



Canada Industrial Relations Board ● Conseil canadien des relations industrielles

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Declaratory Opinion

Telecommunications Workers Union and Telus Advanced Communications, a Division of Telus Communications Inc.; Telus Services Inc. and Telus Advanced Services Inc.; Telus Communications, a Division of Telus Communications Inc. and Telus Communications (B.C.) Inc.; Telus Management Services, a Division of Telus Services Inc.; Telecom Leasing Canada (TLC) Limited; and ISM Information Systems Management (B.C.) Corporation; Tele-Mobile Company/Société Tele-Mobile and TM Mobile Inc.

Joint applicants,

Board File: 26901-C
CIRB/CCRI Decision no. **415**
July 17, 2008

This declaratory opinion was written by Elizabeth MacPherson, Chairperson.

[1] On June 13, 2008, the above-cited parties jointly applied to the Canada Industrial Relations Board (the Board) for a declaratory opinion pursuant to section 15.1(2) of the *Canada Labour Code* (the *Code*). The question was formulated by the parties as follows:

Is TELUS under a *Code* obligation to provide to the TWU home telephone numbers and home email addresses of bargaining unit employees who are not presently members of the TWU?

[2] In *Ledcor Industries Limited*, [2003] CIRB no. 216, the Board indicated that it would be very cautious in deciding whether or not to issue a declaratory opinion. The Board set out criteria for the exercise of its discretion under subsection 15.1(2), namely that:

- (1) there is a valid labour relations purpose for the entire community;
- (2) the benefit outweighs any mischief; and
- (3) there is a solid factual background.

[3] Historically, requests for information similar to that at issue in this matter have come before this and other labour relations boards in the context of unfair labour practice complaints, and the union has indicated its willingness to place the issue before the Board in that manner, if necessary. However, the Board sees its role as one of endeavouring to assist the parties in establishing and maintaining constructive labour relations. To this end, the Board would prefer to deal with issues that have been jointly identified by the parties as an impediment to their relationship in a non-adversarial manner, rather than in the context of an after-the-fact complaint over unilateral action by either party that has inflicted further damage on the relationship. The Board will therefore be more inclined to use its powers under section 15.1(2) in cases involving a joint request by the parties for a declaratory opinion.

[4] Based on the materials submitted by the parties, the Board has determined that the criteria set out above have been met in this case, and that it is appropriate to issue a declaratory opinion in this matter.

I - Opinion of the Board

[5] The answer to the question is as follows:

Telus is under a *Code* obligation to provide to the TWU the home telephone numbers of all employees in the bargaining unit, whether or not they are presently members of the TWU, that

are in its possession, with the exception of telephone numbers that were provided to Telus on the basis of an express guarantee of confidentiality.

So long as the employer does not collect the home email addresses of employees in the bargaining unit for its own purposes, it is under no *Code* obligation to collect and disclose this information to the union.

II - Factual Background

[6] Pursuant to Article 6.02 of the collective agreement between the parties, Telus (the employer) provides the Telecommunications Workers Union (TWU or the union) with an alphabetical list of all employees covered by each appendix of the collective agreement once a month. According to the terms of the collective agreement, the list contains the name, birth date, identification number, status, seniority date, adjusted seniority date, home address, classification, location and rate of pay of each employee.

[7] The union submits that in addition to this information, it requires the home telephone number and home email address of all of the employees in the bargaining unit in order to meet and fulfill its statutory duties under the *Code*, as the exclusive bargaining agent for all employees in the bargaining unit. The union obtains this information directly from employees who choose to become members of the union when they complete the union's application for membership. However, it does not currently have easy access to the home telephone number and home email address of members of the bargaining unit who are not union members ("Rand members").

III - Parties' Positions

A - The Union

[8] The union argues that in order to fulfill its duties under the *Code*, namely the duty to bargain in good faith and the duty to fairly represent all employees in the bargaining unit, it must be able to communicate effortlessly with all employees in its bargaining unit, including non-members of the union. The union further submits that in order to carry out the statutory duties imposed on it, the union must be able to effectively communicate with all employees, and that this implies a concomitant duty upon the employer to provide it with the information it is seeking.

