

Ontario Labour Relations Board: boycott of school board staffing plan is a strike

If a teacher's union successfully urges its members not to apply for certain staff positions, is the resulting boycott a "strike"? In *Toronto District School Board v. Ontario Secondary School Teachers' Federation, District 12* (February 3, 2003), the Ontario Labour Relations Board held that it is.

The dispute arose when the Toronto District School Board decided to alter its Position of Responsibility (POR) model by eliminating the position of Department Head and replacing it with Curriculum Leaders and Assistant Curriculum Leaders. This move was opposed by the teachers' federation, which called upon its members to refrain from applying for the new positions.

The federation's call was successful, and the school board claimed that the school year was in danger of being disrupted if it could not make the new POR appointments. Both the school board and the federation applied to the Board, the school board seeking a declaration that the boycott was an unlawful strike and the federation complaining that the school board's actions violated the freeze provisions of the *Labour Relations Act, 1995 (LRA)*.

TWO DEFINITIONS OF "STRIKE"

In order to determine whether the federation's action amounted to a strike, the board had to apply the definition in subsection 277.2(4) of the *Education Act*, which at the relevant time provided as follows:

"277.2 (1) The *Labour Relations Act, 1995* applies with necessary modifications with respect to boards, designated bargaining agents and Part X.1 teachers, except where otherwise provided or required by this Part.

...

(4) For the purposes of subsection (1),

(a) the definition of "strike" in section 1 of the *Labour Relations Act, 1995* does not apply; and

(b) "strike" includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed to curtail, restrict, limit or interfere with the operation or functioning of one or more school programs, including but not limited to programs involving co-instructional activities, or of one or more schools including, without limiting the foregoing,

(i) withdrawal of services,

(ii) work to rule,

(iii) the giving of notice to terminate contracts of employment."

(iii) the giving of notice to terminate contracts of employment."

The definition of "strike" in section 1 of the *LRA*, which does not apply in the *Education Act*, reads as follows:

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output;"

OPERATIONAL OR ADMINISTRATIVE IMPACT?

The school board argued that the two definitions were substantially the same, and that the reason for having two different definitions was that the notion of "output" did not fit well in the educational context. Accordingly, it argued, the Board should apply the same broad interpretation of the definition as that applied in cases heard under the *LRA*.

The federation countered that the definition in the *Education Act* was narrower, and applied only when teachers' conduct was designed to disturb the operation of a school or a school program. Here, the federation asserted, the boycott of the appointments process had only an administrative, not an operational, impact on schools and school programs. The school board disputed this, stating that the boycott hindered the operation of school programs.

SCHOOL BOARD OPERATIONS IMPACTED BY CONCERTED ACTION

The Board held in favour of the school board, ruling that both the *Education Act* and the *LRA* contemplated a broad definition of "strike". In making this ruling, the Board rejected the federation's argument that, because it was lawful for individuals to decline to apply for POR postings, it should be equally lawful for a group to refrain from applying. The Board noted that, in previous decisions, it had held that activity - such as resigning or not working overtime - that is lawful individually may constitute a strike when done in concert.

The Board noted that, while the federation's primary objective in taking action was to compel the school board to bargain the matter, not to impact school operations, it had the secondary objective of causing hardship to the school board by preventing implementation of the new POR system. Moreover, the fact that classes and programs would continue with or without the new POR system did not change the fact that the delivery of programs as *intended by the school board* would be affected:

"The [school board] sees the absence of a functioning POR system, in the manner which it has determined will best serve its organizational and the students' pedagogical interests, as disruptive of its school and school program organization. The federation points out that classes will still be taught and programs will continue uninterrupted even if the [school board] is unable to commence its new POR system. That may be so, but the classes will not be taught and the programs will not continue in exactly the manner envisaged by the [school board]. A failure by the [school board] to put in place its new POR system will have some, albeit limited, impact on the manner in which school programs are delivered, and on the manner in which schools are organized."

Accordingly, the Board found that the boycott was intended to interfere with the functioning of schools and school programs and, therefore, constituted a strike.

In Our View

The Board, in this decision, was dealing with the limited issue of whether the boycott amounted to a strike. Therefore, it did not grant the school board any relief, as the question of whether the school board's actions violated the freeze provisions of the *LRA* had not been dealt with. As well, the federation had grieved the school board's actions as being in contravention of its collective agreement, and that issue had not been resolved at the time the Board made its decision. The Board noted that the outcome of those proceedings would determine whether the school board was entitled to an unlawful strike declaration.

As well as reiterating, within the context of the *Education Act*, that lawful individual action may be unlawful when done collectively, this decision establishes that, when a school board's chosen method of organizing its programs and schools is affected by the action, that action can be considered a strike despite the fact that schools and classes continue to operate. This suggests that, depending on the facts of the case, there may be little difference between an "administrative" and an "operational" impact.

Readers should note that section 277.2 of the *Education Act* has since been amended to read as follows:

277.2 (1) The *Labour Relations Act, 1995* applies with necessary modifications with respect to boards, designated bargaining agents and Part X.1 teachers, except where otherwise provided or required by this Part.

...

(4) For the purposes of subsection (1),

(a) the definition of "strike" in section 1 of the *Labour Relations Act, 1995* does not apply; and

(b) "strike" includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed or may reasonably be expected to have the effect of curtailing, restricting, limiting or interfering with,

(i) the normal activities of a board or its employees,

(ii) the operation or functioning of one or more of a board's schools or of one or more of the programs in one or more schools of a board, including but not limited to programs involving co-instructional activities, or

(iii) the performance of the duties of teachers set out in the Act or the regulations under it,

including any withdrawal of services or work to rule by teachers acting in combination or in concert or in accordance with a common understanding.

This change would appear to broaden the range of impacts that may trigger the finding that a particular concerted action amounts to a strike.

For further information, please contact [Lynn Harnden](#) at (613) 940-2731, or [Jennifer Birrell](#) at (613) 940-2740.

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