

*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 June 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.

Construction Industry – Grievance Referral –

Summons – Applicant union issued summons to chief operating officer of HDC, a client with whom the responding party employer had a contract for masonry services – Summons was for the purpose of gathering arguably relevant documentation to the issues in the grievance – After summons served, HDC was granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") – Stay of proceedings issued as part of CCAA order prohibited proceedings against HDC or its property and stayed and suspended all remedies against HDC – Monitor appointed under CCAA order submitted that HDC could not be required to comply with summons as a result of the CCAA order – Board concluded that issuance of summons was not a "proceeding" against HDC prohibited by the CCAA order – Summons would not jeopardize restructuring process under CCAA – Section 11.1 of the CCAA, which provides that no order made under s. 11.02 of the CCAA "affects a body's investigation in respect of the debtor company or an

action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court" – Board considered that the summons was part of the Board's "investigation and consideration" of the grievance as contemplated by s. 111(2)(c) of the Labour Relations Act, 1995 – The Board concluded that the CCAA order did not affect HDC's obligation to comply with the summons – Matter continues.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE RONISO CORPORATION; OLRB Case No: 1841-21-G; Dated June 9, 2022; Panel: Jesse Kugler (14 pages)

***Employment Protection for Foreign Nationals Act* – Appeal of Employment Standards Officer's decision - Charging of prohibited fee** – Applicant was a recruitment agency within the meaning of the *Employment Protection for Foreign Nationals Act* ("EPFNA") – Applicant had arrangement with a related company which purportedly provided immigration services - Companies found to be a single employer within the meaning of s. 4 of the EPFNA - Two foreign nationals charged fees for, among other things, resume building and job search services – EPFNA comprehensively expressed prohibition against recruiters charging fees for any service provided to foreign nationals – Fees charged were precisely those prohibited by the EPFNA – Application dismissed and fees to be repaid.

LINK4STAFF INC., RE BERNADETTE MARINAS, and DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No: 1520-21-EF; Dated June 14, 2022; Panel: Derek L. Rogers (17 pages)

Related Employer – Stay of Proceedings –

Several proceedings before the Board seeking a determination of whether responding parties RR, TPH, TMI and a numbered company constitute a single employer for the purpose of the Employment Standards Act, 2000 and the Labour Relations Act, 1995 – RR bound to collective agreement with applicant union – After RR closed down its operations, Union proceeded with grievance for termination and severance pay – After decision of arbitrator awarding termination and severance pay, RR made assignment in bankruptcy under the *Bankruptcy and Insolvency Act* (“BIA”) – Responding parties took the position that the proceeding was stayed by s. 69.3 of the BIA, which prohibits the commencement or continuation of proceedings for the recovery of a “claim provable in bankruptcy” – The Board reviewed the extensive jurisprudence on this issue – Board’s evolving approach to BIA reflects a view that solvent entities ought not to be permitted to use the BIA stay provisions to fend off claims by alleged employees – Permitting the various applicants to attempt to obtain monetary remedies against RR would be inconsistent with the purposes of the stay, but permitting such recovery as against the alleged related employers would not – Matters not stayed by BIA stay – Matters to continue.

UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 1006A, RE RYDING REGENCY MEAT PACKERS LTD., RE TRI-PET HOLDINGS INCORPORATED, TRUHARVEST MEATS INC., and 2805463 ONTARIO LTD; OLRB Case Nos: 0429-21-R, 0625-21-ES, 0675-21-ES, 0677-21-ES & 0676-21-ES; Dated June 23, 2022; Panel: Patrick Kelly (12 pages)

Sale of a business – ATU asserted that TTC had transferred part of an undertaking to the Crown and

