

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Bell Canada, 2011 OHSTC 1

Date: 2011-02-05
Case No.: 2011-04
Rendered at: Ottawa

Bell Canada, Appellant

and

Communications, Energy and Paperworkers Union of Canada, Intervener

Matter: An application for a stay of a direction

Decision: The stay of the direction is granted

Decision rendered by: Mr. Richard Lafrance, Appeals Officer

Language of decision: English

For the appellant: Ms. Maryse Tremblay, Counsel, Heenan Blaikie LLP

For the intervener: Ms. Micheline Blackburn, Communications, Energy and Paperworkers Union of Canada

REASONS

[1] This concerns an application for a stay of a direction filed on January 7, 2011, by Bell Canada. The direction was issued by Health and Safety Officer Jimmy Ammoun (HSO) on December 9, 2010.

Background

[2] On January 7, 2011, Ms. Tremblay, on behalf of Bell Canada, appealed the direction and requested a stay. The direction was issued by the HSO following his inspection of several work places in Bell Canada's Ontario West District.

[3] The direction issued to Bell Canada reads:

“As a result of contraventions found during that inspection, the undersigned health and safety officer has investigated and reviewed the activities of the current single health and safety committee responsible for the specific employer work places located in the Ontario municipalities of London, Sarnia, Windsor, Hamilton, St. Catharines and Brantford. The said health and safety officer has determined that the size of the operations covered by the existing committee precludes the effective functioning of that single health and safety committee established by the employer and the union to cover those work places.”

Therefore, you are HEREBY DIRECTED, pursuant to section 137 of the *Canada Labour Code*, Part II to establish individual work place health and safety committees in accordance with section 135 of the *Canada Labour Code*, Part II or if applicable to any individual work place, to appoint health and safety representatives in accordance with section 136 of the *Canada Labour Code*, Part II for the work places specified herein:

725 Colborne Street, London, ON
100 Dundas Street, Talbot Square, London, ON
211 Lochiel Street, Sarnia, ON
1149 Goyeau Street, Windsor, ON
110 King Street W, Hamilton ON
160 Bay Street N, Hamilton, ON
20 Hunter Street, Hamilton, ON
63 King Street, St. Catharines, ON
86 Market Street, Brantford, ON

[4] Taking into consideration the written submissions provided by Ms. Tremblay, I ordered a stay of the direction on January 12, 2011, until a decision on the merits of the appeal is rendered. Following are the reasons for the order.

Analysis

[5] Subsection 146(2) of the *Canada Labour Code* (The Code) states that:

146(2) Unless otherwise ordered by an appeals officer on application by the employer, employee or trade union, an appeal of a direction does not operate as a stay of the direction.

[6] I derive my authority from the Code, and must therefore exercise my discretion in a way that furthers the objective of the legislation i.e. the protection of the health and safety of employees.

[7] In the exercise of my discretion to grant a stay, I have applied the following criteria developed by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores*¹ as modified and adapted by the Occupational Health and Safety Tribunal Canada (OHSTC):

- 1) The applicant must satisfy the appeals officer that there is a serious question to be tried as opposed to a frivolous or vexatious claim.
- 2) The applicant must demonstrate that he would suffer significant harm if the direction is not stayed.
- 3) The applicant must demonstrate that should a stay be granted, measures will be put in place to protect the health and safety of employees or any person granted access to the work place.

Is the question to be tried serious as opposed to frivolous or vexatious?

[8] I agree with the arguments put forward by Ms. Tremblay, counsel for the appellant, that this is a question with health and safety ramifications and as such is neither frivolous nor vexatious. I believe that the outcome of a decision by an Appeals Officer may certainly affect the manner in which health and safety committee's are structured in the future. Consequently, I find that there is a serious issue to be resolved.

Will the applicant suffer significant harm if the direction is not stayed?

[9] On the second criteria, Ms. Tremblay contended that if the direction is not stayed, Bell Canada would have to fundamentally alter the Committee Structure to which the union has agreed and which has been in place without complaints for more that ten years. In order to comply with the direction, additional committees or representatives will have to be established and at least eight new committee members or representatives would have to be appointed. As well the various business unit concerned with this issue would have to ensure the availability of additional replacement employee members with specialized skill sets.

[10] To make such changes in the established structure, only to perhaps have to change it back to its original structure if the appeal of the direction is successful, would cause Bell Canada to suffer great and unnecessary inconvenience.

[11] Based on the all the above, I am convinced that Bell Canada would suffer significant harm if the direction is not stayed.

¹ [1987] 1 S.C.R. 110

What measures will be put in place to protect the health and safety of employees or any person granted access to the work place if the stay is granted?

[12] On this criterion, Ms. Tremblay affirmed that the status quo was the best possible way to assure the health and safety of the employees. The present structure has been in place for more than ten years and has always been approved by the Labour Program of Human Resources and Skills Development Canada. The present health and safety committee will continue to monitor the work places and do its monthly work place inspections.

[13] In addition, the union on behalf of the affected employee's consents to the present application for stay as indicated in a letter from Ms. Blackburn. She stated in that letter that the current functioning of the single committee is effective in covering all of the above-mentioned work places. Therefore, I believe that at the present time, issues regarding employee's health and safety will continue to be managed by the current health and safety committee.

Decision

[14] Consequently, the stay of the direction issued by HSO Ammoun to Bell Canada on December 9, 2010 is granted.

Richard Lafrance
Appeals Officer