

H Ontario Labour Relations Board **HIGHLIGHTS**

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Provincial Designations

Provincial Bargaining Agency Designations have been scanned and are available electronically through the Ontario Workplace Tribunals Library at <http://www.owtlibrary.on.ca/english/provincialBargaining/index.htm>. A link to the Library page is also available on the Board's website under "Construction Industry".

Scope Notes

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

Duty to Bargain in Good Faith – A variety of incidents occurred during the negotiation of a renewal collective agreement between the parties: a termination application was made, but the union was able to withstand the challenge; a sizeable minority voted against the union, and the union alleged employer initiation (given the result of the vote, the allegation was not adjudicated); notice to bargain was given by the union; a conciliation officer was appointed; the employer offered to have the current and future collective agreements settled by interest arbitration; the union declined the proposal; a "no board" was issued; the employer tabled a "final offer to settle negotiations" and proposed that if the wage component remained at issue, the parties could agree on language and refer the wage issue to an interest arbitrator; the union sought clarification of

one aspect of the wage issue; the employer's clarification was not a "model of clarity"; the employer subsequently withdrew its final offer and did not re-table a fresh offer; in the meantime, the employer implemented a wage raise and at the same time advised the union it would no longer deduct and remit union dues – The Board held that the *LRA* does not mandate that unions and employers enter into a collective agreement, only that they make every effort to do so, and bargain in good faith in the process – These obligations continue beyond the expiry of the statutory freeze, where there may be a strike or lock-out, and even after a legal strike or lock-out has actually commenced – The Board found the employer violated s. 17 when it failed to state its wage proposal clearly and when it withdrew its offer without warning and without re-tabling an offer that the union could address – Application allowed: employer ordered to re-table offer and, if offer is accepted, to reinstate dues deductions

BOLDRICK BUS SERVICES LTD.; RE TEAMSTERS LOCAL UNION 91; File No. 3379-09-U; Dated September 8, 2010; Panel: Brian McLean, R. O'Connor, S. McManus (12 pages)

Sale of a Business – Union Successor Rights

– BFI purchased York Disposal, and merged operations, intermingling employees and overlapping the scope clauses of the two bargaining units of the same union – The employer applied under s.69(6) to terminate the York bargaining rights so its existing collective agreement with BFI could apply to all employees – The union challenged the application, arguing that s.69 operates to preserve and protect bargaining rights and the expiry of the York collective agreement precluded any order under s.69(6)(a-d); further, the application of s.69(6) is restricted to different, competing bargaining

agents – The Board rejected both arguments, holding that s.69(6) applied even though the same union represented both groups of employees – The Board held that s.69 must be read in its entirety: while an order under s.69(6)(a) may not be available, the Board retained the authority to grant a remedy pursuant to s.69(6)(b)-(d) – Further, the Board noted that while the intent of s.69 is to preserve and protect bargaining rights, s.69(6) operates despite these protective provisions in order to resolve the labour relations issues caused by intermingling following a sale – The Board exercised its discretion to grant the order sought

BFI CANADA INC; RE TEAMSTERS LOCAL UNION NO. 419; File No. 0420-10-R; Dated September 17, 2010; Panel: Brian McLean (11 pages)

Standing – Unfair Labour Practice – Milk and Bread Drivers Local 647 and Bakery, Confectionary Local 264 each had collective agreements with Canada Bread at different locations – Local 647 claimed that a collective agreement entered into between Canada Bread and Local 264 was void because it was spawned following the early termination of an existing agreement, and notice of the early termination had not been properly posted – Local 647 argued that the employer had effectively “chosen” 264 over 647 to be the bargaining agent of a new facility it was planning to open – The applicant also argued that the new agreement gave Local 264 bargaining rights beyond the geographic scope of any rights it actually held – Finally, Local 647 submitted that its own collective agreement with one of Canada Bread's facilities provided that its employees would be offered jobs at the new facility – The Board held that Local 647 had no standing to challenge the early termination: Local 647 was not affected in any way by it and only an employee in Local 264's bargaining unit could claim the improper posting – There were several possible consequences of the new collective agreement between Local 264 that could affect the employees represented by Local 647, but since the new facility had not opened and there were no employees currently working there, those consequences were speculative – The applicant had no standing to bring these challenges – Application dismissed

CANADA BREAD COMPANY, LIMITED AND BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION AFL-CIO, CLC, LOCAL 264; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION 647; File No.

3610-09-U; Dated September 29, 2010; Panel: Brian McLean, R. O'Connor, S. McManus (6 pages)

Duty of Fair Representation – Employment Standards – Chrysler provided notice of indefinite layoff to 1,110 employees, in the middle of which was a planned two-week shutdown of the affected part of the company - The union negotiated an opportunity for 850 of the most junior employees to earn wages for those two weeks – The more senior employees, which included the applicant, were not afforded the same opportunity but were informed the lay-off would not continue – The applicant argued he was entitled to payment for the same two week period as per the notice provisions of the *ESA* and the union's failure to seek redress for this breach as well as the work opportunity negotiated for the most junior employees violated the duty of fair representation – The Board held that the proper focus of a s.74 complaint was whether the union's conduct was arbitrary, discriminatory, or in bad faith, and not an exhaustive assessment of the *ESA* challenge – The Board found the union had appropriately balanced the interests of all members in negotiating the work opportunity – Application dismissed

