



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 1749-23-U
Duty of Fair Representation

Tim Thompson, Aslim Ahamad, Steven Booth, Debra Brown, Brian J Chevalier, John Cummings, Joseph JJ Depasquale, Ernest Fleetwood, Allan Geroux, Christopher Hardy, James Harris, E. Harron, Tammy Hill, Susan Inman, Kevin Jackson, Rohan Jaglal, Genica Jones, Ahmed Kabba, Jasotharan Kasippillai, Sean Langworth, Soo-Katy Lem, Salman Mazhar, Richard McCaugherty, Mark McGregor, Shaun Milligan, Adrian Pryce, Jo Anne S, Mike Roache, Kathryn Roberts, Ulando Robinson, Alexis Romano, Andar Saragih, Chistopher P. Simms, Kahmall Smith, Jasiah O. Stevenson, James Theriault, Haroon Ulla, Rob Watt, Arlene Wynn, Rebekah Brand, Anthony Volpe, Michael Stuart, Dave Wichall, and Yaw Yirenkyi, Applicants v Unifor Local 222, Responding Party v Durham Region Transit Commission (Regional Municipality Of Durham), Intervenor

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - January 13, 2025

DATED: January 13, 2025

Catherine Gilbert
Registrar

Website: www.olrb.gov.on.ca

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BEFORE: Jesse Kugler, Vice-Chair

DECISION OF THE BOARD: January 13, 2025

1. This is an application under section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended, (the "Act"). The applicants allege that Unifor Local 222 ("Local 222" or the "Union") has violated the duty of fair representation.

2. The background of this application was described in the Board's decision dated March 11, 2024:

...

2. This case engages a union's duty of fair representation when the interests of two bargaining units collide. The applicants are all members of a bargaining unit represented by Local 222 consisting of transit operators employed by PWT Transit (the "PWT Bargaining Unit"). PWT is under

contract with Durham Region Transit (DRT) to provide transportation services in the Municipality of Whitby. Unifor also represents a bargaining unit consisting of transit operators employed directly by DRT in the municipalities of Ajax, Brock, Clarington, Oshawa, Pickering, Scugog, and Uxbridge (the "DRT Bargaining Unit").

3. During collective bargaining between Local 222 and DRT that occurred in 2022, DRT proposed to "contract-in" the transit services being provided by PWT in the Municipality of Whitby. Local 222, in its capacity as bargaining agent of the DRT bargaining unit, concluded that "contracting-in" the Whitby transit services was a positive development that would produce "better" jobs for the employees who work them. Local 222 ultimately agreed with the DRT's "contracting-in" proposal and entered into a memorandum of agreement concluding a renewal collective agreement. That memorandum of agreement did not address the fallout of DRT's decision to "contract-in" Whitby transit services on the PWT bargaining unit. Issues affecting the PWT Bargaining Unit and the potential integration into DRT were subsequently negotiated between Local 222, the DRT Bargaining Unit and the PWT Bargaining Unit resulting in the conclusion of an agreement in May 2023.

4. The applicants take issue with Local 222's representation of its interests in the context of DRT's decision to "contract-in" Whitby transit services. In effect, they claim that Local 222 preferred the interests of the DRT Bargaining Unit and failed to negotiate an outcome that protected the interests of the PWT Bargaining Unit. The applicants submit that Local 222's conduct violated section 74 of the Act.

5. Local 222, supported by the intervenor, submits that the conduct complained of cannot establish a breach of the duty of fair representation. It submits that the negotiations and memorandum of agreement that it reached with the DRT to "contract-in" Whitby transit services was made wearing its "DRT bargaining agent hat" and that it owed no duty of fair representation to the PWT Bargaining Unit in that context. It cites *Pomietlarz v United Food and Commercial Workers Canada, Local 1000A*, 2013 CanLII 20318 (ON LRB) in support of that position. It further submits that the Board should not police the internal debates amongst Local 222 with respect to these issues. Local 222 and the intervenor request that this application be dismissed on a preliminary basis pursuant to Rule 39.1 of the Board's Rules of Procedure

for failing to establish a *prima facie* case. Finally, Local 222 submits that the application should be dismissed on a preliminary basis for delay.

...

3. In the Board's decision dated March 11, 2024, the parties were provided with an opportunity to file written submissions with respect to the motion brought by the responding party and intervenor to have this application dismissed without a hearing for failing to disclose a *prima facie* violation of section 74 of the Act and for delay. The parties availed themselves of that opportunity and filed written submissions on the issues, which the Board has now had an opportunity to carefully consider.

4. The test for the dismissal of an application for failure to disclose a *prima facie* case is well established. The moving party must demonstrate that, assuming all of the facts pleaded by the applicants are true and provable, under no circumstance would the Board ever grant the relief requested. This is a high standard and appropriately so. The Board should only prevent a party from litigating its case where it is clear that the litigation would be a waste of time.

5. Applying the above test to the facts pleaded by the applicants, the Board concludes that the application contains sufficient facts to establish a *prima facie* case. The Board does not propose to provide detailed reasons in support of that conclusion. To do so is to render a hypothetical decision based on hypothetical facts. It would have the effect of creating a roadmap for the litigation which the Board is loathe to do. In the Board's view, it is far more appropriate to refrain from doing so and allow the parties to shape their cases as they see fit.

6. The applicants plead that the responding party failed to represent their interests and those of the PWT Bargaining Unit in connection with DRT's decision to contracting-in the services. They claim that the responding party only advanced the interests of the DRT Bargaining Unit resulting in an adverse impact to their employment. They also claim that the responding party failed to communicate with them and their representatives in the context of negotiations that occurred between it and DRT that led to DRT's decision to proceed with contracting the work. The Board finds that these pleadings, assumed to be both true and provable, met the very low bar of establishing a *prima facie* case and should proceed to a hearing.

7. To be clear, the Board is in no way judging the merits of the application. It may very well be that the responding party has a clear and compelling response to the application that provides a full answer to the applicants' complaint. However, at this juncture, the Board is not able to consider that response in the adjudication of this no *prima facie* motion.

8. Further, for the reasons stated in the applicants' submissions of March 22, 2024, the Board does not find that the delay in bringing this application should result in its dismissal. The Board finds that the delay in filing this application is between three to six months, which is not the degree of delay that generally results in the dismissal of an unfair labour practice application before the Board.

9. This application is therefore referred to the Registrar to schedule a consultation to adjudicate the merits of this application.

10. I am not seized.

"Jesse Kugler"

for the Board

APPENDIX A

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