

Related Employers: Who Does The Labour Board Say Is A Related Employer?



On April 15, 2013, the Ontario Labour Relations Board released a decision which should be of interest to employers as it considered whether to find that two employers were “related” over the objections of both employers.

To understand the decision, it is important to understand the parties involved and how they were connected. The University of Western Ontario (“UWO”) is a publicly funded university, established in 1878. Its governing legislation is the *University of Western Ontario Act*, 1982 which provides for the management of UWO by a Board of Governors. UWO employs over 10,000 people, including a number of established collective bargaining relationships. UWO’s medical students receive training at London Health Science Centre. These medical training relationships are known as “affiliations”. They are documented in what are known as “Affiliation Agreements”. The nature of medical education in Ontario universities requires a relationship with affiliated teaching hospitals.

London Health Sciences Centre (“LHSC”) is a large acute care public teaching hospital, regulated by the *Public Hospitals Act*. LHSC is a hospital providing facilities for giving instruction to university medical students. LHSC came into existence in 1995 upon the merger of University Hospital (established in 1972) and Victoria Hospital (established as a teaching hospital in 1882). LHSC is governed by a Board of Directors. LHSC receives the vast majority of its funding from the Province. It has nearly as many employees as UWO, including collective bargaining relationships with different unions.

The Affiliation Agreement between UWO and LHSC seeks to recognize and maintain each institution’s independent and unique mandate. However, the Labour Board decided that the relationship between them was such that the line between medical education, patient care and research became “rather blurrily indistinct”.

UWO’s Schulich School of Medicine and Dentistry (“Schulich”) is governed by a Dean and Associate Deans, Chairs and Committees. Schulich has a Council that advises UWO’s Senate, which is responsible for all matters pertaining to UWO’s academic mission. Schulich’s clinical departments and Clinical Academics provide patient care at LHSC and participate in the education of medical students.

The UWO Staff Association (“the Union”), one of eleven employee groups at UWO, was certified in 1997 to represent an “all employee” unit, including a significant number

of UWO's clerical/office/administrative support staff. In September, 2007, the Union filed an application under subsection 1(4), alleging that the responding parties were one employer for the purposes of the *Labour Relations Act*. The matter largely involved the nature of the relationship of a "teaching hospital", LHSC and a university, UWO. The Union's primary position was that the responding parties ought to be treated as one employer under the Act, and covered by the Union's jurisdiction.

This was, in the Board's words, "a hard-fought contest" which spanned 24 days and included three full days of closing arguments over five years.

The *Labour Relations Act*, subsection 1(4) states that the Board acquires the discretion to make a related employer declaration when the following three pre-conditions are present:

1. there is more than one entity involved;
2. related or associated activities or businesses are carried on by the entities concerned; and,
3. the activities or businesses are under common control or direction.

UWO and LHSC both argued that the evidence did not support a finding that they were one employer; did not support a finding that they were related; and that even if the Board decided they were associated or related, the Board should exercise its discretion and not grant the Union the bargaining rights it sought.

The Union relied on a line of cases where the Board had found that otherwise separate entities whose primary business activities were distinct, nevertheless were related employers by virtue of having carried on a single associated or related activity. The Union argued that it had satisfied subsection 1(4)'s precondition; and, had demonstrated some erosion of its bargaining rights and the potential for more erosion. The Union identified the educational and clinical activity within the merged clinical departments as the associated or related activities or business carried on by the responding parties. Thus, argued the Union, the common ground in the activities carried on by the respondents consisted of a "joint venture" in respect of the education of medical students of Schulich. Of note to employers, the Union was almost successful.

In reviewing the operations of the responding parties in this case, the Board found that the subsection 1(4) preconditions for a declaration had been established by the Union. However, the Board declined to exercise its discretion and make the declaration because doing so would give rise to "greater labour relations problems than it addresses".

Employers should learn from this case to exercise caution when entering into situations that could involve the associated or related employee provisions of the *Labour Relations Act*. Employers should be mindful of the risk that the Board can deem otherwise legally separate employers to be associated or related and therefore covered by a union's collective agreement, for labour relations purposes.

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