

*H*IGHLIGHTS

Ontario Labour Relations Board

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September 2024

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 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.

Notice to Community – Vice-Chair Postings (Full-Time) – October 18, 2024

The Ontario Labour Relations Board has posted to fill vacancies for full-time Vice-Chair positions. Applications to apply for these positions are due on or before **November 7, 2024**. For more information about the positions and how to apply, please visit

<https://www.pas.gov.on.ca/Home/Advertisemen/1005>

Notice To Community – New Vice-Chair – September 13, 2024

The Board welcomes **Thomas Black** as a new full-time Vice-Chair.

Thomas Black was called to the Ontario Bar in 2006 and has previously worked for two construction trade unions as in-house counsel. Originally from Manitoba, he has an undergraduate degree from Brandon University, a

Master of Arts degree and Bachelor of Education degree from Western University, and a LLB from the University of Windsor.

Certification – Craft Unit – Union historically represents employees in meat departments of grocery stores – Proposed bargaining unit consisting of only meatcutters at a grocery store – Employer argued separate meat department units in grocery stores are a historical anomaly and that the bargaining unit was inappropriate because the meat industry has evolved – Meat departments no longer perform the onerous meat cutting work that was once required in those departments – Grocery stores now receive small primals of meat, not large quarters – Difficult meat cutting work, such as deboning and separating meat from muscles, is now performed at meat packaging plants rather than the grocery store – Applicant argued there has been no de-skilling of meatcutters – Meatcutters use a high degree of skill to cut even small pieces of meat – Meatcutters are required to take a six-month training course upon hire to learn information such as knife skills and how to identify parts of the animal – Applicant argued no other departments or roles in the grocery store require this type of training – Board found the evolution of the industry did not de-skill meatcutters – Meatcutters continue to use conventional tools such as knives and saws and therefore use the same technical skills – Board found the lines between meatcutters and other grocery departments were not blurred – Board found that bargaining unit satisfied the

requirements for a craft bargaining unit under section 9(3) of the *Labour Relations Act, 1995* - Matter continues

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 633, RE: **SOBEYS CAPITAL INC.**; OLRB Case No. 1383-22-R; Dated August 20, 2024; Panel: R. McGilvery (23 pages)

Construction Industry – Certification – Constitutional Law – Union applied for certification – Employer argued that it was subject to federal jurisdiction and that application should be dismissed as a result – Employer was owned by members of M’Chigeeng First Nation, located on that First Nation and performed significant amount of work for First Nations as it was formed with a view to prioritizing opportunities for First Nations individuals and organizations - Employer submitted that either direct federal jurisdiction or derivative federal jurisdiction applied to its operations – With respect to direct jurisdiction, Employer argued that its core business supported First Nations’ governance function and was therefore a federal undertaking - Employer further argued that it was subject to derivative federal jurisdiction – Employer argued it has become by necessity an indispensable entity by which the M’Chigeeng community is serviced – Employer noted its mandate and that its work is predominantly for First Nations, and/or for First Nations organizations, or the benefit of the First Nations, it is in all respects connected to First Nations, and derives jurisdiction through them – Board noted the strong presumption that Employer’s labour relations were subject to provincial jurisdiction - Board concluded that other than Employer’s location and ties to First Nations members and communities, it would be difficult to distinguish Employer from any other provincially regulated construction contractor – Nature, operations and habitual activities were of a construction contractor and the Employer was therefore not a federal undertaking directly subject

to federal jurisdiction - With respect to derivative jurisdiction, Board reviewed the relevant case law noting that derivative jurisdiction can be found where a non-federal undertaking is integral to a federal undertaking - Board found that Employer is an indivisible, integrated operation, whose dominant character cannot be said to be integral to a federal undertaking – M’Chigeeng First Nation’s governance function is not dependent on Employer and Employer is not essential to that or any other federal undertaking and Employer is not functionally integrated with that or any other federal undertaking – Matter continues

