

*H*IGHLIGHTS

Ontario Labour Relations Board

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

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NOTICE TO COMMUNITY

Vice-Chair Posting (Full-Time)

The Ontario Labour Relations Board has posted the full-time Vice-Chair posting linked below. Applications are due on or before May 31, 2023. For more information and how to apply, please visit

<https://www.pas.gov.on.ca/Home/Advertisement/855>.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in April of this year. These decisions will appear in the May/June 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 grieved that Employer failed to call the Union for the supply of employees – Employer asserted that grievance should be dismissed for delay and in any event Union was not entitled to damages because Union was unable to supply qualified, available employees – Workers on site were provided to Employer by foreman's business and a labour supplier – Union was aware of job but was not aware of non-union employees, and had no

reason to be so aware, until a caller contacted Union's representative to advise of non-union workers being paid in cash – Grievance filed within 10 days of call – Employer's argument that remittance reports and notification of job should have alerted Union to non-union workers was dismissed – Fact that only two foremen listed on remittance reports was not a reason for Union to conclude that non-union workers were also employed – Board also dismissed defense that Union was unable to supply qualified employees – Since Employer did not contact Union for the supply of workers it could not claim that workers were not qualified – Not open to an Employer to fail to contact the Union on the belief that the Union might not be able to supply qualified workers – In any event, many of the workers actually employed by the Employer on the job did not have the qualifications said to be necessary – No evidence that even one of the non-union workers was a journeyperson or had elevated work platform experience as claimed to be necessary by the Employer – Grievance allowed – Blouin Drywall and other damages ordered

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, RE: A & O CONTRACTING INC.; OLRB Case No. 1086-21-G; Dated April 13, 2023; Panel: Yvon Seveny (27 pages)

Interim Order – Unfair Labour Practice – Union sought interim order in connection with

unfair labour practice alleging that the Employer violated Section 70 of the *Labour Relations Act, 1995* (the “*Act*” by restricting Union representatives’ access to the employee cafeteria (“the Hive”) – Union requested declaration that the Employer’s actions violated the *Act* and that their access to the Hive be reinstated – Union complained to Employer that another union representing employees of Employer was speaking with its members in the Hive – Employer sent a letter asking that both unions refrain from campaigning or soliciting employees represented by another union in the Hive – Employer offered to supply meeting spaces to both unions on its premises where they could meet with employees – Following altercations between representatives from the two unions in the Hive, Employer sent a further letter to both unions advising that representatives from both unions would not be permitted in the Hive – Board noted that 98(3) of the *Act* does not require that interim decisions be accompanied by reasons – Board held that the need for expedition and desire not to prejudice underlying litigation are strong policy reasons for not providing detailed reasons – Board applied factors from *National Judicial Institute* – Board held it must balance Union’s right to communicate with its membership against Employer’s right to promote legitimate business interests – Board not satisfied on the material before it that granting interim relief is urgently required as Union remains able to communicate with their membership in various locations throughout the Employer’s premises – Application dismissed

UNITE HERE, LOCAL 75; RE: **FAIRMONT ROYAL YORK HOTEL**; OLRB Case No. 2869-22-IO; Dated April 24, 2023; Panel: Jesse Kugler (8 pages)

Practice and Procedure - Construction Industry – Certification – Unfair Labour Practice – BUC certified in respect of employees of MCI – Labourers filed unfair labour practice and s. 1(4)/69 application asserting that MCI and

MPI, with which Labourers had bargaining rights, were a single employer and that BUC certificate should be rescinded – Labourers requested order for a forensic audit of cell phones of BUC, MCI and MPI representatives – Labourers sought extraction of all communications of any type for a one-month period prior to the certification date – In the alternative, it sought the audit to locate certain text messages were missing from parties’ production – Board noted that it had the power to direct such an audit, but that it should only be ordered in extraordinary circumstances given the highly invasive nature of the request – General request constituted a fishing expedition and an overreach – As it related to the text messages, these messages could be arguably relevant but not sufficiently important to justify intrusive and time-consuming forensic audit which would deprive individuals of their cell phones for extended period of time, subject their potentially highly personal contents to third party scrutiny, and delay the proceeding – Harm in doing so far outweighs potential gain from results of audit – Request denied – Matter continues

THE BUILDING UNION OF CANADA, RE: **MASTERCREE CONSTRUCTION INC.**; OLRB Case Nos. 1045-21-R, 1168-21-R & 1560-21-U; Dated April 27, 2023; Panel: Jack J. Slaughter (8 pages)

