

Retail Shift Leaders Not Truly Managers, Says OLRB



The Ontario Labour Relations Board was recently tasked with determining whether the Shift Leaders of a Brampton, Ontario Sirens retail store exercised managerial functions within the meaning of the Ontario ***Labour Relations Act***, such that they should be excluded from the bargaining unit. After a comprehensive review of the day to day duties of the Shift Leaders, the OLRB **found** that they did not exercise sufficient managerial functions, resulting in their inclusion in the bargaining unit.

In this certification application, the United Food and Commercial Workers International Union, Local 175 (the Union) had included the Shift Leaders in its description of the bargaining unit, and Sirens management (the Employer) disagreed. The Employer took the position that pursuant to Subsection 1(3)(b) of the Act, the Shift Leaders were properly excluded as their function was managerial in nature. The Employer emphasized two (2) key features of the Shift Leader role in support of its position: (i) that Shift Leaders were responsible for checking the bags and purses of departing staff, and reporting any evidence of theft; and (ii) the Shift Leaders' authority to curtail an employee's shift when business was slow and to call employees in to work during busy periods.

After a comprehensive review of the day to day duties of the Shift Leaders, the Board ultimately concluded that the Shift Leader function was not managerial in nature. The OLRB's decision was informed by the following findings of fact:

- apart from enforcing compliance with policy and rules and deciding who to call in to work, the Shift Leaders had little to no impact on the economic lives of the staff;
- the Shift Leaders did not provide any formal training to staff;
- the status of Shift Leaders within the store was different from the staff, but that alone did not confer managerial status; and
- the vast majority of the Shift Leaders' work had nothing to do with supervising others. Rather, most of their time was spent performing the same duties as the staff, such as interacting with customers and selling merchandise.

For these reasons, the Board found that Shift Leaders were analogous to "lead hands" and "working forepersons" and were properly be included in the bargaining unit.

Our view:

This case provides useful insight when considering the appropriate composition of a bargaining unit in the retail environment. Also, given the similarity of the managerial exception for overtime in the Employment Standards Act, and the managerial exception discussed herein, this case may be of assistance when determining whether those occupying Shift Leader roles are eligible for overtime. We note that in the retail environment, Shift Leaders (or similarly situated positions) often represent a “grey area” with respect to overtime entitlement, and a review of the factors discussed above may be instructive for this purpose.

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