

H *Ontario Labour Relations Board* **HIGHLIGHTS**

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New OIC APPOINTMENTS

The Board welcomes the following new appointments:

VICE-CHAIRS

GENEVIÈVE DEBANÉ comes to the Board from a full-time Vice-Chair position at the Human Rights Tribunal of Ontario. She is a graduate of the Faculty of Law at the University of Ottawa and holds a Bachelor of Commerce degree from Concordia University. Prior to her adjudicative career, Ms. Debané was a partner at Mathews Dinsdale & Clark LLP practising labour, employment and human rights law. Ms. Debané is fluently bilingual.

ADAM BEATTY joins the Board from Cavalluzzos LLP. He received his law degree from the University of Toronto. During his time in practice, he appeared before arbitrators and many tribunals, including the OLRB. Mr. Beatty has published multiple articles in the field of labour law. Mr. Beatty has a BA from the University of Victoria and an MA from McGill University.

BOARD MEMBERS

Representing Unions:

STEVEN CRONKRIGHT, former business manager at the Sheet Metal Workers International Association.

JACK DOWDING, from the International Brotherhood of Electrical Workers Construction Council of Ontario.

ROBERT PETRONI, former Business Manager and Recording Secretary from the Labourers International Union of North America, OPDC.

BRIAN MACDONALD, past president of Teamsters Local 91.

HEINO NEILSEN, recently retired Assistant to the President of the Ontario Public Service Employees Union.

ALEXANDRA DAGG, most recently Director of Operations for the NHL Players Association, and formerly with UNITE HERE.

Representing Employers:

WAYNE ZACHAR, recently retired Director of Employee Relations at the Liquor Control Board of Ontario.

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 www.canlii.org.

Certification – Construction Industry – Interim Order – The Labourers sought interim reinstatement of its workforce with Ball, pending the resolution of other litigation following the termination of the Labourers' bargaining rights with Ball, including the Labourers' subsequent efforts to re-establish those rights – The Board

granted the interim order at the consultation and followed up with written reasons – Ball explained that it discharged all of its construction labourers when it realized that the Labourers were about to lose their jurisdictional claim to the work being performed by their members; Ball replaced those workers with members of the Carpenters following the signing of a voluntary recognition agreement – There was no dispute that the discharges occurred during an ongoing organizing campaign and that the events raised a serious issue to be tried – The Board found also that the removal of the employees from Ball’s worksite would cause irreparable harm to the Labourers as it would mean the Labourers were losing an essential connection to the workplace they were trying to organize – The balance of harm clearly favoured the granting of interim relief: there was no suggestion of wrongdoing on the part of the discharged employees; the Board was simply restoring the *status quo* for these long-service employees – Finally, the sequence of events (discharge mid-day, in the middle of an ongoing project) makes it impossible to conclude that the termination of the employees appears to be unrelated to their exercise of rights under the LRA, satisfying the criterion in s. 98(4) – Application for interim order granted

BALL CONSTRUCTION LTD.; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: CARPENTERS’ DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 785; RE: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 598, OLRB file No. 0637-16-IO; Dated July 6, 2016; Panel: Eli A. Gedalof (13 pages)

Practice and Procedure – Sale of a Business –

The applicant and a receiver appointed to represent one of the responding parties reached agreement on production – The receiver subsequently asked the Board for costs of that production, arguing that it was a third party to the proceedings – The Board held that it had no jurisdiction to award costs given that it had not promulgated a rule pursuant to s. 17 of the *Statutory Powers Procedure Act* – The Board acknowledged that “issues of relevance, cost, delay and fairness” all contribute to the weighing for or against production, but the reference to “cost” in this instance related to expense rather than legal costs – Given that the applicant and the receiver had agreed on the terms of production, the Board did not have to give consideration to cost in ordering production – There was nothing

unreasonable about the applicant’s request for production in the context of this proceeding – Request for costs dismissed

