

IN THE MATTER OF AN INTEREST AND RIGHTS ARBITRATION

BETWEEN:

SOBEYS WEST INC. (d.b.a. SAFEWAY)

(the "Employer" or "Safeway")

AND:

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 1518

("Local 1518")

AND:

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 247

("Local 247")

(Bi-Weekly Payroll Issue)

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Duncan MacPhail for
the Employer

Chris Buchanan for
Local 1518

Daniel Bertrand for
Local 247

HEARING:

July 11, 2014
Vancouver, BC

DECISION:

July 16, 2014

BACKGROUND

The parties have agreed to appear before me on an expedited basis. As a result of the expedited nature of the proceedings, the parties also agreed that this decision is non-precedential, meaning this award is issued on a without prejudice and precedent basis.

The issue before me arises out of the 2013 acquisition of Canada Safeway by Sobeys and relates to the resulting need for Safeway Operations to transition away from the Safeway Inc.'s payroll platform and onto the Sobeys SAP payroll system.

On June 19, 2014 the President of Safeway Operations, Mr. Chuck Mulvenna, announced:

...as part of the transition to the Sobeys SAP payroll system, unionized employees across Safeway Operations will convert to a bi-weekly pay schedule. This must take place in order to ensure that we effectively transition away from the Safeway Inc. Payroll platform

I understand that at this point in time all non-union Safeway employees have already converted to the new payroll system and that due to the large number of employees involved across Canada, Safeway has announced that the unionized workforce conversion will be implemented in a staggered manner beginning with British Columbia. Safeway has announced that it intends to begin the conversion in British Columbia on July 13 and expects that the conversion in British Columbia will take until mid to late October to complete.

Both Local 1518 and Local 247 (together the "Locals") are opposed to a conversion to a bi-weekly payroll system and have filed grievances asserting that under their respective Collective Agreements Safeway is obligated to

maintain a “regular weekly payday”. The Locals also raised concerns about the lack of notice under Section 54 of the *Labour Relations Code*. The Locals take the position that any conversion to a bi-weekly payroll system violates their respective Collective Agreement rights. The Locals seek an order preventing Safeway from transitioning to a bi-weekly payroll system.

Safeway joins issue and argues that the conversion is both necessary and permitted under the Collective Agreements and that requiring the maintenance of a weekly payroll system is absurd and unworkable.

MY APPOINTMENT

The parties have agreed to a single expedited proceeding before me in which I have been appointed as an interest/rights arbitrator to adjudicate the grievances. In addition the parties have given me the authority under the *Labour Relations Code*, to impose an adjustment plan if I determine that Safeway has the right to change to a bi-weekly payroll. The parties agree that if Safeway is found to be able to change to a bi-weekly payroll system that I am empowered to minimize or eliminate any harm caused to bargaining unit members.

More particularly, the terms of my appointment are captured in the Employer’s proposal of June 30th as conditionally agreed upon by the Locals. Safeway proposed:

...a single expedited proceeding before Vince Ready in which he would be given the authority to adjudicate and determine the grievances. Our client proposes that Mr. Ready be appointed as an interest/rights arbitrator with the power to interpret and if appropriate amend the collective agreement. In addition he would have the authority under the *Labour Code* to impose an adjustment plan on the parties if he determines that our client is entitled to introduce a bi-weekly payroll.

This proposal is made without prejudice to our client's position that Section 54 has no application here and on the condition that the agreement to cloth Mr. Ready with the power to impose an adjustment plan will not have any precedential value in respect of any future unrelated issues or matters.

After further communications between the parties the Locals conditionally agreed to the proposal:

[The Locals are] agreeable to the Employer's proposal as long as both the hearing and the decision on the merits of the issues can be completed on or before July 16, 2014. If the hearing or decision is not completed by that date, [the Locals reserve] the right to withdraw from the process and have the matter determined by a regular arbitration panel....

