

Crown Employees  
**Grievance  
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GSB#2001-0534, 2003-2944, 2008-3397  
UNION#2001-0551-0001, 2003-0999-0023, 2008-0526-0018

**IN THE MATTER OF AN ARBITRATION**

**Under**

**THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT**

**Before**

**THE GRIEVANCE SETTLEMENT BOARD**

**BETWEEN**

Ontario Public Service Employees Union  
(Hunt et al)

Union

**- and -**

The Crown in Right of Ontario  
(Ministry of Attorney General)

**Employer**

**BEFORE**

Randi H. Abramsky

**Vice-Chair**

**FOR THE UNION**

Ed Holmes  
Ryder Wright Blair & Holmes, LLP  
Barristers and Solicitors

**FOR THE EMPLOYER**

Len Hatzis  
Ministry of Government Services  
Counsel

**HEARING**

July 14, 2009.

**WRITTEN  
SUBMISSIONS**

July 15 and 16, 2009.

## DECISION

- [1] On July 27, 2006, I issued a Decision, hereinafter referred to as “the Hunt decision” which included the following:
1. I determine that the preparation and certification of transcripts is bargaining unit work of the Court Reporters, and so declare.
- I wish to emphasize that, at this point, I am only deciding whether the preparation and certification of transcripts is bargaining unit work. All issues regarding the implications of this finding are referred back to the parties, and I will remain seized.
- [2] In August, 2006, the parties agreed to maintain the status quo pending negotiations over the implementation of the Hunt decision. That agreement was later extended until June 1, 2008.
- [3] The parties attempted to negotiate a resolution and proposals were exchanged, however the parties were unable to reach a mutually acceptable resolution.
- [4] A hearing regarding the remedial issues arising from the Hunt decision - both past and prospective issues - was scheduled for June 1, 2009.
- [5] A teleconference was held on May 29, 2009, at which time I ruled that the June 1, 2009 date would be used to address “a number of process issues (e.g., particulars, order of proceeding)” and “explore potential avenues/steps required to resolve this dispute.”
- [6] On June 1, 2009, I issued a decision which set three future hearing dates “[i]n the absence of a negotiated settlement...” It ordered the Employer to provide particulars and any arguably relevant documents to the Union on all outstanding remedial and implementation issues by September 17, and gave the Union until October 1, 2009 to respond, as well as to provide to the Employer its particulars and arguably relevant documents.
- [7] On July 7, 2009, pursuant to Cabinet Directives regarding advance disclosure to the Union of decisions that affect employees, the Employer advised the President of OPSEU that the Employer had made a decision in regard to the implementation of the Hunt decision and states that: “[a]ll issues regarding the implications of the decision were referred back to OPSEU and the Ministry of the Attorney General (MAG) for review.” It refers to a review by Court Services Division “to examine viable options and make recommendations to the Deputy Attorney General” and notes that research and consultation were now complete and that the team “has made recommendations to the Deputy Attorney General with respect to the future of court reporting and transcript production for Ontario.” It then outlines how it will be done. It further states: “Court Services Division has now begun transition

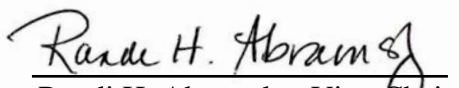
and implementation planning including consultation with our justice partners and court users. Employees will be notified of the *changes being made to court reporting and transcript production* for Ontario on July 21, 2009. The Ministry anticipates *rollout to commence in fall 2009 and we expect implementation to be completed within eighteen months.*" (emphasis added).

- [8] A draft of the memo to staff, dated July 21, 2009, uses similar language. It states: "Court Services Division has now begun transition and implementation planning including ongoing consultation with our justice partners and court users. You will receive updates as planning progresses as we move forward with this very important initiative...."
- [9] Although counsel for the Ministry characterized these documents as the Employer's *proposal* regarding implementation of the Hunt decision, the language employed in the documents makes it clear that a decision regarding implementation has been made and that implementation is commencing.
- [10] The Employer asserts that the Hunt decision does not impact its Article 2 management rights to manage the business and direct the workforce. It asserts that the decision does not constrain the Employer's right to act unilaterally to determine how transcript work is to be done. It submits that the Union is free to challenge its determination at the arbitration hearing on the remedial issues.
- [11] The Union asserts that the Hunt decision does fetter the Employer's right to act unilaterally. It argues that the decision left the implications of the Hunt decision to the parties to resolve, but barring an agreement, the parties would return the remedial issues to the Board, not to the Employer unilaterally.
- [12] With respect, I concur with the Union. To accept the Employer's argument would allow the Employer to determine the appropriate remedy, and require the Union to challenge that decision. However, that would be inconsistent with the parameters of the dispute resolution process that are in play in this instance. Once a decision has been made and the arbitrator is seized with implementation of a decision, as is the case here, the parties try to come to an agreement with respect to the remedy. If they cannot do so, they return to the Board, they present their respective positions, and the Board makes a determination.
- [13] It is not the role of the Board to micromanage the Employer's operations or to dictate how transcription service is to be provided in the Province. The Board's involvement stems from the fact that a determination has been made that transcription is bargaining unit work and it is seized in regard to the implications of that determination. After a long delay, we have started that remedial hearing. The hearing began on June 1 and will continue this fall. It may be, as the Employer asserts, that the Employer's plan complies with the Board's decision and is a proper exercise of its management rights. The question presented today is whether it can implement its plan to deal with the Hunt decision unilaterally at

this time. In my view, the Employer's implementation of its plan at this point in time circumvents the hearing process underway and undermines the integrity of the Board's processes.

- [14] It is also my view that the expiry of the parties' agreement to maintain the status quo did not give the Employer the right to act unilaterally thereafter. If the parties were unable to resolve remedial issues, they had to be addressed before the Board.
- [15] The Employer asserts that by the time the scheduled hearing dates take place – October 15, November 10 and November 24 – very little will have been implemented. The only thing scheduled to take place this fall, it argues, is the installation of Digital Recording Devices into court sites. However, this argument is based on the assumption that this hearing will be completed on November 24. It may well take additional hearing dates to complete the hearing in this matter and the implementation process could be significantly further along by the conclusion of the hearing. Moreover, this aspect of the matter does not address the general implementation of changes that the Employer has advised it will be implementing.
- [16] The Employer also argued that the Union's position was, in reality, a disguised motion for interim relief, without following all of the rules and procedures required for such motions. It asserts that the Union is improperly trying to obtain an order for interim relief through this proceeding. Although there is some parallel to a motion for interim relief – the Union wants an order that the Employer cease its implementation of the changes it plans for transcription production – I do not believe that the rules for interim relief apply in this situation where the Board has made a ruling on the merits and has remained seized regarding remedy. The interim relief rules appear to apply to cases that have not yet been decided on the merits, and relief is sought in the interim, pending a determination on the merits. In this case, there has been a determination on the merits and the issues involve remedy over which the Board is seized.
- [17] I would note that the Employer did not argue that time was imperative here, or that it would suffer some harm or prejudice if implementation were delayed.
- [18] Accordingly, I conclude that the Employer may not unilaterally initiate a process to address the outstanding implementation issues regarding transcript production, as outlined in its July 7, 2009 letter to OPSEU. It is ordered to cease and desist. I continue to retain jurisdiction in this matter.

Dated at Toronto this 17<sup>th</sup> day of July 2009.

  
Randi H. Abramsky, Vice-Chair