EBC INC.; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527; RE: 450477 ONTARIO LIMITED O/A CHARTRAND EQUIPMENT; RE: NORTHEC CONSTRUCTION INC.; OLRB File No. 1892-14-R; Dated July 11, 2016; Panel: Yvon Severy (12 pages)

Bar – Certification – Practice and Procedure –

The union conceded the employer’s s. 8.1 challenge to the application for certification and requested that the application be dismissed pursuant to s. 8.1(5)7 – The employer argued that the application should be treated as withdrawn pursuant to s. 7(8) and (10), with a bar – Alternatively, the employer argued the application should be dismissed under Rule 39.1 (no *prima facie* case) – In the further alternative, the employer asked the Board to direct the union to provide particulars of its challenges so those positions could bind the applicant in any future application – The Board refused to accept any of the employer’s arguments: where the applicant concedes a s. 8.1 challenge, the Board is not required to make a numerical determination in order to calculate a level of support before dismissing the application pursuant to s. 8.1 – Moreover, the concessions will not be treated as a withdrawal of the application – There is no labour relations purpose for the Board to inquire into an objection that has been agreed to – Finally, the Board refused to determine the effect, if any, of the applicant union’s concession in this case on any future applications for certification – Application dismissed

HYDRO OTTAWA LIMITED; RE: THE SOCIETY OF ENERGY PROFESSIONALS, IFPTE LOCAL 160; RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 636; OLRB file No. 0864-16-R; Dated July 21, 2016; Panel: Paula Turtle (6 pages)

Practice and Procedure – Sale of a Business –

The Plumbers were seeking a declaration that Austech was bound to the collective agreements that had previously bound Logue, relying on s. 69 of the Act, and a further declaration that Logue and Austech were jointly and severally liable for damages previously awarded against Logue in

earlier grievance proceedings – Austech argued that, notwithstanding its admission that it had “purchased the assets and contracts from Logue Mechanical, and agrees that it is a successor company” for purposes of the LRA, that it employs the former employees of Logue, operates with Logue equipment and has completed Logue’s contracts, it was not responsible for debts incurred by Logue prior to Logue’s filing for bankruptcy – The Board said the statute is clear: the collective agreement automatically binds the purchaser/successor at the moment of sale, until the Board declares otherwise – There was no reason to stay this proceeding; continuing with it would not be disruptive to the purposes of the *Bankruptcy and Insolvency Act* – The question of whether a trade union’s bargaining rights flow through to a successor employer lies within the exclusive jurisdiction of the Board – There is no reason why Austech should be allowed to operate free of the collective agreements for the indeterminate time it takes to resolve the financial remains of Logue – Declaration of successor employer made – As for the second requested ground for relief, the Board surmised that the Plumbers appeared to be seeking something precariously close to a remedy against the debtor or the debtor’s property, something that is prohibited by the BIA – Moreover the second declaration, if it were granted, would verge on an enforcement of the first declaration, something the Board was loath to do

LOGUE MECHANICAL SERVICES INC.;
RE: UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY
OF THE UNITED STATES AND CANADA,
LOCAL 787; RE: 1924438 ONTARIO INC.
CARRYING ON BUSINESS AS AUSTECH
MECHANICAL; OLRB file No. 2917-15-R ;
Dated July 8, 2016; Panel: Bernard Fishbein (22
pages)

Certification – Construction Industry – Reconsideration – The responding party sought reconsideration of the Board’s unilateral accession to a request from the applicant to amend the date of application from March 29 to May 29 – The employer cited significant and irreparable prejudice because it could not properly investigate the activities of its employees in a timely way given that the Board’s decision to accept the amendment was communicated to the employer several days after the original response would have been due – The applicant argued the employer had actual notice of the application on May 31, notwithstanding the “typographical” error in the application – The employer countered that while there was no confusion regarding what work

was being performed by the two individuals identified in the application, the employer pointed to several other active construction sites where independent (or dependent) contractors were performing work that it could no longer investigate – The respective positions of the employer and the union here were the reverse of the circumstances described in *Reid’s Uptown*, but the prejudice was the same: an error on the part of the applicant with respect to critical information necessary for the responding party to address in determining what work was taking place at job sites the employer was not tracking on a Sunday – Reconsideration allowed; application for certification dismissed

