

Re Borough of Scarborough and Scarborough Fire-fighters'  
Association, Local 626, International Association of  
Fire-fighters et al.

26 O.R. (2d) 298  
104 D.L.R. (3d) 748

ONTARIO  
HIGH COURT OF JUSTICE  
DIVISIONAL COURT  
OSBORNE, CALLAGHAN AND TRAINOR, JJ.  
3RD OCTOBER 1979.

Labour relations -- Arbitration -- Jurisdiction of board of arbitration -- Whether board of arbitration has jurisdiction to consider job descriptions under statutory grant of jurisdiction to arbitrate disputes relating to working conditions -- Fire Departments Act, R.S.O. 1970, c. 169, s. 5.

A board of arbitration was convened pursuant to the Fire Departments Act, R.S.O. 1970, c. 169, to resolve an issue relating to job descriptions which the parties had been unable to settle through collective bargaining. Section 5(1) of the Act gave the board jurisdiction to resolve disputes relating to working conditions. The board issued an award in which it concluded that the job description of first class fire-fighters should not include duties relating to routine maintenance of the fire station.

On an application to quash the award, held, the application should fail. In interpreting the words "working conditions" in s. 5(1) of the Act, one must consider the over-all scheme whereby fire-fighters are made available for community protection, but are entitled to bargain collectively for certain conditions of employment. Certain duties and procedures are specifically set by the Act and are therefore impliedly

withdrawn from the collective bargaining process. In using the general term "working conditions", the Legislature intended the full-time fire-fighter, subject to those specified exceptions, to have a reasonable role in determining matters relating to employment. Job description is one working condition which may be the subject of collective bargaining.

Per Osborne, J., dissenting: The words "working conditions" should be given their ordinary meaning. A job description sets out what work an employee will be required to do. The term "working conditions" refers to the circumstances under which the assigned work is to be performed. The description of the jobs of first class fire-fighters does not fall within the jurisdiction of a board of arbitration under s. 5(1) of the Act.

[Re Metropolitan Toronto Board of Com'rs of Police and Metropolitan Toronto Police Ass'n (1975), 8 O.R. (2d) 65, 57 D.L.R. (3d) 161; Re Sudbury Regional Board of Com'rs of Police and Sudbury Regional Police Ass'n et al. (1976), 13 O.R. (2d) 563, 71 D.L.R. (3d) 624; Re Town of Dryden and Dryden Police Ass'n, [1973] 1 O.R. 619, 32 D.L.R. (3d) 21, consd; Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp., [1979] 2 S.C.R. 227, 97 D.L.R. (3d) 417, 25 N.B.R. (2d) 237, 26 N.R. 341, refd to]

APPLICATION for an order by way of judicial review to quash the award of a board of arbitration.

H. Lorne Morphy, Q.C., for applicant.

Ian G. Scott, Q.C., for respondents.

OSBORNE, J. (dissenting):-- I must respectfully dissent from the judgment of my brother, Mr. Justice Callaghan, as concurred in by Mr. Justice Trainor.

The history of this matter has been thoroughly and accurately set forth by Callaghan, J. I do not, therefore, propose to repeat it.

The issue to be determined on this application is whether the board of arbitration under the Fire Departments Act, R.S.O. 1970, c. 169, has jurisdiction to deal with the job description of a first class fire-fighter. The board of arbitration under the Fire Departments Act has jurisdiction to deal with "remuneration, pensions, or working conditions".

The award of the board of arbitration provides a job description for a first class fire-fighter. This was accomplished by the board in two ways. At pp. 10 and 11 of the award (record, pp. 16-7) positive duties of a first class fire-fighter are set forth. At p. 11 of the award, undertakings that are not to be the responsibility of a first class fire-fighter are set forth. Thus, the board of arbitration has purported to deal with the job description of a first class fire-fighter by describing what a first class fire-fighter is required to do, and also by describing what a first class fire-fighter is not required to do. This was all accomplished under the general heading of job description, as found on p. 3 of the award (record, p. 9).