[The Locals are] agreeable to giving Mr. Ready the powers of an interest arbitrator, including the power to impose an adjustment plan, if he finds both that there has been a material change in the circumstances since the collective agreement was ratified and that such a change has had a significant impact on Safeway operations in British Columbia.

[The Locals] agreement to the Employer's proposal, including the deferral of section 54 adjustment plan to an arbitrator, is made on a without prejudice and precedent basis.

These proposed conditions were agreeable to Safeway.

Under the terms of my appointment I have been granted jurisdiction to hear and determine the issues in dispute and to provide the parties with a final and binding resolution which may include, in the circumstances agreed to by the parties, and if I deem it appropriate, making amendments to the relevant provisions in the Collective Agreements. Should I decide that Safeway has the right to change to a bi-weekly payroll then I am to consider imposing an adjustment plan in order to mitigate against and minimize any harm caused to

bargaining unit employees resulting from the modification. The agreed upon process recognizes:

1. The pressing need to have the matter resolved in an expedited way given Safeway's announced intention to begin the conversion process this month.
2. That the same issue arises under both the Local 1518 and Local 247 Collective Agreements. Both Collective Agreements contain similar language. It therefore makes sense to proceed on a tri-partite basis thereby avoiding separate arbitrations under each Local's Collective Agreement and the potential for inconsistent results.
3. This is a unique situation. The relevant Collective Agreement language is historic and dates back through numerous Collective Agreements. It was agreed upon in the context of a different payroll system, one which was built on the Safeway Inc. payroll platform. At the time the parties did not contemplate the sale of Canada Safeway to Sobeys and the need to transition to a different payroll system. With the purchase of Canada Safeway Operations by Sobeys it has now become necessary to move the payroll system off of the Safeway Inc. platform and onto the Sobeys SAP payroll system. The need to transition the payroll system creates real difficulties for the Employer if a weekly payroll must be maintained. Safeway argues that the Sobeys SAP payroll system does not support a weekly payroll and it would be prohibitively expensive and grossly inefficient to create a separate payroll system for Safeway Operations.
4. While the Locals oppose a bi-weekly payroll system, they also recognize that Sobeys faces real competitive challenges in today's retail food environment. This challenge is reflected in Sobeys' recent announcement that it intends to close a number of underperforming

stores in the wake of the Safeway purchase. In reporting on this announcement the Globe and Mail described the challenges faced by Sobeys:

Sobeys and other grocers have felt the squeeze of a more crowded market as U.S. discount titans add more stores – and food aisles – in unprecedented expansion initiatives. Among them, Wal-Mart Canada Corp. is launching more supercentres with full supermarkets and Target Corp. rolled out almost 130 stores in Canada since it entered this country in early 2013.

Given the pressing need to have the issue resolved as quickly as possible the parties have agreed upon and followed an expedited submission process. Although, after hearing the submissions, I am of the view that my decision would not be different if a normal arbitration were to have been held.

Additionally, as stated earlier, the parties have agreed that this award will not be precedential. The parties have also agreed that my decision is final and binding with respect to the issue in dispute.

Finally, the parties have agreed that I am to issue a brief decision without the need for lengthy reasons.

AWARD

Given the expedited nature of the proceedings, I will not set out the evidence or arguments made be Counsel.

I find that Safeway's proposed bi-weekly payroll violates Article 7.01 of the UFCW 1518 Collective Agreement and Article 6.12 of the UFCW 247 Collective Agreement. The parties in their respective Collective Agreements clearly turned their minds to the frequency with which employees are to be paid. Consequently, this is not an issue that Safeway can unilaterally change

without the agreement of the Locals. Certainly how frequently employees are paid is of considerable importance not just to the employees but also the unions who represent them.

Further, on matters that impact the payment of wages, even when that is just the frequency of the payment, an employer should provide as much notice as reasonably possible. I find that Safeway should have provided more notice about the intended changes.

