



Statutory Freeze Complaints 101

What Is A Statutory Freeze?

A statutory freeze is a period during which the employer cannot change the terms and conditions of employment. More specifically, this refers to the terms and conditions that apply to the employees in the proposed bargaining unit. Labour laws provide three situations in which a statutory freeze takes place:

1. when the bargaining unit is in the process of getting certified;¹
2. when the certified bargaining unit is bargaining for a first collective agreement; and
3. when an old collective agreement runs out and we have to bargain for a new one.²

The National Police Federation is currently in the process of obtaining certification of our bargaining unit, so we are presently in a period of statutory freeze. This freeze will continue until one of three things happen: 1) we withdraw our application to be certified; 2) the Board decides to refuse our certification application; or 3) 30 days after the Labour Relations Board certifies us as the bargaining agent for the unit (in which case, we will extend it by starting the bargaining process).³

So, What Is “Frozen”, Anyway?

This is the big question. During a statutory freeze, the employer **isn't allowed to increase or decrease rates of pay or alter any term or conditions of employment collectively**, unless they obtain permission from the Labour Relations Board. Also, in order to be captured by a statutory freeze provision, the term or condition had to exist or be in place at the time the process of certification began.⁴ The test the Labour Board uses to determine if there has been a breach of the statutory freeze provisions is a combination of the “business as usual” and the “reasonable expectations” tests.⁵ These tests are meant to provide collective security to the workers, but also not infringe on management’s right to run its operation.

The “business as usual” test catches those changes that can be measured against a pattern that started before the statutory freeze started. For instance, if the employer hires additional seasonal staff every summer and then lays them off in the fall, this is a pattern that can be followed year after year and

¹ Federal Public Sector Labour Relations Act (SC 2003, c 22, s 2), section 56, <online at: <http://laws-lois.justice.gc.ca/eng/acts/P-33.3/page-4.html#docCont>> .

² *Ibid* at section 107 and 125(1).

³ *Supra* note 1.

⁴ *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2013 PSLRB 46 (CanLII) at para 135, <http://canlii.ca/t/fxj8t>.



would not constitute a breach of the statutory freeze, as it has nothing to do with the bargaining process.

The “reasonable expectations” test is meant to help with events that are “first-time” events, so they cannot be measured against a pattern. Say for instance, an employer had a really bad year and sales are down 50%, one could reasonably expect that they might have to lay off a few workers to adjust to the lack of money flowing in.

Below are a few scenarios to understand what would satisfy the requirements of a valid statutory freeze complaint in light of the legislation and the resulting tests discussed above:

Scenario 1: ***You had an agreement with your supervisor that you could park in a reserved spot when you came into work early. Management gave that spot to a senior employee so that spot is no longer available to you.*** This would not be a valid statutory freeze complaint. Why? Because it was an individual agreement with your supervisor, it would not be captured under the “collective rights” that labour laws protect. As such, it isn’t a change to the collective rights of the union’s employees, but rather an individual privilege that was rescinded due to a more senior employee getting the privilege.

Scenario 2: ***A group of employees had reserved parking spots owned by the company as a perk of employment. Management then tells the employees that they were no longer providing the parking spots so that they could lease them out to paying customers.***

This could be a valid statutory freeze complaint. Because all employees had reserved parking spots and management unilaterally decided to take away a collective term of employment, that is, a mutually agreed upon condition of employment, to make themselves more money, that would be considered rescinding a collective term of employment. When we measure this against the idea of “reasonable expectations”, it would be unreasonable for the employer to unilaterally revoke parking privileges without providing for alternative arrangements. But, in this case, it would have to be clear that the employer controlled the parking spaces. If the spaces were eliminated by a third party (like the building manager), and the employer has no control over the spaces or how they are administered, then it may not be a breach of the statutory freeze.