



ONTARIO LABOUR RELATIONS BOARD

Public Sector Labour Relations Transition Act, 1997

OLRB Case No: 2287-16-PS
PSLRTA (Bargaining Units/Bargaining Agents)

Ontario Public Service Employees Union, Applicant v Rouge Valley Health System, and Lakeridge Health, Responding Parties v Ontario Nurses' Association, Unifor Local 2003-E, Service Employees International Union Local 2, and Canadian Union of Public Employees and its Locals 1999 and 4365, Intervenors

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - June 2, 2017

DATED: June 2, 2017

Catherine Gilbert
Registrar

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OLRB Case No: **2287-16-PS**

Ontario Public Service Employees Union, Applicant v **Rouge Valley Health System**, and Lakeridge Health, Responding Parties v Ontario Nurses' Association, Unifor Local 2003-E, Service Employees International Union Local 2, and Canadian Union of Public Employees and its Locals 1999 and 4365, Intervenors

BEFORE: Brian McLean, Alternate Chair

DECISION OF THE BOARD: June 2, 2017

1. This is an application under the *Public Sector Labour Relations Transition Act, 1997*, S.O. 1997, c.21 (the "Act" or "PSLRTA").

2. The parties agree the transaction at issue is a "Health Services Integration" within the meaning of the Act and the Act applies to the circumstances which give rise to this application. They also agree on the changeover date. They do not, however, agree about the appropriate bargaining unit configuration which should be at the successor employer. Accordingly, the Board held a consultation to receive submissions from the parties regarding this issue. There were two areas of dispute, each of which concerned OPSEU and the hospital. CUPE took the side of the employer in one of the disputes and ONA took the employer's side in the other. However, the parties agreed to adjourn the CUPE-Hospital-OPSEU dispute and only argue the ONA-Hospital-OPSEU dispute. This decision determines that issue. Consistent with the scheme of the PSLRTA, only brief reasons are provided.

3. This application arises out of the decision by the Ministry of Health and Long-Term Care to eliminate the Rouge Valley Health System as an independent entity. The Minister decided as follows:

TSH (Toronto Scarborough Hospital) and RVHS (Rouge Valley Hospital System) shall amalgamate under the *Corporations Act* (Ontario) to form an amalgamated

corporation which will provide public hospital services in Scarborough (the "Amalgamated Corporation"). In furtherance of the creation of the Amalgamated Corporation to deliver an integrated hospital system in Scarborough, RVHS will enter into an integration agreement with LH under which RVHS will transfer to LH, and LH will acquire from RVHS, all agreed-upon assets, liabilities, employees, professional staff, and undertakings of RVHS related exclusively to the services, programs and operations delivered by RVHS at its Ajax and Pickering campus.

4. The end result was a complete transfer of the governance and operation of the Rouge Valley Health System at its Ajax and Pickering operations to Lakeridge Health. Other parts of Rouge Valley went to a different hospital corporation and are the subject of a separate PSLRTA application.

5. At Lakeridge Health ("LH" or "the successor employer") there are the following bargaining units:

a) OPSEU holds bargaining rights for a unit of paramedical technologists and technicians;

b) OPSEU holds bargaining rights for a unit of addiction counsellors and the Pinewood Centre of LH;

c) ONA holds bargaining rights for a unit of registered and graduate nurses;

d) ONA has bargaining rights for a unit of social workers and registered respiratory therapists;

e) CUPE holds bargaining rights for a unit of service, trade, maintenance, office and clerical employees;

f) the Professional Institute of the Public Service of Canada ("PIPSC") holds bargaining rights for a unit of Radiation Physicists employed in the Regional Cancer Centre in a province-wide bargaining unit. This bargaining unit is not at issue before the Board.

6. At LH, there is also a group of non-unionized paramedical employees who would be affected by the application if OPSEU is successful.

7. At the Rouge Valley site, there was a common hospital collective bargaining structure:

- 1) OPSEU has bargaining rights for a unit of all paramedical employees;
- 2) ONA has bargaining rights for a unit of registered and graduate nurses;
- 3) CUPE has bargaining rights for a unit of service, trade, maintenance, office and clerical employees.

The Position of the Parties

8. In brief, the Employer and ONA, (and CUPE also) take the position that the Rouge Valley employees should be rolled into the Employer's existing bargaining unit structure. OPSEU takes the position that the Board should order a new bargaining unit configuration at LH, one which is the same as was in place at Rouge Valley – that is, three bargaining units plus the PIPSC unit. OPSEU argues that the Rouge Valley configuration is more consistent with the purpose of the Act as it is rational and efficient. On the other hand, it argues the Lakeridge configuration only exists because of events which occurred which created smaller classification based bargaining units, which should properly be included in larger, broader based units.

Background

9. In 1988, three hospitals in Durham Region were merged to become Lakeridge Health Corporation. On June 29, 1999, the Board issued a decision following an application under the Act and certified OPSEU as the bargaining agent for the technical and paramedical unit bargaining unit at Lakeridge. The OPSEU bargaining unit excluded certain professional occupations CUPE was the declared bargaining agent for the maintenance, service, office and clerical bargaining units as exists today.

10. On December 28, 2000 the Board certified, under the *Labour Relations Act*, the current unit of social workers and respiratory therapists with ONA as the bargaining agent.