its agents, within the meaning of s. 69 of the Labour Relations Act, 1995 (the “Act”) and s. 10(2) of the *Crown Employees Collective Bargaining Act, 1993*, namely the provision of public transit service east and west along the Eglinton Corridor in Toronto – Responding parties brought motions to dismiss application on a preliminary basis – Board considered no prima facie case motion – TTC proposed that a light rail network be created along several corridors including Eglinton – TTC did not have the funding to implement the plan, which would require provincial and federal funding, but did do preliminary assessment and design work – 2012 Master Agreement between TTC, City of Toronto and Metrolinx (a Crown agency) provided that Metrolinx was responsible for delivering, among other things, the Eglinton Crosstown LRT – Agreement also provided that TTC would operate the LRTs, but that Bombardier would be responsible for the maintenance work (which historically had been performed by TTC workers) – ATU asserted that TTC had transferred its transit service along the Eglinton Corridor to Metrolinx, by way of a series of actions starting with the Master Agreement and ending with the imminent cessation of TTC bus service along Eglinton – ATU asserted that transit service was a discrete and cohesive portion of the TTC’s overall business activities – Board concluded that no economic vehicle or going concern had been transferred from the TTC to Metrolinx – Metrolinx may have benefited from TTC’s initial planning but that benefit did not constitute a business or part thereof – Metrolinx had independently overseen the creation of a transit system – Nothing in Metrolinx’s hands could be traced back to the TTC except possibly the work itself of providing transit service, to which bargaining rights do not attach – No business or part thereof was acquired by the responding parties from the TTC – Application dismissed.

AMALGAMATED TRANSIT UNION, LOCAL 113, RE THE TORONTO TRANSIT COMMISSION AND THE CROWN IN THE RIGHT OF ONTARIO (METROLINX) AND CROSSLINX TRANSIT SOLUTIONS GENERAL PARTNERSHIP AND

BOMBARDIER TRANSPORTATION CANADA INC.; OLRB Case No: 1921-20-R; Dated June 22, 2022; Panel: Patrick Kelly (23 pages)

COURT PROCEEDINGS

Construction Industry – Certification – Judicial Review – Application for judicial review of a Board decision dismissing an application for certification – Board concluded that application for certification was timely, but declined to order a vote pursuant to s. 128.1(13) of the *Labour Relations Act, 1995* (the “Act”) on the basis that there was no evidence that the applicant had sufficient support in the bargaining unit found to be appropriate by the Board and it was impossible to determine the level of employee support given the passage of time since the application filing date – Divisional Court held that Board reasonably concluded that the applicant did not wish to represent the bargaining unit found to be appropriate by the Board, and reasonably concluded that it could not determine the level of support held by the applicant because there was no evidence before the Board of the number of employees at work in the appropriate bargaining unit on the application filing date – Applicant also argued that s. 128.1(13) of the Act required the Board to either certify the applicant or order a representation vote, but that there was no discretion to decline to do either and dismiss the application – Divisional Court noted that in a judicial review, the starting point of the analysis is the Board’s reasons – Board’s conclusion that the word “may” in s. 128.1(13) is significant and conferred discretion on the Board was reasonable – Board provided clear and logical reasons for its conclusion and outcome was reasonable – Application dismissed.

LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: **THE DANIELS GROUP INC., THE BUILDING UNION OF CANADA** and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 18/20; Dated June 15, 2022; Panel: Swinton, Pomerance, and Kurke JJ.; (9 pages)

Construction Industry – Grievance referral – Judicial Review – Application for judicial review of a Board decision allowing a grievance related to travel allowance – Union asserted that grievor was entitled to his hourly wage for time spent commuting between his hotel and the job site using a car rented for him by the Employer – Union asserted that he was required to “use or transport the Employer’s equipment” and thus was entitled to be paid his “classification rate including overtime for doing so” – Employer disputed that rental car could be included in “Employer’s equipment” – Board concluded that the grievance required a “straightforward reading of the plain words” of the relevant provisions of the collective agreement – The term “Employer’s equipment” was not limited to only equipment listed in the collective agreement and was properly interpreted to include a rental car the grievor was required to use by the Employer – Divisional Court noted that in conducting a reasonableness review the court must be attentive to the application by decision makers of specialized knowledge, such as in labour relations cases – Reasonableness review implicitly recognizes that there may be more than one reasonable interpretation of an agreement – Board’s conclusion that the rental car was “equipment” within the meaning of the collective agreement was reasonable, as was the Board’s finding of fact that the grievor was “required” by the Employer to use it – Board’s decision clearly laid out the factors relied on in concluding that the rental car was under the Employer’s control and fell well within a range of reasonable outcomes having regard to a practical, common-sense approach to the interpretation of the collective agreement – Application dismissed.

