

ONTARIO LABOUR RELATIONS BOARD

0603-02-M Toronto Civic Employees' Union Local 416, Applicant v. **City of Toronto**,
Responding Party.

BEFORE: Kevin Whitaker, Chair.

DECISION OF THE BOARD: June 23, 2002

1. This is an application for reconsideration of the Board's decision in this matter dated June 18, 2002, in which the Board determined an essential services agreement ("ESA") pursuant to section 9 of the *Ambulance Services Collective Bargaining Act*, S.O. 2001, c.10 (the "ASCBA"). The application for reconsideration is brought by the City.

2. On June 21, 2002, the Board issued a decision immediately following a consultation with the parties dealing with the application for reconsideration. In that decision, the Board allowed the application in part and amended the decision of June 18, 2002 by directing the parties to negotiate a protocol for the deployment of ambulance workers required during an unanticipated emergency, "including how the parties will deal with such circumstances where the employer believes that the number of ambulance workers required exceeds the limit of 10% (ten percent)..." as provided for in paragraph "7" of the decision.

3. The parties have been unable to negotiate a deployment protocol in accordance with the Board's direction and a consultation was convened today to adjudicate and determine such a protocol. The parties will be in a strike/lockout position at midnight tonight.

4. Before disposing of the remaining issues, it is necessary to describe what it is that the Board has done to date. In the decision of June 18, 2002, the Board determined those matters that must form part of an ESA pursuant to the statutory requirements set out in section 4(1) of ASCBA. These included a determination that Paramedics were the only employees required to perform essential ambulance services and that certain specified numbers of Paramedics were required to perform such work at certain times. Further, the Board had to "identify" as required by section 4(1)(d) of the ASCBA, the "additional ambulance workers who will be subject to being called in to work under section 5" of the ASCBA which deals with "unanticipated emergencies". These employees were so "identified" by describing them as a percentage of ambulance workers required to perform essential ambulance work at certain times.

5. One of the underlying concerns in the application for reconsideration is that by identifying the number of employees required in an unanticipated emergency as a percentage of employees otherwise required, the employer may be unable to adequately deal with unanticipated emergencies that might require a number of ambulance workers in excess of the determined percentage. There was really no dispute that however unlikely, such circumstances might occur and that a mechanism was needed to ensure that such a catastrophic event could be managed as best as possible.

6. It is apparent that the parties are unable to agree on such a mechanism for different reasons. The union is particularly concerned that the employer will proceed to use the additional

ten percent and perhaps beyond that, for what the union would consider to be “business as usual” requirements. For this reason, the union would like to see amongst other things, a “Board defined” description of what is meant by the term “unanticipated emergency”, and a deployment protocol which in essence requires the employer to seek the Board’s leave before assigning ambulance workers in excess of the ten percent limit. The employer on the other hand is concerned that if it has to seek such leave, it will not be able to respond in a timely fashion if a significant unanticipated emergency were to occur. The employer resists having the Board define the term “unanticipated emergency” in the absence of a statutory definition and concrete circumstances in which such an exercise might be required to resolve an actual dispute.

7. The appropriate result in this case is one which restricts the employer’s ability to use ambulance workers to actual cases of unanticipated emergencies, but permits the employer to adequately respond to such circumstances when necessary, without procedural delay caused by litigation. This balance reflects the underlying statutory scheme which seeks to ensure that ambulance workers have a real right to strike, while maintaining the employer’s ability to meet certain minimum “essential” operational needs.

8. While it is true, as the employer points out, that statutory terms are best defined in the context of a dispute with concrete facts, there are compelling reasons in this case for providing the parties with some guidance as to how the Board understands the term “unanticipated emergency”. Not only would this help the parties to move forward in the administration of the ESA, but it may assist prospectively in the saving of life and limb.

