

OLRB rules employer is guilty of non-compliance

In an historic decision handed down on March 18, 2005 by Ontario Labour Relations Board Vice-Chair Brian McLean, the board found that the employer had not complied with Section 17 of the Labour Relations Act, which states that the parties, “shall bargain in good faith and make every reasonable effort to make a collective agreement.” This decision is a further indication that the employer is failing to live up to its commitment to work with us.

On November 8, 2004, the employer, through their lead at the bargaining table, Elizabeth McKnight, advised OPSEU’s Chief Negotiator, Terry Baxter, that she had a package of Planning Detail Documents (i.e. reorganization of our workplace and details of layoffs) to provide to him. However, in order to receive this package of documents he would have to sign a confidentiality agreement. Baxter refused to sign the confidentiality agreement on the basis that the union was entitled to full disclosure of the government’s plans during the collective bargaining process. This disclosure, without conditions, was required to allow the union to address issues such as planned lay-offs during collective bargaining.

As a result of the employer’s position, OPSEU filed a bad faith bargaining charge with the Ontario Labour Relations Board on Dec. 3, 2004. The board received evidence and heard arguments from the parties in early January 2005.

In testimony, the employer explained why this planning information must be kept confidential. There were essentially three reasons. First, information may make employees feel anxious about plans that may never be implemented. Second, it may create anxiety for the unions. Third, some ideas involve outsourcing that may require a tender, and if information leaked out it may give an unfair advantage to bidders. The employer went on to testify that the union was told when plans were reasonably likely to occur. They described the plans in question as “pie in the sky” and not reasonably likely to occur. They added that “it is not my job” to determine the likelihood of implementation. Furthermore, McKnight did not ask anyone in any of the ministries to assess the plans to

(Continued on page 2)

POST and CIRCULATE

Employer guilty

(Continued from page 1)

determine which were likely to be implemented. In his decision, Vice-Chair McLean stated, “In short, Ms. McKnight’s evidence on this issue was little more than opinion and we disregard it.”

Baxter testified why he believed that it would be inappropriate to accept planning details on a confidential basis. He cited several reasons that would apply if, for example, the employer’s plans (as it appeared) might result in the lay-off of employees. Included among the reasons were: so the union could attempt to convince the employer at the bargaining table to do otherwise; to see if employees wish to take early retirement packages; to negotiate collective agreement protection; and to negotiate enhanced severance packages. Baxter also testified that it would not be appropriate for him to know confidential material and not be permitted to share it with the bargaining teams.

In his decision, Vice-Chair McLean found that, “...based on the evidence before us, that the information contained in documents is information which the employer is obligated to provide to OPSEU.” He also stated, “the employer’s requirement that information be provided to some members of the bargaining committee and not others is difficult to sustain even with certain evidentiary support. The effect of excluding certain information from certain members of the committee excludes them from decision making with respect to that information. Such a requirement, could be seen as effectively dictating the composition of the union’s committee, which the board has

determined is prohibited by the Act.”

In Vice-Chair McLean’s decision, released March 18, 2005, he found that Section 17 of the *Ontario Labour Relations Act* had not been complied with. In addition, he found that the union could not effectively bargain “unless it is provided information about such plans.” In his remedy, McLean directed the employer to do one of the following:

- Provide to OPSEU the Planning Detail Documents which were the subject of this application and answer OPSEU’s appropriate questions about the Planning Detail Documents; or
- During bargaining, answer OPSEU’s appropriate questions about the plans which are described in the August 2004 RBPI [Results Based Planning Initiative] documents.

Hopefully, this decision by the board will entice the employer to move from its paternalistic stance and bargain in good faith for the remainder of this round. However, like always, the “proof is in the pudding” or, in this case, is it in the “pie in the sky?”

Your bargaining team will now be analyzing the plans and the information will be distributed to the MERC chairs of the affected ministries. The information will be used to guide the team in bargaining job security provisions.

Go to www.opseu.org to see the full decision.

Spotlight on your work

Corridor Management Officer

Ministry of Transportation

A Corridor Management Officer (CMO) administers and enforces sections of the Public Transportation and Highway Act. The Act states that no person shall, without permission, deposit anything within the limits, place a sign within 400 meters, construct any entranceway, or undertake any development within a predetermined distance of a King's (Provincial) Highway.

Duties involve receiving applications, fees, advising the minister, preparing permits for the minister's signature and inspecting approved works for compliance. The CMO is also involved in revoking permits where required and in rare instances, the laying of charges. A working knowledge of engineering/construction principles and the ability to understand pertinent legislation is also required. The CMO is part of a team that provides input to municipalities in matters pertaining to official plans, zoning and by-law amendments and variances.