Sale of Business - Single Employer – Delay - Applicant Union asserted that TC and D were related and/or successor employers to DCG – D and TC brought motion to have application dismissed on the basis of abandonment of bargaining rights and/or excessive delay – Union alleged that DCG’s secretary/treasurer, G, was a “key person” in all three companies - D and TC deny that G was “key person” – D and TC allege that DCG’s President L was “key person” – L signed a voluntary recognition agreement on behalf of DCG with the Union in January 2005 – DCG declared bankruptcy in 2010 - TC’s directors are L’s daughter and G’s spouse – D’s directors

are G and L's daughter - TC and D argued application should be dismissed as there was delay bringing the application resulting in prejudice as L had passed away – In respect of TC, Board found delay was at least 13 years – Board found that Union's argument that withdrawal of earlier related employer application was not supported by evidence – In respect of D, Board found delay was at most 6.5 years – Given L's passing, Board found that passage of time resulted in significant prejudice to TC and D as L would have been an important witness – Board found delay prejudiced TC and D's ability to mount defence – Application dismissed

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **DEB-COR GROUP LTD.**, DIESEL CONSTRUCTION LTD., and TRI-COR CONST. LTD.; OLRB Case No. 0776-21-R; Dated April 19, 2023; Panel: Lindsay Lawrence (12 Pages)

Unfair Labour Practice – Freeze – Employer's personnel policy provided that "any other special day proclaimed by government as a public holiday" would be observed as a holiday with pay for permanent employees – Employees requested that National Day of Truth and Reconciliation ("NDTR") be observed – Employer replied that it considered the NDTR to be applicable to federal employees – NDTR not observed – Union later certified as bargaining agent for employees, and Union then requested that Employer observe NDTR – When Employer declined to do so, Union asserted violation of s. 86 of the *Labour Relations Act, 1995* – Union argued that based on the personnel policy, employees had a pre-existing right to the observance of NDTR and the Employer violated s. 86 by failing to observe it – Employer argued that NDTR had never been observed in the workplace and that pre-freeze "business as usual" did not include observance of the holiday – Board concluded that s. 86 was not violated – Section 86 could not be interpreted so

as to confer on employee a paid holiday they had never received and that they had been specifically advised they would not receive – Application dismissed

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 53, RE: **WHITBY PUBLIC LIBRARY**; OLRB Case No. 1415-22-U; Dated April 11, 2023; Panel: Robert W. Kitchen (7 Pages)

Unfair Labour Practice – Remedial Certification – Union alleged that P was terminated contrary to sections 70, 72 and 76 of the Labour Relations Act, 1995 (the "Act") – Union engaged in organizing campaign with Employer which included direct approaches to Employer – Employer had spoken to P, a skilled employee multiple times concerning performance and attendance issues – Employer took numerous corrective steps and warned P, but did not terminate him – Employer witnesses testified that there was no viable replacement for P during relevant time, until Employer convinced K to work full-time for it – Continued issues with P led Employer to decide to terminate him, and Employer conferred with its lawyer about how to do so – The day after Employer's call with lawyer, P disclosed to Employer that he had signed a union card – P terminated the following day – Union argued that Employer had condoned P's attendance and other difficulties - Union argued that termination was tainted with anti-union animus in view of its timing – Board concluded that there was no condonation, and no anti-union animus – Although P was not terminated for several months, Employer had repeatedly communicated its dissatisfaction with his performance – Once K was hired, Employer had no reason to continue to tolerate performance problems – When P was again late and failed to attend work, Employer reached decision to terminate him, prior to disclosure about P signing union card – Termination was based on poor

performance, not anti-union animus – Application dismissed

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS, LOCAL 95, RE: **ENERGY TECH SOLUTIONS LTD.**; OLRB Case Nos. 3533-19-U & 3534-19-R; Dated April 18, 2023; Panel: Patrick Kelly (41 pages)

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and THE ONTARIO LABOUR RELATIONS BOARD, RE: MICHAEL PETERSON, BRIAN MORTENSEN, JAMES KING, GRANT ADAIR, GREG ROST, CHRISTOPHER ARNING and SCOTT CLUTCHEY; Divisional Court File Nos. DC-22-003 & DC-22-004; Dated April 17, 2023; Panel: Backhouse, Lederer, Williams, JJ; (30 pages)

COURT PROCEEDINGS

Construction Industry – Certification – Judicial Review – Application for judicial review of a Board decision certifying Union – Employer and group of employees had raised various objections to the membership evidence supporting the certification application – In main decision and reconsideration decision, Board dismissed those objections – In reconsideration decision, Board concluded that challenges to membership evidence lacked merit in that membership evidence was clear and that it defied belief that card signers had been misled – No employee wrote the Board objecting to application for certification; only Employer did – No obvious error and no significant policy issue raised on reconsideration - 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 doubly so in the area of construction labour relations – Court found that Board’s conclusions were reasonable and in keeping with the Board’s jurisprudence – Court noted that the Board’s choice of procedure in a construction industry certification application, where the Board could exercise its discretion to not hold a hearing, was also owed deference as the Board is “master of its own house” in respect of procedure - Application dismissed

1778767 ONTARIO INC. o/a STRASSER & LANG, Re: CARPENTERS’ DISTRICT COUNCIL OF ONTARIO, UNITED

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	October 23, 2023
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	Withdrawn
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	Dismissed
Strasser & Lang Divisional Court No. 003/22	2301-21-R & 0046-22-R	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-21-000000017-0000 (London)	0857-21-ES	Pending
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
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	June 27, 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