9. Without wishing to unduly confine the term “unanticipated emergency”, it is fair to say that in the context of ambulance work, the term undoubtedly has to mean something other than “business as usual”. The term “essential services” (a broader category of work than “unanticipated emergency”) in the context of the ambulance work performed in this bargaining unit encompasses something less than “business as usual”. Essential services in ambulance work includes the full range of the “anticipated” types of “emergencies” that make up a significant portion of the work. “Unanticipated emergencies” is far narrower. As the employer asserts in paragraph 4 of its original response to the application, ambulance services are delivered by what is called the “Toronto Emergency Medical Service” or “TEMS”. It is called an “Emergency Service” for good reason. Given the fairly exhaustive materials filed by the parties which describe the work of TEMS, one must conclude that “emergencies” are in large part themselves, what constitutes business as usual. If “unanticipated” is to be given any meaning in section 5 of the statute, it has to mean, at the very least, that small category of emergencies which would not normally be part of the day-to-day business of TEMS. In other words, the additional essential services contemplated by section 5 of ASCBA are those which, in the normal course, would not arise. That is why they would not be “anticipated”.

10. With these comments in mind then, it is apparent that the use of the additional ten percent should be confined to those emergencies which seasoned professionals would not anticipate in the day-to-day management of TEMS. It is quite obvious that TEMS is able to accurately predict in the normal course, the usual required staffing levels. That is precisely the exercise that results in the staffing numbers described in the employer’s materials. The parties should understand that this is the analysis that the Board is likely to adopt should it be necessary to define these terms in future litigation.

11. Having provided some direction to the parties as to the Board’s understanding of the term “unanticipated emergency”, the next question is what process will permit the employer to adequately respond to unanticipated emergencies where the employer may need more than the

specified ten percent? As indicated earlier, the Board is concerned that this process itself not serve to frustrate the employer's ability to respond to such circumstances should they occur.

12. The union has objected to the employer's proposed process which permits it to assign ambulance workers in excess of ten percent and then to have the Board deal with any disputes raised by the union. In part, the union relies on the submission that the Board has already determined the numbers to be used under section 5 of ASCBA and so is without further jurisdiction to permit the use of additional ambulance workers in the same statutorily-defined circumstances. There is merit to this position and the Board confirms that the ten percent level has been determined and will not be revisited.

13. In the circumstances, and having regard to the submissions of the parties, it is appropriate to further amend the decision of the Board in this matter of June 18, 2002 to include the balance of this paragraph. The employer shall advise the union when it deploys ambulance workers in excess of the numbers specified in paragraph "5". Such advice shall include a description of the unanticipated emergency and an estimate of the numbers of additional ambulance workers required over those numbers in paragraph "5". This advice shall be given immediately upon the deployment of such ambulance workers and the City shall provide pagers to two persons designated by the union for these purposes in order to facilitate such notice. Ambulance workers deployed by the employer for unanticipated emergencies shall report for duty and the union shall take no steps to prohibit such deployment. The employer shall provide the union with both "initial" and "end" schedules with respect to the assignment of essential ambulance workers described in paragraph "5".

14. If after the union receives notice that the employer has deployed ambulance workers for an unanticipated emergency and takes the position that the deployment is inconsistent with the ESA, the union will advise a designated officer of the Board who will then forthwith arrange a consultation on an expedited basis. The consultation will be considered by the Board to be an application within Board File No. 0603-02-M by the union for enforcement of the ESA pursuant to section 11 of ASCBA. If as part of such an application the union takes the position that the employer has exceeded the ten percent limit described in paragraph "7" of the Board's decision in this matter of June 18, 2002 and the Board so finds, the employer will be permitted during the consultation to seek an amendment of the ESA pursuant to section 10 of ASCBA in order to accommodate the circumstances of the assignment of ambulance workers. The parties will not be required to file any pleadings in these applications and should be prepared to deal with the matter by telephone conference if so directed by the Board. The Board will have a designated adjudicator available to the parties to deal with such applications on a twenty-four hour, seven day a week, basis for the duration of any work stoppage. Attached to copies of the decision provided to the parties is a schedule of contact phone numbers for purposes of the applications described in this paragraph.

"Kevin Whitaker"

for the Board