

Case In Point

OLRB comments on employer support and proper communications during raiding season

Date: February 18, 2014

The Ontario Labour Relations Board (“OLRB” or “Board”) recently found that an employer did not collude with the Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (“Carpenters”) to displace the rights of the Universal Workers’ Union, Labourers’ International Union of North America, Local 183 (“Labourers”).

Central to the issue was whether the employer, Jeffery Homes, provided support to the Carpenters contrary to section 15 of the *Labour Relations Act, 1995*.

The OLRB considered whether the employer had provided “other support” to the Carpenters. In finding that there was no evidence whatsoever to support the allegations of collusion, intimidation or coercion, it made some useful comments with respect to employer communications during a raid and inferences the Board can draw when evidence is not called.

Among other things, the Board held that telling employees to “do what was right” for them is appropriate employer speech; providing access to both unions to speak to the employees helps negate an inference that the employer prefers one union over another; and, there is nothing improper with management meeting with union officials during the raid season, particularly where the employer did not initiate the meeting.

The Labourers asked the Board to draw an adverse inference against the employer because it did not call any evidence. The employer argued that the Labourers had not proven its case and therefore was not required to call evidence. The Board declined to draw a negative inference and reaffirmed that when a party does not call evidence, it has to accept the evidence of the witnesses. In this case, the employer was not required to call evidence to defend allegations where the applicant had not met its onus of proving its case.

This case highlights good practices for employers which become the target of raiding campaigns, such as reaffirming that it is the employees’ choice about whether they wish to be represented by a union, and which union, and treating competing unions equally during the campaign period.

Ultimately, the Board concluded that Labourers’ allegations were unfounded and dismissed the application. The vote was counted and the Board issued a certificate for the Carpenters to represent the employees.

[*Allied Construction Employees Local 1030 v Wayne Jeffery Limited*, 2014 CanLII 1194 \(ON LRB\)](#)