GEORGE CARTER; RE NATIONAL AUTOMOBILE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 1285; RE CHRYSLER CANADA INC.; File No. 2850-08-U; Dated September 20, 2010; Panel: Kelly Waddingham (3 pages)

Certification – Construction Industry – Related Employer – LIUNA sought to certify the employees of Mirtren Contractors Limited and shortly thereafter filed an application for relief under the related employer provision of the Act, citing also Mirtren Construction Limited and Mirtren Builders Ltd. (claim against latter company dropped) – The employees of Mirtren Contractors were represented by CLAC – Contractors asserted it had no employees in the bargaining unit sought by LIUNA - The Board found that although both Contractors and Construction were owned by one individual, they carried on business in two distinct divisions, geographically apart, with each division reporting to different management for operational and labour relations purposes – The Board dismissed the application for a declaration that the companies were related but, given there was no prejudice to Construction, was satisfied that it should invoke s. 112 to find that the responding party had been incorrectly named

in the application for certification – Matters continue

MIRTREN CONTRACTORS LIMITED AND MIRTREN CONSTRUCTION LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE CONSTRUCTION WORKERS LOCAL 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA; File Nos. 1451-07-R; 1483-07-R; 1484-07-U; Dated September 30, 2010; Panel: Harry Freedman, Barry Roberts, Richard Baxter (14 pages)

Duty to Bargain in Good Faith – Unfair Labour Practice – During bargaining for a renewal collective agreement, OPSEU sought the names and telephone numbers of all its members from the employer – The employer resisted, relying on a provision in the parties' collective agreement that limited disclosure of employees' contact information to once per year, and exempted those employees who objected to having their contact information given to the union – OPSEU alleged the employer was bargaining in bad faith and interfering with the union's statutory right to represent its members; it was not specifically relying on the alleged breach of the collective agreement – The Board found the employer has a positive obligation to provide the information to the union to facilitate equal bargaining positions in the collective bargaining relationship – The union's request for the information was made in the context of giving notice to bargain a new collective agreement – The employer's refusal to furnish the information was an interference with the union's administration of its bargaining rights – Application allowed

OAKLANDS REGIONAL CENTRE; RE OPSEU; File No. 1363-07-U; Dated September 10, 2010; Panel: Ian Anderson, P. LeMay, C. Phillips (13 pages)

Certification – Related Employer – The Labourers sought certification for two employees engaged to carry out the "pump watch" at the Ear Falls Project during a specified short period of time – The application for certification and the relief sought under s. 1(4) of the *LRA* were dependent on a finding that one or more of SNC Lavalin Inc., SNC-Lavalin Group Inc. and SNC-Lavalin Power Ontario Inc. (collectively "SNC") was the employer of the two labourers – The Board found that when the original subcontracting arrangements made by SNC collapsed, efforts were made to ensure that there was continuity for the pump watch responsibilities – SNC was sensitive, however, to the employer issue long before the arrangements for the pump watchers

were made; it took steps to ensure that it was not, and was not seen to be, the employer of the labourers – The Board held that there was no doubt that the work performed was for the benefit of SNC and that SNC was ultimately responsible for the labourers being paid through its contract with a subcontractor – However, fundamental control over the labourers at the relevant time was exercised by a contracted project manager, and not SNC – Applications dismissed

SNC LAVALIN INC.; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; File Nos. 2442-07-R; 2936-07-R; Dated September 22, 2010; Panel: Harry Freedman (17 pages)

Court Proceedings

Construction Industry Grievance – Delay – Judicial Review – The Sheet Metal Workers and the IBEW sought judicial review of two Board decisions which found that a 1965 Working Agreement signed by Ellis Don did not confer bargaining rights on the unions and was not a recognition agreement – The IBEW also sought to challenge one of the Board decisions for delay – The Court found the Board's decision-making process in each case was transparent, intelligible and justifiable – On the issue of the two-year delay in issuing a decision, the Court held that the union failed to show any prejudice, and was unable to rebut the presumption of regularity of the Board's proceedings – Applications dismissed

ELLIS-DON LIMITED, ELLIS DON CORPORATION AND OLRB; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE; OLRB File No. 0784-05-G (Court File No. 92/10); Dated September 29, 2010; Panel: Jennings, Sachs and Wilton-Siegel JJ.(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
Greater Essex Catholic District S.B. Divisional Court No. 462/10	3122-04-G	Pending
Rainbow Concrete (Mark Corner) Divisional Court No. 437/10	2904-09-U 2905-09-FC 3292-09-M	Pending
Ontario Power Generation Divisional Court No. 322/10	0264-09-G	Pending
John McKenney v. Upper Canada District S.B. Divisional Court No. 10-DV-1652 Ottawa	2687-08-U	Pending
Rainbow Concrete Divisional Court No. 856-10 Sudbury	3292-09-M	Pending
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
AECON Construction Group v. IBEW, Local 105 Divisional Court No. 87/10	3626-08-G	November 8, 2010
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
Pro Pipe Construction v. Norfab Metal and Machine Divisional Court No. 408/09	2574-04-R	Pending
Blue Mountain Resorts v. Ontario Ministry of Labour Divisional Court No. 373/09	1048-07-HS 0255-08-HS	February 15, 2011
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