

*H*IGHLIGHTS

Ontario Labour Relations Board

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NOTICE TO COMMUNITY

The Board is very pleased to announce that Patrick Kelly, who recently retired as a full-time Vice-Chair, has been reappointed in a part-time capacity.

SCOPE NOTES

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

CERTIFICATION – CONSTRUCTION INDUSTRY

– Union brought certification application for a bargaining unit of electricians - Union sought to include two individuals who performed bargaining unit work for at least part of the application filing date (“AFD”) – Employer conceded that they performed some bargaining unit work on the AFD but argued that the majority of their day was spent performing clean up duties – Employer argued that this was construction labourers’ work – Board noted that all trades performed clean up work, rather than it being exclusively labourers’ work – Insufficient facts pleaded to suggest that the work was of a nature that made it construction labourers’ work, as opposed to trade-specific clean up – As a result, there was no

genuine need for a hearing and these individuals were included in bargaining unit – Board also dismissed claim that membership evidence was tainted by intimidation contrary to section 76 of the *Labour Relations Act, 1995* (the “Act”) – Assertion that card signer felt “pressured” to sign was insufficient to support a claim intimidation – In particular, no facts were pleaded regarding anything done by the Union that was said to be intimidating – One status dispute required hearing – Matter continues

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586, RE: **SELTREK ELECTRIC LTD.**; OLRB Case No. 0054-23-R; Dated July 5, 2023; Panel: Geneviève Debané (15 pages)

CONSTRUCTION INDUSTRY GRIEVANCE

– **Subcontracting** – Union referred grievance alleging that Employer subcontracted bargaining unit work from a non-union main contractor (S) – Parties agreed that but for alleged consent of the Union, subcontracting from S violated the collective agreement – Employer relied on a letter from a business representative of a different local of the same parent union, apparently permitting the Employer to accept work from S – Employee Bargaining Agency (“EBA”) had also sent letter to Employer stating that to the local’s letter was no longer valid – Union argued that the other local had no authority to bind a different local and that EBA’s letter revoked any consent that had been provided

in any event – Employer argued that it had arranged its affairs based on the local’s letter, that at the time it was given the Employer was also performing work in the Union’s geographic jurisdiction, and that consent could not be revoked as the letter was akin to minutes of settlement - Board concluded that a letter from one local could not bind a different local, noting that the letter did not purport to be on behalf of any other local or the EBA itself – Letter not akin to minutes of settlement as there was no dispute being resolved - Grievance allowed

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, ONTARIO COUNCIL AND LOCAL UNION 1819, RE: **XTREME GLASS INC.**; OLRB Case No. 0487-22G; Dated July 25, 2023; Panel: Neil Keating (10 pages)

UNFAIR LABOUR PRACTICE – CONSTRUCTION INDUSTRY – REMEDIAL CERTIFICATION – Union sought remedial certification after four bargaining unit members dismissed in rapid succession – Union tendered evidence of Employer’s anti-union animus in the form of conversations between employees and owner, and evidence that campaign had stalled as a result of termination - Employer asserted that terminations were justified for various reasons, including justified disciplinary action and anticipated lack of work – Board found that sections 70, 72 and 76 of the *Labour Relations Act, 1995* (the “*Act*”) were violated - Employer’s explanation of terminations was contradictory and not compelling – Employer was aware of union activity prior to terminations – Employer may have had good reasons to terminate some of the employees but its actions were tainted by anti-union animus in respect of three of the terminated employees – No evidence linking termination of fourth employee to union activity – Board concluded that although campaign was underway, employees were no longer willing to engage with Union after terminations – Remedial certification appropriate where inside organizers terminated – Certificate issued

IRON WORKERS DISTRICT COUNCIL OF ONTARIO, RE: **ALLOY FUSION INC.**; OLRB Case No. 0519-21-R & 0540-21-U; Dated July 7, 2023; Panel: Roslyn McGilvery (46 pages)

