

*H*IGHLIGHTS

Ontario Labour Relations Board

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in February of this year. These decisions will appear in the March/April 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 – Union applied for certification for construction bargaining unit, as well as an industrial bargaining unit, in respect of A, a division of R - R took the position that a “divisional” bargaining unit was not appropriate, and that the appropriate bargaining unit consisted of all of R’s employees, not just A’s employees – A was one of many divisions purchased by R, some of which were already unionized, such that there were existing bargaining units consisting only of the employees of a division of R – Union argued that unless there was “concrete and demonstrable” labour relations harm, a divisional bargaining unit was appropriate – Board found that despite mix of unionized and non-unionized divisions, working under different terms and conditions of employment, there was not evidence of difficulty in human resources oversight – Subcontracting provisions of ICI collective agreement may pose some administrative inconvenience but this does not rise to the level of demonstrably serious labour relations harm – Certificates issued

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 787, RE: **RT HVAC HOLDINGS INC.**, OLRB Case No. 0721-21-R & 0736-21-R; Dated February 1, 2023; Panel: Patrick Kelly (28 pages)

Construction Industry – Grievance – Grievance alleged that Employer had failed to subcontract bargaining unit work to unionized subcontractors - Employer disputed grievance on the basis that the work performed was not covered by the scope of the bargaining rights set out in the certificate issued by the Board – Employer argued that the collective agreement binding on the Employer (the accredited agreement between the Union and the TRCLB, of which the Employer was not a member) only applied to the extent of the certificate itself – Certificate was in respect of construction labourers and Employer argued that the work at issue in the grievance (among other things, formwork and framing) was not construction labourers’ work – Union and TRCLB argued that the work of a construction labourer, at least outside the ICI sector, was sufficiently broad to encompass the work in issue – Board concluded that the signatories to the applicable collective agreement had concluded that the work of a construction labourer was broad and elastic, and that it included the work in issue in the grievance – As a result, the TRCLB Agreement, including the sub-contracting

provisions, applied to the work at issue and was binding on Employer

RAINBOW VILLAGE SCARBOROUGH INC., RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU, OLRB Case No. 0554-20-G, 0534-21-G, & 0820-21-G; Dated February 27, 2023; Panel: Michael McFadden (13 pages)

Construction Industry – Grievance Referral – Grievance filed pertaining to payment of shift differential - Previous decision of the Board in 1987 concluded that shift differential was payable on total compensation package, and not just the hourly wage rate – Parties agreed that there was no evidence of employer complying or not complying with the 1987 Board Decision and that documentary record available including remittance forms and employee pay stubs did not indicate whether or not the employer had remitted based on the full compensation package or the hourly rate only – Relevant language of collective agreement had not changed in 12 renewals since 1987, nor was there any evidence that the issue had arisen – Employer argued that doctrines of waiver and estoppel applied, such that Union could not proceed with grievance - Board found that on the agreed facts, there was no evidence to establish a continuous or consistent practice which could constitute a representation by the Union that it would not enforce the terms of the collective agreement – Further, since there were no documents that would establish whether or not any ESPCA employer was complying with the 1987 Board Decision, there could be no acquiescence in a practice that could not even be identified – Similarly, in the absence of an intention on the Union's part to not enforce the collective agreement, waiver could not be established – Grievance allowed

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 721, RE: CANATOM POWER GROUP, AND ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION, OLRB Case No. 1615-21-G; Dated: February 16, 2023; Panel: Patrick Kelly (20 pages)

Procedure – Construction Industry – Certification – Application filed electronically with the Board at 5:06 pm on January 19, 2023 – Board issued Confirmation of Filing confirming that application filing date was January 19, 2023 - Employer sought reconsideration, taking the position that Rule 3.5 and Information Bulletin #6 provided that the correct application filing date was January 20, 2023 – Board noted that Rule 1.3 provided that in the event of conflict, the Rules set out in Part V (Construction Industry) prevailed over Rules in, inter alia, Part I (including Rule 3.5) – Rule 24.2 (in Part V of the Rules) provided that where a construction industry certification application was filed electronically, the application filing date is the date it was filed – Board noted that this exception prevailed over Rule 3.5 – Request for reconsideration dismissed

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, RE: JACKMAN EXCAVATING LTD. AND JACKMAN CONSTRUCTION LIMITED, OLRB Case No. 2324-22-R; Dated: February 14, 2023; Panel: Danna Morrison (10 pages)

