

*H*IGHLIGHTS

Ontario Labour Relations Board

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

September 2022

ANNOUNCEMENT

The Board's Rules, Information Bulletins, Forms and other documents were amended effective September 6, 2022 to take into account certain revisions to the Board's procedures. Those revisions are summarized in the Notice to Community dated August 19, 2022 that is posted on the Board's website and linked [here](#).

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in August of this year. These decisions will appear in the September/October 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 – Application for certification – Timeliness of application – Appropriateness of bargaining unit – Impact of s. 150.1 and 150.2 of the *Labour Relations Act, 1995*, involving the residential sector of the construction industry in the Greater Toronto Area – Applicant union sought to displace incumbent union, arguing that function of sections 150.1 and 150.2 made collective agreement in its entirety open for displacement – Applicant argued in alternative that collective agreement expiration clause offends the Act, rendering expiration clause invalid and thus

collective agreement open for displacement – Employer and incumbent Union argued that sections 150.1 and 150.2 only affect specific sector and geographic area described – Sections 150.1 and 150.2 do not impact provisions outside the residential sector in the GTA – Statute carves out a single bargaining unit within a wider collective agreement – Application therefore only timely with respect to residential construction workers – As there are no such workers in the residential sector, application dismissed.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: **EIFFAGE INNOVATIVE CANADA INC. AND EIFFAGE GC CANADA INC.**, RE: THE BUILDING UNION OF CANADA; OLRB Case No: 0011-22-R; Dated: August 22, 2022; Panel: Jesse Kugler (20 pages)

Employment Standards – Deduction from Wages – Applicant employer was found by Employment Standards Officer to have deducted wages from respondent's pay without written authorization as required by section 13(3) of the *Employment Standards Act, 2000* – Applicant employer did not include specific amount to be deducted or calculation formula in employment contract – Chain of documents showing inclusion of amounts in policy handbooks and orientation presentations insufficient – Employment contract included entire agreement and written amendment clause – No document or amendment to contract allowing deduction ever signed – Act being remedial in nature and conferring benefit warrants

an expansive interpretation — Application dismissed

CALABOGIE PEAKS ULC, RE: DARYL CORBERTT, AND DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No: 1709-21-ES; Dated August 12, 2022; Panel: Roslyn McGilvery (14 pages)

First contract arbitration – Parties unable to reach agreement – Union and Employer parties to multiple collective agreements covering many bargaining units – All other collective agreements in Ontario had been negotiated except the instant collective agreement – Bargaining unit employees had some conditions pre-unionization better than comparable unionized positions, and some inferior conditions – Employer raised wage floor of another group of non-unionized employees shortly after this group decided to unionize – Employer gave no financial, economic, or operational basis for its decision – Onus is on applicant Union to convince Board that positions are uncompromising and without reasonable justification, or any other reason showing that remedial action is necessitated – Board reviewing jurisprudence and principles – First contract negotiations are highly contextual endeavours with few absolute certainties or principles – First contract arbitration not to be used to achieve major breakthroughs – Terms should be sufficiently attractive to employees in that they would give serious consideration before deciding to terminate bargaining rights – First contract arbitration should not reward either party for failing to achieve negotiated agreement, should not impede prospect of future labour relations, and should make collective bargaining attractive to both parties – Whether maintaining status quo in respect of a particular provision is appropriate depends on particular case – Presence of long-standing bargaining relationship typically means newly unionized employees will not immediately achieve parity in all respects, but is again entirely dependent on the context – Here, that newly-unionized group of employees had superior entitlements in some respects to other unionized counterparts – Many positions held by Employer were contradictory or

lacking sufficient justification – Employer simultaneously maintained that previous entitlements were to be lost by newly-unionized Employees as these were non-union entitlements, and employees were not entitled to most unionized-employee benefits as they were only newly organized – Positions held by employer were altogether destructive of negotiating first collective agreement – Employer found to be unreasonably uncompromising – Application granted

UNIFOR AND UNIFOR, LOCAL 999, RE: ENBRIDGE GAS INC.; OLRB Case No: 0539-22-FA; Dated August 19, 2022; Panel: C. Michael Mitchell (28 pages)

