



Talking Union is a bi-monthly newsletter highlighting matters of interest to the labour relations community. We welcome your questions and comments.

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GSB orders government to back off security checks

The Grievance Settlement Board (the "GSB") has again affirmed its power to grant substantial interim relief in connection with grievances before it. In a recent and important decision, it prohibited the employer from implementing its so-called "Personnel Security Checks Initiative" until grievances challenging the employer's right to enact this policy have been disposed of by the GSB.

The employer's initiative was to affect 2000 employees working in different Ontario government ministries. The employees were to be made subject to CPIC checks, local police checks ("to identify whether the employee is known to police"), fingerprint checks, national security checks and credit checks. Under the initiative, employees receiving an unsatisfactory security check or refusing to consent to these checks would be "removed" from their positions.

The union argued that the employer's initiative violated the collective agreement, the *Freedom of Information and Protection of Privacy Act* and the *Charter of Rights and Freedoms*. On a preliminary review, the GSB found that the grievance raised an "arguable case", which is all that the union needed to show in an interim relief application of this kind. The GSB was also satisfied that employees' "privacy interests" outweighed the employer's heightened interest in "security" as a result of recent world events. Accordingly, it directed the employer to refrain from proceeding with its initiative until after the GSB has decided the merits of the union's grievance.

Court refuses to allow labour board to hear case against Receiver and Trustee in Bankruptcy

When "labour law" and "insolvency law" collide, the rights of workers and their trade unions often suffer. A recent Ontario Superior Court of Justice decision illustrates this point.

In *TCT Logistics*, the union sought the Court's permission to proceed with a "sale of a business/related employer" application involving an Interim Receiver who later became the Trustee in Bankruptcy. The Ontario Labour Relations Board had already decided that it would not hear the union's applications unless the Court gave it permission to

do so because of the "stay of proceedings" under *Bankruptcy and Insolvency Act*. (See the August 2002 issue of TALKING UNION.) The union also sought to amend the interim receivership order made earlier by a bankruptcy court judge that deemed that the receiver was not a "successor employer" under the *Labour Relations Act*. In that regard, the union argued that the Labour Relations Act gives the Ontario Labour Relations Board "exclusive jurisdiction" to decide such matters.

The Court, however, showed little appetite to allow the labour relations process to operate in this situation. While the Court made a small amendment to one part of the order, it decided that the "successor employer" provisions of the order were otherwise valid so long as the role of the Interim Receiver in continuing the business was for the purpose of effecting sales or liquidating assets. The Court was satisfied that this was the case here and that the Interim Receiver "did not continue the business in the sense contemplated by the *Labour Relations Act*." In other words, the Court decided that the successor rights provisions of the *Labour Relations Act*, as interpreted by the bankruptcy court - not the labour board - did not apply to this case. Accordingly, having itself effectively decided the labour board applications, the Court refused to grant the union permission to have the case heard at the Board.

The union is presently considering whether to appeal this decision to Ontario's Court of Appeal.

Board refuses to order damages for breach of "peace treaty"

In a decision last fall, the Ontario Labour Relations Board allowed UFCW Local 1000A's unfair labour practice complaint against CAW in the *National Grocers* case. The Board agreed that CAW had violated a "peace treaty" between the 2 unions and it enforced the "peace treaty" by dismissing displacement and termination applications that had been brought by CAW. (See the October 2002 issue of TALKING UNION.)

Subsequently, Local 1000A sought extensive money damages from CAW for organizing and legal costs associated with Local 1000A's defence of its bargaining rights against the CAW's improper activity. It asked the Board to grant a "make whole" remedy, that is to be put in the same position that it would have been but for the CAW's breach.

In its recent decision following Local 1000A's request, the Board emphasized that a damages award was a matter of "discretion" and that damages for wasted organizing expenses and general damages should only be considered in cases of egregious unfair labour practices. It decided that no damages whatever should be awarded in this case.

The Board was satisfied that it had already effectively rectified CAW's violation by dismissing the CAW applications and by leaving Local 1000A as the workers' bargaining agent. It noted that the Board had become involved in the dispute between the two unions with "great

reluctance" and it was prepared to be involved only to the extent necessary to preserve "the object" of the unions' "peace treaty". Finally, it observed that the legal contest between the 2 unions would likely continue and that it was not in any of their interests for the Board to start deciding whether one or the other of them should have to pay the legal costs or expenses in any particular case.

CIRB seniority decision upheld

In August 2002, TALKING UNION reported that the Canada Industrial Relations Board had set aside an arbitration award concerning the merger of seniority lists for pilots at Air Canada. The CIRB's 90-page decision marked a departure from previous Canadian and US merger cases, particularly in the Board's emphasis upon the preservation of existing collective agreement rights, which it interpreted as the fundamental objective of the *Canada Labour Code* in the context of industry restructuring.

The Federal Court of Appeal has now dismissed a challenge to this decision brought by the Air Canada Pilots Association and it has endorsed the Board's approach to the seniority issue. The Court noted that the CIRB was the "best judge" of what would promote cooperative and effective labour relations in these circumstances. And the Court saw no reason to disagree with the CIRB's rejection of a "winner take all" approach to seniority integration.

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