



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Matthew Barton

Applicant

-and-

**City of Greater Sudbury, Brian Renwick,
Nick Benkovich and Patrick Thompson**

Respondents

-and-

Canadian Union of Public Employees

Intervenor

INTERIM DECISION

Adjudicator: Naomi Overend
Date: February 9, 2011
File Number: 2010-06103-I
Citation: 2001 HRTO 281
Indexed as: **Barton v. Sudbury (City)**

[1] The applicant filed this Application on June 29, 2010, alleging discrimination in membership in a vocational association and employment on the basis of marital status, association and reprisal contrary to the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”). The applicant, who is a member of the Canadian Union of Public Employees, Local 4705 (“CUPE”), filed grievances with respect to the allegations of harassment and discrimination found in his Application.

[2] The Tribunal issued an Interim Decision, 2011 HRTO 76 (CanLII), seeking submissions from the parties on the question of deferral and whether the applicant wished to pursue the allegation of discrimination in the area of vocational association. The applicant advised the Tribunal that he did not wish to pursue the allegation that he had been discriminated against in the area of vocational association, and that aspect of his Application is dismissed.

[3] With respect to the issue of deferral, the applicant continues to oppose the respondents’ request to defer the Application pending the conclusion of the grievances and provided submissions on the potential loss of his certification to work in the water/wastewater field. The respondents provided lengthy submissions in response and the applicant provided further submissions in response to the respondents’ submissions. CUPE did not file any submissions.

DECISION AND ANALYSIS

[4] The Tribunal may defer consideration of an application, on such terms as it may determine, and on its own initiative (Rule 14.1). The Tribunal has stated that deferral is not automatically invoked simply because the parties are involved in other legal proceedings. It is a discretionary measure that the Tribunal exercises on the basis of the circumstances in each case. Absent good reason, applicants and respondents before the Tribunal are entitled to expect the Tribunal to take timely action to resolve complaints of discrimination brought before it.

[5] The Tribunal has generally deferred applications where there is an ongoing grievance under a collective agreement based on the same facts and human rights issues. In explaining this approach, the Tribunal has referred to the fact that the Supreme Court of Canada has affirmed that grievance arbitrators have not only the power but also the responsibility to implement and enforce the substantive rights and obligations of human rights and other employment-related statutes as if they were part of the collective agreement (*Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42 (CanLII)).

[6] The Supreme Court thus confirmed that human rights tribunals are not the only decision-makers that can decide human rights claims. Where the parties are already engaged in a concurrent legal proceeding in which they are raising the same human rights issues before a decision-making body with the authority to make determinations about those issues, the orderly administration of justice favours deferral to the other proceeding. In such a scenario, the Tribunal's normal approach is to defer to the other proceeding.

[7] In this case, the applicant opposes deferral of his Application because he states that if the grievances go to arbitration, it will be one to two years before the case is heard and a decision is made. The applicant submits that he is in danger of losing his certification in two areas, which expire on June 30, 2011, if he is forced to go to arbitration as opposed to having the Tribunal adjudicate his Application.

[8] The respondents states that CUPE could expedite the process by referring the grievances to arbitration under s. 49 of the *Labour Relations Act, 1995*, which would result in an arbitration being commenced within 21 days of the referral. They also state that the employer's formal response to the grievances is due prior to the end of January 2011 at which time CUPE would be in a position to refer the matters to arbitration (should the response not be satisfactory to the applicant and/or CUPE).

[9] With respect to the certification issue, the respondents submit that there is some

flexibility with respect to the deadlines, and that, in fact, the applicant has the necessary prerequisites already to be recertified (or can obtain them) before the expiration of his current certification. The applicant takes issue with the respondents' position on recertification in his response to the respondents' submissions on deferral.

[10] It is not necessary for the Tribunal to determine whether, in fact, the applicant's certification is in jeopardy, because the applicant's belief that his Application can be determined and a remedy imposed in the necessary time period is not realistic. In the absence of a decision to expedite, the Tribunal will not schedule a hearing prior to June 30, 2011. Moreover, the applicant's submissions on this point suggest that two further things would also have to occur prior to the deadline: (1) a decision in the applicant's favour would have to be issued; and (2) he would have to complete the work and educational components of the certification.

[11] In view of the above, the Tribunal is of the view that deferral to the grievance process is appropriate. The Application will be deferred pending the completion of the grievance process.

[12] The Tribunal directs the parties' attention to Rules 14.3 and 14.4 which outline the procedure by which the Application may be brought back on after the conclusion of the grievance process. The Union's Request to Intervene and the applicant's Request for Order to amend the Application will be dealt with by the Tribunal should the Application be brought back on.

[13] I am not seized of this matter.

Dated at Toronto, this 9th day of February, 2011.

"Signed by"

Naomi Overend
Vice-chair