B - The Employer

[9] The employer sets out three reasons to support its position that it is under no obligation to disclose the employees' home telephone numbers or home email addresses to the union:

a) the employer states that the union has failed to articulate a legitimate reason for its demand for this personal contact information; that the union has not explained why the information that it is currently receiving is inadequate or has prevented the union from fulfilling its statutory duties; and that the union's statutory duties do not impose a legal duty on Telus to provide the union with the information it is seeking;

b) the collective agreement already sets out the information that the employer is obliged to provide to the union and for the Board to order the employer to provide the additional information that the union is now seeking would go beyond what the parties themselves have agreed would be required for the union to reasonably carry out its statutory obligations and would undermine the integrity of the collective agreement and the bargaining relationship; and

c) the employer states that it does not collect the home email addresses of its employees and does not maintain a record of such information in any of its corporate files or systems, and that it has no intention of collecting such employee information in the future. It argues that it cannot be under an obligation to disclose employee personal contact information that is not in its possession.

IV - Analysis and Opinion

[10] There is no express provision of the *Code* that obliges the employer to provide the union with the information that it is seeking. However, numerous decisions of this and other Canadian labour boards have held that the statutory obligations imposed on a union when it is certified as the bargaining agent also imposes an obligation on the employer to provide certain information to the union. The decision most frequently cited for this requirement is that of the Ontario Labour Relations Board (OLRB) in *The Millcroft Inn Limited* [2000] OLRB Rep. July/August 665, in which the OLRB stated:

30. The employer sees no contradiction in it having the names, addresses and telephone numbers of employees and yet advancing a right of privacy concerning that information in relation to the union. **The employer and the union are equal bargaining partners in their collective relationship. The employer is in no more preferential position in relation to the employees than is the union in the context of their collective bargaining relationship.** In that context, the employer is not entitled to greater rights in relation to the employees than is the union. **To the extent that the employer is entitled to know the names, addresses and telephone numbers of the employees, i.e., to the extent that their privacy rights to that information are compromised by the employer sharing it, so too is the union entitled to the information.**

31. A consequence of the union possessing exclusive bargaining status on behalf of the employees is that the union is placed in an equal bargaining position with the employer in its collective bargaining relationship. **To the extent that the employer has information which is of value to the union in its capacity to represent the employees (such as their names, addresses and telephone numbers), the union too should have that information.** The employees' privacy rights are compromised (no doubt legitimately) by the employer having details of their names, addresses and telephone numbers. The union's acquisition of that information would be no greater compromise, nor any less legitimate.

(emphasis added)

[11] The employer's first objection to providing the information is that the union has failed to articulate a legitimate reason for its demand for this personal contact information and has not explained why the information that it is currently receiving is inadequate or has prevented the union from fulfilling its statutory duties. With respect, this argument misapprehends the nature of the relationship between the employer, the union and the employees in the bargaining unit, and the entitlement to the basic personal contact information necessary for a union to carry out its numerous responsibilities under the *Code*.

[12] For the purposes of this decision, the Board considers "basic personal contact information" to consist of the name, home address and home telephone number of an employee. The issue of home email addresses will be dealt with later in this decision.

[13] The personal information about employees that is collected by the employer is not proprietary to the employer. If such information can be said to have an "owner", that owner is the individual employee. An employee supplies this information to the employer in the context of the employment relationship, which in a unionized environment is a three-way, not a two-way relationship. The purpose for which basic personal contact information (i.e., the employee's name, home address and home telephone number) is collected is so that those who need to make contact with the individual regarding employment-related matters are capable of doing so. This purpose applies as much to the union that represents the employees as it does to the employer. Given the restrictions on union contact with employees during working hours, it may be said that the union has an even greater requirement for access to this basic personal contact information.