The bargaining team values you and is working towards a collective agreement that you can be proud of.

Rehabilitation Officer

Corrections Category

There are about 100 Rehabilitation Officers in the Ministry of Community Safety and Correctional Services and the Children and Youth Ministry in Ontario. They work in correctional facilities and youth facilities in unpredictable situations. Their duties include the classification of adult inmates and youth, as well as arranging and organizing temporary absence passes for their client group. They recruit and supervise volunteers and are involved in the electronic monitoring program. Their job requires a myriad of skills and knowledge.

Your bargaining team appreciates your valuable work!

The Sunshine Club – eleventh edition

The Sunshine Club is the list of public service managers who earn over \$100,000 per year. Here are the names for our eleventh edition.

Name	Ministry	Current Position	(Strike Year)	(Non-Strike Year)
			2002 Salary	2003 Salary
Peter Makula	Ministry of Transportation	Manager, Engineering	\$137,254	Under 100k
Ronald Dash	Ministry of the Attorney General	Case Management Master	\$181,442	Under 100k
John Mayes	Ministry of the Environment	Manager, Technology Standards	\$136,982	Under 100k
Kent Broughton	Ministry of Natural Resources	A/HR Consultant – Peterborough	\$138,931	Under 100k
Randy Reese	Ministry of Consumer and Business Services	Manager, Business Improvements	\$104,255	Under 100k

In Corrections:

Name	Current Position	(Strike Year)	(Non-Strike Year)
		2002 Salary	2003 Salary
Frank Geswaldo	Operational Manager, Metropolitan Toronto West Detention Centre	\$176,437	Under 100k
Brent Cook	Acting Deputy Superintendent of Administration, Algoma Treatment and Remand Centre	\$159,012	Under 100k
Joseph Brlek	Acting Superintendent, Elgin-Middlesex Detention Centre	\$153,812	Under 100k
Ian Booth	Superintendent, Fort Frances Jail	\$151,887	Under 100k
Cheryl Sikkes	Area Manager, Probation and Parole, Guelph Office	\$109,512	Under 100k

Bargaining Glossary

Negotiations – The process in which a union presents the changes it would like to see in the collective agreement and management presents its proposed revisions, and two sides bargain toward what is usually a compromise position both can live with.

Conciliation – A process in which a conciliation officer employed by the provincial Ministry of Labour attempts to bring the two parties to an agreement. This may involve meeting with the two sides in the same room or separately. Where a conciliation officer fails to achieve an agreement, s/he usually recommends to the minister that a “no board report” be issued. This “no board report” stemming from conciliation, triggers the countdown to a legal lockout/strike situation.

No Board Report – Where a conciliation officer is unable to obtain an agreement between the two parties, s/he recommends to the Minister of Labour that a conciliation board not be appointed. This recommendation is called a “no board report” and 14 days after the release of this report, the two parties are in a “free legal position” which means the employer can lockout employees or the union can strike.

Mediation – A process in which a mediator, who may be either a government employee or a free-lance mediator, meets with both parties in an effort to achieve the compromises necessary to reach an agreement. The process is similar to conciliation, but mediation may take place at any point in the negotiation process, and under all legislation. One difference is that if a mediator fails to bring about an agreement, it does not have the same strike/lockout-triggering effect as failure at conciliation.

Your OPSEU OPS bargaining teams

Central/Unified Team:

Marg Simmons (Chair), Central Enforcement and Renewal Committee

Linda Thibert, OPSEU Region 1

Doug Peebles, Region 2

Kathleen Demareski, Region 3

Rhéal Delaquis, Region 4

Paul Myers, Region 5

Eric Morin (Vice-Chair), Region 6

John Watson, Region 7

Bob Houston, Administrative category

Brian Chauvin, Corrections

Carl Thibodeau, Institutional & Health Care

Sandra Noad, Office Administration

Beth Anich, Office Administration

Ken Fraser, Technical/Operational & Maintenance

Moira Cowan, Unclassified members

centralubu@bellnet.ca

unclassified@bellnet.ca

Corrections Team:

Jack Hopkins, OPSEU Region 1

Barry Scanlon (Chair), Region 2

Glenna Caldwell, Region 3

Robert Curran (Vice-Chair), Region 4

Dave Graves, Region 5

Joe Wright, Region 6

Len Mason, Region 7

corrections@bellnet.ca

The Source is your only accurate source of Central and Corrections Bargaining Team information. Do not rely on gossip and rumours. We will provide the facts. Your editors are Len Mason, Beth Anich and Moira Cowan. *The Source* is authorized for distribution by Barry Scanlon, chair, Corrections Team, Marg Simmons, chair, Central Bargaining Team and Leah Casselman, President.