

*H*IGHLIGHTS

Ontario Labour Relations Board

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the September/October 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 – Alternate Chair Appointed

The Board is pleased to announce the appointment of **Michael McFadden** as Alternate Chair.

Construction Industry – Grievance – Union filed grievance asserting that the employer had subcontracted work to a non-union entity contrary to the collective agreement - Employer asserted that only declaratory relief was appropriate because it had issued an open invitation to the union to refer workers, which the union failed to do, and that *Blouin Drywall* damages were not appropriate in any event - Board found that collective agreement was violated - Declaratory remedy insufficient - Lack of communication between parties appeared to have aggravated the situation - No evidence that employer made any effort to use a unionized subcontractor other than in respect of a small

portion of the work - Evidence was not clear that there were, in fact, unionized subcontractors available to do the work during this time - Board noted the various steps that both parties did not take that would have been appropriate in the circumstances - Board concluded that no perfect solution was available to it given the evidence before it, and directed that the employer pay damages equivalent to the difference between what it would have paid had it complied with the collective agreement and the actual amount paid to the non-union subcontractor - Less than this amount would give a windfall to the employer for its violations of the collective agreement - More than this amount would assume that the union was capable of dispatching its members to perform the work throughout the period of the grievance, which was not adequately supported by the evidence - Remedy remitted to parties - Grievance allowed

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527, RE: **EXPERCOM TELECOMMUNICATION INC.**, RE: THE UTILITY CONTRACTORS' ASSOCIATION OF ONTARIO; OLRB Case No. 0872-21-G; Dated November 13, 2024; Panel: Lindsay Lawrence (36 pages)

Construction Industry – Grievance – Union filed grievance concerning meal allowance payable to

employees in certain circumstances – Issue arose when employees were scheduled for eight-hour shifts with two scheduled hours of overtime each day of the week – Collective agreement provided that where employees performed “plastics work” in a “Zone 3 nuclear environment”, they were entitled to a meal period “for the first two hours worked” beyond the regular quitting time – Collective agreement also contained a general provision regarding “meals on overtime” which provided for a meal period where employees worked “more than two hours” beyond their regular hours - On a prior occasion where employees at a different location subject to the same collective agreement worked similar hours, no meal period was provided – Union argued that the terms of the collective agreement were clear, and that different words were used to mean different things – Prior occasion involved a different local union and the applicant union was not involved – Employer association argued that the “plastics work” provision was internally inconsistent and ambiguous, while the “meals on overtime” provision was clear – Employer association argued that the past practice involving different location was relevant because discerning the meaning of the “plastics work” provision was challenging – Employer argued that Union knew or ought to have known that Employer had not paid for meal period in comparable circumstances, almost immediately after the “plastics work” clause was negotiated – Board concluded that the relevant provision of the “plastics work” clause was unambiguous – While “meals on overtime” provision referred to work “more” than two hours beyond the normal quitting time, the “plastics work” clause provided for a meal period “for the first two hours” beyond the normal quitting time – Difference was relevant and nothing in the “plastics work” supported the Employer’s or Employer association’s interpretation – Practice at different location could not ground an estoppel argument –

Grievance allowed; appropriate remedy remitted to parties

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059, RE: AECON INDUSTRIAL SERVICES, A DIVISION OF AECON CONSTRUCTION GROUP INC., RE: ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; OLRB Case No. 2947-23-G; Dated November 5, 2024; Panel: Derek L. Rogers (33 pages)

Construction Industry – Jurisdictional Dispute

– LIUNA asserted that removal and replacement of caulking should have been assigned to its members rather than to members of IUPAT – As a result of security requirements, IUPAT members who performed the work were escorted by LIUNA members employed by a different subcontractor with security clearances – Board noted that sealant or caulking work was performed by many trades, often ancillary to trades’ other work, but that this was a stand-alone project involving only caulking work – Further, practice evidence was limited to caulking or sealant work that was comparable to the work in dispute, such that different types of caulking or sealant was comparable, but grouting was not, and caulking applied to different types of surfaces was not – Area practice evidence submitted by IUPAT was insufficiently detailed to determine whether it was comparable to the work in dispute – Much of LIUNA’s practice was similarly not comparable, but the evidence established that a number of comparable assignments had been made to LIUNA members - Employer practice evidence submitted by all parties was not comparable to the work in dispute – With respect to economy and efficiency, although it may

have been inefficient to have the IUPAT members escorted by LIUNA members, the employer did not pay for the escorts and could have performed the work using its own employees who did have security clearances – Board considered this factor neutral – As a result, although the practice evidence was limited, such evidence as there was did establish a practice of assigning the work to LIUNA members – Application granted