CONSTRUCTION INDUSTRY GRIEVANCE – Discipline – Grievor suspended for two days for violation of rule requiring fall protection to be worn at all times on Employer’s job sites – Grievor failed to fasten chest buckle of his fall protection equipment – Employer argued that the rule was consistently enforced and that the Employer’s policy made it clear that a two-day suspension was the penalty for such an infraction - Union argued that employee was not at risk of a fall, that he was unaware that chest buckle was unfastened and had no intention to disregard rule – Union further argued that Employer had mechanically issued a two-day suspension with no regard to context or mitigating factors – Board concluded that although the rule had been breached, it was due to inadvertence, rather than intention – Long-recognized principles of discipline required regard for factors such as the nature of the non-compliance, basis for it, disciplinary history, acknowledgement of fault, as well as other factors – No factual, anecdotal or even theoretical evidence that the invariable application of the automatic minimum two-day suspension is necessary for the enforcement of the safety rule - Prior arbitration decisions (in which two-day suspension was upheld) between these same parties were distinguishable based on other relevant factors – Suspension unjust in the circumstances – Employer free to impose a written warning instead – Grievance allowed

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50, RE: **OTIS CANADA**; OLRB Case No. 1995-22-G; Dated July 7, 2023; Panel: Derek L. Rogers (33 pages)

CONSTRUCTION INDUSTRY GRIEVANCE

– **Discipline** - Grievor suspended for two days for violation of rule requiring fall protection to be worn at all times on Employer's job sites - Grievor removed fall protection equipment for a washroom break and resumed work without putting equipment back on – Another employee observed at the same time without hard hat or glasses was not disciplined - As in similar case between these parties, Employer argued that the rule was consistently enforced and that the Employer's policy made it clear that a two-day suspension was the penalty for Grievor's infraction – Employer argued that automatic two-day suspension applied only to fall arrest infractions and not hard hat or glasses infractions – Union argued that mechanical application of policy was unjust and differential treatment of the two employees constituted discriminatory discipline, and also that Grievor was never at actual risk as a result of infraction - Board concluded that although the rule had been breached, it was due to inadvertence, rather than intention – Long-recognized principles of discipline required regard for factors such as the nature of the non-compliance, basis for it, disciplinary history, acknowledgement of fault, as well as other factors – No factual, anecdotal or even theoretical evidence that the invariable application of the automatic minimum two-day suspension is necessary for the enforcement of the safety rule - Prior arbitration decisions (in which two-day suspension was upheld) between these same parties were distinguishable based on other relevant factors – In this case, Grievor took responsibility for actions but had breach was intentional and not justified – As a result, breach was more significant, but still not as significant as those in prior cases between these parties – One-day suspension just in the circumstances - Grievance upheld in part.

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50, RE: **OTIS CANADA**; OLRB Case No. 1996-22-G; Dated July 7, 2023; Panel: Derek L. Rogers (41 pages)

COURT PROCEEDINGS

JUDICIAL REVIEW - Application for leave to appeal to Supreme Court of Canada dismissed

TOMASZ TURKIEWICZ, A SOLE PROPRIETOR C.O.B. AS **TOMASZ TURKIEWICZ CUSTOM MASONRY HOMES**, RE: **BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY** and **THE ONTARIO LABOUR RELATIONS BOARD**; Supreme Court of Canada File No. 40564; Dated July 27, 2023 (2 pages)

JUDICIAL REVIEW - Application for leave to appeal to Supreme Court of Canada dismissed

ENERCARE HOME & COMMERCIAL SERVICES LIMITED PARTNERSHIP; RE: **UNIFOR LOCAL 975 AND THE ONTARIO LABOUR RELATIONS BOARD**; AND BETWEEN: **GANEH ENERGY SERVICES LTD. AND BEAVER ENERGY SERVICES LTD.**, RE: **UNIFOR LOCAL 975 AND THE ONTARIO LABOUR RELATIONS BOARD**; Supreme Court of Canada File No. 40566; Dated July 27, 2023 (2 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
Robert Currie Divisional Court No. 365/23	0719-22-UR 1424-22-UR	Pending
Red N' Black Drywall Inc. And Red N' Black Inc. Divisional Court No. 350/23	1278-19-R	Pending
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	September 28, 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	Motion for Leave to Appeal to Court of Appeal
Elementary Teachers' Federation of Ontario Divisional Court No. 367/22	0145-18-U	April 3, 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 to Court of Appeal
Joe Placement Agency Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	Pending
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

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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	Dismissed
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 dismissed
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 dismissed
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 dismissed
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