In dealing with job descriptions in general, the board of arbitration did so over the objection of counsel for the borough. Simply put, the borough's counsel contended that the board of arbitration had no jurisdiction to deal with job descriptions. The conclusion of the board of arbitration was "... that the question of 'job descriptions' formed part of working conditions and working conditions were the object of negotiation and arbitration under The Fire Departments Act" (award, p. 4 -- record, p. 10). It is, therefore, clear that the board of arbitration concluded that the concept of job description was included within the necessarily broader concept of working conditions.

Although the applicant's position is focused on the four undertakings that the award specifies are not to be among the responsibilities of a first class fire-fighter, the applicant

challenges the board of arbitration's jurisdiction in dealing with any aspect of job description.

Unless the general scheme of the Fire Departments Act requires otherwise, the words "working conditions" as used in that Act should be given their plain, ordinary meaning. It is, therefore, necessary to consider, in a primary way, the statutory scheme established by the Legislature for firemen. Mr. Scott in his argument suggests that as fire-fighters have been denied access to the Labour Relations Act, R.S.O. 1970, c. 232, and as fire-fighters have been thereby denied the right to strike, the words "working conditions" should be given the broadest possible scope. I trust in setting out the above I am not doing an injustice to that branch of Mr. Scott's able argument.

I agree with Mr. Morphy's submission, the effect of which is that there is no justifiable reason why the words "working conditions" as used in the Fire Departments Act should not be given their plain, ordinary meaning. I am not convinced that the scheme of the Fire Departments Act, even if given an interpretation most favourable to the respondent, is justification for expanding the plain meaning of the words "working conditions". Further, I recognize that in considering the broad issue as to whether the board of arbitration has exceeded its jurisdiction, this Court should not strain to find that the jurisdiction given to the board of arbitration under the Fire Departments Act has been exceeded: see *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, unreported decision of the Supreme Court of Canada, dated March 30, 1979, Dickson, J. [since reported [1979] 2 S.C.R. 227, 97 D.L.R. (3d) 417, 25 N.B.R. (2d) 237]. If, however, the excess of jurisdiction is clear, it cannot, and should not, be ignored.

What, then, is the meaning to be ascribed to the words "working conditions" and to the words "job description"? Out of the answer to that question will emerge the resolution of what I consider to be the basic issue on this application.

In my opinion the words "working conditions" refer to the

circumstances under which work is to be performed. Working conditions as a concept assumes the existence of the work. The words "job description", in the context of this application, refer and relate to the work which a first class fire-fighter will be required to do (and in this case, not do). The concepts embraced by the words "working conditions" and "job description" are different. While there may in some instances be an overlapping between working conditions and job description, I conclude that in this case job description is not included within the ambit of working conditions as referred to in the Fire Departments Act. Thus, the description of the jobs that first class fire-fighters will be required to do, or not do, as set forth in para. 9(i) of the award, does not properly fall within the jurisdiction of the board of arbitration.

In the cases of *Re Metropolitan Toronto Board of Com'rs of Police and Metropolitan Toronto Police Ass'n* (1975), 8 O.R. (2d) 65, 57 D.L.R. (3d) 161; *Re Sudbury Regional Board of Com'rs of Police and Sudbury Regional Police Ass'n et al.* (1976), 13 O.R. (2d) 563, 71 D.L.R. (3d) 624, and *Re Town of Dryden and Dryden Police Ass'n*, [1973] 1 O.R. 619, 32 D.L.R. (3d) 21, working conditions, as referred to in somewhat similar terms in the Police Act, was held to encompass the issues of two men in a cruiser, and promotions. The Courts' conclusions in those cases are, however, not inconsistent with what I consider the meaning of working conditions to be. Having, or not having, two police officers in a cruiser assumes the existence of the work, and sets forth as a condition of doing that work in a given environment, the number of men that will at one time be available to discharge the work. The work is the same; the circumstances under which it is to be done may vary. Here, by way of useful example, the board of arbitration specified as part of its award that a fire-fighter does not have to participate in the washing of walls and ceilings within fire halls once a year (see award, p. 5 -- record, p. 11); this goes far beyond the issues raised in *Re Metropolitan Toronto Board of Com'rs of Police and Metropolitan Toronto Police Ass'n*, supra; *Re Sudbury Regional Board of Com'rs of Police and Sudbury Regional Police Ass'n*, et al., supra, and *Re Town of Dryden and Dryden Police Ass'n*, supra, and far beyond what I

consider a reasonable definition of working conditions to be.

