

WHAT'S NEW

ISSUE 8 - August 2012

In an effort to keep the Labour Relations Community informed on an ongoing basis of happenings at the Labour Relations Board, the Board produces a monthly newsletter - "What's New." The following is Issue 8 for 2012.

NEWS AROUND THE BOARD

A New Staff Member! - The Board is very pleased to announce Bridget Oliveira as the successful candidate for the Labour Relations Officer position in our Calgary office.

Bridget is a graduate of Laurentian University with an Honour's Degree in Law and Justice. She brings with her over 8 years of labour relations experience including work with the Air Traffic Control Association, CAW Local 5454 in Ottawa and most recently as a Senior Policy Analyst with the Federal Mediation and Conciliation Service, Labour Program. Bridget's strong research and investigative skills as well as her experience providing strategic policy advice to senior officials at the federal level on high profile labour relations disputes will serve her well in her role at the Board.

Bridget will be starting with us on September 4, 2012. Please join us in welcoming Bridget.

RECENT CASES

Great Canadian Railtour Company Ltd. v. Teamsters Local Union No. 31 et al 2012 BCCA 238

The British Columbia Court of Appeal recently issued a decision upholding an interim injunction granted during a legal lockout.

The injunction enjoined locked out employees from a variety of conduct including: (a) harassing in any manner their employer's replacement workers, passengers, customers, suppliers, and others; (b) unlawfully watching or besetting any current employees; and (c) following or pursuing any current employees, customers, suppliers and others.

The Teamsters challenged the injunction on various grounds including that harassing cannot be enjoined because it does not constitute an independent tort and that certain aspects of the order were vague and unnecessarily broad.

In upholding the lower court's interim injunctive relief, the Court of Appeal addressed each of the arguments advanced by the Teamsters. Addressing the union's argument

that harassment is not an independent tort and therefore cannot form the basis for injunctive relief, the Court of Appeal rejected the union's position that only conduct that constitutes a tort or crime can be restrained. Rather, the Court concluded the Supreme Court of Canada's wrongful action approach did not intend to preclude courts from enjoining conduct that is neither tortious nor criminal in and of itself. As stated by the Court,

There is no requirement that every prohibition in an injunction be directed at conduct that itself amounts to a tort. In many cases it may be the cumulative effect of the various conduct, or the frequency of its repetition, which results in the commission of a tort (or crime). The primary issue in considering whether an injunction should be granted is whether there is conduct that amounts to a tort (or crime). To succeed on an application for an interim injunction, an applicant must make out a *prima facie* case that a tort (or crime) has been committed or is reasonably apprehended. It is only after that test has been met that a judge will consider what specific injunctive terms are necessary to address the wrongful conduct. When, as in the case at bar, a *prima facie* case of intimidation has been made out, it is open to a judge to enjoin not only that tort, but also related conduct, which although not tortious on its own, forms part of, or contributes to, the commission of that tort. The important question is whether the later prohibition is reasonably necessary to prevent a repetition of the tort. ...

An example of such a reasonably necessary term is one limiting the number of picketers. While congregating in numbers is not a stand-alone tort, placing a limit on the number of picketers may be reasonably necessary in response to a *prima facie* showing that picketers have committed such torts as intimidation, interference with contractual relations, or nuisance.

The Court of Appeal also dismissed the argument advanced by the union that various terms of the interim injunctive relief should be struck on the basis of vagueness or overbreadth. The phrases "harassing in any manner", "unlawfully watching or besetting" and "following or pursuing" are sufficiently precise to put picketers on notice as to the type of conduct they must avoid.

Finally, it may be worth noting the lower court had issued a previous injunction enjoining picketers from directly or physically blocking, impeding, hindering, delaying, or obstructing, by any means, partially or completely the movement of persons or vehicles at or near the entrances to the employer's premises. The factual foundation for this first injunction was the delay by picketers of vehicles entering and leaving the employer's premises for between 10 and 20 minutes.

CONFERENCES:

- Canadian Labour Board Law Conference: October 16-17, 2012 at the Park Hyatt, Toronto, Ontario
- Alberta Congress Board's Annual Workplace Conference: October 25-28, 2012 at the Fairmont Jasper Park Lodge, Jasper, Alberta