Case Name:

Oaklands Regional Centre

Ontario Public Service Employees Union, Applicant v. Oaklands Regional Centre, Responding Party

[2010] O.L.R.D. No. 3512

[2010] OLRB Rep. September/October 658

No. 1363-07-U

Ontario Labour Relations Board

BEFORE: Ian Anderson, Vice-Chair; P. LeMay, Board Member; C. Phillips, Board Member

Decision: September 10, 2010.

(37 paras.)

Tribunal Summary:

Duty to Bargain in Good Faith -- Unfair Labour Practice -- During bargaining for a renewal collective agreement, OPSEU sought the names and telephone numbers of all its members from the employer -- The employer resisted, relying on a provision in the parties' collective agreement that limited disclosure of employees' contact information to once per year, and exempted those employees who objected to having their contact information given to the union -- OPSEU alleged the employer was bargaining in bad faith and interfering with the union's statutory right to represent its members; it was not specifically relying on the alleged breach of the collective agreement -- The Board found the employer has a positive obligation to provide the information to the union to facilitate equal bargaining positions in the collective bargaining relationship -- The union's request for the information was made in the context of giving notice to bargain a new collective agreement -- The employer's refusal to furnish the information was an interference with the union's administration of its bargaining rights -- Application allowed

Appearances:

Richard Blair and Neil Fraser appeared on behalf of the applicant.

Paul Boniferro, David Phillips and Susan Scott appeared on behalf of the responding party.

DECISION OF THE BOARD

1 This is an application under section 96 of the *Labour Relations Act, 1995*. The applicant union alleges that the refusal of the employer to provide it with the telephone numbers of employees' in the bargaining unit within the context of collective bargaining constitutes a breach of sections 17 and 70 of the Act.

2 Sections 17 and 70 of the Act provide:

> 17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.
>
> ....
>
> 70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

The Facts

3 The hearing was conducted on the basis of the following Agreed Statement of Facts[1]:

> Ontario Public Service Employees Union ("the Union") and Oaklands Regional Centre (now referred to as Central West Specialized Developmental Services) ("Oaklands") agree that instead of proceeding by way of calling *viva voce* evidence in the application before the Ontario Labour Relations Board filed by the Union on July 19, 2007 (File No. 1363-07-U) (the "Application"), the evidence shall be limited to the following agreed facts:
>
> **Background**

1. Oaklands is a non-profit organization providing specialized residential services, care and support to individuals over 18 years of age with multiple developmental disabilities. Oaklands' main facility is located in Oakville, Ontario.
2. In addition to its residential operations, Oaklands manages:

    (a) a Respite Program, which provides non-emergency respite for families and caregivers of children and adults with developmental disabilities;
    (b) a Dual Diagnosis Service, which provides community-based assessment, treatment, and planning for persons with a dual diagnosis, as well as mentoring and training support for their caregivers; and
    (c) Halton Support Services, which provides access to various non-residential programs and community resources for persons with developmental disabilities living in the Regional Municipality of Halton.

3. Oaklands is also a member of the Central West Network of Specialized Care, which is a group of service providers that delivers care and treatment, consultations, teaching, education, and training for adults with developmental disabilities in Peel, Halton and Waterloo Regions and Dufferin and Wellington Counties.
4. The Union is the exclusive bargaining agent for an "all employee" bargaining unit of employees of Oaklands ("the Bargaining Unit").
5. On the date of the Application, the Union represented approximately 173 employees at Oaklands, including residential counsellors, day programme instructors, support workers, vocational support workers, community support workers, casual relief staff, housekeeping staff, and some administrative staff.
6. The Union has been certified to represent the employees in the Bargaining Unit since 1985. Since that time, the Union and Oaklands have negotiated and entered into several consecutive collective agreements.
7. The Union and Oaklands are currently parties to a collective agreement effective from April 1, 2007 to March 31, 2010 ("the Current Collective Agreement").

The 2002 Settlement

8. On May 30, 2002, the Union filed an Application under section 96 of the *Labour Relations Act, 1995* ("the Act") alleging that Oaklands violated section 70 of the Act by refusing to provide the Union with the home telephone numbers of

employees in the Bargaining Unit ("the 2002 Application").

