ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-030

December 21, 1999

ALBERTA LABOUR RELATIONS BOARD

Review Number 1549

I. BACKGROUND

[para 1.] On January 26, 1999, counsel for several union members (the "Third Parties") wrote to the Alberta Labour Relations Board (the "Public Body") requesting a question and answer session on the day of an upcoming proposal vote. Attached to the letter was a signed petition containing the names, signatures, addresses and phone numbers of the Third Parties. In the letter, the Third Parties explicitly requested that the Public Body not circulate the petition.

[para 2.] On January 29, 1999, the Public Body denied the Third Parties' request for a question and answer session because it was outside of the Public Body's jurisdiction.

[para 3.] On February 4, 1999, the Third Parties' union (the "Applicant") made an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") for a copy of the petition.

[para 4.] The Public Body refused to disclose the petition.

[para 5.] On February 16, 1999, the Applicant requested this Office review the Public Body's decision. Mediation was unsuccessful and the matter was set down for an oral inquiry on September 27, 1999.

[para 6.] The Public Body cited sections 15(1)(a)(ii), 15(1)(b), 15(1)(c)(ii), 15(1)(c)(iv), 16(1), 16(2)(d), 16(2)(g), and 16(3)(f) of the Act as its authority to withhold the petition.

[para 7.] At the conclusion of the inquiry, I rendered an oral decision, with written reasons to follow. I decided that the Public Body must not disclose the petition to the Applicant. This Order sets out my written reasons for that decision.

[para 8.] It should be noted that during the inquiry, the Public Body indicated to me that following this inquiry, they would consult with the Third Parties to determine whether the Third Parties would consent to the disclosure of a portion of the petition. It is my understanding that as of the date of this Order, the Third Parties have not consented to the disclosure. In issuing this Order, I have therefore assumed that the entire petition remains at issue.

[para 9.] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORD AT ISSUE

[para 10.] The record at issue is a two-page petition requesting a question and answer period on the day of a proposal vote. The petition includes the names, signatures, addresses and phone numbers of the Third Parties. In this Order, I will refer to the petition as the "record".

III. ISSUES

[para 11.] There are two issues in this inquiry:

(A) Did the Public Body correctly apply section 15(1) to the information contained in the record?

(B) Did the Public Body correctly apply section 16 to the information contained in the record?

IV. BURDEN OF PROOF

[para 12.] Section 67 of the Act addresses the burden of proof. The relevant parts read as follows:

67(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.

(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[para 13.] In this inquiry, the burden of proof for section 15 rests with the Public Body. The burden of proof for section 16 is two-fold. The Public Body must first prove that section 16 does, in fact, apply to the record. The Applicant must then prove that the disclosure would not be an unreasonable invasion of the Third Parties' personal privacy.

V. DISCUSSION

Issue A: Did the Public Body correctly apply section 15(1) to the information contained in the record?

[para 14.] Section 15(1) reads:

15(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party,

(b) that is supplied, explicitly or implicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

> *(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*
>
> *(iii) result in undue financial loss or gain to any person or organization, or*
>
> *(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolved or inquire into a labour relations dispute.*

[para 15.] Section 15(1) is a mandatory exception. This means that if a head of a public body determines the information falls within the exception, he/she must refuse access.

[para 16.] For information to fall under section 15(1), the Public Body must satisfy the following three-part test:

> Part 1: The information must reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party (Section 15(1)(a));
>
> Part 2: The information must be supplied, explicitly or implicitly, in confidence (Section 15(1)(b)); and
>
> Part 3: The disclosure of the information must reasonably be expected to bring about one of the outcomes set out in section 15(1)(c).

A. Does the record reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party?

[para 17.] In order to fulfill part 1 of the section 15(1) test, the record must reveal trade secrets, or commercial, financial, labour relations, scientific or technical information of a third party.

[para 18.] After reviewing the record and the submissions of all parties, I find that Part 1 of the section 15(1) test has been met. "Labour relations" information is at issue. The Canadian Oxford Dictionary defines the term "labour relations" as "the relations between management and employees". Although the names, signatures, addresses and phone numbers of individuals would not generally

constitute labour relations information, in my view, this information in the context of a petition to the Public Body clearly falls within this definition. In addition, it is my opinion that disclosure of the information could reasonably be expected to "reveal" labour relations information as there is no evidence before me that the Third Parties disclosed this information in the public domain.

B. Was the information supplied, explicitly or implicitly, in confidence?

[para 19.] The Public Body states that the information in the record was supplied implicitly or explicitly in confidence. In support, the Public Body refers to the Third Parties' January 26, 1999 letter to the Public Body which specifically requested the record not be disclosed.

