

H Ontario Labour Relations Board **HIGHLIGHTS**

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June 2010

APPOINTMENTS

The Honourable Kevin Whitaker

The Board is pleased and proud to announce that on May 18, 2010, Kevin Whitaker was appointed a Judge of the Ontario Superior Court of Justice, effective immediately. Justice Whitaker leaves the OLRB after nine years as its Chair and institutional leader. We are grateful for his commitment to labour relations and his many initiatives to enhance dispute resolution. The broader adjudicative community is equally appreciative of his wisdom and contributions to the government's modernization of administrative justice. We wish him great and continuing success.

Diane Gee, Interim Chair

Diane Gee, Alternate Chair of the OLRB and Chair of the Pay Equity Hearings Tribunal, has been appointed Interim Chair of the Board. Diane was named Alternate Chair in August 2008, having been a Vice-Chair during the years 1994-2002. Diane will serve as Interim Chair for a period of one year or until a new Chair is appointed, whichever occurs first.

Brian McLean, Interim Alternate Chair

Brian McLean has been appointed to the position of Interim Alternate Chair of the OLRB. Brian has been a Vice-Chair since joining the Board in 1998. He will serve as the Alternate Chair for a period of one year or until a new Chair is appointed whichever first occurs.

NOTICE TO COMMUNITY

Harmonized Sales Tax

Please note that effective July 1, 2010 hearing fees for construction industry grievances will be \$565 (\$500 fee, plus 13% HST).

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in May of this year. These decisions will appear in the May/June 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.

Certification – Construction Industry – Timeliness – Voluntary Recognition – Bruce Power and BACU were bound to a collective agreement that provided that if bricklayers' work was performed by Aecon or another subcontractor, the subcontractor was required to sign a document ("Appendix E") recognizing the bargaining rights of BACU – Aecon signed the document and delivered it to Bruce Power who failed to deliver it to BACU – BACU applied to certify bricklayers employed by Aecon – Aecon's position was that it was already bound to a collective agreement as a result of signing Appendix E, thus the application was untimely – The issue before the Board was whether a voluntary recognition had been created, and a collective agreement reached, between Aecon and BACU when Aecon executed the Appendix E document but BACU did not – The Board held that once Aecon executed Appendix E, the document became a voluntary recognition

agreement between Aecon and BACU – The Board found that the signature of Aecon evidenced its acceptance of the terms of the voluntary recognition agreement offered by BACU – Accordingly the employees subject to the certification application were covered by a collective agreement on the application date – Application dismissed as untimely

AECON CONSTRUCTION GROUP INC.; RE BRICK AND ALLIED CRAFT UNION OF CANADA; File No. 3015-09-R; Dated May 20, 2010; Panel: Lee Shouldice (16 pages)

Abandonment – Certification – Construction Industry – Standing – Status – Timeliness – In its response to a certification application, the employer asserted that it was bound to a collective agreement with an employee association and therefore the application was untimely – The union challenged the status of the association, and argued that the employer had no standing to proffer arguments on behalf of the association which, the union alleged, had abandoned its bargaining rights by failing to file a response or intervention – The Board found that the employer, as signatory to the agreement, could make arguments asserting the existence of the association and the validity of the collective agreement – The employer was not purporting to advance interests of individual employees – Matter continues

ECONOMY PAVING COMPANY (ST. CATHARINES) LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; File No. 2711-09-R; Dated May 12, 2010; Panel: Marilyn Silverman (4 pages)

Collective Agreement – Duty to Bargain in Good Faith – OPSEU complained that MPAC's revocation of an offer for the renewal of a collective agreement and subsequent tabling of a new offer following the release of the provincial budget was a violation of the employer's duty to bargain in good faith – The Board recognized that its jurisprudence reflects an inherent conflict: on the one hand, there is an element of voluntarism in the concept of bargaining which means that the parties are each expected to maximize their own self interest and are not required to agree to any particular collective agreement; on the other hand, there is an element of compulsion introduced by the obligation to bargain in good faith and the obligation to make every reasonable effort to make a collective agreement – Further, negotiation is a fluid process and may encounter changes in circumstances that require a shift or even reversal in bargaining position – The Board

held that the introduction of the budget and applicable FAQs were relevant considerations for the employer's position, and accepted that "the spirit and intent" of these documents gave the employer *bona fide* reasons to change its position – Application dismissed

MUNICIPAL PROPERTY ASSESSMENT CORPORATION; RE OPSEU; File No. 0094-10-U; Dated May 14, 2010; Panel: Ian Anderson, P. Lemay, D.A. Patterson (10 pages)

Final Offer Vote – First Contract Arbitration – Ministerial Reference – The employer requested that the Minister direct a final offer vote – Prior to the scheduled vote, the Board issued a decision directing the settlement of the first collective agreement by arbitration – The Minister subsequently referred a question to the Board regarding whether he is required to direct that the final offer vote be taken in light of the Board's order for first contract arbitration – The Board held that a request for a final offer vote is understood as a continuing request until the time the vote is held – The Board found that the statutory precondition of the possibility of a strike or lock-out does not continue to exist once a direction for first contract arbitration is made – Accordingly, the right to a final offer vote is extinguished when a direction for first contract arbitration is made – There is no basis upon which the Minister could continue to direct a vote on the employer's final offer

RAINBOW CONCRETE INDUSTRIES LTD.; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; File No. 3292-09-M; Dated May 3, 2010; Panel: Ian Anderson (5 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	October 21 & 22, 2010
K.A.S. Group of Companies v. Metro Waste Paper Recovery Divisional Court No. 611/09	0723-08-R 1037-08-R	December 17, 2010
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	Abandoned
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	Adjourned sine die
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