

- **DRUG AND ALCOHOL TESTING POLICY UPHELD AT ARBITRATION**

In a recent case, a union's grievance claiming that a drug and alcohol testing policy was invalid was rejected, because the policy was not unreasonable or unlawful, and did not violate the collective agreement or human rights law.

In its grievance, the United Steelworkers of America claimed that the policy was invalid from the moment of its introduction by Fording Coal, a mining company in B.C. First, in the union's submission, it was unlawful and unreasonable. Fording was seeking to eliminate from its workplace all risk of impairment from drugs and alcohol, but did not provide evidence that the testing policy could accomplish this goal. The objective of the policy was therefore not reasonable. Further, according to the union, the policy would not accomplish Fording's objectives, because it focused too narrowly on testing, at the expense of alternatives.

The second ground for the union's claim was that the policy contravened the B.C. Human Rights Code and was in conflict with human rights principles and Charter values.

Fording countered that the policy was not, on its face, unlawful or unreasonable.

The issues raised by the union related not to the introduction of the policy but rather to the application of the policy. The policy was a reasonable approach, given the threat to worker safety posed by the consumption of alcohol or drugs in a potentially hazardous workplace.

Arbitrator Allan Hope disagreed with the union. "The starting point in .. this dispute," Hope said, "is to recognize that the policy serves only to put employees on notice with respect to the employer's expectations .. with respect to alcohol and drug use and ... the disciplinary consequences which will flow from actions alleged to be in breach of the policy." Putting the employees on notice in this way was not unreasonable. The unilateral introduction of a drug and alcohol testing policy could only be challenged if it was unreasonable on its face or inconsistent with the collective agreement.

Referring to Canadian National Railway and CAW-Canada, (2001) 95 L.A.C. (4<sup>th</sup>) 341, Hope concluded that "... employers are recognized as having the right to impose mandatory drug and alcohol testing where reasonable cause exists or in response to workplace incidents where the condition of employees involved is seen as a reasonable line of inquiry. The protection for employees is the requirement on employers to establish in every case that it had just cause to impose the mandatory testing."

Rejecting the union's contention that the policy was unreasonable because drug and alcohol use could be dealt with in less invasive ways, Hope again relied on the CNR case, in which Arbitrator Picher said that "there are certain industries which by their very nature are so highly safety sensitive as to justify a high degree of caution on the part of an employer," and "[t]he more highly risk sensitive an enterprise is, the more an employer can ... justify a proactive, rather than a reactive, approach designed to prevent a problem before it manifests itself." Fording's workplace was an open pit mine, a safety-sensitive environment. Drug testing in defined circumstances was within the employer's discretion as a precautionary measure.

The question of reasonableness could arise with regard to the application of the policy, but on its face the policy was not unreasonable.

Moreover, Arbitrator Hope did not agree with the union's submission that drug and alcohol testing is a violation of human rights. The policy did not involve random testing. In any case, if the union's argument were correct, this would eliminate all drug and alcohol testing policies, a position not consistent with the legal authorities.

Altogether, the union failed to show that the policy was unreasonable on its face, or unlawful, or that its introduction violated employees' human rights. The policy simply provided a discretionary right to require employees to submit to drug tests where reasonable cause existed or where an employee's condition was relevant to the investigation of a safety-related incident. The reasonableness of the policy would arise in its application to particular facts. In the result, Arbitrator Hope dismissed the grievance.

United Steelworkers of America, Local 7884 v. Fording Coal Limited  
British Columbia Grievance Arbitration  
Allan Hope, Sole Arbitrator  
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