Ordinarily, I would simply order that Safeway cannot implement the proposed bi-weekly salary. However, the parties have provided me with the powers of an interest arbitrator to alter the terms of the Collective Agreement if it can be established that there is a material change in circumstances since the Collective Agreement was ratified and that such a change has had a significant impact on Safeway operations in British Columbia. This agreement demonstrates a sophisticated approach to labour relations because it recognizes that in rare instances sufficiently compelling circumstances exist to compel necessary adjustments to the Collective Agreement.

I accept the evidence and argument of Safeway that the present circumstance falls within the admittedly rare instance in which I should use my powers as an interest arbitrator to modify the language of the Collective Agreement to permit a bi-weekly payroll system.

The retail grocery business is highly competitive. Safeway must strive to control unnecessary costs in an effort to remain as competitive as possible in the market place. In BC, the landscape is particularly competitive as the market has seen increased competition by Walmart, Loblaws and most recently Target.

With the purchase of the Canada Safeway business in late 2013, Sobeys was given very firm deadlines in terms of available systems support from Safeway Inc. These deadlines have driven the transition of the store level systems and also affect the move to the Sobeys IT platform. Sobeys IT platform does not support a weekly payroll system. As a result in order to maintain a weekly payroll system in British Columbia Safeway would have to create and maintain a separate payroll system. Creating a separate payroll system for Safeway employees in British Columbia would be extremely costly and would result in system inefficiencies that are untenable.

Sobeys currently maintains a single integrated SAP system which not only processes the payroll for its employees but also connects with Sobeys' centralized time and attendance system and other systems within the Company's integrated centralized network. SAP supports all aspects of Sobeys' business from financial systems and payroll to merchandizing and retail operations. It drives the backend processes across the organization. It would be costly, inefficient, and cumbersome to attempt to integrate a separate BC only payroll system into this highly centralized and integrated IT network.

I accept the evidence that the change of payroll platform, the inability of the Sobeys' SAP payroll system to accommodate a weekly payroll, and the prohibitive cost of a separate weekly Safeway payroll. I find that that impact on Safeway operations in BC would be significant and the harm suffered by the employees to be relatively minor.

In allowing Safeway to implement a bi-weekly salary, I find that I should impose on Safeway an adjustment plan requiring and directing Safeway to introduce certain measures (which are outlined below) which ensure that the impact of the transition to a bi-weekly payroll system on bargaining unit employees is minimal. For example Sobeys' SAP payroll system is capable of


paying all part-time employees vacation pay during scheduled vacations, something that Safeway Inc. was either unable or unwilling to do with the previous payroll system. Therefore, the benefits of Sobeys' SAP payroll system can be used to offset any harm caused to bargaining unit members in part by ordering that part-timers may take their vacation pay during their scheduled vacations.

I therefore order the following:

1. That the Collective Agreements be modified to expressly permit a bi-weekly payroll. I will leave it to the parties to work out the language. If the parties cannot agree on the amending language I remain seized to determine how the Collective Agreements are to be modified.
2. Bridge Loan:
Safeway will offer a one time bridge loan, equivalent to one week of gross earnings payable on the employee's first "missed" deposit date. If employees choose to utilize this loan, equal payments will be made over the next 20 weeks (10 pay periods). I will leave the details of the bridge loan to the parties to work out. If the parties cannot agree on the bridge loan details I remain seized to determine them.
3. Part time Vacation bank:
Safeway will calculate the part time vacation pay based on prior year's gross earnings as stated in the Collective Agreement and create a bank of those funds which can be taken as a lump sum (current practice) or withdrawn when vacation time off is taken. I will leave it to the parties to work out any Collective Agreement language that may need to be modified. If the parties cannot agree on the amending language I will remain seized to determine how the Collective Agreements are to be modified.

I remained seized to resolve any difficulties or disputes arising out of or related to the interpretation, application or implementation of this award.

Dated at the City of Vancouver in the Province of British Columbia this 16th day of July, 2014.

A handwritten signature in black ink, consisting of a stylized, cursive 'V' followed by a horizontal line and a short vertical stroke at the end.

Vincent L. Ready