

# *H* Ontario Labour Relations Board **HIGHLIGHTS**

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Editors: Aaron Hart, Solicitor  
Lindsay Lawrence, Solicitor

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## **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](http://www.canlii.org).

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**Certification – Construction Industry – Delivery of Application** – Board held that the applicant should be able to rely on, and take at face value, the responding party’s registered office address information contained in a Corporation Profile Report on file with the Ministry of Consumer and Business Services for purposes of delivery - Responding parties continued to use this address on a cheque it issued two days before the application was filed – Responding parties did not provide any explanation for continued use of this address – Given the delay, that the Board did not find any compelling explanation for the delay, and the prejudice to the applicant, Board refused to exercise discretion to amend or extend the time for filing a response in this application – Application granted.

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**HK WELDING INC.; RE: IRON WORKERS DISTRICT COUNCIL OF ONTARIO; OLRB Case No: 0686-20-R; Dated July 23, 2020; Panel: Yvon Severyn (13 pages)**

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**Certification – Construction Industry – Practice and Procedure - Rule 41.3** – Board permitted the

Union to bring a second Rule 41.3 motion following production of documents to the Union - Given the purpose of Rule 41.3 and its potential effect in reducing delay and costs associated with lengthy litigation, it is appropriate for a party to revisit a Rule 41.3 motion if significant disclosure reveals additional facts which may lead to a different outcome – Board dismissed Rule 41.3 motion and concluded that further inquiry by the Board through oral evidence was necessary – Matter continues.

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**CEDARWELL EXCAVATING LTD.; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059; OLRB Case No: 1334-19-R, 3374-19-U; Dated July 7, 2020; Panel: Paula Turtle (8 pages)**

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**Certification – Membership Support – Section 8.1** – In a certification application involving Uber drivers, the Board first determined the notice from the responding parties under section 8.1 of the Act, i.e. notice of the responding parties’ view that the Union did not have the requisite membership support (40%) to be entitled to a representation vote – Parties agreed that the Uber drivers were dependent contractors only for the purpose of determining the section 8.1 issue – After reviewing jurisprudence, Board determined that only individuals on alternative employee list who drove at least one Uber Black/ Uber Black SUV trip, or who accepted such a trip, but that the rider subsequently cancelled, in the sixty days prior to

date of application had a sufficient connection to Union's primary bargaining unit and counted for the purpose of the section 8.1 assessment – Matter continues.

**UBER CANADA INC.; RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA); RE: RASIER OPERATIONS B.V.; RE: UBER B.V. D.B.A. UBER BLACK; RE: UBER BLACK SUV; OLRB Case No: 2845-19-R; Dated July 31, 2020; Panel: Matthew R. Wilson (20 pages)**

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**Certification – Non-Construction Employers – Craft Units** – Applications for certification filed under the general provisions of the *Labour Relations Act, 1995*, following amendments to the Act made by Bill 66 and in particular to non-construction employer provisions of the Act – Section 127(1) of the Act now deems certain entities, including the employer University, to be non-construction employers – Certification applications were not made during the “open period” of either the UA or IBEW's existing agreements with the University – However, applications were made under the general and not the construction provisions of the Act, and accordingly were timely and not time barred pursuant to section 127(2)2 – Unions submitted that they were entitled to a craft unit under section 9(3) of the Act – Board concluded that the Unions had not satisfied the second element of section 9(3) of the Act – Matter was returned to the parties to make any submissions they wished about the appropriate bargaining unit under section 9(1) – Matter continues.

**UNIVERSITY OF TORONTO; RE: THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO; RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353; RE: UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46; RE: THE ATTORNEY GENERAL OF ONTARIO; OLRB Case No: 1450-19-R, 1525-19-R; Dated July 16, 2020; Panel: Bernard Fishbein (41 pages)**

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**Occupational Health and Safety Act - Appeal of an Inspector's Order** – Appeal of an order made under section 25(2)(h) of the *Occupational Health and Safety Act* requiring the Employer to take “every reasonable precaution in the circumstances to protect workers” – Employees worked on a production line, shoulder to shoulder, and were not able to maintain physical distance of two metres, which resulted in a risk of COVID-19 exposure – Employees were wearing face shields, but not masks – Employer asserted that use of masks was invariably accompanied by workers touching their faces, and thus increased risks – Board concluded that, while it would be preferable to have more reliable and definitive evidence, a requirement for use of masks was a reasonable precaution in the circumstances, and a necessary one at the time, to require source control measures that are not currently conclusively proven to be effective – Application dismissed.

