

*H*ontario Labour Relations Board **HIGHLIGHTS**

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Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in April of this year. These decisions will appear in the March/April issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

and contractor – Order suspended until the appeal is determined

ACTION GROUP INC., AND DAN DIGNARD, INSPECTOR; RE UBCJA, LOCAL 1946; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 593; File No. 3747-09-HS; Dated April 8, 2010; Panel David A. McKee (7 Pages)

Construction Industry – Health and Safety – Jurisdictional Dispute – Trade Qualification and Apprenticeship Act – The UA called the Health and Safety Inspector to seek a ruling to determine whether or not the work performed by Carpenters could only be done by a person who was licensed as a journeyman or apprentice plumber – The Inspector's Order required the work to be performed by plumbers – The Carpenters seek to have the Board suspend the Order pending the appeal – The Board applied its standard three part test to determine whether a suspension of the Order was appropriate – The first and third element of the test converge as the Regulations of the TQAA specify what training is required for specific trades, and the Board will likely find it unsafe for any person without such training to perform the work – The issue was simplified to an application of the work to the TQAA and Carpenters' and Plumbers' Regulations suggesting that the dispute was entirely a jurisdictional one and not a question of worker safety – Therefore a strong case for a successful appeal existed – Worker safety will not be affected by suspending the Order – There was prejudice to the employer if the Order was not suspended as the UA was seeking to disrupt the commercial arrangements between the employer

Construction Industry – Duty to Bargain in Good Faith – Employer – Unfair Labour Practice – In negotiating the renewal of the collective agreement, the employer tabled a proposal with respect to jurisdiction and contracting out provisions – These amendments pertained to only one of the members of the Skilled Trades Council, the IBEW, which claimed the employer's proposals were an attempt to bargain recognition provisions to impasse, in breach of the obligation to bargain in good faith – The Board noted that to determine if changes are truly inconsistent with the Act, the context of the particular collective agreement and circumstances must be reviewed – The Board found the proposal to change the jurisdiction clause did not change the description of the bargaining unit and the change to the contracting out wording did not breach the Act, as it was the same language that the other members of the council have lived with, nor does it threaten the long-term integrity of the bargaining unit or IBEW's bargaining rights in light of the provincial collective agreement which covers electrical work in the ICI sector – The Board determined that the employer's proposed amendments did not breach their obligation to bargain in good faith

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE ESSEX AND KENT COUNTIES SKILLED TRADES COUNCIL; File Nos. 2669-08-U; 2835-08-U; 3057-08-RV; Dated April 6, 2010; Panel Kevin Whitaker (8 Pages)

Bargaining Rights – Construction Industry – Practice and Procedure – Termination – Trade Union – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

KIDD MECHANICAL INC.; RE EMPLOYEES OF KIDD MECHANICAL INC. REPRESENTED BY VIKKI SCHLONIES; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, ON ITS OWN BEHALF AND ON BEHALF OF ALL OF ITS AFFILIATED BARGAINING AGENTS; File No. 0106-10-R; Dated April 19, 2010; Panel: David A. McKee (6 pages)

Certification – Discharge – Interim Relief – Unfair Labour Practice – The union applied for interim reinstatement of the worker contending he was terminated for his involvement in the organizing drive – The evidence showed that prior to his termination the union had signed up five members (in a 65 member bargaining unit) and after his termination the union signed up an additional 37 members and filed for certification – As the worker's termination did not stall the organizing drive (indeed it seemed to propel it), the Board found that interim relief was not necessary to prevent irreparable harm nor was it necessary to achieve other significant labour relations objectives – Accordingly all of the conditions under s. 98(2) were not met – Application dismissed

NOVOTEL CANADA INC., ACCOR CANADA INC., NOVOTEL OTTAWA; RE HOSPITALITY & SERVICE TRADE UNION, LOCAL 261 AND JEFFREY SEGAT; File No. 0022-10-M; Dated April 21, 2010; Panel: Patrick Kelly (5 pages)

Bargaining Unit – Certification – Construction Industry – Local 183 applied for certification under the construction industry provisions of the Act asserting that the locating work performed in an excavation project was construction industry work – Local 183 argued that the work was performed on a construction site and that it was necessary and integral to the work on those sites – The company argued that the purpose of the work was safety, not construction; that its contract was not with the constructor; and that the work was performed before construction began, which therefore could not be a part of the construction industry – The Board found that the work in question was “necessary and integral” to the construction activity as there was a clear connection between the work required to be performed by the locators and the work of the excavation that requires the locating work be undertaken – Therefore, it was construction industry work – Matter continues

