

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

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July 2010

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in June 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-Bargaining Unit – Practice and Procedure – Status – The employer and the union did not agree on the list of employees who were at work on the date of application and performing work within the scope of the bargaining unit – The employer challenged the sufficiency of the union's submissions as they failed to contain detailed facts and failed to establish a *prima facie* case as per the Board's Information Bulletin No. 9 – The Board confirmed that where a party states that a name belongs on the employee list, the submissions filed will generally be required to contain sufficient facts to establish that the person was at work and performing bargaining unit work for a majority of the day on the date of application – The Board found that the union's submissions were deficient as they did not describe the work being performed on the date of application notwithstanding that such information appeared to be available to the union – The Board directed the union to file any further submissions upon which it wished to rely – Matter continues

CONTERRA RESTORATION LTD.; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA

LOCAL 183; File No. 1975-09-R; Dated June 4, 2010; Panel: Diane L. Gee (11 pages)

Construction Industry Grievance – Reconsideration – Hydro One sought reconsideration of the Board's decision that it had violated the contracting out provisions of the Principal Agreement – On a more extensive review of the case law the Board found no support for Hydro One's position that no "contracting out" occurs where an employer enters into an agreement with another entity to perform work on its behalf that would otherwise be performed by bargaining unit employees where the employer had no other option (Hydro One's arrangement with CN required Hydro One to have its transformer off-loaded from a rail car by employees of a subcontractor to CN which were not bound to the Principal Agreement) – The Board found that the situation that Hydro One found itself in may be relevant to remedy, but not to whether the contracting out provision of the Principal Agreement had been violated – Reconsideration denied

HYDRO ONE NETWORKS INC.; RE CANADIAN UNION OF SKILLED WORKERS; File No. 2478-09-G; Dated June 22, 2010; Panel: Diane L. Gee (6 pages)

Termination – Timeliness – Unfair Labour Practice – The responding union and intervening employer entered into a collective agreement, based on the terms of the Sudbury Heavy Civil Construction Collective Agreement ("Heavy Agreement"), commencing December 15, 2009 – The Heavy Agreement expired April 30, 2010 and the termination application was filed within 30 days of April 30th – The Board found that s. 58(1)

mandates the minimum term of operation of a collective agreement to be one year, and since the exception in s. 58(4) did not apply (the intervening employer was not a member of the employers' organization), the application was untimely – The Board also rejected the employer's submission that the union should be estopped from relying on s. 58(1) for three reasons: first, estoppel cannot operate to prevent the operation of a public statute; second, the elements of estoppel were not made out; and third, there was no evidence of representations made to the applicant by the union, in any event – Application dismissed

LABELLE BROTHERS CONSTRUCTION AND/OR LABELLE BROTHER LTD., 763535 ONTARIO INC. O/A LABELLE BROTHERS EXCAVATING; RE DEREK SEQUIN; RE LIUNA, LOCAL 493; File Nos. 0006-10-R; 0403-10-U; Dated June 23, 2010; Panel: John D. Lewis (6 pages)

Freedom of Information and Protection of Privacy Act – Unfair Labour Practice – The union sought disclosure of a document ("Notice of Decision") detailing the results of the employer's investigation of complaints made between two union members pursuant to the employer's policy regarding harassment complaints – The issue before the Board was whether or not the mandatory limitation on the disclosure of personal information under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") prevented the Board from issuing an order requiring the employer to disclose the Notice of Decision to the union – The Board found that FIPPA did not prevent disclosure of the Notice of Decision as it fell within the labour relations exception under section 65(6) and accordingly FIPPA had no application – In addition, after reviewing FIPPA section 21(1) the Board found that to the extent that disclosure of the Notice of Decision to the union involved any invasion of personal privacy, it was not an unjustified invasion – Matter continues

LAURENTIAN UNIVERSITY; RE LAURENTIAN UNIVERSITY FACULTY ASSOCIATION; File No. 3642-08-U; Dated June 7, 2010; Panel: Patrick Kelly (15 pages)

Interim Relief – Unfair Labour Practice – The employer laid off a number of employees during a CAW organizing campaign – The CAW filed an unfair labour practice complaint and an interim relief application alleging that the lay-offs were motivated by anti-union animus, animated particularly by the inclusion of three employees who were supporters of the union – The employer

reinstated the employees and the CAW withdrew its application for interim reinstatement – The CAW then filed an application for certification but withdrew the application two days later – There were then additional lay-offs including the three employees who were supporters of the union – The CAW filed an application to have the employees reinstated to their positions – In assessing whether a campaign to establish bargaining rights was underway the Board found that there was sufficient evidence to conclude that the organizing drive continued after the CAW withdrew its application – The fact that the CAW withdrew its application for certification did not mean that its campaign to establish bargaining rights was no longer underway – In assessing whether all of the conditions under s. 98(2) were met the Board held that on a balance of probabilities it narrowly appeared that the lay-offs were unrelated to the exercise of rights under the Act – There was evidence that the employees had been selected for possible lay-off prior to the CAW organizing campaign – Application for interim relief dismissed

MJ MANUFACTURING – A DIVISION OF MARTINREA INTERNATIONAL INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA); File No. 3201-09-M; Dated June 1, 2010; Panel: Brian McLean (6 pages)

Certification – Natural Justice – Related Employer/Sale of Business – Practice and Procedure – Reconsideration – Termination – Subsequent to the filing of a 69/1(4) application the UFCW and responding employers settled the matter in a way that affected employees in locations other than those which had received notice of the original applications – Neither the parties nor the Board ensured that these additional employees received notice of the Board's decision, reflecting the parties' settlement, which affected their rights – Given a timely objection by employees from one of the stores for which notice was not provided, the Board varied its decision to exclude the store from the bargaining unit descriptions contained in its earlier decision – Termination application dismissed – Certification continues

PHARMA PLUS DRUGMARTS LTD., KATZ GROUP CANADA LTD. AND PHARMX REXALL STORES LTD.; RE UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 414; File Nos.

0579-08-R; 0580-08-R; 1497-09-R; 1662-09-R;
Dated June 8, 2010; Panel: Brian McLean (3
pages)

Certification – Membership Evidence – Practice and Procedure – The union filed membership evidence that was undated – The Board found that undated membership cards is not evidence that the Board can rely on in deciding whether to order a representation vote – The Board noted that Rule 9.2 requires that membership evidence must disclose the date upon which each signature was obtained – Further the Board found it was unlikely that it could rely upon affidavit evidence to provide the dates the cards were signed, given s. 8(3) prevents the Board from considering the affidavit and it would defeat the quick vote scheme of the Act – Finally, given the large number of undated cards this would not be an appropriate case, in any event, to relieve against the Board's rules – Application dismissed

STOCK TRANSPORTATION LTD.; RE AMALGAMATED TRANSIT UNION LOCAL 1573; File No. 0876-10-R; Dated June 16, 2010; Panel: Brian McLean, J.A. Rundle, S. McManus (3 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, 7 th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Rainbow Concrete Divisional Court No. 850-10 Sudbury	2904-09-U 2905-09-FC	Pending
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	Dismissed June 29, 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	Dismissed June 29, 2010
Blue Mountain Resorts v. Ontario Ministry of Labour Divisional Court No. 373/09	1048-07-HS 0255-08-HS	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	Adjourned <i>sine die</i>
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