

## **Minutes of the OLRB Advisory Committee**

**November 29, 2007, 5:30 pm  
Ontario Labour Relations Board**

In attendance: Kevin Whitaker - Chair, OLRB  
Leonard Marvy - OLRB  
Lorne Richmond – Union, Committee Co-Chair  
Risa Pancer – Union  
Roman Stoykewych - Union  
Elizabeth Mitchell – Union  
Joseph Liberman – Employer, Committee Co-Chair  
Daryn Jeffries – Employer  
Kathleen Stokes (by telephone) – Employer  
Ken Lung – Ontario Ministry of Labour  
Jeff Andrew – OBA Labour Section

Absent: Sunil Kapur – Employer  
Patrick Moran – Employer  
David Jewitt - Union

(It was brought to the attention of the meeting that the union representatives were each appointed to the committee by the Canadian Association of Labour Lawyers – Association Canadienne des Avocats de Mouvement Syndical)

Lorne Richmond was appointed Chair of the Meeting by consensus.

Minutes were taken by Roman Stoykewych.

### **Proceedings:**

#### **A. Agenda Items Submitted by the Committee Members**

##### **1. Procedure for Setting and Adjourning Meetings:**

It was agreed that meetings would be set on a quarterly basis in advance, and to the extent feasible, on the first Thursday starting in March 2008. Accordingly, the meetings for 2008 will be held as follows:

March 6  
June 5  
September 18  
December 4

It was agreed that Minutes will be kept for all meetings, and will thereafter be posted on the OLRB website. Meetings will not be rescheduled to accommodate individuals' availability, as they had in the past. Committee members will not be permitted to send proxies or substitutes, with the exceptions of Ken Lung, for whom Bridget Lynette of the Ministry of Labour may substitute, and Jeff Andrew, for whom an OLRB practitioner who is not an OLRB member may substitute.

## **2. Publication of Emergency Hearing Protocol:**

In response to concerns that the Emergency Hearing Protocol was not readily available to the public, it was pointed out by Len Marvy that the protocol was, in fact, on the OLRB website under "Notices to the Community". The OLRB Chair informed the Committee of the use of the Protocol since its inception, pointing out that the Board had received approximately six inquiries about it, almost entirely in the context of illegal strike applications. It was utilized on two occasions, which proceedings featured hearings held on late Friday afternoon and evening, with decisions issued shortly thereafter. The committee members discussed the desirability of making the existence of the protocol better known, and considered whether the protocol should be incorporated into the Board's Rules. It was determined by consensus that a draft Information Bulletin ought to be drafted for this purpose, since incorporation into the Rules at the present time would make subsequent amendments to the procedure more difficult.

*Action:* Leonard Marvy agreed to present a draft of the Information Bulletin, and other options, at the next Committee meeting.

## **3. Time of Filing of Response by Employers in Section 133 Matters:**

Union members of the Committee expressed concern that the present practice, which requires the employer to provide its response to a grievance by 9:30 am of the date of the hearing, has the effect of making it impossible to proceed in many instances and constitutes an inefficient use of the hearing time by the Board. Various options were discussed by the Committee, including requiring the filings immediately after the Officer's Meeting, or the evening before the hearing, or on the tenth day following the filing of the application at the Board. Consensus was reached by the Committee that it would be desirable to require the receipt of employer responses by no later than 4 pm two days prior to the hearing date.

*Action:* The OLRB Chair agreed to consult with Peter Gallus in order to determine whether such a rule is workable, and agreed to report back to the Committee at the next meeting.

## **4. Quantum of Payment of Fees for Multiple Grievances:**

The Committee discussed the \$500 fee per party per grievance in circumstances in which

more than one grievance is being heard by the same panel. A suggestion was made to impose a fee per hearing day, rather than per grievance. Reference was made in discussion to the fee regulations as well as to the Board's jurisprudence which may require the present practice. Further, the question arose as to how to appropriately establish fees in circumstances in which there were intervening parties.

*Action:* The OLRB Chair indicated that he would discuss this matter internally in order to determine whether a resolution was possible and report back at the next meeting.

## **5. Timing of Union Challenges in Card-Based Certifications:**

The Committee discussed the present practice of requiring an applicant trade union to provide its list of challenges to the list only after the Regional Certification meeting. A concern was expressed by Employer members that the current process required the employer party to be "locked in" for an extensive period of time in the process, and that it was unable to meaningfully review the facts in the challenges. That was because, it was explained, the information relevant to job duties would be more than two weeks old at the time that challenges were first made known. It was proposed that the applicant be required to declare its challenges in a time frame analogous to the vote-based certifications. The Union representatives expressed their concern that the early identification of challenges would unnecessarily divulge employee desires for representation.

*Action:* The Union committee members agreed to caucus further on the matter, and the matter was tabled for further discussion at the next meeting.

## **B. Next Meeting of the Committee:**

March 6, 2008

Offices of Mathews Dinsdale  
One Queen Street East  
25th Floor  
Toronto, Ontario  
M5C 2Z1

**Meeting Adjourned at 7:10 pm.**

Minutes prepared by Roman Stoykewych