School Board Update

OLRB: Withdrawal of Extracurricular Activities Constitutes an Unlawful Strike

Date: April 11, 2013

Today, the Ontario Labour Relations Board ("OLRB") rendered *Trillium Lakelands District School Board and Upper Canada District School Board v. Elementary Teachers' Federation of Ontario*, a significant decision in which it found the withdrawal of extracurricular activities by the Elementary Teachers' Federation of Ontario ("ETFO") constituted an unlawful strike according to the definition set out in the *Education Act*.

OLRB Chair Bernard Fishbein summarized his findings as follows:

- notwithstanding that ETFO, on March 26, 2013 (well after the hearing had concluded), withdrew its "advice" to members not to participate in voluntary/extracurricular activities, there was still a labour relations purpose to issuing this decision – it was not clearly moot;
- although the Government has repealed the *Putting Students First Act* (Bill 115), the collective agreements imposed by that legislation continue to exist and operate;
- the withdrawal in combination or in concert of participation in voluntary co-instructional (or extracurricular) activities constitutes a "strike" within the meaning of the *Education Act*;
- no final orders were issued because ETFO's *Charter* challenge to the definition of strike in the *Education Act* remains to be litigated – but a direction to post a Notice to Employees has been issued clarifying the stage that this litigation has reached.

We are reviewing the 75-page decision and will be issuing a more detailed analysis of its findings shortly.

Should you have any questions regarding the award, please feel free to contact Michael A. Hines at 416.864.7248, Dolores M. Barbini at 416.864.7303 or your regular Hicks Morley lawyer.

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