[para 20.] The Applicant states that the information in the record was not submitted in confidence because the Third Parties did not have an expectation of confidentiality. The Applicant states that the Third Parties did not have an expectation of confidentiality because the Public Body did not promise the Third Parties that the information would be kept confidential. Furthermore, the Applicant states that if the question and answer session had been held, the identity of the Third Parties would, in any event, have been disclosed at that session. The Applicant also refers to the confidentiality provision in section 13(6) of the *Labour Relations Code*, S.A. 1988, c. L-1.2, which does not explicitly compel the Public Body to keep this type of information confidential. Section 13(6) of the *Labour Relations Code* reads as follows:

> *13(6) The Board is not required to divulge any information as to whether a person*
>
> *(a) is or is not a member of a trade union*
>
> *(b) has or has not applied for membership in a trade union, or*
>
> *(c) has or has not indicated in writing his selection of a trade union to be, or his opposition to the trade union's being, the bargaining agent on his behalf.*

[para 21.] After reviewing the arguments of the parties, I find that the information was submitted in confidence to the Public Body. In coming to this conclusion I took into account the content of the Third Parties' January 26, 1999 letter which specifically requested the record not be disclosed. Furthermore, I find the Applicant's argument regarding section 13(6) of the *Labour Relations Code* unconvincing. Although I agree that section 13(6) does not compel the Public Body to keep this type of information confidential, it does not prohibit a Public Body from doing so. Lastly, I find the Applicant's claim that the Third Parties did not have

an expectation of confidentiality difficult to understand for two reasons. First, the Public Body, in its written and oral submissions, stated that information was submitted in confidence. Second, I do not agree with the Applicant's contention that a question and answer session would have disclosed the identity of the Third Parties. A question and answer session would have been open for all union members to attend. It would not necessarily disclose the identity of the union members who signed the petition.

C. Could the disclosure of the information reasonably be expected to bring about one of the outcomes set out in section 15(1)(c)?

[para 22.] In order to satisfy Part 3 of the test under section 15(1), the Third Party must establish that the disclosure could reasonably be expected to bring about one of the outcomes listed in section 15(1)(c) on a balance of probabilities. Only one of the outcomes has to be proven to satisfy this part of the section 15(1) test.

[para 23.] The Public Body argues that a disclosure of the information could reasonably be expected to result in similar information no longer being supplied when it is in the public interest that this information continue to be supplied under section 15(1)(c)(ii). In addition, the Public Body argues that section 15(1)(c)(iv) is met because the information was supplied to a labour relations body who was appointed to resolve or inquire into a labour relations dispute.

[para 24.] The Applicant states that section 15(1)(c)(ii) is not fulfilled. The Applicant states that a disclosure of the record would not reasonably result in employees withholding similar information when it is in the public interest that this information continue to be supplied. In support, the Applicant argues that section 149 of the *Labour Relations Code* protects employees from possible retaliation by a union. The Applicant also states that section 15(1)(c)(iv) is not fulfilled. The Applicant states that section 15(1)(c)(iv) cannot be used to shield information from parties to a labour relations dispute. Since the Applicant is a party to the dispute, the Public Body should not withhold information from the Applicant.

[para 25.] In order to fulfill section 15(1)(c)(iv), the record must contain information the disclosure of which could reasonably be expected to reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[para 26.] I find that the criteria under section 15(1)(c)(iv) have been met. In my view, the Public Body is a labour relations body that is

appointed to resolve or inquire into a labour relations dispute. In addition, a disclosure of the information could reasonably be expected to "reveal" the information supplied to the Public Body.

D. Conclusion regarding section 15(1)

[para 27.] I find that the information contained in the record fulfills the three-part test under section 15(1). Therefore, the Public Body correctly applied section 15(1) to that information.

Issue B: Did the Public Body correctly apply section 16 to the information contained in the record?

[para 28.] As the Public Body correctly applied section 15(1) to the information contained in the record, I do not find it necessary to decide whether the Public Body correctly applied section 16 to the that same information.

VI. ORDER

[para 29.] I make the following Order under section 68 of the Act.

[para 30.] I find that the Public Body correctly applied section 15(1) to the information contained in the record, and I therefore order the Public Body to refuse the Applicant access to the information.

[para 31.] In addition, since the Public Body correctly applied section 15(1) to the information contained in the record, I do not find it necessary to address whether the Public Body correctly applied section 16 to that same information.

Robert C. Clark
Information and Privacy Commissioner