[14] At paragraphs 20 to 29 of its decision in *The Millcroft Inn Limited, supra*, the OLRB sets out the numerous statutory obligations that a union assumes once it is certified as a bargaining agent under the *Ontario Labour Relations Act* (OLRA). Unions certified under the *Code* have the same obligations as those certified under the OLRA, and therefore the same requirement for employees' basic personal contact information set out in that decision.

[15] Accordingly, the union is not required to persuade or convince the employer that it needs basic personal contact information for the employees in the bargaining unit. It has an entitlement to this basic personal contact information by virtue of its status as the accredited bargaining representative for every employee in the bargaining unit. However, the union is restricted in its use of this information - it may only use the information for the purpose for which it was collected, namely matters related to the individual's employment and the fulfillment of the union's statutory obligations in regard to that employment. Furthermore, the employer may be entitled to withhold certain basic personal contact information (for example, an unlisted telephone number) if that information was provided to the employer by the employee based on an express guarantee of confidentiality.

[16] The employer's second argument is that the collective agreement already sets out the information that the employer is obliged to provide to the union and for the Board to order the employer to provide the additional information that the union is now seeking would go beyond what the parties themselves have agreed is required for the union to reasonably carry out its statutory obligations, and would undermine the integrity of the collective agreement and the bargaining relationship.

[17] The parties' agreed statement of facts indicated that the current provision of the collective agreement that sets out the employer's obligation to provide an alphabetical list of all employees covered by the collective agreement to the union monthly, including the employees' name and home address, derives from a collective agreement between the union and a predecessor employer, BCTel. They agree that the TWU/BCTel provision had been in place for a long period of time. No explanation was provided as to why parties who are engaged in the telecommunications industry would not have included the employees' home telephone numbers on the list of information that the employer provides to the union. The employer does not deny that it collects employees' home telephone numbers.

[18] Given our finding that the union has a *Code* entitlement to bargaining unit members' basic personal contact information, the Board must ask itself whether the union gave up or waived its right to access to bargaining unit members' home telephone numbers when it agreed to what is now Article 6.02 of the collective agreement.

[19] In the Board's view, the answer to this question must be no. The Board's jurisprudence (see *Monarch Transport Inc. and Dempsey Freight Systems Ltd.*, [2003] CIRB No. 249; and *Bank of Canada*, [2007] CIRB No. 387) clearly recognizes the right of a certified bargaining agent to basic personal contact information about employees that is collected by the employer as part of the employment relationship. Therefore, any collective agreement provision that provides for less than the statutory entitlement is unenforceable. Rather than undermining the integrity of the collective agreement and the bargaining relationship, as the employer asserts would happen, requiring the employer to provide the union with the home telephone numbers of bargaining unit members is simply a matter of ensuring that the parties' situation is consistent with the current state of the jurisprudence. The Board therefore concludes that the TWU is entitled to have the home telephone numbers of all of the employees in the bargaining unit that it represents, including those of Rand members.

[20] The situation is somewhat different with respect to employees' home email addresses. The employer argues that it cannot be under an obligation to disclose employee personal contact information that is not in its possession. The employer states, and the Board accepts, that it does not currently collect the home email addresses of its employees and does not maintain a record of such information in any of its corporate files or systems. Although in a technological age, an employee's home email address could be considered as useful personal contact information, the Board will not order an employer to collect such information solely for the purpose of providing it to the union. If the employer does not require the home email address of employees for the purposes of the employment relationship, then the union has no right to require the employer to collect this information solely for the union's benefit.

[21] Accordingly, the Board finds that the employer is obliged to provide the union with the home telephone numbers of all employees in the bargaining unit that are in its possession, with the exception of those telephone numbers that were provided to it on the basis of an express guarantee of confidentiality. So long as the employer does not collect the home email addresses of employees in the bargaining unit for its own purposes, it is under no statutory obligation to collect and disclose this information to the union.

Elizabeth MacPherson
Chairperson