Dealing With Human Rights Complaints In Unionized Workplaces



Rhonda B. Levy and Douglas Sanderson examine The Human Rights Tribunal of Ontario preliminary hearing to determine whether allegations made under the Human Rights Code fell within the exclusive jurisdiction of a labour arbitrator, or whether the Tribunal had concurrent jurisdiction over employment-related human rights matters in a unionized workplace.

The applications in *Weilgosh v. London District Catholic School Board*, 2022 HRTO 1194, were filed by unionized employees of the London District Catholic School Board and the Regional Municipality of Peel Police Services Board. The Tribunal found that the provisions of Ontario's Labour Relations Act (LRA) and Police Services Act (PSA) grant a labour arbitrator exclusive jurisdiction to decide claims arising from disputes that in their essential character relate to the interpretation, application or alleged violation of a collective agreement (CA); however, the Code demonstrates a clear legislative intent to displace the labour arbitrator's exclusive jurisdiction. Accordingly, the Tribunal found that it had concurrent jurisdiction to decide discrimination and harassment claims that fall within the scope of a CA governed by the LRA and PSA.

Prior SCC Decision

Notably, in 2021, the Supreme Court of Canada (SCC) decided otherwise in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, when it found that Manitoba's Human Rights Commission (MHRC) does not have concurrent jurisdiction over human rights claims in a unionized workplace; rather, jurisdiction over such claims is held exclusively by a labour arbitrator.

The decision in *Weilgosh* is more aligned with the dissent in *Horrocks*, in which Justice Karakatsanis opined that the SCC's jurisprudence did not establish a rule of exclusive jurisdiction in cases involving two statutory tribunals, and that although the dispute fell within the scope of the CA, it was nonetheless also within the jurisdiction of the MHRC under Manitoba's Human Rights Code. Justice Karakatsanis found, therefore, that the MHRC had concurrent jurisdiction over the dispute and acted appropriately in proceeding with the human rights dispute. Notably, Justice Karakatsanis referred to provisions of the Ontario Code that permit the Tribunal to defer human rights applications pending the completion of related proceedings in

other forums and to decline to deal with applications where the substance of the matter has been appropriately dealt with in another proceeding (sections 45 and 45.1, respectively) as indicators of concurrent jurisdiction.

Tribunal Decision

In its decision, the Tribunal recalled that in *Horrocks*, the SCC articulated the following two-step analysis to resolve jurisdictional questions between labour arbitrators and other statutory tribunals:

- The legislation in question must be examined to determine whether it grants the arbitrator exclusive jurisdiction and, if so, over which matters. If the legislation has a mandatory dispute resolution clause, an arbitrator empowered under that clause has exclusive jurisdiction to decide all disputes arising from the CA, subject to a clearly expressed legislative intent to the contrary.
- If at step one it is determined that the legislation grants the labour arbitrator exclusive jurisdiction, the next step is to determine whether the dispute falls within the scope of that jurisdiction.

The Tribunal stated that its decision would address the first step of the *Horrocks* analysis and, more specifically, it would ask:

a. Do the LRA or the PSA grant exclusive jurisdiction to a decision-maker appointed under labour legislation?

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