

Minutes of the OLRB Advisory Committee

April 10, 2014

Ontario Labour Relations Board

In attendance: Craig Morrison – Union
Keith Burkhardt – Employer
Lorne Richmond – Union
Laurie Kent – Union
Melissa Kronick – Union
Amyr Hadibhai – Ministry of Labour
William LeMay – OBA
Bernard Fishbein -- OLRB, Chair
Catherine Gilbert -- OLRB, Deputy Registrar
Ursula Boylan -- OLRB, Labour Relations Officer

1. Report on Open Period Statistics

Bernie reported that during the 2013 Open Period:

- there were 202 files opened (of which 55% were displacement applications and 45% were termination applications).
- 95% of those files have now been closed – the success rate of the displacement applications being between 25-27%
- only 13 files remain open (which may actually represent fewer proceedings, since multiple files may be being heard at the same time)

Administratively, the OLRB is pleased with how the Open Period was handled.

2. Town Hall

The OLRB will be hosting a “Town Hall” type of gathering in order to get feedback on the Open Period from stakeholders.

Bernie suggested that counsel and members of the labour community be invited to a meeting to be scheduled at the OLRB at 5.00 p.m. one afternoon in September 2014 and that a notice of the meeting will be published in one or two editions of Highlights before then.

Laurie Kent asked that the OLRB also entertain written submissions by counsel. Bernie agreed to this and suggested that this would be incorporated into the Notice of the meeting.

Lorne Richmond suggested that Bernie might ask Lancaster House to host the event as a courtesy and Bernie will follow up on this suggestion. In addition, a teleconference option will be considered so that people could phone in to the Town Hall meeting.

If any ideas come out of the Town Hall or the written submissions made, the Advisory Committee would have input into changes which may be made by the OLRB as a result.

3. Ten Year Rule

Bernie advised that the Ministry of Government Services has issued a directive to the Public Appointments Secretariat envisaging OIC appointments be made for a maximum of 10 years (in the manner of 2 year, 3 year, followed by 5 year appointments). The PAS has interpreted this be effective as of 2006 and as a result a number of OICs will be up in 2016.

The PAS does have the power to make exceptions in “exceptional circumstances”, but this is not proving to be the case in the recent appointments. The PAS takes the position that the 10- year rule is in the public interest, while WSIAT has been publicly opposed (with the assistance of CBAO).

Bernie reported that this is an issue for the OLRB and that it is hard to recruit people for an appointment that is only for 2 years.

4. Increase in Construction Fees

There will be an increase in the fees in Construction Industry grievances and the money goes to the Consolidated Revenue Fund (and not to the OLRB).

5. Change in Rule 6 - in respect of delivery of Applications for Certification where the corporate head office is in Quebec or New Brunswick and the inclusion of French documents

Union counsel indicated that they were opposed to any change at all for a variety of reasons, including: it is not necessary since it is a “one-off” problem and can be dealt with as such, it creates too much paper in an already unruly package often sent by fax, it will invite new arguments and thereby delay the process.

It was suggested that if a change is necessary, a better route would be to have a concise bilingual Notice to the Employer in all cases. The Notice could then refer people to the OLRB website, where they can find all the forms in French.

6. Jurisdictional Disputes

A number of issues were raised with respect to JDs:

- Out of town parties have complained that they have to travel to Toronto for short PCCs which do not lead to settlement. If the parties are able to agree on the work in dispute and the dates for filing the briefs, they could agree to cancel the PCC.
- Laurie Kent requested that Rule 28.2 be enforced so that plans, drawings, specifications and sketches are provided before the PCC. Bernie suggested that any of the parties could write to the other side and then to the OLRB to have that rule enforced and get an Order for the documents it is seeking.
- Laurie Kent also suggested that she would like to see PCCs more like CMHs. In particular, she canvassed the idea of dealing with delay or abandonment arguments up front at the PCC, prior to filing the briefs, instead of including it in the brief. In response,

Bernie suggested that he didn't want the PCC to be bogged down with preliminary issues, since the process is working well. However, he invited the parties to raise such issues at the PCC and request, for example, that a one day hearing on the issue of delay or abandonment be scheduled prior to the filing of briefs (or agree on this).

7. Timing for response in section 133 Referrals

Laurie Kent requested that the Response to a section 133 Referral be filed earlier than 2 days before the hearing. Employer counsel responded by saying that it is useful to have the LRO meeting prior to filing the Response since it illuminates the employer of the issues involved and prevents the parties from becoming entrenched in their position before the meeting.

Bernie suggested that if the deadline were moved for the filing of the Response, it would only be a day or 2 and would not be to the date of the filing of the Notice of Intent to Defend. The OLRB will consider it.

8. ULPs and 1(4)/69 applications

Lorne Richmond requested that Case Management Hearings be scheduled in ULPs. Bernie said the OLRB does schedule a CMH in circumstances where the parties agree. In cases in which one party asks, the OLRB will consider it based on the facts of the file and from time to time, the OLRB schedules a CMH in a ULP on its own initiative.

In addition, there was some discussion as to whether a hearing date could be set in the Confirmation of Filing for ULP and 1(4)/69 applications. It was noted that the Board schedules ULPs involving discharges with the related certification/termination applications within approximately six weeks of the application date. Bernie explained that the OLRB is increasingly hard-pressed to schedule in a reasonable amount of time (exacerbated by the number of adjournments of actual hearing dates), but that this might be possible if the parties are prepared to have cases "stacked", as is the case in Criminal Court (and historically happened at the OLRB). The Board will consider whether changes can be made to the scheduling of these cases.

9. Construction Vice Chairs

Bernie explained that while many cases are situate in the construction industry, it is not the case that they can only be dealt with by Construction Vice-Chairs (some of whom do not have dates until the fall). Industrial VCs can (and have) learned construction as part of their duties at the OLRB. Parties ought not to jump to the conclusion that the result would be different if it were put before a Construction VC, since often issues are discussed and VCs do not operate in a vacuum.

10. Re-listing

Keith Burkhardt inquired as to the process of relisting a matter so that he can manage his clients' expectations. The Deputy Registrar responded that if the panel is seized, the parties are given the panel's dates and asked to agree upon a date within 72 hours. Otherwise, the parties can agree upon or be asked to provide their available dates. However, if no date is selected, the Registrar may, depending on the case, select a date which is available to the OLRB.

NEXT MEETING: Thursday, October 16, 2014, 2:00pm @ OLRB

Minutes prepared by Ursula Boylan