

ONTARIO LABOUR RELATIONS BOARD

3556-01-M The Crown in Right of Ontario, as represented by the Management Board of Cabinet, Applicant v. **Ontario Public Service Employees Union, Alan Foote, Nino Capone, James Mills, David Ritchie and Jeff Johnson**, Responding Parties.

3567-01-U Ontario Public Service Employees 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; April 9, 2002

1. These are continuations of applications which arise out of the ongoing legal strike by public service employees.
2. Under the *Crown Employees Collective Agreement Act* most public service employees are entitled to be on strike at this time. However, the Act requires that certain employees, essential service employees, report for work and perform essential services for the duration of the strike. The Act requires the parties to negotiate an essential services agreement regarding the number of employees which the parties agree are essential services employees and the kinds of job duties which they will perform. The parties have negotiated such an agreement.
3. These disputes involve corrections employees. Shortly after the commencement of the strike a number of corrections institutions operated without Corrections essential services employees. By decision dated March 14, 2002 the Board found that the essential services agreements between the parties had been violated. The Board ordered “all Corrections essential services employees in the Province of Ontario to return to work as scheduled in accordance with the relevant [essential services agreements]”. The Board also ordered “that the employer allow all such essential services employees to return to work in accordance with the relevant [essential services agreements]”.
4. The Board, among other things, also ordered that the employer permit a search of corrections institutions be conducted so that Corrections essential services employees could be confident they were returning to a safe workplace. The Board established a search protocol in a Search order which determined how such searches were to be conducted. Essentially, Corrections essential services employees were to return to work at the same time as the search was being conducted.
5. Most institutions and Corrections essential service employees complied with the Board’s order. However, some did not. Accordingly the Board held another hearing on March 15, 2002. At the conclusion of that hearing the Board made another decision dated March 16, 2002. The Board determined that both parties were in violation of the Board’s March 14, 2002 decision. The Board again ordered that Corrections essential services employees return to work and management permit them to return to work. There have been several hearings held with respect to further allegations that the Board’s orders have not been complied with.

6. Unfortunately, the essential services employees of a number of correctional institutions are off work despite the Board's orders.

7. Concurrent with these applications, the Board (differently constituted) has been hearing a number of appeals decision by Ministry of Labour inspectors under the *Occupational Health and Safety Act* (the "OHSA"). It is anticipated that the resolution of those cases will result in the return to work of Corrections Essential Services employees at a number of institutions.

8. In order to facilitate the return to work of Corrections Essential Services employees generally, the Board makes the following orders with respect to the Institutions listed on Appendix "A" to this decision (the "Institutions"):

- (a) The Superintendent and the Local Union President (or any other person with authority to make decisions on behalf of the Local) and the Union Health and Safety Officer, at each of the Institutions are to commence meeting by no later than Wednesday, April 10, 2002 at noon to attempt to agree on a return to work protocol.
- (b) If the parties are unable to agree to a protocol by 10:00 p.m. Thursday, April 11, 2002 that would see Corrections Essential Services employees return to and remain at work they are to advise the Board. In addition, the parties must file with the Board a list of all items which have been agreed to and a list of all items which have not been agreed to and the parties' position with respect to each of the not agreed to items. This information must be filed with the Board by Friday, April 12, 2002. The lists of not agreed to items must be set out in order of importance to the party.
- (c) Each local return to work protocol will include the following items in addition to those agreed to by the local workplace parties:
 - (i) Without limiting either party's right to immediately proceed formally to the Dispute Resolution Process, the parties will establish a Local Dispute Resolution Committee consisting of two (2) members from the Union and two (2) members from Management to attempt to deal with local essential services disputes during the strike, prior to accessing the formal Dispute Resolution Process. The Local Dispute Resolution Committee shall meet as soon as possible after a dispute arises to attempt to resolve same. Management agrees to defer any action pending a review of the dispute by the Local Dispute Resolution Committee.
 - (ii) Before a worker will initiate a work refusal under OHSA the employer will assess and, if applicable, address the concern.

- (iii) Health and Safety complaints/refusals will be investigated forthwith in accordance with OHSA procedures. The parties agree to provide a safe and healthy work environment for all workers.
- (d) The Board will hold hearings (at dates and times to be determined) with respect to each of the Institutions where the parties cannot agree on a return to work protocol and essential services employees remain off work. The Board will deal with the top two issues which the parties have each identified as not agreed to. Each party should understand from this that the Board will deal with the two issues (four in total) each side believes are most important.
- (e) As part of this process the Board may identify individuals by names under its authority under the applicable collective agreement, the Essential Services Agreement (the "ESA"), the *Crown Employees Collective Bargaining Act* and and/or the *Labour Relations Act, 1995*.
- (f) The Board reminds the parties that:
 - It is inappropriate to discipline for a refusal to do non-essential work.
 - It is inappropriate to refuse to work when a worker does not have reason to believe an endangering situation exists (see decision of the Board dated April 5, 2002 in Board File No. 3641-00-HS).
 - It is inappropriate to refuse to work because of perceived violation of the ESA except where such violation creates a situation which is "likely to endanger".

9. It has become apparent to the Board that at some institutions the local parties have no desire and/or ability to ensure that the Essential Service process under the *Crown Employees Collective Bargaining Act* ("CECBA") works. The Board has employed considerable amounts of its resources in attempting to assist parties to reach agreement where, it has become clear, there is no genuine desire or ability to resolve the situation. Accordingly, henceforth, the Board will examine more closely any request for its mediation resources and will only grant such request under restricted circumstances.

"Brian McLean"
for the Board

APPENDIX “A”

Mimico Correctional Centre
Ontario Corrections Institute
Toronto East Detention Centre
Toronto Jail
Toronto Youth Assessment Centre
Vanier Centre for Women
Brookside Youth Centre
Cornwall Jail
Millbrooke Correctional Centre
Ottawa-Carleton Detention Centre
Quinte Detention Centre
Whitby Jail
North bay Jail
Sault Ste. Marie Jail
Sudbury Jail
Burtch Correction Centre
Elgin Middlesex Detention Centre
Hamilton Wentworth Detention Centre
Owen Sound Jail
Sarnia Jail
Stratford Jail
Windsor Jail
Niagara Detention Centre