9. Prior to the filing of the 2002 Application, there was no provision in the collective agreement between the Union and Oaklands pertaining to Oaklands' obligation to disclose the personal contact information of Bargaining Unit employees to the Union.
10. On November 29, 2002, the Union and Oaklands entered into Minutes of Settlement and settled all issues, *inter alia*, arising out of the 2002 Application ("the Minutes"). The Minutes were then incorporated into a Decision of the Board, dated January 23, 2003.
11. In the Minutes, the Union and Oaklands expressly agreed that the Union's request for the provision of employee phone numbers would be "a matter for future collective bargaining". Specifically, paragraph 1 of the Minutes stated:

> The Union's request for the provision of employee phone numbers will be a matter for future collective bargaining. Until such time as the parties agree otherwise, the Employer will not release the phone numbers of employees who request that their numbers be kept confidential.

The Disclosure Provision

12. In accordance with the parties' agreement under paragraph 1 of the Minutes, the Union and Oaklands subsequently reached an agreement on collective agreement language pertaining to the disclosure of bargaining unit employee telephone numbers ("the Disclosure Provision").
13. The Disclosure Provision was officially incorporated into the collective agreement concluded on November 22, 2004, which had a term of operation from April 1, 2003 to March 31, 2005 ("the 2003-2005 Collective Agreement"). The Disclosure Provision was set out at Article 6.01.
14. The Disclosure Provision provides as follows:

> The Employer will provide the Union annually (July) with a list of names, addresses and telephone numbers of those Employees who do not object and for whom deductions have been made. Once per year the Employer will send out a notice notifying Employees of this event. Employees not wishing to have their phone numbers released to the Union must respond in writing to the Employer annually.

15. Following the expiry of the 2003-2005 Collective Agreement, the Union and Oaklands agreed to renew the Disclosure Provision without amendment. The Disclosure Provision was consequently included in the collective agreement concluded by the parties on February 13, 2006, with a term of operation from April 1, 2005 to March 31, 2007 ("the 2005-2007 Collective Agreement").
16. The Union did not file any grievances alleging a failure by Oaklands to comply with its obligations under the Disclosure Provision during the term of operation of either the 2003-2005 Collective Agreement or the 2005-2007 Collective Agreement.

The Union's 2007 Request for Bargaining Unit Employees' Telephone Numbers

17. On January 12, 2007, Neil Fraser, Staff Representative of the Union, wrote a letter to James Duncan, Executive Director of Oaklands, in which he provided formal notice of the Union's desire to commence bargaining for a new collective agreement. In the letter, Mr. Fraser also requested that Oaklands provide the Union with "the names, addresses, work and home telephone numbers of all bargaining unit employees".
18. Mr. Duncan responded to Mr. Fraser in a letter, dated March 9, 2007, attaching the names and addresses of all employees in the Bargaining Unit as of that date ("the Letter of March 9, 2007).
19. Oaklands did not produce the telephone numbers of any of the employees in the Bargaining Unit in the Letter of March 9, 2007 because Oaklands had not yet determined which employees objected to the disclosure of their telephone numbers to the Union (the "Non-Consenting Employees").

The Union's Bargaining Proposal

20. The Union and Oaklands commenced bargaining for the Current Collective Agreement on April 26, 2007. On that date, the Union tabled a proposed amendment to the Disclosure Provision that would have required Oaklands to produce the telephone numbers of all Bargaining Unit employees, with or without their consent.
21. Specifically, the Union made the following proposal to amend the Disclosure Provision:

Article 6:

Amend to:

Delete "employees who do not object".

> Delete "Once per year Oaklands will send out a notice notifying employees of this event. Employees not wishing to have their phone number released to the Union must respond in writing to Oaklands annually."

