

*H*IGHLIGHTS

Ontario Labour Relations Board

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in January of last year. These decisions will appear in the January/February issue of the OLRB Reports. The full text of recent OLRB decisions is available on-line through the Canadian Legal Information Institute www.canlii.org.

Certification – Construction Industry – Status Disputes – Union brought motion asking the Board to strike certain names from the employee list pursuant to Rule 41.3 of the Board's Rules of Procedure – Rule 41.3 permits the Board to decide issues and limit parties' opportunities to call evidence where the Board is satisfied there is no genuine issue requiring the calling of evidence – Employees in question held journeyman qualifications in their respective trades – Given the particular context, the Board had no reasonable doubt that these employees were exercising the skills and roles of their respective trades on the date of the application – Motion to strike names granted – Matter continues.

NEWTON GROUP LTD., RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: NEWTON BRIDGE SOLUTIONS LTD.; RE: KAIPIKARI HOLDINGS LTD.; RE: KIWI NEWTON CONSTRUCTION; RE: NEWTON PARKING STRUCTURES LTD.; RE: NADECO HOLDINGS LTD.; RE: KIWI CONDO; RE: KIWI CONSTRUCTORS LTD.; RE: KIWI-NEWTON

CONSTRUCTION LTD.; RE: NADECO LIMITED; RE: NEWTON SOLAR; OLRB Case No: 1697-20-R; Dated January 26, 2021; Panel: Jack J. Slaughter (10 pages)

Occupational Health and Safety Act – Reprisal – Employee alleged his employment was terminated after he raised safety concerns with his employer – Employer had issued discipline to the employee for violations of the harassment and violence policy – While he was on suspension, the employee complained about this discipline but also raised various concerns about health and safety, and threatened to call the Ministry of Labour if his concerns were not addressed – Upon return to work following his suspension, the employer terminated his employment – Board held employer failed to meet its onus that it did not breach the Act – Termination of employment was tainted, at least in part, by safety concerns expressed – Application granted.

CAMBRIDGE PALLET LTD.; RE: MICHAEL PEREIRA; OLRB Case No. 0946-20-UR; Dated January 14, 2021; Panel: Robert W. Kitchen (6 pages)

Termination Application – Practice and Procedure – Previous application for termination filed in respect of the same bargaining unit – Previous application dismissed because the petition used by the applicant did not identify the employer or the union, and it was therefore not apparent that

employees were signing the petition in respect of the responding party union – When new application was filed, it was apparent the applicant had simply written the name of the union and employer at the top of each page of the petition, with the petitions being otherwise identical – Board had no way to verify that employees knew that they were signing a petition in support of terminating the bargaining rights of the union – Application dismissed.

PARKVIEW TRANSIT INC.; RE: NARINDER KAUR HUNDEL; RE: UNIFOR LOCAL 1285; OLRB Case No: 2367-20-R; Dated January 21, 2021; Panel: Matthew R. Wilson (2 pages)

Unfair Labour Practice – Unlawful Strike – Construction Industry – *Prima Facie* Case – Applicants alleged an illegal scheme involving the union to compel certain non-union contractors to enter into collective agreements – Contractors refusing to attend on site and perform work awarded to them – Union made a motion that the applications be dismissed without a hearing, relying in part on the recent decision in *Baycliffe* – Board was not prepared to dismiss the application on a *prima facie* basis – Board noted *Baycliffe* was decided after hearing six days of evidence, and was not determined on a *prima facie* basis – Board concluded it was not “plain and obvious”, on the facts as pled, that the applicants could not possibly succeed – Preliminary motion dismissed – Matter continues.

RAS-CON GROUP INC.; RE: LABOURER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: MASONRY CONTRACTORS ASSOCIATION OF TORONTO; RE: MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY; RE: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1; RE: TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; OLRB Case Nos: 2275-20-U and 2297-20-U; Dated January 21, 2021; Panel: Bernard Fishbein (17 pages)

Unlawful Strike – Definition – Applicant, a residential home builder, alleged that the employees of its bricklaying and masonry

subcontractor had engaged in an illegal strike by refusing to work at the behest of the union and its representatives – Union had warned the subcontractor that, if it started the work on site, it would be in breach of certain collective agreement provisions and would be fined – Subcontractor decided not to attend on site – Board considered the definition of “strike” under subsection 1(1) of the *Labour Relations Act* – Board held that, in deciding not to begin the work on site, the subcontractor made a business decision, not scheduling work for employees or beginning work on site – Illegal strike provisions of the Act are directed at actions of employees, not employers, and provisions were not therefore engaged on these facts – Application dismissed.

BAYCLIFFE HOMES; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: CESAR RODRIGUES; RE: MASONRY CONTRACTORS' ASSOCIATION OF TORONTO; OLRB Case No: 1923-20-U; Dated January 13, 2021; Panel: Jack J. Slaughter (23 pages)

Unlawful Strike – Statutory Definition – Employer alleged an unlawful strike by employees at its motor vehicle assembly plant, in the form of an ongoing blockade and picketing at the front of its “releasing yard” – Protests began when the employer contract of its “releasing agents” went from a union to a non-union company – Board concluded there had been no unlawful strike, and no unlawful strike had been counseled, encouraged or threatened by the union – Employer’s evidence did not meet the statutory definition of a strike – While the blockages complained of had the effect of interfering with the normal flow of vehicles from the plant to the releasing yard, the blockades did not interfere with the ability of employees to report for and attend at work – There was no evidence to establish that bargaining unit employees had participated in the blockades – The proposition that bargaining unit employees might be unwilling to perform work was speculative – Application dismissed.

FCA CANADA; RE: UNIFOR LOCAL 444; RE: UNIFOR; RE: DAVE CASSIDY; OLRB Case No: 2355-20-U; Dated January 22, 2021; Panel: Derek L. Rogers (16 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
Mir Hashmat Ali Divisional Court No. 275/20	0629-20-U	Pending
Guy Morin Divisional Court No. 20-DC-2622 (Ottawa)	2845-18-UR 0892-19-ES	Pending
SNC Lavalin Nuclear Inc. Divisional Court No. 473/20	3488-19-ES	April 20, 2021
KD Poultry Divisional Court No. 20-DC-2611 (Ottawa)	0618-19-ES 1683-19-ES 1684-19-ES 2165-19-ES	June 2, 2021
Paul Gemme Divisional Court No. 332/20	3337-19-U	Pending
Fortis Construction Group Inc. Divisional Court No. 395/20	1638-17-R	May 11, 2021
Aluma Systems Inc. Divisional Court No. 456/20	2739-18-JD	September 21, 2021
Anthony Hicks Federal		
Capital Sports & Entertainment Inc. Divisional Court No. 20-DC-2593	1226-19-ES	Pending
Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
Abdul Aziz Samad Divisional Court No. 019/20	3009-18-ES	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
Community Care Access Centers Divisional Court No. 720/19	0085-16-PE 0094-16-PE	May 12-13, 2021
Audrey Thomas Divisional Court No. 436/19	2508-18-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
Kuehne + Nagel Ltd. Divisional Court No. 393/19	0433-18-R	Pending
Todd Elliott Speck Divisional Court No. 371/19	1476-18-U	November 18, 2020

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New Horizon Court of Appeal No. C68664	0193-18-U	Pending
Doug Hawkes Divisional Court No. 249/19	3058-16-ES	May 17, 2021
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Adjourned due to pandemic
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
Deloitte Restructuring Inc. Divisional Court No. 238/18	2986-16-R	November 18, 2019
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Adjourned due to pandemic
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Pending
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	October 21, 2019
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending