

*H*IGHLIGHTS

Ontario Labour Relations Board

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April 2023

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in March 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.

Construction Industry – Grievance – Union filed grievance asserting that Employer should have applied ICI collective agreement to certain work – Employer asserted that it properly applied maintenance collective agreement because the work was not in the construction industry – Board dismissed preliminary objection that grievance should be dismissed due to delay - Project in issue involved bringing facility up to a new cleanliness standard – Work performed by Employer generally involved replacing existing electrical fixtures, speakers, conduit and other electrical devices and new wiring – Employer also removed control panels and other electrical devices prior to demolition taking place – Board concluded that focus should be on the project as a whole as opposed to electrical work in isolation – Work resulted in an improved system with new components to the system – Board also dismissed Employer’s estoppel defense – ICI agreement applicable – Grievance allowed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 804, RE: **TRADE-MARK INDUSTRIAL INC.**, OLRB Case No. 1027-21-G; Dated March 23, 2023; Panel: Neil Keating (24 pages)

Construction Industry – Grievance – Union grieved termination of L, who was working as fire watch on a job site as an accommodation of a workplace injury – General contractor forwarded photo to Employer in which L was not visible and raised a concern about performance of fire watch duties – Employer also alleged that L was periodically observed away from his fire watch post – Two days later, L made a harassment complaint to the Employer – Shortly after the harassment complaint was made, L was terminated on the basis of the fire watch concern – Union argued that there was no just cause for termination and that termination constituted a reprisal contrary to s. 50 of the Occupational Health and Safety Act – Board found that despite the photo, L was in the appropriate location for fire watch – Employer’s other concerns were not persuasive – No explanation for why L was left on fire watch duties for two days if Employer’s health and safety concerns were so significant as to warrant termination – No just cause - Timing of termination and other circumstances also indicated a nexus between the termination and the harassment

complaint – Section 50 violation also found – Grievance allowed

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 736, RE: **W&W STEEL ERECTORS, LLC**, OLRB Case No. 0282-21-G; Dated March 31, 2023; Panel: Maureen Doyle (61 pages)

Construction Industry – Jurisdictional Dispute – Practice and Procedure – Union sought order for production at pre-consultation stage of a jurisdictional dispute application – Employer resisted order arguing that Board’s long-standing policy in respect of production requests related to jurisdictional disputes was that production was only ordered in the most exceptional of circumstances – Employer further submitted that Union had not established the arguable relevance of the documents requested, and that the time and expense involved in searching for them was disproportionate to any benefit – Union argued that the Board had more recently suggested that pre-hearing production was appropriate in a jurisdictional dispute – Union argued that in the absence of a production order, Employer could pick and choose what documents to file in support of its position in the dispute – Board concluded that contrary to Union’s position, the Board’s approach continued to be that production at the initial stages of a jurisdictional dispute was only to be ordered in exceptional circumstances or if production was required to describe the work in dispute – Neither of these conditions were met in this case - Union could request production later in the process in the event a concrete issue required it – Request dismissed – Matter continues

LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527, RE: **HYDRO ONE NETWORKS INC.** AND UNITED

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93, OLRB Case Nos. 2336-22-JD & 2337-22-JD; Dated: March 23, 2023; Panel: John D. Lewis (14 pages)

Unfair Labour Practice – Intimidation and Coercion – Interference in Bargaining Rights – Bad Faith Bargaining – Steelworkers brought s. 96 complaint asserting that Employer and Unifor had violated s. 73(2) and 76 of the *Labour Relations Act, 1995* (the “*Act*”) and that Employer had violated s. 17 of the *Act* – Steelworkers and Unifor had historically bargained collective agreements together with IBEW – Unifor ended coalition bargaining and entered into collective agreement with Employer prior to other unions – Unifor and Employer negotiated “me too” clause in that collective agreement – Steelworkers pleaded that Employer took position in bargaining with them that it could not meet the Steelworkers’ wage demands because it would have to grant the same increases to other employees – Steelworkers argued that “me too” clause interfered with Steelworkers’ right to represent its bargaining unit, and sought to coerce Employer into not fulfilling its duty to bargain in good faith – Steelworkers further argued that Employer had violated its duty to bargain in good faith by agreeing to the “me too” clause – Board concluded there was no prima facie case pleaded – No facts pleaded in support of intimidation and coercion claim – No facts suggesting that Unifor had bargained an agreement contrary to s. 73(2) of the *Act* – Although Employer had not specifically disclosed the “me too” clause to Steelworkers, this did not constitute a breach of s. 17 since Employer had specifically identified the effect of the “me too” clause in bargaining – No facts pleaded that suggested Employer refused to bargain – Further, no labour relations purpose in proceeding given that employees in Steelworkers bargaining unit had ratified collective agreement – Application dismissed

