

Union alleges intimidation after minister orders OHL examination

By Rick Westhead

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David Branch, Tara Walton/Toronto Star via Getty Images



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The Ontario government is being intimidated by Ontario Hockey League team owners, many of whom enjoy significant influence in local politics.

That's the serious charge levelled by Jerry Dias, the head of Unifor, Canada's largest private sector union.

For almost a year, Dias, who says his union played a pivotal role in getting Kathleen Wynne's Liberal government elected in Ontario, has been trying to convince her government to launch a task force to examine working conditions in major-junior hockey.

Last July, according to documents obtained by TSN under the Freedom of Information and Protection of Privacy Act, labour minister Kevin Flynn ordered his staff to research whether OHL players are considered employees under the province's minimum-wage legislation.

But nearly a year on, the government has declined to form a task force and refuses to say whether it considers major-junior players to be employees.

"They're dragging their asses," Unifor president Jerry Dias said of labour ministry staff. "There's a lot of wet diapers in Queens Park. "(Ministry officials) know it's wrong. You can't have a successful business model based on players not being paid. Everyone is paid at the arena except the players. Owners, coaches, popcorn vendors, even the guys that clean the toilets. Just not the players."

Flynn's press secretary Craig MacBride declined to comment, saying the government does not want to impact the lawsuit filed last November by former OHL player Sam Berg.

OHL Commissioner David Branch rejected Dias's allegations.

"The players in the OHL are some of the best amateur athletes in the world and our teams are proud to provide them with the support, programs and tools to ensure they have the best player experience," Branch wrote in an emailed statement. "This player experience, funded by our Member Teams and Leagues includes: a comprehensive education program that promotes academic success both during their time in the OHL and after including post-secondary scholarship programs; extensive health and safety, anti-doping and mentoring programs that support our players whether they continue with the sport or pursue other careers; and out-of-pocket expense coverage, equipment, billeting and travel costs."

Lawyers for Berg and other former Canadian Hockey League players who are suing the league to force its 60 teams to pay players at least minimum wage allege major-junior hockey had become a juggernaut industry, and say players deserve a far larger share of revenue than scholarships and expense coverage.

While some teams may not generate millions of dollars worth of profits, team sales are often a way to make up for years of losses, the lawyers say.

The Quebec Remparts, for instance, recently sold for as much as \$25 million, The Hockey News reported, and other teams routinely sell for more than \$8 million.

The Erie Otters are also for sale, and at a May 7 bankruptcy hearing, lawyers for the team are expected to detail the offers that owner Sherry Bassin has received for the club. Several people familiar with the team sale said the Otters will probably fetch \$10 million.

If some teams are losing money, critics say, the CHL should adopt a revenue sharing system similar to the one the NHL uses that has that league enjoying record revenue.

The former players have asked an Ontario court to order the CHL to pay \$187 million to cover overtime, holiday, back pay and punitive damages.

Documents obtained by TSN show that at least one member of provincial parliament wrote to Queen's Park over the issue of major-junior hockey.

In a Nov. 2, 2012, letter to then-labour minister Linda Jeffrey, MPP Randy Hillier wrote that he was concerned about the formation of a CHL Players' Association. Hillier wrote that a unionization effort in the OHL raised "serious concerns."

"The secrecy and lack of transparency surrounding these activities are generating legitimate concerns for many parents of players in the Ontario Hockey League as many OHL teams include players who are under the age of majority," Hillier wrote.

On Nov. 28, 2012, Jeffrey replied to Hillier, noting that the ministry has no oversight role related to union organizing activity.

The CHLPA's efforts fizzled out after it was revealed that Glenn Gumbley, who was involved with the union drive, had contacted members of the media using someone else's name.

In a confidential July 14, 2014, briefing note that was prepared for Flynn before his meeting with Dias, Flynn's staff wrote three so-called key messages for the minister.

They were:

"In general, Ontario's employment standards, occupational health and safety, and workplace insurance legislation apply equally to all employees in Ontario under provincial jurisdiction."

"The Employment Standards Act, 2000, sets out the rights and responsibilities of most employees in Ontario workplaces, and sets standards on issues such as payment of wages, public holidays, hours of work, and overtime pay."

“Anyone who has a question about their rights or entitlements can contact the Ministry’s Employment Standards Information Centre or visit the Ministry’s website.”

The briefing note also indicates that Flynn was made aware of Dias’s concerns.

“The union has said that junior hockey players in Canada aged 16 to 20 are paid as little as \$35 a week for what can amount to full-time hours,” the briefing note said. “It has also stated that players require better protections around pay, educational scholarship assistance and insurance.”

In a July 14, 2014 email to Melissa Faber, manager of employment rights and responsibilities, senior policy advisor Darren Gluckman wrote: “In terms of ES (employment standards), we’d have to know a lot more about the relationship between the players and the league/team than can be ascertained by tomorrow. While the definition of employee under the ESA is expansive (and could conceivably include junior hockey players) the policy and interpretation manual is not particularly helpful on this front.”

“On the LR (labour relations) side, the definition of employee is restricted to “includes dependent contractor.” To the extent that junior hockey players have a contract and are providing services for wages, on the face of it there’s no reason they shouldn’t be able to organize under the LRA...”

Four days later, on July, 18, 2014, Faber, in an email to a number ministry colleagues, wrote the Ontario government wanted to establish whether OHL players are employees.

“Coming out of a discussion with the MO (minister’s office) yesterday, we’ve been asked to coordinate a policy/ops note on junior hockey - with a focus being on whether or not they’re employees. We’ve started to do some research on our end as to how junior hockey is set up and what information we can get as to how players are selected and what benefits they receive,” Faber wrote.

It’s unclear whether Flynn has contacted OHL teams to ask whether players are being paid the equivalent of minimum wage.