Successor Employer – Stay of Proceedings - Union sought a declaration that there had been a sale of a business within the meaning of sections 69 and 69.1 of the Labour Relations Act, 1995 (the "Act") from M (a shuttle bus service provider) to V and that V was therefore bound the collective agreement binding on the Union and M – V sought stay of proceedings pending the outcome of the judicial review of the Board's decision finding that

M itself was a successor in respect of the shuttle bus service – V asserted a stay of proceedings was required to prevent irreparable harm as the remedies sought by the Union could have retroactive effects to V's detriment – Stay of proceeding denied - No extenuating circumstances justifying exercise of Board's discretion to stay proceedings – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 RE: **MULMER SERVICES LTD.** AND 947465 ONTARIO LTD. OPERATING AS VOYAGO AND/OR VOYAGEUR TRANSPORTATION SERVICE, OLRB Case No: 1037-22-R; Dated February 27, 2023; Panel: Thomas Kuttner, KC (5 pages)

Voluntary Recognition Agreement – Termination - Carpenters sought to terminate CUSW's bargaining rights in respect of the Employer pursuant to s. 66 of the Labour Relations Act (the "Act") and Boilermakers intervened – Carpenters' and Boilermakers' collective agreements with the Employer excluded general forepersons – CUSW's collective agreement with the Employer applied to general forepersons - Employer informed non-CUSW general forepersons that they would need to become members of CUSW or be demoted – Affected employees chose to not become members of CUSW – CUSW argued that the application must be dismissed because neither the Carpenters nor the Boilermakers represented any person in the bargaining unit – Board noted that the affected employees had decided not to become employees in the bargaining unit – There was no basis on which the Board could find that they were employees in the bargaining unit described in the collective agreement the Carpenters sought to terminate - Application dismissed for lack of standing

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

ON ITS OWN BEHALF AND ON BEHALF OF UBCJA, LOCAL 2222, RE: CANADIAN UNION OF SKILLED WORKERS (CUSW), RE: **NUVIA CANADA INC.**, AND INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL 128, OLRB Case No: 3329-19-R; Dated February 14, 2023; Panel: Michael McFadden (14 pages)

COURT PROCEEDINGS

Certification – Construction Industry – Judicial Review – Application for judicial review of a Board decision determining that the employer's labour relations were provincially regulated such that the Board had jurisdiction to determine the union's application for certification – Court determined that matter was premature since the application for certification had not concluded – Court concluded that there were no exceptional circumstances present that warranted the fragmentation of the proceeding before the Board – Application dismissed as premature

HOLLAND, L.P. RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL and ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No: 673/21; Dated February 7, 2023; Panel: Backhouse, Newton, and O'Brien JJ (3 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
RT HVAC Holdings Inc. Divisional Court No. 131/23	0721-21-R 0736-21-R	Pending
All Canada Crane Rental Corp. Divisional Court No. 037/23	1405-22-G	August 22, 2023
BGIS Global Integrated Solutions Canada LP Divisional Court No. 614/22	0598-22-R	March 15, 2023
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Pending
Temporary Personnel Solutions Divisional Court No. 529/22	3611-19-ES	August 23, 2023
Mulmer Services Ltd. Divisional Court No. 504/22	2852-20-MR	June 8, 2023
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
1476247 Ontario Ltd. o/a De Grandis Concrete Pumping Divisional Court No. 401/22	0066-22-U	April 25, 2023
Elementary Teachers' Federation of Ontario Divisional Court No. 367/22	0145-18-U	April 3, 2023
Michael Peterson, et al. Divisional Court No. 003/22	2301-21-R & 0046-22-R	December 5, 2022
Strasser & Lang Divisional Court No. 003/22	2301-21-R & 0046-22-R	December 5, 2022
CTS (ASDE) INC. Divisional Court No. 295/22	0249-19-G 2580-19-G 2581-19-G	January 30, 2023
Aecon Group Inc. Divisional Court No. 301/22	1016-21-HS	Dismissed
Sleep Country Canada Divisional Court No. 402/22	1764-20-ES 2676-20-ES	June 6, 2023
Capital Sewer Services Inc. Divisional Court No. 280/22	1826-18-R	May 30, 2023
The Ontario Secondary School Teachers' Federation Divisional Court No. 187/22	0145-18-U 0149-18-U	April 3, 2023
Susan Johnston Divisional Court No. 934/21	0327-20-U	Motion for Leave to Appeal

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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	Dismissed
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
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	April 25, 2023
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	Application for leave to appeal to Supreme Court of Canada
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	Application for leave to appeal to Supreme Court of Canada
Ganeh Energy Services Divisional Court No. 515/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	Application for leave to appeal to Supreme Court of Canada
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