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE: **CONNCO GROUP LTD. O/A NORTHERN PAINTERS AND/OR NORTHERN PAINTING** AND ONTARIO COUNCIL OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES AND ITS LOCAL UNION 1590; OLRB Case No. 1969-23-JD; Dated November 1, 2024; Panel: Danna Morrison (16 pages)

Successor or related employer – Union held bargaining rights for employees of C store – C store purchased by R and subsequently by L, which maintained R store banner (the “R store”) – L operated another store in the same municipality as the R store, under the L banner (the “L store”) – L eventually determined that the C store would be closed, and a closure agreement was negotiated – Three years later, L sold its retail business to S, which eventually changed the L banner of the L store to an R banner – Union brought application under section 69 of the *Labour Relations Act, 1995* (the “*Act*”) asserting that there was a sale of a business from R to S in respect of the now-R-bannered store – S argued that application was untimely and should have been filed after the closure of the R store or after the sale of L to S – Union argued that the material facts underpinning

its application did not crystallize until the L store took on the R banner, and application was filed shortly thereafter – Board concluded application was timely – Union formed a reasonable view that an application under s. 69 of the *Act* filed upon the closure of the R store would have been seen as seeking an expansion of bargaining rights – Since sale is alleged to have taken place between R and S, the application was filed in a timely fashion after the rebranding of the L store to the R banner – Matter continues

UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175, RE: **SYCAMORE PARTNERS C.O.B. AS RONA INC;** OLRB Case No. 1412-23-R; Dated November 4, 2024; Panel: Michael McCrory (10 pages)

Unfair Labour Practice – Practice and Procedure – Standing – Applicant coalition filed unfair labour practice application against unions and labour organization asserting that some or all of the responding parties had engaged in activities seeking to undermine “parental rights demonstrations” – Responding parties asserted that applicant had no standing to bring application, that application made out no *prima facie* case that the *Labour Relations Act, 1995* (the “*Act*”) had been breached, and that application should be dismissed for delay – Application asserted violation of sections 74 and 76 of the *Act* – Application did not plead any facts asserting that responding parties had failed to represent their members in their employment relationship – Application also did not plead any facts asserting that any alleged intimidation or coercion was for the purpose of compelling a person to not exercise rights under the *Act* – No *prima facie* case pleaded – Applicant was also a stranger to any relevant employment

relationship involving any of the responding parties – Applicant was not complaining of responding parties' conduct in respect of their members, but in respect of political action – Applicant did not have standing to make complaint – Board also concluded that the application ought to be dismissed as untimely as it was brought one year after the acts complained of, with no explanation – Application dismissed

MELANIE BENNET, PARENTS RIGHTS COALITION OF CANADA, RE: **UNIFOR**, ELEMENTARY TEACHERS' FEDERATION OF ONTARIO (ETFO), CANADIAN LABOUR CONGRESS (CLC), ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION (OSSTF), AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW); OLRB Case No. 1445-24-U; Dated November 12, 2024; Panel: Timothy P. Liznick (15 pages)

decision, owed considerable deference by the Court – Application dismissed

CANADIAN UNION OF SKILLED WORKERS, RE: **FOUR SEASONS SITE DEVELOPMENT LTD.** and WESTPORT PAVING INC. and ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 661/23; Dated November 27, 2024; Panel: Lococo, Matheson and Sheard JJ (11 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.

COURT PROCEEDINGS

Judicial Review – Related Employer – Board dismissed related employer application on the basis that the applicant union had not demonstrated any erosion in its bargaining rights – Board concluded that granting the application would expand, rather than protect, the applicant's bargaining rights – On judicial review, applicant argued that the Board had not engaged with its central argument that the target entity economically dominated the entity to which the applicant's bargaining rights attached – The Divisional Court found that the Board's reasons indicated that it was alive to the applicant's argument concerning economic dominance, and had considered it – Court noted that the Board was not obliged to address every aspect of the applicant's argument – Court concluded that the Board considered, but did not agree with, the applicant's argument – Court also noted that a related employer declaration was a discretionary

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Peter Miasik Divisional Court No. 735/24	1941-23-U	Pending
Jitesh Parikh Divisional Court No. 409/24	0408-24-HS	January 21, 2025
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	February 13, 2025
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	March 3, 2025
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
Four Seasons Site Development Divisional Court No. 661/23	0168-17-R	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
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

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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 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