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, RE: **E. CORBIERE & SONS CONTRACTING**, RE: UNITED CHIEFS AND COUNCILS OF MNIDOO MNISING, M’CHIGEENG FIRST NATION, AUNDECK OMNI KANING, AND UNION OF ONTARIO INDIANS – ANISHINABEK NATION; OLRB Case No. 1792-22-R; Dated August 19, 2024; Panel: L. Lawrence (35 pages)

Construction Industry – Grievance – Union filed grievances nearly one year after the conclusion of the construction project they related to – Responding Parties argued that the grievances were untimely – Evidence disclosed that the Union knew about the work giving rise to the grievances many months prior to filing grievance - Responding Parties argued there was no basis for the Board to extend the 30-day collective agreement time limit for filing grievance - Union argued the time limit in the collective agreement referred to “processing,” not “filing” grievances such that grievances were not untimely – In the alternative, Union argued Board should extend the time limit due to the seriousness of the grievance – Union argued it was not aware of potential claims until it reviewed media publications concerning the work performed – Union argued grievances were timely because it filed the grievances when it had appropriate information to grieve – Union further argued that Responding Parties denied it access to plant, such

that it did not have clear information about the work - Responding Parties would not be prejudiced by the delay – Board found the collective agreement indicated grievances should be submitted within 30 days and that time limit applied – Board declined to extend grievance timeline – Union provided no compelling explanation for its delay – Board found Union was aware of at least a potential breach, namely the installation of garage doors, but delayed grieving – Board found delay substantial – Media publications allegedly prompting filing did not mention installation of incinerators or compactors (mentioned in grievances) in any event - Prejudice assumed - Parties entitled to a level of finality – Application dismissed

MILLWRIGHTS REGIONAL COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1592, RE: **ONTARIO POWER GENERATION**, LAURENTIS ENERGY PARTNERS, ENERGY SOLUTIONS CANADA, AND DANCOR CONSTRUCTION LIMITED; OLRB Case No. 2398-23-G; Dated August 29, 2024; Panel: D. Morrison (27 pages)

Employment Standards – Overtime Pay – In application for review, employee argued that the exemption set out in section 16 of O. Reg. 285/01 to the *Employment Standards Act* concerning sewer and watermain work did not apply and that as a result, he should have been paid overtime rates for all work in excess of 44 hours in a week, rather than in excess of 50 hours – Exemption applied to, in relevant part, employees “employed in laying, altering, repairing or maintaining sewers and watermain and in work incidental thereto” - Parties agreed that applicant was not employed in laying, altering, repairing or maintaining sewers and watermain but applicant asserted that he was employed in “work incidental thereto” - Applicant’s work consisted of driving truck delivering pipes, materials and equipment to sites where employer performed sewer and watermain work – Board reviewed case law governing

exemptions to employment standards as well as case law related to other construction exemptions - Board found that there was a nexus between the Applicant’s work and sewer and watermain work - Employer could not perform this work in the absence of the equipment and material that the Applicant delivered to its construction worksites – Application dismissed

JOHN COUPS A.K.A. JACK COUPS, RE: **EARTH BORING COMPANY LIMITED**, AND DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No. 2216-23-ES; Dated August 22, 2024; Panel: Peigi Ross (14 pages)

Occupational Health and Safety – Appeal from Inspector’s Order – Employer appeal under s. 61 of the *Occupational Health and Safety Act* (the “Act”) - Inspector determined that workers trained in tunnel rescue (a tunnel response team or TRT) in accordance with Part IV of O. Reg. 213/91 under the *Act* were not readily available at a tunnel being constructed by the Employer and directed compliance – Employer argued that Part IV of the Regulation did not apply to the work being performed at the project on the date of the field visit since no tunnelling, boring or excavating was being done and tunnelling operations had ended – Employer further argued that if the Regulation did apply, the Employer had provided protection equal to the Regulation’s requirement because the combination of other emergency response teams and the availability of municipal fire and paramedic services made up for the discontinuation of TRT training at the project site – Board found that Part IV of the Regulation applied - Although the regulation indicated that TRT had to be trained within 30 days of “tunnelling operations” commencing, it did not indicate that the TRT could be discontinued once tunnelling operations were complete - Although tunnelling operations had ended, underground construction continued - Board also concluded that the other measures identified by the Employer did not constitute equal protections

as required by s. 3 of the Regulation - Evidence suggesting that equal protections were in place was insufficient and notice requirement of s. 3 had not been complied with in any event - Appeal dismissed