Accordingly, I am of the opinion that para. 9(i) of the award of the board of arbitration should be quashed. I would grant costs of this application to the applicant.

CALLAGHAN, J.:-- This is an application for an order by way of judicial review quashing para. 9(i) of the award of a board of arbitration, dated April 28, 1978. The board was convened pursuant to the provisions of the Fire Departments Act, R.S.O. 1970, c. 169 ("Act"), to resolve several outstanding issues in relation to the collective agreement between the applicant and the respondent association for the calendar year 1977. The issue relevant to this application related to the question of "job descriptions". The applicant challenges the award of the board in so far as it purports to determine the job description for a full-time fire-fighter for purposes of the collective agreement.

At the conclusion of the hearing, the board issued an interim award relating to the salaries of first class fire-fighters. As part of the interim award, it directed the parties to attempt to reconcile their views on the issue of job descriptions. The parties failed to come to any agreement on this issue as the representative of the applicant took issue with jurisdiction of the board to consider the question of job descriptions. The board, noting this objection, was "unanimously of the view that the question of 'job descriptions' form part of working conditions and working conditions were the object of negotiation and arbitration under The Fire Departments Act" (record, p. 10).

The board then considered argument presented by the parties in relation to job descriptions. It was agreed that, if a job description could be determined for a first class fire-fighter, the parties themselves would achieve agreement upon the job descriptions for other grades or ranks. The respondent association presented a draft job description for that classification as did the applicant.

The board convened a hearing on April 4, 1978, in relation to

this issue and the parties reached agreement upon the language of the description for a first class fire-fighter, except with respect to certain maintenance tasks presently assigned to fire-fighters and which the respondent association asked to have excluded from the job description. These were as follows:

- (a) The washing of walls and ceilings within the fire halls once a year;
- (b) The cleaning of administrative and secretarial offices in the main fire hall upon a daily basis;
- (c) The removal of snow from the fire department properties as required; and,
- (d) The maintenance of lawns and shrubs at fire halls (once or twice a week).

The board reviewed the evidence presented to it with reference to these matters and, in its final award, concluded that the duties of a fire-fighter did not include responsibility for maintenance of the station as set out in the four questioned items (record, p. 17).

The board was constituted pursuant to s. 5(1) of the Act. Section 5(1) provides as follows:

5(1) When requested in writing by a majority of the full-time fire fighters, the council of the municipality shall within sixty days after receipt of the request bargain in good faith with a bargaining committee of the full-time fire fighters, and shall make every reasonable effort to come to an agreement, for the purpose of defining, determining and providing for remuneration, pensions or working conditions of the full-time fire fighters other than the chief and the deputy chief of the fire department.

The Act further provides in s. 1(d) as follows:

1. In this Act,

. . . . .

(d) "full-time fire fighter" means a person regularly employed in the fire department on a full-time salaried basis and assigned exclusively to fire protection or fire prevention duties, and includes officers and technicians;

It is the position of the applicant herein that the jurisdiction of the board is restricted to remuneration, pensions and working conditions; that the determination of working conditions within the meaning of s. 5(1) does not include the determination of work assignment or the duties to be performed by the fire-fighters. It is argued that the term "working conditions" refers to the circumstances under which certain work will be performed and does not encompass the nature of the work to be performed. It is submitted that by excluding the four items above referred to, the board was determining the nature of the work to be performed and thereby exceeded its jurisdiction and made an error of law on the face of the record entitling the applicant to the remedy sought herein.