11. On November 14, 2003, as a result of Lakeridge assuming responsibility for a substance abuse program in Whitby, the Board

certified OPSEU as bargaining agents for a unit of addiction counsellors. In that matter, the Board also ordered that child welfare workers were to be included in CUPE's clerical unit.

12. With respect to Rouge Valley, on May 24, 2000 the Board ordered on consent that five bargaining units be established with OPSEU representing the paramedical unit, ONA representing the nurses and CUPE the service, trade, maintenance, office and clerical unit.

Decision

13. Section 22(1) of the Act states:

22. (1) Subject to any agreement under section 20 that is in effect, the Board, upon the application of a successor employer or any bargaining agent that has bargaining rights, may by order determine the number and description of bargaining units that are appropriate for the successor employer's operations after the occurrence of an event to which this Act applies.

14. The purposes of the Act are relevant in deciding whether to change the bargaining unit configuration at LH. They are described in s. 1 of the Act as follows:

1. The following are the purposes of this Act:

1. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.
2. To facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations.
3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.
4. To foster the prompt resolution of workplace disputes arising from restructuring.

15. Those purposes, and sound labour relations, lead me to conclude that the non-union group and the employees represented by

ONA in the social workers/respiratory therapists bargaining unit should be part of the paramedic and employees bargaining unit. I have come to that conclusion for the following reasons.

16. Broadly speaking, the successor employer and OPSEU made two arguments regarding why their bargaining unit configuration should be preferred.

17. Their first argument is that the existing structure has been in place for many years and there have been no notable labour relations problems as a result. While I accept that is true, and may (and may not) indicate the current structure is effective, it says little about whether the current structure is rationalized.

18. There appears little doubt that for the employer, the existing configuration has been effective. However, whether that is true for the employees, and whether it will be true for the employees in the future, is not as clear. The Board has frequently identified the benefits to employees of bigger, broader based bargaining units (see, for example, *North Bay Regional Health Centre*, [2017] CanLII 16969 at paras. 51-54).

19. Moreover, it is difficult to say that the existing structure is at all "rational". It is a patchwork configuration born out of various events which occurred over time. Indeed, the existing ONA social workers/respiratory therapists bargaining unit with 113-135 employees seems a complete anomaly in a hospital this size. But for the agreement of the parties at the time of the application for certification by ONA, the Board could be reluctant to certify a dual classification based bargaining unit, especially given the fact there were and are unrepresented employees at the Hospital. The Board's statements in its cases (see *North Bay Regional Hospital*, *supra*, that PSLRTA applications present an opportunity to rationalize bargaining unit seem applicable in this case.

20. Furthermore, while the Board has given weight to employer preference as to the proper configuration of bargaining units because it presumably is in the best position to identify efficiencies and impediments to service delivery, there is no rule that the employer's preference is automatically accepted. Were it otherwise, the Act could simply have said so. The Board has the authority under the Act to create rationalized bargaining unit structures for the benefit of monetary efficiency and effective labour relations. Moreover, the Board must be cognizant of the fact that employees may prefer particular configurations out of a desire to avoid or prefer particular unions or

maintain groups of "union free" workers, which are of limited assistance to the Board.

21. Finally, on this point, the Board has distinguished between its practice on "amalgamations" and "transfers of services". The point is that in an amalgamation or an amalgamation-like event for an employer there is already a lot of labour relations disruption going on, which creates an opportunity to get things "right". On the other hand, since service transfers may occur more frequently, and may only effect a limited number of employees, there accordingly seems little point to "upsetting the apple cart". In this case, whether the transfer at issue is an amalgamation or not (I think it likely is), it is certainly an amalgamation-like event affecting hundreds of employees directly or indirectly. Given the anomalies in the successor employer's bargaining unit configuration, it makes sense to rationalize that structure.

22. The Hospital and ONA also argue that the Board's job should be to make the transfer as seamless as possible and minimize the labour relations disruption to the greatest number of employees.

23. While I agree that this is an important consideration, were it as simple as counting the number of employees affected by one configuration versus another configuration, the Act could have said so, there are which have followed such an approach (for example, *Hamilton CCAC*, [2007] O.L.R.D. No. 1838). In these cases, however, it seems clear the two proposed configurations were essentially equally attractive and, accordingly, the Board sought to reduce the disruptive effect on employees. Those circumstances are not present here as the configuration which OPSEU proposes (leaving aside the CUPE issue) is substantially superior to that proposed by the employer and ONA.

24. While "bigger is not always better", the Board has generally stated its preference for larger bargaining units in applications under the Act (see *North Bay Regional Health Centre, supra*). In this regard, a paramedic bargaining unit that includes the existing non-union paramedic group and the existing ONA group provides a much more rationalized structure.

25. The Board has also often noted that a PSLRTA application presents an opportunity to rationalize an employer's existing bargaining unit structure. A single collective agreement for this group of employees will avoid the maintenance of islands of employees as fragmented groups with limited mobility rights. It will also eliminate the possibility that the existing non-union employees who are affected by the

application will choose a bargaining unit of their own and create an even more patchwork configuration than already exists.

26. Accordingly, for these reasons, I find that the bargaining unit structure proposed by OPSEU (excluding the CUPE issue) is appropriate for the successor employer's operations.

27. The matter is directed to the Manager of Field Services so that the parties can meet with a labour relations officer to determine the next steps.

"Brian McLean"
for the Board

APPENDIX A

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