

## LABOUR &amp; EMPLOYMENT

# Employers' group can't compel multi-unit bargaining at one table

An employers' organization cannot force a trade union to negotiate a single collective agreement covering multiple employers at one bargaining table.

This was the conclusion of the Alberta Labour Relations Board in *School Boards Employer Bargaining Authority*, [2007] A.L.R.B.D. No. 108.

The Alberta Teachers' Association (ATA) is the bargaining agent by certification or voluntary recognition for 62 public school jurisdictions in Alberta. Fifty-four Locals of the ATA cover all 62 school boards. There is a single collective agreement relating to each of the Locals.

While collective bargaining commences at the local level and each Local engages in collective bargaining with its school board through a local negotiating committee, the certificate or voluntary recognition is in the name of the ATA, the provincial association. Furthermore, the ATA may become involved in the bargaining through appointment of the representative of the bargaining agent, who then supersedes the powers of the Local negotiating committee. Also, the formal collective agreement is executed by the ATA, not the Local.



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Twelve school boards joined a newly formed employers' organization called the School Boards Employer Bargaining Authority ("SBEBA") to compel the ATA to negotiate a single multi-unit collective agreement at one table in place of the individual agreements that had previously been negotiated at multiple tables.

This case gave rise to the following questions: What are the powers of an employers' organization? Can a single bargaining agent be compelled to negotiate multiple collective agreements at one bargaining table? There is very little guiding authority on this issue across the country.

In *Continuing Care Employers' Bargaining Association*, [2000] A.L.R.B.D. No. 55, the Alberta Labour Relations Board held that an attempt by an employers' organization to compel a group of Locals of the United Nurses of Alberta to negotiate a single agreement at one table constituted bargaining in bad faith. Unlike the ATA, the bargaining certificates were held in the names of the UNA Locals.

The board held that the fact that the employers' organization was authorized to bargain by a number of employers did not permit or empower the employers' organization to compel each of the Locals with whom it was to bargain to unite or join together in one group to

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engage in collective bargaining. The board held that in most instances, it had no power to oblige bargaining agents to band together for the purposes of collective bargaining with an employers' organization.

In other words, while employers were free to authorize an employers' organization to bargain on their behalf, the Locals were not required to create a similar structure in response.

SBEBA sought to distinguish the *Continuing Care* decision on the basis that the bargaining agent was the same trade union for each of the employers represented by the employers' organization. It argued that since the ATA was the bargaining agent for all of SBEBA's members, it was not seeking to force a number of bargaining agents to group together for the purpose of collective bargaining. SBEBA also argued that once an employers' organization is formed, it steps into the same position as the employer. Since an employer and the bargaining agent negotiate at one table to arrive at one agreement, so too must the employers' organization and the bargaining agent when it is the same trade union for all the members of the employers' organization.

The board determined that the formation of an employers' organization does not trump the exclusive authority granted to a bargaining agent to bargain on behalf of the employees in the unit for which it is certified. The fact that the bargaining agent was the same for all employers in the employers' organization did not mean that individual employers

or their employers' organization could oblige that trade union to bargain a single collective agreement covering all the employers.

As a result, the board ruled that it was without legislative authority to direct that the bargaining between the ATA and SBEBA take place other than on a single unit basis.

The board also addressed the formation of an employers' organization, concluding that formation continues to the point "at which the entity has achieved the purpose for which it was intended." In this case, SBEBA's formation was found to extend to the date it had both given the ATA notice to bargain and responded on behalf of its members to the ATA's notices to bargain.

*School Boards Employer Bargaining Authority* reinforces the right of employers to join and bargain through an employers' organization. While an employers' organization can seek to bargain identical collective agreements for its members, it can only do so at multiple bargaining tables resulting in separate agreements. ■

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