

OLRB rules again on essential services

Within hours of an Ontario Labour Relations Board decision that ordered both the union and the employer to comply with the Essential Service Agreements, OPSEU filed charges against the employer for continuing to block employees from the workplace.

A hearing was held at 6:00 p.m. on Saturday, March 16. In the complaint, OPSEU listed nine institutions where the employer prevented bargaining unit employees from performing essential

service duties.

Even while the hearings were taking place, the employer continued to block employees at other institutions. At the Stratford Jail, members initiated a work refusal due to the employer not providing breaks. When the members refused to leave the institution until the issue was resolved, management had them escorted out by the police. At Millbrook C.C., members were ordered to leave when they refused to perform work that was not

deemed essential.

The Labour Board has ordered once again that employees return to work as per the employer's schedule and that the employer allow the employees into the institutions. Members should be prepared to start work immediately, and also have emergency services search teams available. We need to get back on the inside of our facilities.

The following is the text from the latest Labour Board decision:

ONTARIO LABOUR RELATIONS BOARD

3556-01-M The Crown in right of Ontario, as represented by the Management Board of Cabinet, Applicant v. The Ontario Public Services Union et al., Responding Parties.

3567-01-U The Ontario Public Services Union, Applicant v. The Crown in right of Ontario, as represented by the Management Board of Cabinet, Responding Party.

BEFORE: Brian McLean, Vice-Chair

Decision of the Board; March 17, 2002

On March 14, 2002 the Board issued a decision respecting these applications. That decision was

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amended by decision of the Board dated March 15, 2002. (Together these decisions are referred to as the “Decision”).

By decision dated March 16, 2002 (the “second Decision”), the Board determined that the Decision had been violated by both parties. The Board, among other things, ordered the parties to cease and desist from violating the Decision. Specifically, the Board ordered the Corrections essential service employees to return to work and management to permit them to return to work in accordance with the Decision.

By letter dated March 16, 2002 the Union requested the Board convene a hearing on 6 hours notice pursuant to paragraph 9 of the Decision. The Board did so. Each party asserts that the other party(s) violated both the first and second Decisions.

Background

These applications occur in the context of a Province wide strike by OPSEU which commenced on March 12, 2002. Under the *Crown Employees Collective Bargaining Act* (CECBA) the parties were required to, and have, negotiated an Essential Services Agreement (ESA). The purpose of the ESA is to ensure that essential services are maintained during the term of a labour dispute. This serves an important public policy objective of ensuring that the public is not placed in danger as a result of the labour dispute. As a result, persons who are designated to perform essential services during a labour dispute are not entitled to strike or be locked out.

These dangers are readily apparent on the facts before me. Due to the absence of the Correctional essential services workers the inmates at several institutions have been locked in their cells for a protracted period of time since the commencement of the strike. This may have led to a riot at one institution. Legitimate concerns have been expressed about the welfare of young offenders in some institutions.

These applications concern the activities of Corrections essential services employees and the management of the correctional institutions at which they work. The Decision determined that the relevant ESAs were violated. The Board in the Decision also ordered all Correctional essential service employees in the Province of Ontario to return to work and the employer to allow all such essential services employees to return to work.

The Board established a scheme to ensure that the return to work would be as smooth as possible. Under the scheme, any disputes about health and safety which allegedly contributed to the removal of essential services by a work refusal under the *Occupational Health and Safety Act* were to be referred to this panel of the Board on an expedited basis. Other disputes, including scheduling disputes, were to be referred for resolution in accordance with the Mediation/ Arbitration Protocol Concerning essential Services.

The other part of the Board’s scheme to provide for a smooth return to work was a Search Order. That Order allowed the Correctional Officers the opportunity to satisfy themselves that the workplace they returned to would be a safe one. Essentially, the union was to provide “emergency workers” to conduct a search of certain specified areas of the facilities. That search was to be

conducted during certain specified hours. In the meantime, the essential services workers were to perform their essential duties.

To the credit of the parties, it appears that many of the Corrections essential service employees that were previously not at work have now returned to work. However, in several institutions Corrections essential service employees remain off the job.

DECISION

The first issue is whether the Board should clarify paragraph 6 of the Decision. I decline to do so. The application of paragraph 6 is not before me in these matters. It ought to be interpreted in connection with an application in which the meaning to be given to paragraph 6 is necessary to resolve such application.

After careful consideration of the evidence and submissions before me I am satisfied that there were breaches of the Decisions by both parties. Specifically, it is apparent that at the Toronto West Detention Centre Corrections essential service employees did not attend at work at the scheduled start time for their shift. Even if I accept, which I do not, that these workers were unaware of the schedule it is clear that they were aware of it by the 1 pm shift. Even at that time all of the scheduled workers did not appear for work.

However, I am also satisfied that management did not put to work those scheduled Corrections essential service employees who eventually appeared for work. Absent any suggestion that these employees were disciplined for being late, the employer's conduct constitutes a technical violation of the Decisions.

I am also satisfied that the employer violated the Decisions at the Brookside institution by preventing Corrections essentials services workers from commencing work at the scheduled start time while the employer "geared up". The employer ought to have permitted the workers to return to work at their start time.

With respect to the violations of the Decisions at the Toronto West Detention Centre the Board:

Declares that certain of the Corrections essential services employees and the Union have breached the Decisions;

Declares that certain members of management of the employer have breached the Decisions;

Orders that Corrections essential service employees and the union cease and desist from engaging in all activities which breach the Decision;

Orders that Corrections essential service employees return to work as scheduled in accordance with the relevant ESAs and in accordance with the Decision. It is now absolutely certain that the union is in possession of the relevant schedule. There can be no reason why the scheduled employees cannot attend at work. There can be no reason why the union cannot provide sufficient emergency workers to complete the search of the facility in accordance with the Decisions.

Orders that the employer forthwith cease and desist from engaging in activities which contravene the decision.

With respect to the violations of the Decisions at the Brookside the Board:

Declares that the employer has breached the Decisions;

Orders that the employer forthwith cease and desist from engaging in activities which contravene the decision. Specifically, the employer ought to permit emergency workers to search the facility in accordance with the Decisions and to permit essential service workers to begin work at the start of their shift.

At this time and under the circumstances I find no labour relations benefit to identifying individually the persons who violated the Decisions.

The Board reserves its decision with respect to the remaining institutions which are in dispute. In the Board's view, with goodwill, these issues can be put behind the parties in accordance with the Board's decisions. The board hereby orders the parties to comply with the Decisions. The Board also directs the parties to file with the Board by March 17 at 3pm a report on whether Corrections essential service employees remain off work in the 6 locations which are the subject of this decision. The Board will then determine what further action is required.

I remain seized in accordance with the Decisions.

Brian McLean
For the Board

Your corrections team

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The Burn Barrel will be available by fax, by e-mail, and on the OPSEU web site at www.opseu.org. To receive it directly, send your secure fax number to Lesley Williams at (416) 443-1762 or send your e-mail address to lwilliams@opseu.org.

The Burn Barrel is authorized for distribution by Barry Scanlon, chair, Corrections team, and Leah Casselman, president.