

In the matter of an Arbitration

Between

PSAC-UNDE Local 639

and

Toure Building Solutions

3 collection grievances

Second Interim Decision

The union and the employer are bound to a collective agreement covering workers at a garrison in Petawawa ON. It is alleged that Toure stopped paying wages, benefits and payments into a social assistance fund contrary to the collective agreement. In the result 3 grievances were filed. The union subsequently alleged that a company called Dexterra stood in the shoes of the employer. The union has filed extensive submissions as to why I should declare Dexterra bound to the collective agreement. Essentially the union argues that Dexterra is the successor employer to Toure within the meaning of section 69 of The Labour Relations Act. Dexterra has responded by raising a timeliness issue. It alleges that the grievances were referred to arbitration out of time and relies on the *Leisureworld* line of cases and in the result, I lack jurisdiction to adjudicate the grievances.

Dexterra states that "...it will not seek to intervene until your (my) statutory jurisdiction is addressed". Further, Dexterra's position is "to us to await your decision and our attendance at a hearing is not presently required." The difficulty is that Dexterra is currently not a party to the proceedings and therefore currently has no standing to raise issues and lead evidence. The foundational issue in all labour arbitrations is whether the employer is bound to the collective agreement. Usually, it is conceded that the employer is bound, or a signed collective agreement is entered into evidence to prove an employer is bound.

The union, in the case at hand, needs to establish first that Dexterra is bound and that I have jurisdiction over Dexterra. Dexterra has standing to address this issue; that is, to address its objection to my jurisdiction to make any decision affecting or binding Dexterra. If it is established that Dexterra is bound, then Dexterra will be bound by any subsequent decision I might make, regardless of whether it chooses to participate in any further proceedings.

Dexterra's timeliness objection is premature since it has not yet been established that I have the jurisdiction to entertain such an objection as brought by Dexterra. If Dexterra is not bound, and does not consent to be bound, then it has no standing to bring the

timeliness objection or to participate in any further part of this arbitration proceeding. Then the grievances would proceed only as against Toure.

These matters will be set down for hearing to deal first with whether I have jurisdiction over Dexterra, and whether Dexterra is bound to the collective agreement by operation of s. 69 of the Act. As noted, Dexterra has standing to raise this jurisdictional objection and to participate in the hearing on this issue.

The issue of my jurisdiction over Dexterra will be set down for hearing in accordance with the availability of the Union and Dexterra. As Toure has chosen not to participate, it will not be canvassed for its availability for the hearing. I will however forward a copy of this decision to it.

Dated this 24th day of January 2025.

Michael McCreary

Arbitrator McCreary