USW-COASTAL FOREST INDUCTRY HEALTH AND WELFARE PLAN

THRID PARTY CLARIFICATION OF DECSION RE:

BENEFIT COVERAGE DURING LABOUR DISPUTE

HEARING OF CLARIFICATION APPLICATION
JULY 20, 2020
VANCOUVER, B.C.

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BACKGROUND

On January 24, 2020 I issued a decision in this matter (the "Decision"). The first question put to me and the first part of the answer given in the Decision follows:

1. Are plan members who are engaged in a lawful strike covered under the Plan during the duration of that lawful strike on the basis set out in the April 1, 1993 Trustees' Resolution?

   The answer must be given in two parts.

   Yes, but in respect of members who are employed by an employer who is a FIR member company as per the Plan No. 1 '93 Resolution only as long as section 62 of the Labour Code is in force.

Counsel agreed that I would provide clarification of the Decision pursuant to section 27 (4) of the Arbitration Act by answering the following question:

> Are each of Western Forest Products and the other non-member employers referenced in paragraph 26 of the Agreed Statement of Facts a "Fir member company" for the purposes of the first part of the answer to question 1 of the Decision?

Paragraph 26 of the Agreed Statement of Facts is reproduced below. The reference to Tab 8 is to the 1986 Agreement discussed below.

> In 1993 (and for many years before) FIR was the accredited bargaining agent for all major companies in the coastal forest industry with the authority to negotiate for and bind all employers to collective agreements. WFP, the largest Coastal forest company, withdrew from FIR March 1, 2008. Thereafter, FIR was the accredited bargaining agent for a small number of independent companies and could no longer bind WFP or other non-members to collective agreements or ancillary documents, such as Tab 8.

I have now received written submissions from counsel on the clarification question together with a Will Say Statement from Brian Butler, President of USW Local 1-1937 and a Will Say Statement from Tom Getzie, VP of FIR Ltd., Managing Partner in FIR Labour Relations Ltd. and employer trustee. Counsel has also provided a Supplemental Agreed Statement of Facts and a Joint Book of Documents to the Supplemental Agreed Statement of Facts.

CLARIFICATION

I shall begin with a review of the Plan No.1 '93 Resolution and the Plan No. 2 '93 Resolution.
As noted in the Decision these resolutions were prompted by a newly enacted section 62 of the Labour Relations Code which required the continuation of benefits during a strike or lockout if the union tendered the required contributions. These resolutions represented a material departure from the requirements of section 62 by emulating the 1986 Agreement which was a tripartite accord reached by the IWA, FIR and the trustees of the health and welfare plan.

The 1986 Agreement was first and foremost a labour relations accommodation. At law benefits would not continue during a strike or lockout without such an express agreement. Once the accommodation was reached between labour and management it was left to trustees of the health and welfare plan to implement it by continuing benefit coverage through the strike.

This is the blueprint followed in the establishment of most collectively bargained multi-employer pension and benefit plans. The foundational elements of the plan are negotiated by labour and management, a trust is established to deliver the negotiated benefits and a joint board of trustees is appointed to manage the plan. In this sense it can be seen that the divide between labour relations and these type of trusts is not watertight. Plan No. 1 was established exactly along these lines.

The Plan No. 2 '93 Resolution required the employer and the union involved in a strike or lockout to first agree upon a continuation of benefits. This was understandable since a continuation of benefits was not required by law nor likely provided for in any collective agreement and the participating employers of Plan No. 2 were not represented by a bargaining agent like FIR.

The Plan No.1 Resolution was different in that an agreement between union and employer was not a pre-condition for the continuation of benefits during a strike or lockout. This was also understandable since the employers were all accredited to FIR. In effect the foundational agreement between labour

and management to the continuation of benefits during a strike or lockout was subsumed in the Plan No. 1 '93 Resolution by virtue of the governance structure of Plan No. 1.

Long after the Plan No.1 '93 Resolution was passed a number of events transpired which could not possibly have been within the contemplation of the trustees of Plan No. 1 at the time that resolution was passed. In particular, the plan witnessed many employers de-accrediting from FIR. This would normally have resulted in these employers moving to Plan No. 2. However, FIR also modified its membership criteria to provide for benefits only membership and the trustees of Plan No. 1 agreed to accept these benefits only employers as participating employers even though they were not accredited to FIR. In addition, the two plans merged.

As I noted in the Decision the Plan No. 1 '93 Resolution was never incorporated into the plan text by way of a plan amendment. This limits the efficacy of the Plan No. 1 '93 Resolution to that of an administrative practice intended to bind FIR accredited employers.

Putting the Plan No. 1 '93 Resolution into historical context and applying a purposive interpretation I am of the opinion that the Plan No. 1 '93 Resolution only binds Plan No. 1 employers that are accredited to FIR. This is consistent with the conduct of the parties. On July 2, 2009 Western Forest Products wrote to the union clearly stating it would not continue benefit contributions during the strike but acknowledged it would comply with section 62 of the Labour Relations Code. In response the union proposed a return to the "past agreement" whereby employer contributions continued and were repaid by employees after the strike (Tab 22 Original Book of Documents).

Therefore, in answer to the question put for clarification, each of Western Forest Products and the other non-member employers referenced in paragraph 26 of the Agreed Statement of Facts is not a "Fir member company" for the purposes of the first part of the answer to question 1 of the Decision

Dated this 23rd day of July, 2020

Shawn Hatch