The Union's Second Request for Employees' Telephone Numbers

22. On June 8, 2007, Mr. Fraser sent an e-mail to Donna Brazelton, Director of Human Resources at Oaklands, in which he again requested the names, addresses and phone numbers for all bargaining unit members. Mr. Fraser specifically noted in his letter that the information previously provided by Oaklands had not included the phone numbers of Bargaining Unit employees.
23. Ms. Brazelton responded to Mr. Fraser in an e-mail, dated June 15, 2007, in which she indicated that Oaklands was "not required to release the phone numbers for those employees who do not wish to have their numbers released to the union". Accordingly, Oaklands did not provide the phone numbers of Bargaining Unit employees at that time.

The Application

24. On July 18, 2007, the Union filed the present Application under section 96 of the Act, in which the Union alleges that Oaklands violated sections 17 and 70 of the Act by refusing to provide the Union with the home telephone numbers of all employees in the Bargaining Unit.

Oaklands' Release of Employees' Telephone Numbers

25. On July 27, 2007, Oaklands finalized the list of Non-Consenting Employees. On the same date, and in accordance with the Disclosure Provision, Oaklands provided the Union with the telephone numbers of all employees in the Bargaining Unit, except for the telephone numbers of the Non-Consenting Employees. There were 13 Non-Consenting Employees at the time.

Renewal of Article 6.01 in the Current Collective Agreement

26. On October 3, 2007, the Union and Oaklands concluded the Current Collective Agreement in which, pursuant to the terms of the Memorandum of Settlement," the parties reached a full settlement of all matters in dispute at the bargaining table.
27. As part of the settlement between the Union and Oaklands, the parties agreed to renew the Disclosure Provision without amendment for the term of operation of the Current Collective Agreement.

Employee Turnover

28. Over the course of a year, there is some level of changeover of employees in the workforce at Oaklands. Therefore, the identities of bargaining unit employees may vary to some degree.

The Parties' Arguments

4 The Union argues that as a function of its right and obligation to represent employees in the bargaining unit it is entitled to the bargaining unit employees' telephone numbers. The refusal of Oaklands to provide that information constitutes a breach of section 70 of the Act. It cites the following Board decisions: *The Millcroft Inn*, [2000] OLRB Rep. Jul./Aug. 665; *Ottawa-Carleton District School Board*, [2001] OLRB Rep. Nov./Dec. 1426; *Baron Metal Industries Inc.*, [2001] O.L.R.D. No. 2732; *The Alcohol and Gaming Commission of Ontario*, [2002] OLRB Rep. Jan./Feb. 1; *Canadian Niagara Hotels Inc.*, [2005] OLRB Rep. Nov./Dec. 932; and *York University*, [2007] OLRB Rep. May/Jun. 659. It notes that the Ontario jurisprudence has been followed and applied in other Canadian jurisdictions, citing: *Treasury Board and Canada Revenue Agency*, [2008] C.P.S.L.R.B. No. 13; *Bank of Canada*, [2007] C.I.R.B.D. No. 17; *Buhler Manufacturing*, [2007] M.L.B.D. No. 10; *Economic Development Edmonton*, [2002] A.L.R.B.D. No. 41; P. *Sun's Enterprises (Vancouver) Ltd.*, [2003] B.C.L.R.B.D. No. 301; *Hudson's Bay Company*, [2004] B.C.L.R.B.D. No. 227; and *Monarch Transport Inc.*, [2003] C.I.R.B.D. No. 42. Further the Union argues given that the Board's jurisprudence has now routinely recognized that unions have a right to such information, Oaklands' refusal to provide that information constitutes a breach of its obligation to make every reasonable effort to conclude a collective agreement pursuant to section 17 of the Act.

5 The Union argues that the Minutes of Settlement entered into between the parties in 2002 do not change this result. The Minutes remitted the matter to collective bargaining. The parties met and bargained. The Minutes are now spent. In addition, the Minutes were without prejudice to any future proceedings. They do not prevent the Union from advancing the position it now seeks to

advance in these proceedings. Finally, nothing in the Minutes purports to prevent the Union from enforcing its statutory right to this information. The Disclosure Provisions of the collective agreement concluded in 2003, renewed in 2005 and again, after this application was filed, in 2007 govern the day to day operations of the workplace, but do not prevent the Union from asserting its statutory rights to the information under section 70 and, within the context of collective bargaining, section 17.