Ministerial Reference – Successor Employer – Respondent Employers operated shuttle buses for University Health Network (“UHN”) – Mulmer took over routes replacing Standard Parking – Interpretation of s 69.1 of the *Labour Relations Act, 1995* – Whether “services to premises” includes shuttle bus operations – Board reviewed principles of statutory interpretation – Legislation to be given large and liberal interpretation – Legislative interpretations ought not to produce absurd outcomes – Adjudicative expertise of Board informs how it should interpret home statutes – Words in statute coloured by statutory context – Statutes dealing with same subject matter ought to be consistent, coherent, harmonious – Same applies to a lesser extent to coherency and consistency with other Acts generally – To fall within s. 69.1, services must both be provided directly or indirectly by or to a building owner or manager, and they must be related to servicing the premises – Harmonious interpretation of *Labour Relations Act* and *Employment Standards Act* does not require adopting *ESA* definition to determine scope of *LRA* provision – Shuttle buses were “servicing premises” – Sale of Business – Service provided at UHN premises – Drivers identify UHN as where they work – Service provided was substantially similar to previous provider – Successorship declared

LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, UNION RE:

MULMER SERVICES LTD., AND SP PLUS CORPORATION CANADA/STANDARD PARKING OF CANADA LTD., EMPLOYERS; OLRB Case No: 2852-20-MR; Dated August 5, 2022; Panel: Kelly Waddingham (37 pages)

Unfair labour practice – Duty to bargain in good faith - Sale of business – Application to determine whether NFMC is a successor to WR based on section 69 of the Labour Relations Act, 1995, and whether WR committed unfair labour practices by not bargaining in good faith based on section 17 of the same – Both respondent employers involved in forestry industry – Union had collective bargaining agreement with WR – Sustainable Forest License (“SFL”) transferred from WR to NFMC – Union alleges failing to disclose transfer of SFL from WR to NFMC violated WR’s duty to bargain in good faith – Union argued failure to disclose how transfer of SFL would impact union’s bargaining rights was bad faith bargaining – Union argued refusal to engage in collective bargaining after the transfer of the SFL also violated duty to bargain in good faith – WR argued it was not under a duty to disclose to the union the transfer of the SFL, and alternatively that if it was, the potential for transfer was communicated to union on multiple occasions – WR argued that once transfer occurred, it was no longer required to bargain with union – Union alleged transfer of SFL constituted sale of business for the purposes of section 69 of the Act – NFMC argues WR’s harvesting business was not transferred when SFL was transferred, and the SFL transfer did not affect any of WR’s harvesting activities – NFMC argues that to find it to be a successor employer would expand union’s bargaining rights – First Nation interveners encouraged Board to adopt constitutional lens that would respect commitments to the First Nations – No breach of duty to bargain in good faith – Possibility of transfer of SFL shown in evidence to have been communicated to union – Transfer of SFL gave ultimate control of operations to NFMC – Sale of business found to have occurred – SFL was the very core of total economic organization of

WR – Bargaining rights transferred with the sale of the business, and NFMC was bound to collective agreement – Rights of First Nations are unaffected by the Board’s decision.

UNITED STEELWORKERS LOCAL 1-2010, APPLICANT RE: **WHITE RIVER FOREST PRODUCTS LIMITED PARTNERSHIP BY ITS GENERAL PARTNER WHITE RIVER FOREST PRODUCTS GP INC., AND NAWIINGINOKIIMA FOREST MANAGEMENT CORPORATION, RE: NETMIZAAGGAMIG NISHNAABEG, AND BIIGTIGONG NISHNAABEG; AND UNITED STEELWORKERS LOCAL 1-2010, RE: WHITE RIVER FOREST PRODUCTS LIMITED PARTNERSHIP BY ITS GENERAL PARTNER WHITE RIVER FOREST PRODUCTS GP INC.;** OLRB Case No: 3526-17-R and 3527-17-U; Dated August 16, 2022; Panel Adam Beatty (64 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
1476247 Ontario Ltd. o/a De Grandis Concrete Pumping Divisional Court No. 401/22	0066-22-U	Pending
Elementary Teachers' Federation of Ontario Divisional Court No. 367/22	0145-18-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	Abandoned
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	January 24, 2023
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	Dismissed
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
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
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending

Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
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
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