

*H*IGHLIGHTS

Ontario Labour Relations Board

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June 2021

New Part-Time Vice-Chairs

The Board welcomes two new part-time Vice-Chairs, John Martelli and Brian Smeenk.

John Martelli is an arbitrator and mediator. He was called to the Ontario Bar in 1998 and holds a B.A; M.A; and LL.B. John practiced labour and employment law as an associate on Bay Street in Toronto before becoming Bruce Power's Assistant General Counsel (Labour and Employment). He retired from Bruce Power after 20 years at the end of 2020.

Brian Smeenk has over 40 years of experience in employment and labour law, across the broader public sector (both Ontario and federal) and the private sector. He retired as a partner of the national law firm, Fasken, in January 2020. He is a Past President of the former, tripartite Toronto Area Industrial Relations Association and past Vice-President of the Human Resources Association of Ontario. Brian was inducted as a Fellow of the tripartite College of Labor and Employment Lawyers in 2015. He has been ranked as a leading lawyer in the area of labor relations and employment law in various legal publications and listed in Best Lawyers in Canada since 2010.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in May of this year. These decisions will appear in the May/June 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 Application – Section 8.1 – Application for certification seeking to represent a group of Uber Drivers referred to as Uber Black Car Drivers – Previous Board decision addressed various issues with respect to the section 8.1 notice – Union seeking to next have Board apply the “greatest attachment” test to further narrow list of employees eligible to be counted for section 8.1 notice – Responding party arguing the question of individuals to be counted for purpose of section 8.1 notice had been fully answered by the Board – Board accepting responding party’s argument – Board concluded union’s position amounted to relitigating issues previously determined by the Board – Bargaining unit description and additional parameters set by Board contained adequate descriptions of the geographical location of the work and the frequency and type of work for the purpose of determining which employees ought to be counted for the purpose of the section 8.1 notice – Board denied union’s request to apply the “greatest attachment” test – Matter continues.

UBER CANADA INC., RASIER OPERATIONS B.V. AND UBER B.V. D.B.A. UBER BLACK AND UBER BLACK SUV; RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA); OLRB Case No: 2845-19-R; Dated May 4, 2021; Panel: Matthew R. Wilson (13 pages)

Construction Industry – Application for Certification – Personal Information – Section 119 – Application for certification filed in the construction industry – Responding party seeking to serve summonses on individuals, which it claimed were independent contractors and for whom it claimed not to have contact information – Responding party seeking order from Board directing union to produce full name, address, email address and telephone numbers for these individuals – Union objecting on basis that the production of this information would disclose identity of union supporters contrary to subsection 119(1) of *Labour Relations Act* and asserting violation of privacy rights of individuals in question – Board noted that, given the employee lists and the challenges, it would not be difficult for anyone to deduce who supported and did not support the union in this particular proceeding – Concern anchored in subsection 119(1) not present in this case – Provision of contact information and service of summonses could significantly reduce number of hearing dates – Privacy legislation provided for exception allowing disclosure of information – Board directed union to provide the information in its possession – Matter continues.

1211384 ONTARIO INC.; RE: CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; OLRB Case No: 1526-20-R; Dated May 31, 2021; Panel: Lee Shouldice (9 pages)

First Contract Arbitration – Failure to Recognize Union – Application for a direction that a first collective agreement be settled by way of arbitration, filed with the Board pursuant to section 43 of the *Labour Relations Act* – Board concluded

process of collective bargaining between the parties had been unsuccessful because the employer did not recognize the union's bargaining authority – Employer repeatedly failed to provide union with information required for bargaining and to which union was lawfully entitled – Employer continued to insist that union bargain on behalf of one of its corporate officers and one of its site supervisors, effectively insisting on embedding managers in the bargaining unit – Board directed settlement of a first collective agreement between the parties by way of arbitration, pursuant to subsection 43(2)(a) of the Act.

BANK-STROX RENOVATION INC.; LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB Case No: 1079-20-FA; Dated May 13, 2021; Panel: Lee Shouldice (25 pages)

Project Agreement – Withdrawal of Application – Application filed by BNA for project agreement for work in connection with construction of Gordie Howe bridge, major new international bridge with associated toll and border control plazas and road work to be built near Windsor, Ontario – Objections made by several building trade unions under subsection 163.1(8) of the *Labour Relations Act* – BNA seeking to withdraw project agreement application based on objections – Unions objected to withdrawal – Board noted that project agreements, pursuant to section 163.1, are “fundamentally voluntary instruments” – Failure to reach required statutory threshold for approval was the end of the matter – No authority to require BNA to amend proposed project agreement to the satisfaction of objecting unions – Filing of intervening unfair labour practice applications was not sufficient to preclude the withdrawal of project agreement application, even if that remedy was ultimately available in the ulp complaints – Project agreement application deemed withdrawn.

BNA CA DFA INC.; CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ET AL; OLRB Case Nos: 0681-19-PR, 2428-19-U and 2414-19-U;

Dated May 7, 2021; Panel: Michael McFadden (5 pages)

Unfair Labour Practice – Interim Order –

Application for an interim order in connection with an unfair labour practice complaint – Union alleging employer violated section 70 of the *Labour Relations Act* by refusing to post a bargaining update in the workplace – Union seeking Board order requiring employer to post update until the merits of unfair labour practice complaint could be heard – Board emphasized that union had sent update by email to its membership, such that posting of notice did not give rise to the type of urgency that would justify an interim order - Balance of labour relations and other harm did not favour granting interim order requested - Granting interim order would effectively give union remedy sought in unfair labour practice, without giving employer an opportunity to defend against the allegations – Application for interim order dismissed – Unfair labour practice complaint referred to the Registrar to schedule hearing on an expedited basis.

ARTERRA WINES CANADA C.O.B. AS WINE RACK; RE: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2; OLRB Case Nos: 0163-21-U and 0162-21-IO; Dated May 4, 2021; Panel: Michael McCrory (8 pages)

Court allowed the applications and quashed the Board's orders.

TOMASZ TURKIEWICZ, A SOLE PROPRIETOR C.O.B. AS TOMASZ TURKIEWICZ CUSTOM MASONRY HOMES; RE: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: MASONRY COUNCIL OF UNIONS OF ONTARIO; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. DC 262/18, 601/18, 789/18; Dated May 31, 2021; Panel: Backhouse, D.L. Corbett and Gomery JJ. (19 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, 7 th Floor, 505 University Avenue, Toronto.

COURT PROCEEDINGS

Judicial Review – Related Employer – Applicant sought judicial review of three decisions of the Board, in which the Board: (1) held the applicant to be a related employer to his previously owned, bankrupt company, (2) found the applicant to be in breach of his collective agreement obligations and (3) quantified the damages as a result of the breach – Court concluded Board's decisions were unreasonable – Court refused to remit the applications back to the Board for determination –

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Eugene Laho Divisional Court No. 336/21	1869-20-U	February 9, 2022
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
AWC Manufacturing LP Divisional Court No. 304/21	1320-20-ES	Pending
Bomanite Toronto Ltd. Divisional Court No. 271/21	2057-19-G	February 3, 2022
Cambridge Pallet Ltd. Divisional Court No. 187/21	0946-20-UR	October 27, 2021
Kaydian Carney Divisional Court No. 110/21	1583-18-UR	October 7, 2021
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
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	November 25, 2021
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
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
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
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	Allowed
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	Allowed
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Allowed
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