

*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 July of this year. These decisions will appear in the July/August 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 – Reconsideration – Timeliness

The Board certified the trade union based on sufficient card-based membership, and stated in its decision that it had no regard to the employer's late-filed response – In its request for reconsideration, the employer deposed by affidavit that it had received misleading information regarding the time limit for its response from a Board clerk – The Board sets out the policy underlying its reluctance to permit parties to rely on oral evidence from Board staff to justify non-compliance with requirements established by the Act and the Rules (see *Sarnia Construction*) – In this case, the affidavit sworn by the employer's representative indicated he advised the Board clerk he had only received the applicant's information that day, which was the day relied upon by the Board staff – However, correspondence from the employer's counsel clearly showed that the responding party had received the application a day earlier and knew the date from which it was required to calculate the time for filing the response – Request for reconsideration dismissed

BUILD-ALL CONTRACTORS; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; File No. 0577-10-R; Dated July 7, 2010; Panel: Harry Freedman (5 Pages)

Certification – Practice and Procedure – When the description of the bargaining unit and the status of four individuals remained following the Regional Certification Meeting, the Board scheduled a hearing in Toronto – The employer requested that the venue of the hearing be changed to Windsor because it could not afford the cost of travelling to Toronto or bringing its three witnesses to the hearing – The Board pointed to its travel policy which outlines the limited funding and human resources available for travel outside of Toronto – In matters such as applications for certification, the policy requires the first two days of the hearing to take place in Toronto – The Board did note it has discretion to depart from this policy in exceptional circumstances (for example the health of a party or witness), but found no sufficiently compelling reasons to depart from the policy in this matter – Matter proceeds

MICHAEL ANTHONY ALLSOP O/A ADVANCED SOLAR SOLUTIONS; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS CONSTRUCTION COUNCIL OF ONTARIO; File No. 0958-10-R; Dated July 22, 2010; Panel: Patrick Kelly (2 Pages)

Collective Agreement -- Construction Industry

– Grievance – This referral by Otis of a grievance centred around two elevator mechanics from IUEC Local 102, which is based out of Winnipeg, performing work in Terrace Bay, Ontario – The issue was what wage rate the Local 102 members were entitled to: their local wage rate, or the higher Toronto wage rate – A survey of the evolution of the collective agreement and associated letters of understanding revealed that any members working in areas other than their local area, at the request of their employer, would receive their local wage rate or the wage rate of the area they were working in, whichever was higher – Local 102 acknowledged that the collective agreement language on its face restricted the application of the Toronto wage rate to the City of Thunder Bay – The union submitted that the language of the collective agreement did not reflect the negotiation of the parties that the wage rate set for the City of Thunder Bay also would include the surrounding Northern areas – Local 102 asked the Board to rectify the collective agreement to reflect an error in the language used – The Board reviewed the criteria for rectification and determined there was no clear and easily fixable error in the collective agreement, as the parties significantly disagreed on what had been agreed to in negotiations – Consequently, the test for granting rectification laid out in *Nav Canada* was not met – The Board concluded there was no wage rate established for Terrace Bay and the Local 102 members were therefore entitled to their home wage rate – Grievance allowed

OTIS CANADA INC.; RE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 102; File No. 3414-08-G; Dated July 5, 2010; Panel: Norm Jesin (11 Pages)

Bargaining Unit – Certification –

Reconsideration – Following resolution of status disputes, the Board determined that the applicant had between 40 and 55% support for its application, and ordered a vote – On the date the vote decision was sent to the parties (but before they received it), the applicant provided the Board with an accurate membership list, persuading the Board that the applicant had greater than 55% support for its unit – The Board revoked the earlier decision and issued a fresh decision certifying the applicant – The employer sought reconsideration of the latter decision, arguing that the Board had no authority to consider submissions made by the applicant after the hearing had ended – The Board found there is nothing in its Rules that addresses whether a

party may file written submissions after a hearing has concluded – Information relating to membership evidence was properly not provided to the employer by the applicant; however, in response to the request for reconsideration, the applicant had provided the employer with its post-hearing list, so the employer was not prejudiced – The information provided by the applicant dealt only with the identity of certain individuals (e.g., clarification of spelling), and not with their status (which was the subject of the hearing before the Board) – The Board found it had made an error in assessing the membership evidence and ordering the vote and therefore appropriately reconsidered its decision – Employer's request for reconsideration denied

QUALITY RUGS OF CANADA LIMITED; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; File No. 2997-05-R; Dated July 9, 2010; Panel: Harry Freedman (9 Pages)

Evidence – Natural Justice – Practice & Procedure – Trade Union

UNITE HERE brought a motion to admit the transcripts taken by a court reporter during eleven hearing days presided over by the Chair, who was appointed a Judge of the Superior Court of Justice of Ontario, and as a result was unable to continue to hear and determine these proceedings – UNITE HERE had been granted permission to have a court reporter create transcripts of the evidence with the usual understanding that the transcripts must be shared with the other parties and the Board and were not an official record – At a reconstituted hearing before a different Vice-Chair, the use of these transcripts for the purpose of expediting the proceedings was explored – Workers United Ontario Council (WUOC) indicated that it was not prepared to consent to the use of the transcript, predominately because such a process did not accord with the principles of natural justice given the dangers surrounding the admittance of hearsay evidence – The Board found that a reading of sections 111(2)(e) of the Act and s. 15(1) of the *Statutory Powers Procedure Act* clearly indicated that the authority to admit hearsay evidence such as the transcripts is within its power – On analysis as to whether the transcripts ought to be admitted, the Board indicated that the relevancy, reliability, unfairness and any violations of natural justice should provide the basis upon which it should determine whether to accept or reject hearsay evidence –

Ultimately, the Board found that the provision of an opportunity for WUOC to cross-examine witnesses on their adoption of the prior statements under the observation of the Vice-Chair effectively ensured that there was no unfairness or violation of natural justice arising from the dangers associated with admitting hearsay evidence – Accordingly, the transcripts were admitted as evidence – Matter continues

UNITE HERE; RE WORKERS UNITED ONTARIO COUNCIL AND ARAMARK CANADA LTD.; File Nos. 0607-09-R; 0678-09-R; 0969-09-U; Dated July 8, 2010; Panel: Lee Shouldice (12 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
Dr. Peter A. Khaiteer v. OLRB et al Divisional Court No. 383/10	0290-08-U 0338-08-U	Pending
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