

*H*IGHLIGHTS

Ontario Labour Relations Board

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March 2021

New Full-Time Vice-Chairs

The Board welcomes two new full-time Vice-Chairs, **Maureen Doyle and Neil Keating**.

Maureen Doyle has been an adjudicator since 2005, commencing at the Workplace Safety and Insurance Appeals Tribunal, and subsequently at the Human Rights Tribunal of Ontario, working full-time there since 2011. Prior to 2005, she was a partner at a firm specializing in labour law. Before becoming a lawyer, she worked as a French teacher in Toronto and in Simcoe County. She studied law at Osgoode Hall Law School, York University.

Neil Keating was an associate counsel for LIUNA Local 183, and a former articling student/lawyer for Evans Law Firm. His community involvement includes serving as a volunteer counsel for Wellspring Legal Clinic.

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.

Audited Financial Statements – Sections 92 and 93 – Applicant brought application against union alleging a violation of ss. 92 and 93 of the *Labour Relations Act*, i.e. that the union had not supplied him with appropriate or sufficient financial documents – Applicant argued he was entitled to all of the union’s financial documents and to engage in a very thorough review of documents – Applicant also asked the Board to engage in an analysis of the financial statements – Board found if the financial statements provided were the same financial statements the union relied upon for its own purposes, that they had undergone an official review by a competent individual at arm’s length from the union, and in the case of applications under section 93 of the Act that they had been certified by a qualified individual (as defined in section 93) and disclosed the required information, they satisfied ss. 92 and 93 – Board also found there were no grounds for concluding that section 92 applied to funds that were not controlled or administered by the union – Board also found section 93 did not apply to Building Trust Fund – Union’s financial statements met the requirements of the Act – Application dismissed.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 530; RE: STEVE BRANDER; OLRB Case No: 0288-20-M; Dated February 25, 2021; Panel: Adam Beatty (21 pages)

Certification Application – Unfair Labour Practice – Voter Eligibility – Union filed certification application in December 2017 – In a previous decision, the Board found the Employer had committed unfair labour practices, but declined to order remedial certification – Board ordered that union may request a representation vote at any time within defined period and ordered employer to provide ongoing employee contact information to union – Board subsequently extended this time period – Union made timely request for vote in 2021 and the Board invited submissions on the composition of the voting constituency given employees had been hired or were no longer employed since the certification application was filed in 2017 – Union argued employees hired after application date should not be eligible to vote and all employees at work on the application date should be eligible even if no longer employed – Employer argued current employees should be permitted to vote and those who are no longer employed should not – Board found purpose of its order and a subsequent order extending the timeline for requesting a vote was to permit the Union to continue organizing and it would be inconsistent with this purpose to exclude employees hired after December 2017 – Board found January 29, 2021 was appropriate date for determining voter eligibility – Representation vote ordered – Matter continues.

FGF BRANDS INC.; RE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA); OLRB Case No: 2081-17-U, 2470-17-R, 2471-17-U; Dated February 23, 2021; Panel: Paula Turtle, Vice-Chair, William Cook and Heino Nielsen, Board Members (7 pages)

Construction Industry – Certification Application – Electronic Vote – Production of Employee Email Addresses – Employer provided list of employee email addresses to the Board for electronic vote – Following the vote, union alleged employer provided the Board with incorrect email addresses and that certain employees did not cast an electronic ballot; others did so in their stead – Union requested the Board order production of the

email addresses the employer provided to the Board in advance of vote – Union argued integrity of Board's process was at stake and the email addresses were arguably relevant – Employer argued the union had not provided enough particulars to support its request – Board held it must consider employees' privacy interest, but when the integrity of the voting process is at stake, the Board could order the employer to release employee contact information to union – Board further found pleadings contained sufficient particulars – Specific facts were solely within employer's knowledge and in accordance with Board jurisprudence on conspiracy, pleading requirements were less stringent – Board ordered production of email addresses for the employees in question – Matter continues.

