



## Legal Corner

By  
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# Labour relations board reviews vote distribution

The Ontario Labour Relations Board (OLRB) recently issued a decision clarifying the obligations a provincial Employer Bargaining Agency (EBA) has to its member groups.

In Sarnia Construction Association and Operating Engineers Employer Bargaining Agency, the board concluded that, absent evidence of arbitrariness, the board could not alter the allocation of votes within an Employer Bargaining Agency and could not give votes to an organization that was not designated as a member of the EBA.

### The dispute

The Operating Engineers EBA is charged with the responsibility of negotiating the Operating Engineers ICI Provincial Agreement. The Sarnia Construction Association (SCA) is not a member of the EBA, and as such does not officially have a vote when it comes to acceptance or rejection of the provincial agreement. However, the SCA is a member of the Construction Labour Relations Association of Ontario (CLRAO), which in turn is a member of the EBA. CLRAO has five votes within the EBA (of a total of 32 votes) which it casts following a vote among its 14 member associations.

The SCA argued that because of its unique role within the sphere of provincial labour relations, it should be allocated votes directly. More specifically, since employees of its members work a substantial number of hours under the provincial agreement, the SCA argued it should be entitled to specific representation (in the form of approximately four votes) when it came to voting on amendments to the provincial agreement. The SCA argued that failure to allocate the votes proportionally meant that the EBA had violated its obligation under the Ontario Labour Relations Act (the Act) to treat all of its members in a manner that was not arbitrary, discriminatory, or in bad faith.

Other organizations which were direct members of the EBA also intervened (the Crane Rental Association and Earth Movers). In essence, they too argued that the vote allocation was not fair and should be reallocated in their respective favours.

Ultimately, all of the claims failed.

### Obligations of an EBA to SCA

Under the Act, because an EBA is mandated by statute as the exclusive representative of employers in negotiating a Provincial Agreement, an EBA owes an obligation to each of its members to represent them fairly.

However, in the case of the SCA, it was not a member of the EBA; it was a member of a member of the EBA. In the circumstances, the Board found that the EBA owed no direct obligation to the SCA. To the contrary, by imposing such an obligation on the EBA, this would indirectly make the SCA a member of the EBA, something only the minister of labour has the power to do.

### To other direct members

The board also refused the request of the Crane Rental Association and Earth Movers to alter the voting structure.

The board held that, although it may have structured the EBA votes differently, these members were unable to demonstrate that the relative voting strengths of the various members had "become so divorced from any lawful, legitimate or rational basis on which bargaining is performed that it can be described as arbitrary," to use the board's wording. That is, the board confirmed that when seeking to change the relative voting structure within an EBA the test is very difficult to meet.

This is an important case for EBA's and their members. It provides a thorough review and commentary of an EBA's duty to act fairly to its members, as well as a sense of when the board may find that obligation to have been breached. Every EBA would be well advised to consider the board's decision within the context of their own practices and relationships with members.

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