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COLLECTIVE BARGAINING AND AGREEMENT

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Collective Bargaining and Agreement deals with every aspect of the collective bargaining process, including: union-management relations, preparation for bargaining negotiations, and tactics and the law. It offers a practical explanation of industrial relations laws and practices, good faith bargaining in light of recent decisions, the law governing strikes, lockouts, replacement labour and other management-union tactics, as well as why more negotiators are using mutual gains bargaining, including the inner workings of today's most effective bargaining techniques and the factors affecting union-management relations.

Collective Bargaining and Agreement also includes chapters covering key aspects of collective agreements with annotations which include a summary of the law and a discussion of applicable legal cases.

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What's New in this Update:

This release features updates to some of the memos in Appendix IF. Issues in Focus, as well as some entries in Appendix WP. Words and Phrases.

Highlights:

APPENDIX IF. ISSUES IN FOCUS — § IF:5. Is a union entitled to use an employer's communication network, and specifically its email system, to communicate with its members about union matters? If so, to what extent must an employer permit such use? — Generally, no employer, and no person who is employed in a managerial or confidential position whether or not they are acting on behalf of the employer, may participate in or interfere with the formation or administration of an employee organization or with the representation of employees by such an organization. Broadly speaking, an employer has the right to restrict the use that its employees make of its electronic resources. It is not appropriate for a bargaining agent to use employer facilities for its business and the ability of the bargaining agent to communicate with its members in the workplace is clearly constrained. However, while the employer may have the right to block email communication, it cannot secretly monitor emails sent by the bargaining agent to its members at their work email address and must give prior notice to the bargaining agent of its intention to unilaterally block the bargaining agent's access to employees' email.

APPENDIX IF. ISSUES IN FOCUS — § IF:5. In a unionized work environment, will an employer's failure to provide union representation during the disciplinary process render the discipline at issue void? — Canadian labour jurisprudence has varied in its response to an employer's breach of union representation rights during the disciplinary process. Labour arbitrators have traditionally treated such a breach of the parties' collective agreement as rendering the discipline at issue void. There are still numerous instances in contemporary case law where discipline is found to be null and void as a result of an employer's breach of union representation rights. However, a growing number of labour law decisions in recent years have endorsed the view that a violation of contractual union representation rights does not automatically render discipline null and void. Instead, this school of thought encourages arbitrators to consider a myriad of factors in order to determine an appropriate remedy for an employer's breach of union representation rights, including: the significance of the clause breached, any prejudice experienced by the grievor, any stress or other harm caused as a result of the breach and whether there is evidence of bad faith on the part of management in connection with the breach. Also important

for labour practitioners to note, although jurisprudence on this subject is limited, an entitlement to union representation during the disciplinary process has been held to exist even in the absence an express collective agreement provision.

ProView Developments

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