RIVERSIDE DOOR AND TRIM INC.; RE:
CARPENTERS AND ALLIED WORKERS
LOCAL 27, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA;
OLRB Board No. 0630-16-R; Dated July 13,
2016, Panel: Harry Freedman, (13 pages)

Employment Standards – The employee sought review of an ESO’s refusal to issue an order for compensation following an alleged reprisal – The employee was hired by an Ontario company to work in Michigan, with occasional and irregular attendance at the company’s Ontario worksites or head office – The job posting stated the “position resides in Michigan;” the parties entered into a contract of employment which identified the position as “U.S. sales manager” but was silent about where the employee was to carry out his duties; and the contract included a clause that said the agreement shall be “governed by the law of the Province of Ontario” – The Board held that the employee’s circumstances were the polar opposite of s.3(1)(b), the provision relied on by the employee: the employee’s work in Ontario was rather a continuation of work performed *outside* of Ontario – Parties cannot confer authority on the Board to enforce a statute when the statute on its face is inapplicable to their dispute – Application dismissed

VALOR INC.; RE: JOHN KARPOWICZ; RE:
DIRECTOR OF EMPLOYMENT STANDARDS;
OLRB File No. 2478-15-ES; Dated July 28, 2016;
Panel: Patrick Kelly (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
Carpenters (Riverside) Divisional Court No. 363/16	0630-16-R	Pending
Lee Byeongheon #2 Divisional Court No. 16-2219 (Ottawa)	0095-15-UR	Pending
Lee Byeongheon #1 Divisional Court No. 16-2220 (Ottawa)	0015-15-U	Pending
College Employer Council Divisional Court No. 308/16	0625-16-R	Pending
Ajay Misra Divisional Court No. 176/16	1849-15-U	October 27, 2016
Delores Grey Divisional Court No. CV-16-1127-00 (Brampton)	0317-15-U	Pending
Labourers' International Union of North America, Local 183 (Alliance Site Construction Ltd.) Divisional Court No. 133/16	3192-14-JD	Pending
Public Service Alliance of Canada Divisional Court No. 115/16	0119-13-R	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Week of November 21, 2016
Serpa Automobile (2012) Corporation (o/a Serpa BMW) Divisional Court No. 095-16	0668-15-ES	Pending
David Houle Divisional Court No. 1021-16 (Sudbury)	0292-15-U	Pending
Qingrong Qiu Divisional Court No. 669/15	2714-13-ES	Pending
Airside Security Access Inc. Divisional Court No. 670/15	1496-15-ES	Pending
Cotton Inc. Divisional Court No. 554/15	3254-13-U 3255-13-R	Dismissed May 30, 2016 Seeking leave to CA
Kognitive Marketing Inc. Divisional Court No. 51/15 (London)	0621-14-ES	Pending
W.H.D. Acoustics Inc. Divisional Court No. 52/15 (London)	3151-14-G 3716-14-R	Pending

IBEW Electrical Power Council of Ontario (Crossby Dewar Inc.) Divisional Court No. 501/15	1697-11-G 1698-11-G	Pending
Labourers' International Union of North America, Local 1059 (McKay-Cocker) Divisional Court No. 384/15	0883-14-R	June 17, 2016 Reserved
Universal Workers Union, Labourers' International Union of North America, Local 183 (Maystar) Divisional Court No. 368-15	1938-12-R	September 12, 2016
Carlene Bailey Divisional Court No. 173/15	0480-13-U	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending
Toran Carpentry Inc. Divisional Court No. 49/15; Court of Appeal No. M46308	0229-13-R	Dismissed March 8, 2016, LIUNA seeking leave to CA
Dean Warren Divisional Court No. M-45870 SCC 37019	2336-13-U	Allowed Leave to CA dismissed March 30, 2016 NHL seeking leave to SCC