**INOVATA FOODS CORP.; RE: A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; RE: MINISTRY OF LABOUR, TRAINING & SKILLS DEVELOPMENT; OLRB Case No: 0385-20-HS; Dated July 14, 2020; Panel: C. Michael Mitchell (12 pages)**

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**Unfair Labour Practice – School Board Collective Bargaining Act** – Unfair labour practice complaint was filed involving allegations of a breach of statutory freeze and duty to bargain in good faith – Responding parties brought a motion to have the application dismissed as moot and as having no labour relations purpose after parties were successful in reaching an agreement on central terms, including on the contentious issue of class size – Board granted the motion, terminated the proceedings and dismissed the application – Board saw no reason to consider doctrinal differences between the Board's general jurisprudence about its discretion to unfair labour practice complaints and the concepts of no labour relations purpose and mootness – Application dismissed.

**THE CROWN IN RIGHT OF ONTARIO; RE: ONTARIO ENGLISH CATHOLIC TEACHERS'**

ASSOCIATION; RE: ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION; RE: ELEMENTARY TEACHERS' FEDERATION OF ONTARIO; OLRB Case No: 1747-19-U; Dated July 31, 2020; Panel: Bernard Fishbein (21 pages)

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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, 7<sup>th</sup> Floor, 505 University Avenue, Toronto.

### Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
<b>Fortis Construction Group Inc.</b> Divisional Court	1638-17-R	Pending
<b>Aluma Systems Inc.</b> Divisional Court	2739-18-JD	Pending
<b>Anthony Hicks</b> Federal		
<b>Capital Sports &amp; Entertainment Inc.</b> Divisional Court No. DC-20-2593	1226-19-ES	Pending
<b>Rochelle Sherwood</b> Divisional Court No. 074/20	1551-19-U 1557-19-UR	Pending
<b>Joe Mancuso</b> Divisional Court No. 28291/19	<b>(Sudbury)</b>	2499-16-U – 2505-16-U
<b>Abdul Aziz Samad</b> Divisional Court No. 019/20	3009-18-ES	Pending
<b>Daniels Group Inc.</b> Divisional Court No. 018/20	0279-16-R	Pending
<b>Audrey Thomas</b> Divisional Court No. 436/19	2508-18-U	Pending
<b>The Captain's Boil</b> Divisional Court No. 431/19	2837-18-ES	Pending
<b>Kuehne + Nagel Ltd.</b> Divisional Court No. 393/19	0433-18-R	Pending
<b>Todd Elliott Speck</b> Divisional Court No. 371/19	1476-18-U	Adjourned due to pandemic
<b>New Horizon</b> Divisional Court No. 264/19	0193-18-U	May 7, 2020
<b>Doug Hawkes</b> Divisional Court No. 249/19	3058-16-ES	Pending
<b>EFS Toronto Inc.</b> Divisional Court No. 205/19	2409-18-ES	Pending
<b>RRCR Contracting</b> Divisional Court No. 105/19	2530-18-U	Adjourned due to pandemic
<b>Hector Yao</b> Divisional Court No. 063/19	1841-18-ES	Dismissed

<b>AB8 Group Limited</b> Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
<b>Tomasz Turkiewicz</b> Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
<b>Deloitte Restructuring Inc.</b> Divisional Court No. 238/18	2986-16-R	November 18, 2019
<b>China Visit Tour Inc.</b> Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
<b>Front Construction Industries</b> Divisional Court No. 528/17	1745-16-G	Adjourned due to pandemic
<b>Enercare Home</b> Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Pending
<b>Ganeh Energy Services</b> Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	October 21, 2019
<b>Myriam Michail</b> Divisional Court No. 624/17 <b>(London)</b>	3434-15-U	Pending
<b>Peter David Sinisa Sesek</b> Divisional Court No. 93/16 <b>(Brampton)</b>	0297-15-ES	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48402	0095-15-UR	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48403	0015-15-U	Pending
<b>R. J. Potomski</b> Divisional Court No. 12/16 <b>(London)</b>	1615-15-UR 2437-15-UR 2466-15-UR	Pending
<b>Qingrong Qiu</b> Court of Appeal No. M48451	2714-13-ES	Pending
<b>Kognitive Marketing Inc.</b> Divisional Court No. 51/15 <b>(London)</b>	0621-14-ES	Pending
<b>Valoggia Linguistique</b> Divisional Court No. 15-2096 <b>(Ottawa)</b>	3205-13-ES	Pending