

*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 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 available on-line through the Canadian Legal Information Institute www.canlii.org.

Application for Certification – Construction Industry – Constitutional Jurisdiction – Union applied for certification under section 128.1 of the *Labour Relations Act, 1995* – Employer engaged in welding and other track repair on railways – On date of application, employees performed this work on CN, CP and Crosslinx track infrastructure – Employer argued its labour relations were subject to federal jurisdiction – Board concluded evidence was not sufficient to rebut the presumption of provincial jurisdiction over labour relations – “Effective” performance of railway operations of either CN or CP is not dependent on maintenance of way services performed by Employer’s employees – Matter continues.

HOLLAND, L.P.; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB Case Nos. 2059-18-R, 2469-18-R, 2506-18-R, 2577-18-R, 0571-19-R, 0615-19-R; Dated July 15, 2021; Panel: Caroline Rowan (26 pages)

Employment Protection for Foreign Nationals Act

– Application filed by employee under the *Employment Protection for Foreign Nationals Act* – Employer admitted that she retained possession of the employee’s passport – Board concluded this would be sufficient to establish a violation of the Act, and that employer could not meet onus with respect to reprisal (having turned the employee out of her accommodations as a consequence of seeking to recover her passport) – The Act, however, did not apply to the employee – Employee was a foreign national employed in Ontario, but was not employed “pursuant to an immigration or foreign temporary employee program”, as required by section 3(1) of the Act – While Act should be given a broad and generous reading, having regard to its purposes, Board must nonetheless not ignore plain language or interpret the statute in such a way as to make the statutory delimitations illusory – Application dismissed.

CANDY E-FONG FONG; RE: MARIA CELIA FAIGMANI; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No. 1723-20-EF; Dated July 23, 2021; Panel: Derek L. Rogers (12 pages)

Employment Standards Act – Practice and Procedure

– Application for review filed under the *Employment Standards Act* – Applicant requested to record upcoming hearings, seeking to produce a transcript which could be used as a record of the proceeding on judicial review – Board noted its

usual practices, and Information Bulletin No. 37, “Video Hearings” – Applicant provided no compelling reason to depart from Board’s usual practice – Parties are free to take notes and/or bring or retain someone to take notes, but recording is not permitted – Request denied – Matter continues.

INSTANT BRANDS INC.; RE: VIVIEN LO; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No. 2237-20-ES; Dated July 19, 2021; Panel: Neil Keating (7 pages)

Employment Standards Act – Practice and Procedure – Electronic Hearings – Board directed submissions on how the matter ought to proceed given ongoing issues with videoconference technology experienced by counsel for the responding party – Several days of hearing were disrupted and ultimately adjourned due to counsel’s inability to stay connected during the video hearing – Board noted that, while accommodations have been made in various circumstances (including, for example, in the early pandemic, and for unrepresented litigants), “it is by now reasonably expected that lawyers (and paralegals) will have the technology infrastructure to participate in videoconference hearings, absent unusual and extenuating circumstances” – Submissions directed – Matter continues.

RUSTY’S AT BLUE INC. / M & S ACCOUNTING; RE: ERICA SOLMES, RE: JOLYNE SIMONEK; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case Nos. 2935-18-ES and 1091-19-ES; Dated July 12, 2021; Panel: Kelly Waddingham (5 pages)

School Boards Collective Bargaining Act – Mootness – Application pursuant to section 28(5) of the *School Boards Collective Bargaining Act* – Question before the Board was whether certain proposals made at the local negotiating table were items that were agreed upon as central items – Responding parties argued the application was moot, because the issues had subsequently been removed from the local negotiating tables – Board rejected mootness argument, holding that the

underlying dispute had not disappeared, and giving consideration to the purposes of the Act and the public interest and to the fact that the dispute was of a recurring nature – Board concluded that the responding parties had failed in their statutory duties under section 23(3) “to meet and determine whether the items placed on the local negotiating tables, and remaining in dispute, are properly local items for negotiation, or are central” – Matter continues.

THE ONTARIO CATHOLIC TRUSTEES’ ASSOCIATION; RE: THE ONTARIO ENGLISH CATHOLIC TEACHERS’ ASSOCIATION; RE: THE CROWN IN RIGHT OF ONTARIO; OLRB Case No. 2067-20-M; Dated July 9, 2021; Panel: Maurice A. Green (15 pages)

Unfair Labour Practice – Interference – Union filed unfair labour practice application, alleging employer breached the *Labour Relations Act, 1995* by refusing to post a bargaining update, as drafted by the union, on the workplace bulletin boards – Board held employer interfered with union’s right to communicate with its members, as the refusal to post the bargaining update “was not justified by a *bona fide* operational or business purpose” – Board concluded employer’s refusal adversely impacted the union’s rights “in a more than incidental manner” – Application allowed – Board directed employer to post in the workplace a copy of the Board’s decision and a notice to employees, and to email these documents to employees.

ARTERRA WINES CANADA C.O.B. AS WINE RACK; RE: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2; OLRB Case No. 0163-21-U; Dated July 5, 2021; Panel: Michael McCrory (20 pages)

COURT PROCEEDINGS

Judicial Review – *Labour Relations Act* – Duty to Bargain – Appeal of decision of Divisional Court

dismissing judicial review of three Board decisions – Court of Appeal agreed with Divisional Court that Board’s decisions were reasonable – Board’s decisions, which addressed *inter alia* the scope of the duty to bargain in good faith and requirements for disclosure in bargaining, were “justified in light of the existing jurisprudence and the facts of the case” - Appeal dismissed.

NEW HORIZON SYSTEM SOLUTIONS; RE: THE SOCIETY OF UNITED PROFESSIONALS; RE: ONTARIO LABOUR RELATIONS BOARD; Court of Appeal File No. C68664; Dated July 12, 2021; Panel: Rouleau, Hoy and van Rensburg JJ. (32 pages)

Judicial Review – *Labour Relations Act* – Successor Employer – Applicant sought judicial review of two Board decisions – Initial decision granted successor bargaining rights in a manner which avoided jurisdictional conflict between two unions – Subsequent decision rejected request for reconsideration – Divisional Court concluded the Board’s decisions were reasonable – Court noted: “the Board is a specialized tribunal that is familiar with the construction industry” – Exercise of the Board’s discretion “is entitled to deference” – Application dismissed.

FORTIS CONSTRUCTION GROUP INC; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059; RE: THE FORMWORK COUNCIL OF ONTARIO; RE: STC CONSTRUCTION GROUP INC.; RE: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 395/20; Dated July 12, 2021; Panel: R. Smith, Lederer, and Kristjanson JJ. (11 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
Ontario Catholic School Trustees' Association Divisional Court No. 650/21	2067-20-M	Pending
Ontario Catholic School Trustees' Association Divisional Court No. 645/21	2067-20-M	Pending
PipeFlo Contracting Corp. Divisional Court No. 625/21	0170-21-G	Pending
Mammoet Canada Eastern Ltd. Divisional Court No. 609/21	2375-19-G	Pending
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	Pending
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	2845-18-UR 0892-19-ES	Pending
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	Dismissed
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	2499-16-U – 2505-16-U	Pending

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Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
New Horizon Court of Appeal No. C68664	0193-18-U	Dismissed
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Pending
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	Application for Leave to Appeal to CA – M52577
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	Pending
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Application for Leave to Appeal to CA – M52413
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Application for Leave to Appeal to CA – M52413
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