School Board Update

ECE Representation Disputes: OLRB Rules on Appropriate Venue

Date: November 16, 2010

In a decision dated November 9, 2010, the Ontario Labour Relations Board ("OLRB") considered the impact of an ongoing arbitration proceeding on an application for certification by the Elementary Teachers' Federation of Ontario ("ETFO") to represent designated early childhood educators ("DECEs") at the District School Board of Niagara.

The Canadian Union of Public Employees ("CUPE"), which represents office, clerical, technical and instructional support staff at the Board, had intervened in ETFO's application on the basis that the DECEs were already covered by its collective agreement. Because CUPE was also taking that position in an ongoing arbitration, it asked the OLRB to adjourn the certification proceeding until the arbitration proceeding was completed.

The OLRB declined to adjourn its proceeding because it had an obligation under the *Labour Relations Act*, 1995 to determine whether the employees in the proposed bargaining unit were already bound by a collective agreement. It concluded that both the OLRB and an arbitrator had the jurisdiction to consider the issue, and that "the possibility of inconsistent decisions is an inherent, albeit unpleasant possibility in labour relations where parallel jurisdiction exists." The OLRB held that it would not be bound by the arbitrator's decision on the issue and would not adjourn its hearing because ETFO was not part of the arbitration case.

The OLRB's decision in *District School Board of Niagara* could have wide-reaching implications for other school boards if it is interpreted to mean that an arbitration award, voluntary recognition agreement or other agreement relating to DECEs will not preclude the OLRB from considering whether an application for certification is barred by pre-existing bargaining rights.

If you have any questions about this decision, please contact your regular Hicks Morley lawyer.

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