TELECOM CANADA LTD.; RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183; File Nos. 0745-09-R; 0754-09-R; 0765-09-R; 0782-09-R; Dated April 14, 2010; Panel: Marilyn Silverman (9 pages)

Health and Safety – Reconsideration – The Board allowed an appeal of the Inspector's order ([2010] OLRB Rep. Jan/Feb 199) and both the Union and the Ministry of Labour applied for reconsideration – The Union submitted that the underlying factual basis for the Board's decision had changed significantly since the employer had decided to reopen one of the mines which was only on care and maintenance – The Board found that the evidence that the Union sought to put before the Board related to developments that occurred or will take place after the order under appeal was issued, and were accordingly irrelevant and would not be considered by the Board – The Board went on to note that the dismissal of the appeal and denial of the reconsideration did not preclude an inspector conducting another investigation and making a determination with respect to the employer's compliance with the Regulations based on the facts that exist when the investigation takes place – Reconsideration denied

XSTRATA CANADA CORPORATION; RE
UNITED STEELWORKERS, LOCAL 2020; RICK
KULYSKI, INSPECTOR; AND CAW CANADA
AND ITS LOCAL 598; File No. 0506-09-HS;
Dated April 6, 2010; Panel: Harry Freedman (6
pages)

The decisions listed in this bulletin will be included
in the publication Ontario Labour Relations Board
Reports. Copies of advance drafts of the OLRB
Reports are available for reference at the Ontario
Workplace Tribunals Library, 7th Floor, 505
University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Mr. Todor Pandeliev v. OLRB Divisional Court No. 10-DC-1594 Ottawa	3279-08-ES	Pending
Ellis Don Limited v. Ontario Sheet Metal Workers' and Roofers' Conference Divisional Court No. 92/10	0784-05-G	June 29 & 30, 2010
AECON Construction Group v. IBEW, Local 105 Divisional Court No. 87/10	3626-08-G	Pending
Independent Electricity System Operator v. Canadian Union of Skilled Workers, LIUNA et al Divisional Court No. 78/10	3322-03-R 2118-04-R	Pending
Christopher Henderson (Proteus Craftworks) v. Director of Employment Standards et al Divisional Court No. 02/10	1953-07-ES	Abandoned April 12/10
K.A.S. Group of Companies v. Metro Waste Paper Recovery Divisional Court No. 611/09	0723-08-R 1037-08-R	Pending
Reliable Painters & Decorators Divisional Court No. 620/09	1443-09-R	Pending
Riverside Mart & Service v. Bilal Jebahi Divisional Court No. 09-DC-1566 Ottawa	1598-09-ES	Pending
Lennox Drum Limited v. Joseph Ah-hone Divisional Court No. 465/09	0657-08-HS	August 10, 2010
Pro Pipe Construction v. Norfab Metal and Machine Divisional Court No. 408/09	2574-04-R	Pending
IBEW v. Ellis Don Divisional Court No. 437/09	2836-08-G	June 29 & 30, 2010
Blue Mountain Resorts v. Ontario Ministry of Labour Divisional Court No. 373/09	1048-07-HS 0255-08-HS	Pending
Julie Desgrosseillers v. North Bay General Hospital Divisional Court No. DV-830-09 SUDBURY	0827-08-U	Pending
Roy Murad v. Les Aliments Mia Foods Divisional Court No. 291/09	1999-07-ES	Pending
Greater Essex County District School Board v. IBEW, Local 773 et al Divisional Court No. 212/09	1776-04-R et al	June 14, 2010
Dr. Peter A. Khaiteer v. OLRB et al Divisional Court No. 431/08	4045-06-U et al	Pending
Comfort Hospitality Inc. o/a Days Inn v. Director Employment Standards et al Divisional Court No. 344/08	2573-07-ES	Pending
L.I.U.N.A. v. Barclay Construction et al Divisional Court No. 310/08	0837-06-R	Pending
Janet Kitson v. OLRB et al Divisional Court No. 492/06	4205-02-U	Pending