



## ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 0017-21-U  
Duty of Fair Referral

Hilary Campbell and Kim Liddle, Applicants v OPSSU, Responding Party v  
Ontario Public Service Employees Union, Intervenor

### COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - April 08, 2022

DATED: April 08, 2022

Catherine Gilbert  
Registrar

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## ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0017-21-U**

**Hilary Campbell and Kim Liddle**, Applicants v OPSSU, Responding Party v Ontario Public Service Employees Union, Intervenor

**BEFORE:** Maureen Doyle, Vice-Chair

**DECISION OF THE BOARD:** April 8, 2022

1. This is an application filed with the Board pursuant to section 96 of *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended, (the "Act"). The applicants assert that the responding party, Ontario Public Services Staff Union ("OPSSU") violated section 74 of the Act with respect to the applicants' relationship with the employer, Ontario Public Service Employees Union (OPSEU). OPSSU denies that the Act has been violated.

2. In its response, in addition to denying that it has violated the Act, OPSSU seeks dismissal of the application on the basis that it does not reveal a *prima facie* case.

3. In a decision dated November 2, 2021, the Board directed the applicants to file submissions in response to the request of OPSSU that this matter be dismissed as revealing no *prima facie* case, including copies of any case law relied upon, and copy the other parties, by no later than November 12, 2021. The applicants did not provide submissions and in a decision dated January 24, 2022, the Board provided the applicants with another opportunity to make submissions. It directed that they provide submissions by no later than February 8, 2022, failing which the Board would consider whether this matter should be dismissed as revealing no *prima facie* case on the basis of the materials before it.

4. The Board has received nothing further from the applicants and accordingly this matter is decided on the basis of the materials currently before the Board.

5. The applicants include Schedule "A" to an Unfair Labour Practice (ULP) complaint, dated March 19, 2021. The applicants allege that the ULP, at paragraphs 73-84, makes direct reference to them in "an arbitrary and discriminatory way". They state that the ULP application was sent to all union members and was shared on social media. They state that the "naming" of them has caused them emotional harm. They allege that the employer hired a number of temporary employees to full time status on March 31, 2021 and that they were excluded from the opportunity even though they had worked there on a temporary basis for 9 months and had exceeded all expectations in respect of their job duties. By way of remedy, they state that they want the union to stop targeting them, and that the union rescind the section of the ULP which makes reference to them particularly.

6. The union submits that the applicant has not established a *prima facie* case, and requests that the Board dismiss the application. It submits that the applicants are not named nor are they referred to in an arbitrary or discriminatory manner at paragraphs 73 to 84 of the ULP. It submits that in those paragraphs, it has outlined the actions of the employer which it alleged were in violation of the Act and/or the collective agreement.

7. The union notes that the applicants submit that they suffered harm by being excluded from the employer's hiring opportunity and submits that it does not control the hiring process. It states that it must seek recourse through grievance and arbitration provisions where the employer violates the posting and competition provisions of the collective agreement. It also asserts that the employer's hiring decision is the "subject of a dispute between the Union and the Employer and is being dealt with by the Union in the normal course".

8. The union submits that the applicants have not pleaded any facts which would make out a case of a violation of section 74 of the Act, and requests that it be dismissed on that basis.

#### *Analysis and Decision*

9. At this stage, the question to be answered is whether any of the applicants' allegations, if true, make out a violation section 74 of the Act. Section 74 reads:

**74.** A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary,

discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

10. The Board has the authority under Rule 39.1 of the Board's Rules of Procedure to dismiss an application without a hearing where it does not make out a *prima facie* case. To plead a *prima facie* violation of the duty of fair representation under section 74 of the Act, the applicants must plead facts capable of supporting a conclusion that the union acted in a manner that is arbitrary, discriminatory, or in bad faith.

11. The Board in *Hill v Canadian Union of Public Employees, Local 793*, 2006 CanLII 7208 (ON LRB) summarized the Board's jurisprudence considering the terms arbitrary, discriminatory and bad faith as follows:

- (a) "arbitrary" means conduct which is capricious, implausible or unreasonable, often demonstrated by a consideration of irrelevant factors or a failure to consider all relevant factors;
- (b) "discriminatory" is broadly defined to include situations in which a trade union distinguishes between or treats employees differently without a cogent reason or labour relations basis for doing so;
- (c) "bad faith" refers to conduct motivated by hostility, malice, ill-will, dishonesty, or improper motivation.

12. The Board has held repeatedly that the threshold for pleading a *prima facie* case is not particularly high. In *J. Paiva Foods Ltd.*, [1985] OLRB Rep. May 690, at page 691, the Board held as follows:

The Board's discretion to dismiss a complaint on the grounds that it does not disclose a *prima facie* case should only be exercised in the clearest of cases, that is, when the Board is satisfied that there is no reasonable likelihood that a violation of the Act can be established on the facts as alleged.

13. In assessing whether an application states a *prima facie* case, the Board must assume that the applicants' allegations are true and could be established if the matter proceeded to a hearing or consultation. The Board does not consider any explanation or defense offered by a responding party in making this determination.

14. Upon review of the schedule to the union's ULP provided by the applicants with the application, the applicants are not named, and it is a narrative of events which the union submitted were violations of the Act by the employer. There is no reference to the applicants in a manner which is arbitrary or discriminatory. While it is clear that the applicants are not happy that the union has filed a ULP complaint which appears to include a complaint regarding the circumstances by which they came to be employed by the union (though as noted above, they are not personally named in the ULP), there is nothing in the application which would establish that the union has acted in a manner which is arbitrary, discriminatory or in bad faith. Similarly, the dissemination of the ULP to the membership of the union is not something which would support a determination that the union acted in a way which was arbitrary, discriminatory or in bad faith.

15. With respect to the employer's March 31, 2021 hiring decision, the applicants have not indicated they sought any assistance from the union, nor have they indicated that the union refused to provide assistance or acted in any way which was arbitrary, discriminatory, or in bad faith in respect of the employer's actions. The fact that the employer made a hiring decision which they consider to have been contrary to their rights, does not support a finding that the union has contravened the Act.

16. The applicants seek an order that the union stop "targeting" them, but the applicants have provided no indication of how the union has taken action to target them in a way which was due to any personal animosity or took actions for reasons which were unrelated to legitimate collective bargaining concerns. I am not persuaded that the applicants' allegations would establish that the union acted in a way which was arbitrary or in bad faith or discriminatory.

17. The applicants have not pleaded facts which are capable of establishing that the union acted in a manner that is arbitrary, discriminatory, or in bad faith. For all of the reasons above, this application is dismissed as stating no *prima facie* case that the responding party has contravened its duty of fair representation under the Act.

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"Maureen Doyle"  
for the Board