School Board Update

OLRB Dismisses Duty of Fair Representation Applications Against OECTA

Date: March 12, 2013

On February 26, 2013, the Ontario Labour Relations Board ("OLRB") released a decision dismissing four different duty of fair representation applications filed by members and local leaders of the Ontario English Catholic Teachers' Association ("OECTA") against OECTA relating to OECTA's negotiation of its Memorandum of Understanding dated July 5, 2012 with the provincial government ("MOU"). The Chair of the Board, Bernard Fishbein, held that the Applicants had failed to disclose any possible violations of the *Labour Relations Act, 1995* ("*Act*"). This *FTR Now* discusses the decision and its implications for school boards.

THE APPLICATIONS

The Applicants claimed that the manner in which OECTA had participated in negotiations with the provincial government, including the manner in which it sought and received ratification of the MOU, was in breach of OECTA's Constitution, by-laws and policies. The Applicants asserted that there had been a failure to communicate to OECTA members through the presidents of the local units and a failure to allow for a meaningful ratification of the MOU. The Applicants sought an order from the OLRB declaring the MOU to be void.

OECTA responded by arguing that the duty of fair representation does not cover internal union processes and does not cover a union's activities beyond its representation of employees with respect to their employers.

THE DECISION

The OLRB held that the applications did not disclose any arguable breach of the duty of fair representation because the events that were the subject of the complaint did not relate to OECTA's negotiation of a collective agreement or its representation of members with respect to their employers.

The OLRB held that the 2012 provincial discussions were voluntary negotiations between stakeholders, not collective bargaining within the meaning of the *Act*. As a result, the MOU between OECTA and the Ministry of Education that resulted from the discussions was not a collective agreement. It would only become binding on school boards, which are the employers, following collective bargaining or through legislation. The Chair compared the 2012 provincial discussions to a legislative consultation process, in which the government invites stakeholders to make submissions regarding a new piece of legislation. He held that a union's participation in such a consultation process was not subject to the duty of fair representation.

IMPLICATIONS FOR SCHOOL BOARDS

With this decision, the OLRB has made it clear that when a teachers' federation or trade union participates in provincial discussions with the government or with provincial trustees' associations, those discussions do not generally constitute collective bargaining and would not engage in the provisions of the *Act* that regulate collective bargaining. As a result, the provincial teachers' federation and trade unions are not constrained by the provisions of the *Act*. However, that does not mean that their actions could not be challenged by members in other venues, such as internal union proceedings relating to union constitutions.

Should you have any questions regarding this decision please feel free to contact your regular Hicks Morley lawyer.

The articles in this client update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©