Message from the Chairperson

Robert Monette, André Lecavalier, Norman Rivard, William G. McMurray, John Bowman, Daniel Charbonneau, Claude Roy, Louise Fecteau, Patric F. Whyte, Elizabeth MacPherson, Graham J. Clarke, Judith F. MacPherson

The year 2012 has been a productive one for the Canada Industrial Relations Board. Not only have we significantly improved our case processing times, but we also completed a substantive review of the *Canada Industrial Relations Board Regulations, 2001* and implemented amendments designed to make the regulations more clear, modern and practical.

The *Canada Industrial Relations Board Regulations, 2012* came into force on December 18, 2012. I am confident that the regulatory amendments will serve the Board and the labour relations community well in ensuring the effective processing of matters requiring determination by the Board. You will find more detailed information on these amendments elsewhere in this newsletter.

Overall, the Board's case management activities have produced impressive results. Staff continue to resolve many of the complaints that are filed with the Board to the satisfaction of all parties. The Board has again disposed of more matters than it received, resulting in the reduction of the active case load to historic lows. The average processing time for all matters coming before the Board is now 174 calendar days (i.e., less than six months). These results indicate that the Board's relentless efforts to deal with industrial relations matters in an effective and efficient manner have been successful.

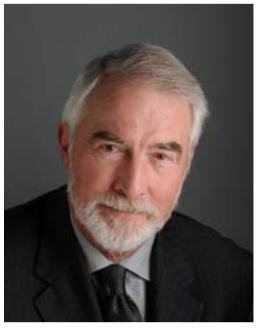
In the year ahead, the Board faces significant challenges and opportunities as it undertakes new responsibilities for the administration and interpretation of Part II of the *Status of the Artist Act*. I will be making every possible effort to reach out to stakeholders in the artistic community to ensure that the Board understands and is able to respond to their needs. My objective is to make the transition as seamless and as positive as possible for all those affected.

It is with great honour and renewed commitment that I accepted a renewal of my mandate as Chair of the Canada Industrial Relations Board. It is my intention to continue to engage the labour relations community in the Board's various initiatives and to focus the Board's efforts on achieving timely and effective results for the workplace partners.

I take this opportunity to wish you all a very safe holiday season and a happy and healthy 2013.

Elizabeth MacPherson

Appointment to the Board



Mr. Patric F. Whyte

On the recommendation of the Minister of Labour, the Governor-in-Council has recently appointed Mr. Patric F. Whyte of Toronto as a full-time Vice-Chairperson of the Board, for a term ending on November 4, 2017. In the course of his labour relations career, Mr. Whyte has held senior positions in a number of organizations, including the Ontario Labour Relations Board, MVP Personnel Services and Canada Post Corporation. He has also served as a Chief Spokesperson for the Retail, Wholesale and Department Store International Union. Prior to his appointment to the Board in November 2012, Mr. Whyte was an active labour mediator and arbitrator with Quicksilver Arbitration Services.

Reappointments

The Board is also pleased to inform you that the Governor-in-Council has reappointed the following members:
Mr. André Lecavalier, as a full-time Member for a term ending on December 17, 2015
Mr. Norman Rivard, as a full-time Member for a term ending on January 14, 2016
Mr. William Terence Lineker, as a part-time Member for a term ending on January 13, 2016

Regulations 2012

The Board is pleased to announce that the *Canada Industrial Relations Board Regulations, 2012* (SOR/2012-305) are now in force.

The amendments will be published in the Canada Gazette, Part II in early January 2013. Information on the new *Regulations* will also be made available on the CIRB's Website (http://www.cirb-ccri.gc.ca/index_eng.asp).

The Board would like to extend its gratitude to all the members of the labour relations community who provided us with feedback throughout the regulatory review process. We are confident that the *2012 Regulations* address the concerns that we heard from you during our many consultations and are now more clear, modern and practical.