6 Oaklands argues that the Board should give primacy to the agreements of the parties as reflected in the 2002 Minutes, which were incorporated into a Board order, and the three collective agreements which they have reached since that time. It notes that nowhere does the statute expressly provide that a union is entitled to the names, addresses or telephone numbers of bargaining unit members. This is because the Act deliberately avoids enumerating specific rights and obligations. Instead, section 70 is framed in terms of general obligations: *The Adams Mine, Cliffs of Canada Ltd., Manager*, [1982] OLRB Rep. Dec. 1767 at paragraph 27. The question is whether an employer's impugned conduct has defeated the purposes of the Act.

7 Oaklands argues that while the Board has found that an employer's refusal to provide telephone numbers of bargaining unit employees is a breach of the Act in other cases, that determination was based on the facts of those cases. In this case, Oaklands' position and actions with respect to the provision of the telephone numbers of employees in the bargaining unit was in accordance with the terms of the collective agreement. There is no evidence that the Union's representation of the employees in the bargaining unit has been interfered with by Oaklands' refusal to provide telephone numbers until July 2007.

8 Oaklands argues the fact that the parties have been able to reach three collective agreements suggests that its actions have not interfered with the Union's representation of the employees in the bargaining unit. Counsel knows of no cases in which the Board has found that an employer, by acting in compliance with the parties' collective agreement, has interfered with a union's representation of the employees covered by that collective agreement. Thus, in order for the Union to succeed, the Board would have to find that the Disclosure Provisions of the collective agreement are in violation of the Act.

9 Oaklands makes similar arguments in relation to section 17, citing *DeVilbiss (Canada) Limited*, [1976] OLRB Rep. Mar. 49.

Analysis and Decision

10 The first issue is the effect of the Board's decision dated January 23, 2003 and the 2002 Minutes on these proceedings. The Board's decision of January 23, 2003 did no more than give effect to the Minutes. We agree with the Union that the Minutes were expressly without prejudice to either party's position in any other proceeding and that in any event the Minutes are spent. The issue, therefore, is whether Oaklands' reliance on the Disclosure Provisions of the collective agreement constitutes a breach of section 70 or 17 of the Act.

11 Oaklands is correct in its observation that the Act does not expressly provide, in sections 17, 70 or anywhere else, that a union is entitled to the names, addresses or phone numbers of bargaining unit employees. As in *Adams Mine*, the issue is whether such an obligation arises from application of the general principles of the Act.

12 At issue in *Adams Mine* was an employer's prohibition of any form of canvassing on company property at any time, including non-working time, of employees. The employees were represented by a union. The prohibition was imposed (or at least came to the fore) in response to a campaign by the union to get bargaining unit members to support the New Democratic Party and the political objectives of the Canadian Labour Congress. The union's campaign was conducted by bargaining unit members, on company premises but during non-working time.

13 For the purposes of this decision, *Adams Mine* addressed two issues. The first was the relationship between the proprietary and commercial interests of the employer on the one hand and the statutory rights of employees and unions on the other. The second was the scope of those statutory rights of unions.

14 With respect to the first issue, the Board held that the approach of the Act and the Board's jurisprudence "has been to create a meaningful balance between the statutory rights of employees and the proprietary and commercial interests of employers" and that "to this extent, property rights have been encroached upon by the statute" (see paragraph 18). After a careful analysis, the Board articulated two general, and now well known, principles (at paragraph 22):

> (a) No-solicitation or no-distribution rules which prohibit union solicitation on company property by employees during their non-working time are presumptively an unreasonable impediment to self-organization and are therefore invalid; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline.
>
> (b) No-solicitation or no-distribution rules which prohibit union solicitation by employees during working time are presumptively valid as to their promulgation, in the absence of evidence that the rule was adopted for a discriminatory purpose or applied unfairly; and no solicitation or no-distribution rules which prohibit union solicitation by non-employee union organizers at any time on the employer's property are valid in the absence of an application for a direction pursuant to section 11 [now 13].

