness or an inability to seriously and effectively act on behalf of the interests of the employees they represent), even if the association is acting in good faith. In the past, the Commission has found an association to have been seriously negligent in a case where the steps or time frames of the grievance procedure set out in the collective agreement were not followed or respected (2003 QCCRT 0192 (107 KB)). Section 47.2 of the *Labour Code* does not impose a standard of perfection on the union. Errors that cannot be considered gross faults do not usually constitute serious negligence. The duty of representation must assume a normal standard for knowledge and ability. In order to be found to be wrongful, the union's conduct must constitute more than mere incompetence or excusable negligence or error.



APPENDIX B

Draft flexible schedules clause

Flexible schedules

4-1.06 When the CEO wishes to establish a flexible schedule plan or when seventy percent (70%) or more of professionals in a sector wish so, a request shall be submitted to the committee designated in section 3-4.06.

The committee studies the request based on the following conditions:

1. The modification to the work schedule does not decrease efficiency.
2. Seventy percent (70%) or more of affected professionals are in favour of the modification.
3. The rules concerning the application of flexible schedules are accepted by the parties. These rules must consist of the following:
 - The core hours are of a maximum duration of two (2) hours.
 - The time tracking method consists in recording the exact time of each entry and exit on a register that engineers keep, sign and give to their immediate superior at the end of each reporting period.

If the committee's recommendation is accepted by the CEO, the change to the plan comes into force on the date agreed upon by the committee designated in section 3-4.06. If not, the CEO notifies the committee's union in writing of the grounds for refusal.

The CEO can end this plan after providing a thirty-day (30) notice to the association and affected professionals and notifying the committee designated in section



3-4.06 of the grounds for the decision. The same applies to the committee's union when seventy percent (70%) of the affected staff wish to opt out of the plan.

It is also understood that the CEO can only modify the provisions of an existing flexible schedule plan upon mutual agreement with the committee designated in section 3-4.06 on the nature of the changes and the date it came into force. The CEO notifies the committee's union in writing of the proposed modifications, and the committee must assemble within thirty (30) days from the date the notice is sent.