MAMMOET CANADA EASTERN LTD., RE: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 609/21; Dated June 9, 2022; Panel: McWatt A.C.J.S.C.J., Stewart, and Mew JJ.; (11 pages)

Occupational Health and Safety – Reprisal – Judicial Review – Application for judicial review of Board decision concluding that Employer had engaged a reprisal against employee contrary to the Occupational Health and Safety Act (the “Act”) – Employee suspended following incident at work – While on suspension, employee texted Employer complaining about unsafe working conditions at workplace and indicating that if they were not addressed he would contact the Ministry of Labour – Upon employee’s return to work from the suspension, Employer terminated the employee – Board found that there were several inconsistencies in the Employer’s evidence and explanation for the termination that cast doubt on the Employer’s explanation – Board found that decision to terminate was at least tainted by employee’s expression of health and safety concerns – Employer failed to attend subsequent hearing at which Board received evidence and submissions as to the appropriate remedy – Employer then requested that Board strike the evidence and submissions heard, or receive submissions from the Employer in writing – Board declined to do so, indicating that Employer failed to attend at its own peril – Employer sought judicial review on the basis that the Board denied the Employer procedural fairness by not permitting it to call certain evidence at the merits hearing, that the Board had refused to re-hear or allow further submissions on the remedy portion of the proceeding, and that the Board had failed to consider relevant evidence, namely an earlier decision of an employment standards officer concluding that the employee had been terminated for violations of the Employer’s policy, not for threatening to report health and safety issues – Divisional Court found that there was no procedural unfairness as the Board had conducted the hearings consistently with its Information Bulletin regarding reprisal complaints and its Rules – Employer had a full opportunity to put its position before the Board – Employer was also aware or ought to have been aware of consequences of failing to attend remedy hearing and Board’s refusal to disregard the evidence, schedule a new hearing or accept written submissions was not procedurally unfair – Divisional Court also

concluded that the Board acted reasonably in not giving weight to the employment standards officer’s administrative decision since that decision was made under the Employment Standards Act, 1995, not the Act – Board’s conclusion that the termination was related at least in part to health and safety complaints was reasonable – Application dismissed.

CAMBRIDGE PALLET LTD., RE: MICHAEL PEREIRA and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. DC-21-187-JR; Dated June 3, 2022; Panel: K. Swinton, R.D. Gordon, W. Matheson JJ.; (9 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
Cheryl Mucci Divisional Court No. 134/22	1832-21-U	Pending
Michael Peterson, et al. Divisional Court No.	2301-21-R & 0046-22-R	Pending
Strasser & Lang Divisional Court No. 003/22	2301-21-R & 0046-22-R	Pending
Torque-Fab Inc. Divisional Court No.	0553-21-R	Pending
CTS (ASDE) INC. Divisional Court No. 295/22	0249-19-G 2580-19-G 2581-19-G	Pending
Aecon Group Inc. Divisional Court No. 301/22	1016-21-HS	Pending
Sleep Country Canada Divisional Court No.	1764-20-ES 2676-20-ES	Pending
Capital Sewer Services Inc. Divisional Court No. 280/22	1826-18-R	Pending
Laksaman Fernando Mihinduklasuriya Divisional Court No. 079/22	1623-14-U 1738-14-ES	Pending
The Ontario Secondary School Teachers' Federation Divisional Court No. 187/22	0145-18-U 0149-18-U	April 3, 2023
City of Hamilton Divisional Court No. 967/21	1299-19-G 1303-19-G 1304-19-G	December 12-13, 2022
Susan Johnston Divisional Court No. 934/21	0327-20-U	November 2, 2022
Royal Group Inc. Divisional Court No. 911/21	2440-20-U	Pending
Joe Placement Agency Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	Pending
Holland, L.P. Divisional Court No. 673/21	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	February 2, 2023
Mammoet Canada Eastern Ltd. Divisional Court No. 609/21	2375-19-G	Dismissed
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending

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Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
Cambridge Pallet Ltd. Divisional Court No. 187/21	0946-20-UR	Dismissed
Guy Morin Divisional Court No. 20-DC-2622 (Ottawa)	2845-18-UR 0892-19-ES	September 15, 2022
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
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Dismissed
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
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 Court of Appeal No. C69929	2375-17-G 2375-17-G 2374-17-R	May 25, 2022
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 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	May 25, 2022
Ganeh Energy Services Divisional Court No. 515/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	May 25, 2022
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