15 The Board then turned to the second issue: what constitutes "union solicitation"? The Board rejected the proposition that solicitation by a union for any lawful purpose was union solicitation protected by the Act. Rather, the Board held that its jurisdiction, and thus protected union solicitation, was restricted to solicitation in relation to the dominant purpose of the Act, collective bargaining, and activity that was necessarily incidental to that purpose. It was in relation to this

conclusion that the Board made the observation relied upon by Oaklands in this case:

> 27. .... The Act does not spell out each and every right and obligation of labour and management. This Board is left with the task of applying the Act's general language in light of an infinite variety of circumstances which may arise. A rigid scheme of regulation is avoided and flexibility is provided although all within the limitations necessary to effectuate the dominant purpose of the Act.

16 Undoubtedly it is true that for the most part the Act has been framed in terms of general language and the Board's jurisprudence has highlighted the necessity of flexibility in the application of that language. However, as argued by the Union in reply, what is noteworthy for the purposes of the present case is the Board's conclusion that no-solicitation rules which prohibit union solicitation on company property during non-working time are presumptively invalid arises from an analysis of the principles of the Act: there is no section of the Act which expressly provides for this result.

17 In *The Millcroft Inn*, following an extensive analysis, the Board concluded that the rights and obligations attendant upon being the exclusive bargaining agent for employees meant that a union must have the ability to communicate with those employees. The Board stated, at paragraph 33:

> The establishment of a collective bargaining relationship between a union and an employer entails a change in the employment relationship between the employer and its workers. The change is from an individual to an [sic] collective basis of the relationship - the union becomes the agent for the employees and, as such, it is entitled to speak on their behalf as if they were together negotiating as a group. The individual employees may not make their own individual bargains or deals with the employer. To that end, the union is entitled to take full instructions from them and to represent them. For the union to do so, it must be able to communicate effortlessly with the employees. The alternative methods offered by the employer do not meet that need. They enable the union to obtain the information, but the methods are such as to amount to an obstacle in the path of the union obtaining what it wants. Obstacles have their social value, but not in this case. Here they serve merely to frustrate the union's capacity to do its job properly. The union needs the information and it should have it without the need to pass through the obstacles suggested by the employer.

18 A union's communication with members of a bargaining unit is thus an activity which is protected by section 70 of the Act. The right and obligation to represent necessarily includes the right to communicate with the employees represented. Interference with the union's ability to communicate with members of the bargaining unit will thus be a violation of the Act, absent a legitimate business purpose: see *The Millcroft Inn* at paragraph 16.

19 The modalities of communication change over time. One common denominator, however, is the need for the names of the employees in the bargaining unit. It is interesting to note that

Oaklands does not challenge a union's right to be provided with the names of the employees in the bargaining unit notwithstanding, as it observed in its argument, the absence of an express statutory provision to that effect.

20 In the present day, the telephone remains a significant modality of communication. This is not to say that it will always be so. It is interesting to note that even in 2001, in *Ottawa-Carleton District School Board*, the Board mused that email addresses might be a more effective, and less personally intrusive, means of communication between a union and its members (see paragraph 25). It may well be that "facebook" or "twitter" are now equally, and even more important, means of communication than the telephone. The telephone remains, however, an important means of communication.

21 Oaklands argues that the Board's determination in other cases that an employer was obliged to provide the union with telephone numbers for members of the bargaining unit was based on the facts of those cases. However, a review of the cases provided by the union suggests that the determinations were not fact driven. In *The Millcroft Inn* the facts are described in paragraphs 4 - 7 of the decision. In *Ottawa-Carleton District School Board* the Board indicates, at paragraph 2, that the parties agreed that the matter could be determined on the basis of written submissions without a hearing: that is, there was no evidence before the Board. In *The Alcohol and Gaming Commission of Ontario*, the evidence is summarized at paragraphs 3 and 4. In *York University*, the facts are stated in paragraphs 3 - 8. In each of these cases, the union's request for the telephone numbers of employees derived from the fact that it was the bargaining representative of the employees. In none of these cases is there any reference to evidence of actual interference to the union as a result of the employer's refusal to provide the telephone numbers.

