

Helpful Legal Information for MAHCP Members

The Rule of Estoppel

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There is a recent development in the arbitral jurisprudence that may be unjustly depriving certain members of benefits under the collective agreement. The rule of estoppel is being used more and more by labour arbitrators in deciding disputes over the interpretation of the collective agreement. The rule can operate in a situation where, even though the union is successful in arguing the correct method of interpreting the collective agreement, the arbitrator can apply the rule of estoppel so as to prohibit the union and its members from being able to rely on the correct interpretation.

The rule of estoppel is based on a change to the terms of a contract. It has a number of parts. Arbitrators in Manitoba have recently decided the rule may be imposed where a union knew or should have known about how the employer was administering a term of the collective agreement. The courts of law adopt a 6 part test to determine if the terms of a contract have been changed by the conduct of the parties. They are:

- (1) There must be a promise by someone in the union (or the employer);
- (2) The promise must be clear and unequivocal;
- (3) The other side must have changed her position as a result of the promise
- (4) There must be a real legal relationship between the parties;
- (5) The legal relationship must be affected by the promise;
- (6) The one making the promise must have intended to affect the legal contract in place.

The new application of the rule of estoppel in the Manitoba cases has misinterpreted these legal requirements and has applied estoppel even when the union did not know about the misapplication of the collective



agreement. When the rule is imposed, the arbitrator makes a determination that the benefit should be provided but for the rule of estoppel and, in essence, suspends the correct interpretation of the agreement until it expires.

The MAHCP is fighting hard against this application of the rule. It has taken the employer to task in a number of instances where the rule was invoked to preserve a long standing practice determined by an arbitrator to be in violation of the collective agreement.

The rule should not be imposed where there is simply silence on the part of the union in the face of an employer's method of calculating a benefit. Uninformed silence is not a clear and "clear and unequivocal" promise as required by the law. It is not intended to affect the application of the collective agreement, the terms of the legal relationship between the parties. The employer should have the onus, where it wants the rule of estoppel to apply, to prove these elements in a case. Estoppel should require that a representation be made by one party (the union) with the intention that it be relied on by the employer so as to change the legal relationship. There is no jurisprudence supporting a distinctly different application of the estoppel remedy in the labour arbitration arena than that which is used in the courts of law. The remedy has developed through the common law and its regulation is subject to the order of the jurisdictional court of Queen's Bench in the Province of Manitoba.

This application of the law of estoppel works a basic unfairness to a

union in this context. The collective bargaining relationship works on the basis that the employer will administer the terms of the collective agreement and the union will act in a role much like a firefighter, recognizing problems where members make complaints as to the employer's inappropriate or unfair methods of applying the agreement. The employer will never, or only in the rarest cases, interpret a provision of the collective agreement contrary to their interest. They will only do that which they are obliged to do by the terms of the collective agreement and nothing more. If there is an ambiguity in the language, the employer will adopt that interpretation that favours them. In the face of the differing roles of the employer and the union, there is no obligation on the union to analyze every administrative decision of the employer to determine that the collective agreement is being strictly followed. The union's obligation is only to fully and actively represent its membership when a member comes forward with a legitimate complaint.

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That is where the union needs help from the membership. Often, the reason an incorrect administrative practice is allowed to go unchecked for so long is that the members, if they question a practice are told by the employer that everything is alright, that the employer is administering the terms of the agreement properly even when it is not. It is at that stage that the employee can do one of two things, accept the explanation of the employer or clarify the issue with a union representative. If the employee accepts the word of the employer in this instance, the rule of estoppel should not be invoked because you are entitled to believe the employer when he tells you something. The rule will only be invoked where the union, not the employee, is made aware of the incorrect practice.

The rule should not be applied where the union remains silent due to lack of knowledge of the issue. This imposes an unfair obligation on the union to suspiciously analyze every aspect of the employer's administration of the collective agreement. This would place the onus on the union to be all knowing and if it is not become aware of an inappropriate remedy for some time, the arbitration process would not help them. The union then must wait for the pressure packed intensity of collective bargaining to deal with any issues of interpretation because even where they are absolutely right in their position before the arbitrator and the arbitrator agrees with the union, the arbitrator can say, because of estoppel, "I can't help you. Deal with it yourselves at collective bargaining."

It is for these reasons that the MAHCP has devoted a lot of time and energy to correcting the application of the rule of estoppel in Manitoba so that this basic unfairness does not deprive its members of the benefits they are entitled to under the collective agreement.