Reconsideration Applications

In light of the regulatory amendments and particularly the repeal of section 44 of the *Regulations*, the Board has issued a new Information Circular that sets out the Board's policy and practice concerning applications for reconsideration of Board decisions. Information Circular no. 2 is now available on the Board's Website (http://www.cirb-ccri.gc.ca/index_eng.asp).

Summary of Key Regulatory Amendments

The following is a brief summary of the key amendments that have been made to the former *Regulations*:

- Sections 12 and 13 have been merged into a single provision setting out the requirements for filing responses and replies.
- Section 12.1 and 13.1 have been merged into a single provision concerning applications for intervenor status. A new, two-part process for such applications has been established.
- Dismissal complaints made under section 133 of the *Code* are now subject to the expedited process under section 14 of the *Regulations*.
- Parties must seek disclosure from each other prior to applying to the Board for a disclosure order under section 21; parties can request disclosure at any stage of the proceeding and no longer require the consent of the Board.
- A clear process for determining claims of confidentiality including an express test has been set out in section 22.
- A new section 29.1 has been added that requires a party to show cause why a matter that has been dormant for more than 12 months should not be deemed to be withdrawn.
- A new section 41.1 has been added that sets out the requirements for applications made under section 87.4 of the *Code* (maintenance of activities).
- Section 44, setting out the circumstances in which the Board will reconsider a decision, has been repealed. An Information Circular has been issued to replace the regulation.
- The time limit for filing a reconsideration application has been extended to 30 days to coincide with the time period for applications for judicial review (section 45).
- Section 17 has been moved to section 47.1 and section 25(3) has been merged with section 47(2) in order to group similar provisions together.
- Grammatical and wording differences between the French and English versions of the *Regulations* have been resolved.

Mark Your Calendars!

The CIRB is very pleased to be partnering with the Federal Mediation and Conciliation Service again this year to sponsor the **2013 National Industrial Relations Conference**. This conference will be held on September 18 to 20, 2013, at the Château Cartier Hotel in Gatineau and offers a unique opportunity for federally regulated employers and trade unions to participate in discussions regarding the critical issues affecting today's workplaces, and to address tomorrow's challenges. Registration details will be made available shortly.

Recent Cases–Summary Notes

Canadian Merchant Service Guild v. *Teamsters, Local Union 847*, 2012 FCA 210

In a unanimous decision, the Federal Court of Appeal (the Court) upheld the Board's decision to give standing to a union that had an interest in ensuring that individuals who supported its unsuccessful displacement application would not be subject to reprisals from the incumbent union.

Teamsters Local Union 847 brought an unfair labour practice complaint before the Board alleging that the Canadian Merchant Service Guild had breached the *Canada Labour Code* (the *Code*) by laying charges against three of its members under the Guild's Constitution for their active participation in the Teamster's unsuccessful campaign to displace the Guild as the bargaining agent for marine engineers and electricians employed by Upper Lakes Shipping Limited. The Guild objected to the Teamsters' standing to bring the complaint to the Board on the ground that it did not have the requisite authorization from the individual members to do so. The Board dismissed this objection on the ground that it did not, as a matter of course, require statements of authorization to be filed by a union representing individuals in a complaint. The Board granted the Teamsters' complaint on behalf of the members, finding that the members should be afforded the necessary protection from reprisals for exercising their rights to change unions. The Board ordered that the penalties issued to the individual members be rescinded and any fines paid be refunded. However, the Board refused to certify the Teamsters as the bargaining agent and did not order another representation vote.

The Guild challenged the Board's decision on three grounds: standing, timeliness and an error of law. The Court dismissed the timeliness and error of law arguments. With regard to the remaining issue, the Court explained the concept of standing, which allows only those with a real and legitimate interest in a matter to initiate, obtain notice of or participate in a proceeding. Therefore, it is necessary to review the party's interest and rights to determine whether such interests could be prejudiced or affected by the proceeding. In the present case, the Court found that the individuals should be represented by the union that they supported during the certification process. The union had a separate and distinct interest in ensuring that the individuals who assisted it in a legitimate certification campaign were not subject to reprisals by either their employer or a rival union, since this may affect future certification proceedings initiated by that union. Consequently, the Court upheld the Board's decision that the Teamsters had standing to initiate the complaint.