22 In *Baron Metals*, the employer was ordered to provide telephone numbers of bargaining unit employees to a union which was attempting to organize a group of employees. This order was made to remedy the chill to the union's organizing drive caused by the employer's breaches of the Act. There is no discussion, however, of why the provision of telephone numbers specifically was required in order to accomplish this result.

23 *Canadian Niagara Hotels*, uniquely, contains a review of evidence which would support the conclusion that employer's refusal to provide telephone numbers was causing actual interference to the union's ability to represent the members of the bargaining unit. This evidence was relevant to the first issue determined by the Board: whether it should exercise its discretion to inquire into the complaint given a previous decision of the Board not to inquire into the same complaint between the same parties. The Board concluded (at paragraph 19) that "the circumstances then were not as they are now" and decided to inquire into the complaint. In its consideration of the merits of the complaint, however, the Board made no reference to any of this evidence in reaching the conclusion that the employer's conduct constituted improper interference with the union, stating (at paragraph 21) that "the union is the best judge of its own interest" in determining how to effectively communicate with its members.

24 In each of these cases, the union's need for the telephone numbers in order to facilitate communication with employees was presumed. In the absence of a counterbalancing business purpose, the employer was directed to provide the telephone numbers. In this respect, these cases are similar to *Adams Mine*, where no-solicitation rules which prohibit union solicitation on company property during non-working time were held to be presumptively invalid absent evidence of special circumstances from the employer.

25 It might be argued that the difference between a requirement that an employer provide telephone numbers of employees in the bargaining unit and a requirement that an employer permit union solicitation on company property during non-working time is that the former requires a positive action on the part of the employer. In our view, this is not a compelling argument.

26 In *The Millcroft Inn*, the Board founded the positive obligation of an employer to provide telephone numbers of employees in the bargaining unit to the union on the necessity of ensuring that the union was placed in an equal bargaining position with the employer. It stated, at paragraph 31:

> A consequence of the union possessing exclusive bargaining status on behalf of the employees is that the union is placed in an equal bargaining position with the employer in its collective bargaining relationship. To the extent that the employer has information which is of value to the union in its capacity to represent the employees (such as their names, addresses and telephone numbers), the union too should have that information. The employees' privacy rights are compromised (no doubt legitimately) by the employer having details of their names, addresses and telephone numbers. The union's acquisition of that information would be no greater compromise, nor any less legitimate.

27 This conclusion finds support in the observation in *Adams Mine* that giving effect to the statutory rights of employees, and unions, necessarily encroaches upon the property rights of employers. Records of information on the telephone numbers of employees in the bargaining unit in the possession of an employer are the property of the employer. It could be argued, on the basis of *Adams Mine*, that the union has the right to enter an employer's offices for the purposes of obtaining that information. Clearly, in the absence of some extraordinary set of circumstances, imposing a positive duty upon the employer to instead provide such information will be less intrusive and less of an encroachment upon the rights of the employer.

28 What significance, then, attaches to the fact that in this case the parties had agreed to a specific Disclosure Provision governing when and whether the Union will receive the telephone numbers of employees under the terms of the collective agreement?

29 The Union, as noted, argues that while the Disclosure Provision governs the "day to day" relationship of the parties, it is entitled to the telephone numbers as a matter of statutory rights under sections 17 and 70. It argues that even if it were possible to contract out of its statutory rights,

nothing in the collective agreement purports to do so. Further, if the collective agreement purported to limit the access of the Union to the telephone numbers, it cannot do so. Thus, whether or not the Union is entitled to the information under the collective agreement, it seeks to assert its rights under sections 17 and 70. The Union argues that the only limit on those rights arises from the fact that the Board has discretion not to inquire into a complaint that they have been breached. Thus, if the Union's request were frivolous or vexatious it could not be enforced because the Board would not inquire into a complaint that a refusal of that request constituted a breach of the Union's rights.

30 Oaklands, by contrast, argues that it knows of no cases in which the Board has found that an employer, by acting in compliance with the parties' collective agreement, has interfered with a union's representation of the employees covered by that collective agreement. Thus, in order for the Union to succeed, the Board would have to find that the Disclosure Provisions of the collective agreement are in violation of the Act.

