

**OLRB FINDS PLANNED EMERGENCY DAY OF ACTION TO CONSTITUTE  
AN UNLAWFUL STRIKE**

*Ontario Hospital Association and O.P.S.E.U.*, an unreported decision of the O.L.R.B. dated February 11, 2003

The Ontario Labour Relations Board has declared that O.P.S.E.U.'s planned Emergency Day of Action on February 13, 2003 constitutes an unlawful strike.

The Ontario Hospital Association argued that O.P.S.E.U. had breached section 11 of the *Hospital Labour Disputes Arbitration Act* (the "HLDAA") by calling an unlawful strike for Thursday, February 13, 2003. O.P.S.E.U. had called on its members to support what it described as an "Emergency Day of Action" on that date.

Section 11 of the *HLDAA* provides in part:

11(1) Despite anything in the *Labour Relations Act, 1995*, no hospital employees to whom this Act applies shall strike and no employer of such employees shall lock them out.

The Board commented that the parties have been negotiating for a new collective agreement since March of 2002, and have been unable to agree on a new agreement.

The Board found that O.P.S.E.U. had breached section 11 of the *HLDAA*. According to the Board, what O.P.S.E.U. had referred to as an "Emergency Day of Action" was actually an unlawful strike. The Board stated, at paragraph 11:

The Board declares that OPSEU through the acts of its officers, officials and agents, has called, authorized, encouraged, supported and threatened an unlawful strike to occur on Thursday, February 13, 2003. Further, the Board orders and directs that OPSEU, its officers, officials and agents cease and desist from calling, authorizing, encouraging, supporting or threatening an unlawful strike.

The Board reminded the parties that where an unlawful strike has occurred, an employer may seek the following remedies:

- a cease-and-desist order;
- damages for lost profits or economic losses;
- the employer may discipline employees who engage in the unlawful activity; and
- the employer may seek a consent to prosecute employees or the trade union for their breach of the law.

The Board also noted that a variety of remedies may be available to other interested parties who are injured by an unlawful strike, including in respect of picketing in connection with such a strike.

The Board ordered that picketing on February 13, 2003 was prohibited in and around access points or areas where it would interfere in any way with employees' access to work or ability to work.

The Board issued only an abbreviated ruling and stated that it would issue its full reasons for its decision at a later date.