UNITED STEELWORKERS, LOCAL 1-2010, RE: UNIFOR LOCAL 89, AND UNIFOR LOCAL

256, RE: **GREENFIRST FOREST PRODUCTS**, OLRB Case Nos. 1570-21-U & 1571-21-U; Dated: March 9, 2023; Panel: Brian O'Byrne (13 pages)

Unfair Labour Practice – Remedial Certification – Construction Industry – Union's application claimed that the termination of three inside organizers contravened the *Labour Relations Act, 1995* (the "*Act*") and that remedial certification was a necessary remedy – R, B and M all hired or offered employment over by Employer over the course of two months, and their offers were rescinded or employment terminated over the course of two days, the same or the day after G, one of the Employer's vice-presidents, allegedly learned that they were union members – The next day, G attended a job site, discussed the terminations with a group of employees and added that a union had appeared at a job site and that they should be wary – Board concluded that the timing and particulars of the terminations indicated that the Employer was aware that R, B and M were union members at the time they were terminated – Board reviewed circumstances of terminations and concluded that they violated the Act – Reasons included the timing of the terminations, the fact that alleged performance issues had never previously been considered serious and that the alleged shortage of work did not exist – Board further determined that Union's inability to achieve sufficient membership support was the result of the violations of the Act – Campaign was in its early stages but following terminations none of the individuals spoken to by the Union expressed any interest – Board concluded that G's site visit established a connection in employees' minds between R, B and M's union activity and their termination - Finally, the Board determined that the Employer's anti-union message would "follow the voters into the voting booth" and that it was reasonable the employees would fear for their job security in the event they supported the Union – In the circumstances, remedial certification was the only sufficient remedy – Application granted

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **MCDONALD BROTHERS CONSTRUCTION INC.**, RE: GASTON MYRE, OLRB Case Nos: 2351-19-U & 2358-19-R; Dated March 16, 2023; Panel: Michael McCrory (43 pages)

Unfair Labour Practice – Reprisal – Applicant suspended from membership and removed from certain union committee and trustee positions by the Responding Party after she brought an application to terminate the Responding Party's bargaining rights with the Employer – Applicant argued that suspension and removal constituted a reprisal contrary to s. 87(2)(b) of the *Labour Relations Act, 1995* (the "*Act*") – Responding Party reinstated Applicant's membership but maintained removal from committees – Responding Party argued that there was no labour relations purpose for the balance of the remedies sought by the Applicant and no prima facie case in support of them – Applicant argued that committee roles were not positions which led to a conflict of interest as might be present in elected or officer positions – Applicant argued that removal did not comply with Responding Party's constitution – Board exercised its discretion not to inquire into application – Board concluded that roles on committees and as Trustee required Applicant to act in Responding Party's best interest and that termination application created a conflict of interest – Board concluded that Responding Party's action was a reasonable response to the conflict of interest and not a reprisal for having brought the termination application – Board found that there was no prima facie case that the Act was violated – Application dismissed

TRACEY ROBERTS, RE: **ONTARIO PUBLIC SERVICE EMPLOYEES UNION**, OLRB Case No: 0003-22-U; Dated March 10, 2023; Panel: Peigi Ross (20 pages)

COURT PROCEEDINGS

Grievance – Judicial Review – Application for judicial review of a Board decision granting a grievance filed by the Union – Board found that AW’s employment was terminated without just cause and that termination was discriminatory – Employer argued that the Board unreasonably determined that it had no just cause without conducting credibility assessments and because AW was dishonest during the hearing – Employer argued that on the facts considered by the Board it had established just cause to terminate AW’s employment - Employer argued that the Union did not discharge its onus of proving that termination was discriminatory – Divisional Court held that standard of review is reasonableness – Court found that deference is to be afforded to decisions of the Board, that the Board is a highly specialized tribunal and that is for the decision-maker to assess and evaluate the evidence before it - It was not critical to the Board’s analysis to determine precisely what occurred – Board was entitled to assess evidence as it did and to find an absence of just cause in the circumstances – Employer submits that Board’s decision and finding of discrimination motivated by implicit bias was extraordinary – Employer argued Union was required to and did not lead evidence of a particular decision motivated by bias – Court found decision was not extraordinary as it applied principles confirmed in Court of Appeal’s decision in *Peel Law Association* – Court rejected Employer’s argument that union was required to lead evidence that a particular decision was motivated by bias – Court in accordance with *Peel Law Association* discrimination only requires that prohibited ground be a factor in adverse treatment – Board was entitled to rely on expert evidence to deepen its understanding between AW and others – Court held that Board reasonably concluded on the evidence, that race was more likely than not a factor in the employer’s decision to discharge AW – Application dismissed

CTS (ASDE) Inc., Re: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 and ONTARIO

LABOUR RELATIONS BOARD; Divisional Court File No. 295/22; Dated March 13, 2023; Panel: O’Brien, J., Backhouse, J. and Newton J.; (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
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	Adjourned
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	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
Joe Placement Agency Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	Pending

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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
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