The applicant drew to our attention a decision of this Court between the parties hereto, released on September 26, 1977, and to date unreported. In that case, this Court was asked to review the award of an arbitration arising under the collective agreement between the parties for the year 1975. That particular arbitration related to a dispute as to whether full-time fire-fighters could be required to carry out maintenance in and around the fire hall similar to the four tasks before the arbitrator in this case. On that occasion, however, the arbitration was a result of a policy grievance by the applicant on behalf of all full-time fire-fighters. Such an arbitration arises pursuant to the provisions of s. 7(5) [am. 1972, c. 1, s. 95(2)] of the Act and is determined by a single arbitrator. This Court ruled that the arbitrator had applied the wrong test in arriving at his award and quashed the same. The Court noted the absence of a job description in the collective agreement and pointed out that such absence created an ambiguity or uncertainty permitting the introduction of extrinsic evidence on the issue before the arbitrator. In our

view, that case did not determine the scope or ambit of the "working conditions" subject to arbitration under s. 5(1). That issue was not before the Court for determination in that case. The question before this Court is whether or not this board had jurisdiction to determine a job description and exclude therefrom certain duties in relation to the maintenance items above referred to. That depends on the meaning of the words "working conditions" in s. 5(1) of the Act.

"Working conditions", while not defined by the Act are, in their ordinary meaning, words of very broad compass. They have been the subject of considerable judicial comment in the context of the Police Act, R.S.O. 1970, c. 351, as amended: Re Metropolitan Toronto Board of Com'rs of Police and Metropolitan Toronto Police Ass'n (1975), 8 O.R. (2d) 65, 57 D.L.R. (3d) 161; Re Sudbury Regional Board of Com'rs of Police and Sudbury Regional Police Ass'n et al. (1976), 13 O.R. (2d) 563, 71 D.L.R. (3d) 624; Re Town of Dryden and Dryden Police Ass'n, [1973] 1 O.R. 619, 32 D.L.R. (3d) 21.

In considering the scope and meaning of the term under this Act, one must, in our view, consider the scheme of the statute which encompasses two important matters: first, it provides a statutory scheme whereby full-time fire-fighters, that is, persons "assigned exclusively to fire protection or fire prevention duties", may be made available for the protection of the community; and second, it provides to those full-time fire-fighters some measure of control over the working conditions of their employment by allowing them to negotiate collectively certain of these conditions subject to binding arbitration. Job descriptions prescribing the duties of the various classifications of a full-time fire-fighter are, in our view, part of these conditions of employment which can be negotiated to the extent that they do not qualify the public duties and responsibilities in relation to fire protection and prevention imposed on the parties by legislation. Maintenance items clearly in no way affect such duties and responsibilities.

The labour relations of fire-fighters and municipalities have long been the subject of legislative control -- see the Fire Departments Hours of Labour Act, 1920 (Ont.), c. 88; the Fire

Departments Two-Platoon Act, 1921 (Ont.), c. 80; consolidated and re-enacted under the present title R.S.O. 1927, c. 245. The full-time fire-fighter is excluded from the operation of the Labour Relations Act, R.S.O. 1970, c. 232, s. 2(e). His common law right to strike or withdraw services from the municipality is eliminated. This restriction on rights is offset by the provisions of the legislation which enables the full-time fire-fighter to have a voice in determining matters relating to employment by way of collective bargaining and, where necessary, compulsory arbitration. Certain "working conditions" are covered by statute and by implication withdrawn from the process of collective bargaining and the jurisdiction of the arbitrator, i.e., hours of work, platoon and alternative systems, maximum hours, weekly day off duty, emergency recall, procedures on discharge: the Act, ss. 2, 3 and 4. To further limit the scope of "working conditions" subject to negotiation would, in our view, fail to achieve one of the manifest purposes of the legislation. It would appear that the legislation, by use of the general words "working conditions", intended the full-time fire-fighter, subject to the limitations above mentioned, to have a reasonable role in determining matters relating to employment and this would include the matters in issue in this application. There is nothing in the legislation which would prohibit the board and the association from bargaining, and, if necessary, submitting to arbitration the matters before this Court.

In the circumstances then, it is our view the arbitrator acted within his jurisdiction in considering the job description for a fire-fighter and excluding therefrom the station maintenance duties above mentioned.

The application will be dismissed with costs.

TRAINOR, J., concurs with CALLAGHAN, J.

Application dismissed.