

VIA EMAIL

August 26, 2020

Bob Eaton
Executive Assistant to President Thomas
Ontario Public Service Employees Union
100 Lesmill Road
Toronto, ON
M3B 3P8

Dear Bob:

Re: Application of Statutory Freeze Provisions – CSN/OACE Raid

As you requested I am writing to provide my opinion as to whether or not the statutory freeze provisions in the *Ontario Labour Relations Act* (“OLRA”) will apply if the CSN/OACE files a certification application seeking to represent the Corrections bargaining unit, and if so, what the impact of the freeze provisions would be.

For the reasons I will set out below, it is my opinion that the freeze provisions will apply if the CSN/OACE files a certification application and that this will have the effect of barring any changes to any terms and condition of employment of the members of the Corrections bargaining unit until the certification application is finally resolved.

While the Corrections unit is governed by the *Crown Employees Collective Bargaining Act* (“CECBA”), CECBA provides that the provisions of the OLRA apply to CECBA bargaining units, except to the extent that express provisions in CECBA modify the terms of the OLRA.

The freeze provisions are set out in section 86 of the OLRA. Section 15 of CECBA requires that an essential services agreement be in place before the freeze ends.

In all other respects, section 86 of the ORLA applies to bargaining units governed by CECBA.

Section 86(2) of the ORLA provides that once a certification application has been filed, the employer cannot “alter the wages or any other term and condition of employment or any right, privilege of duty of the employer or the employees” without consent of the union.

The OLRB has specifically ruled that the freeze provisions apply in the context where of a raid – where the union filing the certification application is seeking to displace an incumbent union.

In the *Manual DaSilva Foods Ltd.* case (1984 OLRB Rep. June 834) the OLRB held that the freeze applied where one union was raiding another. The Board stated that there was no difference between a raid and the situation where the employees in question were unorganized. In either case the freeze provisions apply as soon as an application for certification is filed.

This ruling was confirmed by the OLRB in its decision in the *CAW Canada v. Middlesex (County)* case (2002 CarswellOnt 4963) where the Board again found that the freeze applied in the context of a raid.

There are no OLRB decisions which overrule or contradict either of these cases, and as such there can be no doubt that the freeze provisions in section 86 of the OLRA will apply if CSN/OACE files a certification application seeking to replace OPSEU as the bargaining agent for the Corrections bargaining unit.

Given that the freeze would apply, the Ministry and OPSEU would be prohibited from agreeing to change any term or condition of employment because section 86 prohibits such a change being made without CSN/AECO's approval.

As well, section 73 of the OLRA prohibits an employer from bargaining with another trade union as long as an incumbent union retains bargaining rights. Therefore CSN/AECO and the Ministry would be prohibited from agreeing to alter any term or condition of employment because OPSEU will remain as the bargaining agent for the Corrections unit until CSN/AECO's certification application is finally resolved.

The impact of the freeze will be very significant.

The OLRB has ruled that the freeze is very broad and applies to all terms and conditions of employment in place at the date of the certification application. In the *Royal Ottawa Health Care Group* case (1999 CarswellOnt 2935), the Board stated that the freeze applies to any term of employment that applies that would normally be the subject of bargaining between the employer and union.

This means that any term or condition of employment that was the subject of bargaining or discussions between OPSEU and the Ministry is caught by the freeze. Thus, the

freeze would capture anything which is covered by the Collective Agreement, by a MERC or LERC agreement, or by a joint health and safety agreement.

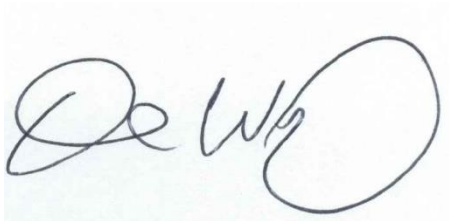
The result is that if the CSN/OACE gathers enough support and applies for certification, there cannot be any changes to any terms or condition of employment of the members of the Corrections until that certification application is finally resolved.

Given that in order to be certified the CSN/AECO would have to win a constitutional challenge overturning section 24(7) of CECBA, any certification application filed by CSN/OCEA would be hung up for years as it worked its way through the OLRB and then the courts, with the result that there could be not be any change to any term or condition of employment - including wages, benefits, hours of work and overtime protocols - during that whole time.

Please let me know if I can be of further assistance.

Yours truly,

RYDER WRIGHT BLAIR & HOLMES LLP

A handwritten signature in blue ink, appearing to read 'D Wright', is centered on a light blue rectangular background.

David Wright

Cc: Eric O'Brien
Ed Ogibowski