MAPPI LTD.; RE: CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; OLRB File No: 3137-19-R; Dated February 26, 2021; Panel: Thomas Kuttner, QC (10 pages)

Construction Industry – Certification Application – Off-Site Work – Employee List – Dispute over whether certain employees should be included on the employee list – Employer had two separate crews, a "shop crew" which does off-site fabrication and a "road crew" which does on-site installation work – Shop crew employees rarely, if ever, attended job sites, some members of the shop crew had previously been part of the road crew – The disputed individuals were part of the shop crew – Employer argued the shop crew employees are properly included on the employee list because they are employees engaged in off-site work commonly associated in work with on-site employees pursuant to section 126(1) of the *Labour Relations Act* – Board first compared the tools, equipment and work methods of the two crews and found there was very little similarity – Board also found the work of the road crew was different in character – Board did not hold workers who fabricate custom parts for a specific project can never be included in a construction bargaining unit – However, on the

facts of this case, there was no reason to depart from the general approach of keeping on-site and off-site employees separate – Shop crew employees excluded from the employee list – Union had necessary support – Application for certification granted – Issue outstanding with respect to the name of the employer.

NOR-WELD LTD. AND/OR NOR-WELD 2000 LTD.; RE: IRON WORKERS DISTRICT COUNCIL OF ONTARIO; OLRB File No: 3228-19-R; Dated February 11, 2021; Panel: Michael McFadden (14 pages)

Construction Industry – Certification Application – Summons to Witness – Substituted Service – Union filed an affidavit from a process server indicating he attempted to serve an officer of the company four times – Union requested the Board order substituted service – Responding Party responded in writing that it would direct the officer not to produce any company documents as they are irrelevant – Responding Party had not brought objection to production – Board found since Responding Party can contact the officer, and the hearing date was scheduled for the following day, substituted service was appropriate – Board ordered service of the summons on counsel for the Responding Party would constitute proper service – Matter continues.

1256975 ONTARIO LTD. O/A HORIZON CONNECT CONSTRUCTION; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB Case No: 1517-20-R; Dated February 1, 2021; Panel: M. David Ross (2 pages)

Construction Industry – Certification Application – Withdrawal of Application – Discretionary Bar – Union filed two certification applications for same bargaining unit – Union withdrew first application prior to status submissions or vote – Employer requested Board use its discretion under section 128.1(21) of the *Labour Relations Act* to bar the Union from further certification applications, including the second

application already filed – Employer submitted there were special or extreme circumstances as the union withdrew because it knew it would be unsuccessful – In the alternative, Employer requested representation vote – Board found there were no special or extreme circumstances and declined to impose bar – First application was withdrawn five business days after second application was filed, no vote was imminent and no status submissions had been filed – Board also found no basis for ordering vote – Board was satisfied the union had membership evidence for more than 55% of the bargaining unit – Application for certification granted.

FIRST RESPONSE ENVIRONMENTAL (2012) INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB File No: 2448-20-R; Dated February 25, 2021; Panel: John D. Lewis (10 pages)

Occupational Health and Safety Act – Application for Suspension of Inspector's Order – Reasonableness of Order – During COVID-19 pandemic, inspector ordered increased physical distancing measures and an extension of plexiglass barriers in the lunch room – Lunch tables were too close together such that employees seated at a lunch table did not maintain a two meter distance from adjacent tables or with employees walking between tables – Employer claimed inspector's order was unreasonable – To comply with the order, the employer would have to open two extra lunch rooms and require face shields as well as masks – Board held test for suspension of order is whether the suspension of the order would endanger worker safety, the relative prejudice accruing to the parties from the suspension or lack of the suspension of the order, and whether the applicant has made out a strong prima facie case for the appeal of the order – Board will also consider whether the circumstances warrant deference to the inspector's order – Board found it could not permit a reversion to the *status quo ante* without endangering the health and safety of the workers – No serious prejudice to employer

– Prudent to give some deference to inspector as the inspector had actually viewed lunch room in use –
Application dismissed.

LIQUOR CONTROL BOARD OF ONTARIO;
RE ONTARIO PUBLIC SERVICE EMPLOYEES
UNION; RE: A DIRECTOR UNDER THE
OCCUPATIONAL HEALTH AND SAFETY ACT;
OLRB Case No: 2352-20-HS; Dated February 25,
2021; Panel: C. Michael Mitchell (17 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	April 19, 2021
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	June 1, 2021
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