CROSSLINX TRANSIT SOLUTIONS RE: A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT, AND **LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183**, AND IBEW LOCAL 353; OLRB Case No. 1568-21-HS; Dated August 27, 2024; Panel: Patrick Kelly (40 pages)

Related Employer – Practice and Procedure – Union filed application under section 1(4) and/or 69 of the *Labour Relations Act, 1995* – Union issued a summons to DC, an accountant for the Responding Parties, which requested that DC produce financial documents related to the Responding Parties - Responding Parties argued summons should be quashed because the documents should have been sought earlier in the proceeding as part of the Applicant's production request, and the Board had already issued a decision indicating that all production issues had been resolved - Responding Parties also argued that summons was abusive and a fishing expedition – Union argued the documents sought from DC addressed financial control, which was a core issue in the Application, and that the summons to DC was necessary because the Responding Parties' witnesses had suggested that DC could explain financial statements in ways the witnesses could not – Board reviewed its normal criteria for quashing a summons - Board found that the documents sought were arguably relevant - In view of Responding Parties' witnesses' inability to explain the financial statements and their evidence that DC would be able to explain them, the evidence was necessary - No evidence that summons was for ulterior or improper purposes – Motion dismissed - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL

DISTRICT COUNCIL, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607; RE: **CLOUTIER BUILDERS & SUPPLIERS COMPANY LTD**, AND 6080961 CANADA INC. O/A CLOUTIER CONTRACTING; OLRB Case No. 1836-21-R; Dated August 1, 2024; Panel: D. Morrison (11 pages)

COURT PROCEEDINGS

Judicial Review – Occupational Health and Safety – Applicant asserted that changes to his teaching hours and location constituted a reprisal contrary to the *Occupational Health and Safety Act* – Evidence before the Board was that the changes were necessitated by accommodations requested by the Applicant and did not constitute a reprisal – On judicial review, Applicant asserted that the Board's decision was unreasonable in that it accepted "perjured" evidence, that it incorrectly declined to consider whether the *Human Rights Code* had been violated, and that the Board had altered the terms of the applicable collective agreement in its decision – Court concluded that the Board had considered all of the Applicant's arguments, and had reasonably weighed the evidence and determined the legal issues before it – Board had also fully explained the process to the Applicant and given him a full opportunity to call any evidence he wished to rely on – Application for judicial review dismissed

ROBERT CURRIE, RE: PEEL DISTRICT SCHOOL BOARD and ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 365/23; Dated July 23, 2024; Panel: Backhouse, Lococo and Leiper JJ. (12 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
Glen Hill Terrace Divisional Court No. 478/24	2001-18-PE	Abandoned
Ahmad Mohammad Divisional Court No. 476/24	1576-20-U	Pending
Clean Water Works Divisional Court No. 401/24	1093-21-R	January 16, 2025
SkipTheDishes Divisional Court No. 378/24	0019-24-R	Pending
Bird Construction Company Divisional Court No. 363/24	1706-23-G	Pending
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	Pending
Yan Gu Divisional Court No. 306/24	0994-23-U	December 12, 2024
Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario Divisional Court No. 131/24	2442-22-U	October 31, 2024
A. & F. Di Carlo Construction Inc. Divisional Court No. 657/23	0614-23-ES 0638-23-ES	Dismissed
Errol McHayle Divisional Court No. 013/24	1396-22-U	September 11, 2024
Four Seasons Site Development Divisional Court No. 661/23	0168-17-R	September 25, 2024
Robert Currie Divisional Court No. 365/23	0719-22-UR 1424-22-UR	Dismissed
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Adjourned
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-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

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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
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
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sese 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