The Court did not accept the Guild's flood-gate argument since the Board's decision was limited to complaints made by an unsuccessful union concerning reprisals by a rival union following an otherwise legitimate certification campaign. The Court dismissed the Guild's application with costs.

City of Yellowknife, 2012 CIRB 661

In this recent decision, the Board considered the interpretation of section 49 of the *Code* and whether it established a "window" within which notice to bargain must be given.

The collective agreement between the Yellowknife Firefighters, Local 2890 of the International Association of Fire Fighters (IAFF), and the City of Yellowknife (the City) expired on December 31, 2011. In January 2012, the City advised the IAFF that, since neither party had provided notice to bargain under section 49 of the *Code* prior to the expiration of the agreement, the agreement automatically renewed for one year pursuant to section 67(1) of the *Code* and the collective agreement. The IAFF responded stating that notice to bargain could be given under section 49 after the term of the agreement had expired and requested mutually acceptable dates to commence bargaining. The City maintained its position and the IAFF brought an unfair labour practice complaint to the Board, alleging that the City had failed to bargain in good faith contrary to section 50 of the *Code*.

In its analysis of the complaint, the Board initially considered whether section 49 of the *Code* established a limited window for giving notice to bargain. The Board discussed various interpretative aids that supported the view that section 49 merely establishes the earliest date on which a party may give notice to bargain. The Board was of the view that

looking at section 49 in this way seemed to best protect against a situation where parties might find themselves in a legal "vacuum" if an agreement expires without notice to bargain having been given. However, the Board ultimately left the interpretation of whether notice can be given under section 49 after the term of a collective agreement has expired for another day, since it was not necessary to do so given the facts of this case.

The Board then considered whether sections 67(1) to (3) and the parties' collective agreement could address the consequences arising if section 49 creates a limited window within which notice to bargain could be given, as argued by the City. In doing so, the Board rejected the City's argument that by operation of section 67(1) and the bridging clause in the collective agreement, a new collective agreement with a one year term had come into force upon the expiration of the term of the last collective agreement. The Board contrasted the effect of a bridging clause with that of an automatic renewal clause and highlighted that the former simply keeps the existing terms and conditions of the expired collective agreement in force until the parties conclude a new one, while the latter replaces bargaining if neither party provides notice to bargain before the expiration of the collective agreement. The Board found that section 67(1) was not meant to operate so as to turn a bridging clause into a new collective agreement with a one year term.

The Board then focused its analysis on whether section 48 could be used to allow the parties to provide notice to bargain in the present case. In interpreting section 48, the Board stated that it does not apply only to first contract situations but also to situations that meet the two explicit conditions imposed by Parliament, namely: i) the Board has certified a bargaining agent; and ii) no collective agreement binding on the parties is in force. In this case, the IAFF was the certified bargaining agent and given that the Board concluded that the bridging clause in the collective agreement did not keep the collective agreement in force after its term had expired, there was no collective agreement binding on the parties. As such, the Board found that the prerequisites for giving notice under section 48 had been met in this case. In this regard, the Board stated that section 48 is a "fail safe provision" that allows for notice to be given in bargaining relationships which might have lapsed for various reasons. The Board concluded that this interpretation protects the integrity of the bargaining regime under the *Code* and avoids the legal void that could arise if section 49 is interpreted as providing a fixed window for giving notice.

The Board found that the IAFF's notice to bargain was valid under section 48. The Board dismissed the IAFF's unfair labour practice complaint and directed the parties to meet to negotiate a renewal of the collective agreement.

Contact Us

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