31 The Disclosure Provisions require Oaklands to provide the Union with contact information of certain employees once per year without request by the Union. They need not be construed as purporting to prohibit Oaklands from providing the Union with contact information for all employees at other times if requested by the Union. It is not necessary, therefore, for the Board to find that the Disclosure Provisions are in violation of the Act in order for the Union to succeed. This is similar to the conclusion reached by the Board in *Canadian Niagara Hotels*, at paragraph 20, with respect to the effect to be given to a collective agreement provision relied upon by the employer in that case.

32 That is not to say that the Disclosure Provisions in the collective agreement are irrelevant. They reflect the settled expectations of the parties as to what contact information the Union will be entitled to receive and when in order to permit it to communicate with the employees in the bargaining unit in furtherance of its statutory rights and obligations to represent those employees during the term of the collective agreement. The Board might have refused to inquire into a mid-term complaint by the Union that Oaklands had refused a request for more or more frequent contact information, absent proof by the Union that such information was required in order for it to exercise its representational rights and fulfill its obligations. The Union's request here, however, was not mid-term. It was made in the context of giving notice to bargain a new collective agreement.

33 The Act imposes additional rights and obligations upon a union in relation to collective bargaining. These additional rights and obligations are reviewed in *Canadian Niagara Hotels* at paragraph 24. Simply stated, as a practical matter during collective bargaining a union has a greater need to be able to freely communicate with all the members of the bargaining unit in relation to the bargaining, possible strikes and lockouts and the conduct of ratification votes.

34 Given that the Union's request for the contact information was made in the context of collective bargaining, there being no evidence of a counterbalancing business purpose, we find that

Oaklands' refusal to provide that contact information was a violation of section 70 of the Act.

35 Given our conclusion, it is not necessary to address the parties' alternative arguments with respect to whether Oaklands' refusal constitutes a violation of the duty to bargain under section 17 of the Act.

36 The Union has requested a declaration that Oaklands violated the Act, an order directing Oaklands to provide the contact information and an order directing the posting of a Notice to Employees. Given our conclusions, we are prepared to make the declaration requested. Given the history of this matter, more fully developed in documents attached to the Agreed Statement of Facts and the oral submissions of the employer, we also think it would be useful from the perspective of both parties to direct the posting of a Notice to Employees so that those who have exercised their right under the collective agreement to object to the provision of their contact information to the Union on an annual basis will be advised of the Board's conclusion that the Union is entitled to that information in the context of collective bargaining. We also think it would be useful to direct the posting of these reasons for decision. Given, however, that the 2007 round of collective bargaining which gave rise to this complaint has been concluded we decline to order Oaklands to provide the Union with the contact information it requested.

Disposition

37 For reasons stated, the Board makes the following orders and directions:

1. The Board declares that Oaklands violated section 70 of the Act in refusing to provide the telephone numbers for all employees in the bargaining unit in response to a request by the Union within the context of collective bargaining.
2. The Board orders Oaklands to post this decision and the Notice to Employees attached to it as Appendix "A" on employee notice boards where they are likely to come to the attention of the employees affected by this decision. They are to remain posted for a period of 30 days from the date of this decision.

"Ian Anderson"
for the Board

* * * * *

APPENDIX

Appendix "A"

The Labour Relations Act, 1995

NOTICE TO EMPLOYEES

Posted by order of the Ontario Labour Relations Board

Section 70 of the Labour Relations Act, 1995 provides:

> No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

On a complaint by the Ontario Public Service Employees Union, the Board has found that Oaklands Regional Centre violated section 70 of the Act in refusing to provide the telephone numbers for all employees in the bargaining unit in response to a request by the Union within the context of collective bargaining.

The Board's reasons for its decision have been posted along with this Notice to Employees.

This is an official notice of the Board
and must not be removed or defaced.

This notice must remain posted for 30 consecutive days.

DATED this 10th day of September, 2010.

cp/e/qljlg/qlhcs/qlhcs/qlhcs

1 All documents cited in the Agreed Statement of Facts were attached and adopted by reference in footnotes to the Agreed Statement of Facts. Those footnotes have been omitted in what follows.