



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER 88

Appeal 890012

Ontario Labour Relations Board



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August 25, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 88  
Ontario Labour Relations Board  
Appeal Number 890012

This letter constitutes my Order in Appeal Number 890012 from a decision of the Ontario Labour Relations Board (the "Board") to disclose union certification records pursuant to a request under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On November 22, 1988 a requester wrote to the Board asking for access to the following information:

Copies of any reports and studies or correspondence involving Almico Plastics Ltd., 60 California Ave., Brockville and Local 351 of the Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union.

The local applied to the Ontario Labour Relations Board for certification in the plant March 14, with a terminal date of March 29, 1988. The board granted certification April 22 on the basis that five of six union membership cards matched the same number of names among the nine employees considered part of the bargaining unit. I have

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a copy of the board's decision but want to know the names of those original nine members and the six names who signed cards (as well as why one card was considered ineligible).

Please send me copies of anything contained in the union certificate file regarding Almico Plastics Ltd. during 1987-88.

The union local represented workers at Almico before 1988, when the plant was located in or near Cornwall, Ontario from late 1982 to late 1987. Then the union was dissolved and re-certified when the plant moved to Brockville. Please send copies of any documents relating to Local 351 and its certification at the Cornwall area plant.

Upon receipt of the request, you were notified by the Board, pursuant to subsection 28(1)(b) of the Act, as a party whose interests might be affected by disclosure of the records, and invited to make representations as to whether these records should be released. After considering your representations, the head issued a decision on January 10, 1989, granting access to all of the documents in File Numbers 0051-86-R and 3360-87-R, with the exception of the lists of employees, case count sheets, and waiver work sheets.

On January 25, 1989 you appealed the head's decision to my Office under subsection 50(1) of the Act, submitting that none of the information contained in the certification files should be disclosed. You also claimed that the Chair of the Ontario Labour Relations Board was not a "head", as defined by the Act, and was therefore without jurisdiction to make decisions regarding disclosure.

Upon receipt of the appeal, the Appeals Officer assigned to the case conducted an investigation into the circumstances of the appeal and attempted to mediate a settlement. As part of this process the Appeals Officer obtained a copy of the records in question and had discussions with you, the Board's Freedom of Information Co-ordinator, and the requester. I understand that the Appeals Officer also provided you with a copy of a delegation from the Minister of Labour to the Chair of the Labour Relations Board, authorizing her to make decisions under the Act.

Despite efforts by the Appeals Officer, settlement was not effected, and the matter proceeded to an inquiry under the Act. At this point the Appeals Officer prepared a report which was sent to you, the Board, and the requester, with a letter dated June 30, 1989. All parties were invited to make representations in response to issues raised in the Appeals Officer's Report, and I have

considered these representations in making this Order.

Section 53 of the Act stipulates that the burden of proof that a record or part of a record falls within one of the specified exemptions in the Act lies upon the head. However, as I decided in my Order 3 (Appeal Number 880031), issued on June 21, 1988, where an affected party appeals the head's decision to release a record, the burden of proving that the record falls within the specified exemption rests upon the party resisting disclosure.

In your representations you adopt the arguments raised in your January 25, 1989 appeal letter, with the exception of the issue respecting the jurisdiction of the Chair to make decisions under the Act. I have assumed that you no longer contest the jurisdiction of the Chair to act as a "head" in this case.

You make the following arguments in favour of denying disclosure:

- a. that sections 109 and 111 of the Labour Relations Act R.S.O. 1980, c.228, as amended, are "confidentiality provisions" for the purpose of section 67 of the Act, and that the records at issue in this appeal fall within the scope of these "confidentiality provisions";
- b. that the records contain "personal information" as defined by subsection 2(1) of the Act, the disclosure of which would constitute an unjustified invasion of the privacy pursuant to section 21 of the Act;
- c. that the records fall within the scope of the mandatory exemption provided by subsection 17(1) of the Act;
- d. that the records contain no additional information other than that which is available upon examination of the Board's decision, and as such qualify for exemption under subsection 22(a) of the Act.

The issues raised in this appeal are identical to those considered by me in my Order 42 (Appeal Number 880052), released on March 2, 1989. I understand that the Appeals Officer has provided you with a copy of that Order, and has discussed its contents with you. In that case, I found that the records fell outside the scope of the confidentiality provisions contained in the Labour Relations Act and that none of the exemptions contained in the Act applied. Consequently, I upheld the decision of the head to release the records.

As far as the present appeal is concerned, I have reviewed the records and considered all representations, and have reached the same conclusion as I did in Order 42. In my view, the records at issue in this appeal do not fall within the scope of the

confidentiality provisions provided by section 109 and 111 of the Labour Relations Act, nor do they meet the requirements for exemption under subsections 21(1), 17(1) or 22(a) of the Act.

Accordingly, I uphold the decision of the head to release all records to the requester in their entirety. I also order the institution not to release these records until 30 days following the date of the issuance of this Order. This time delay is necessary to give you, the appellant, sufficient opportunity to apply for judicial review of my decision before the records are actually released. Provided notice of an application for judicial review has not been served on the Board within this 30-day period, I order that the records be released within 35 days of the date of this Order. The Board is further ordered to advise me in writing within five (5) days of the date on which disclosure was made.

Yours truly,

Sidney B. Linden  
Commissioner

cc: Mr. Morton Mitchnick, Chair  
Ontario Labour Relations Board

Ms Colleen Edwards, FOI Co-ordinator  
Ontario Labour Relations Board

Requester