

*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 May 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.

Construction Industry – Accreditation – Application by GTSWCA for accreditation – An employer given notice of the application objected to inclusion in accreditation order on the basis that responding party Local 183 had not been certified, voluntarily recognized or party to a collective agreement in respect of the employer’s employees – Employer asserted that it was not party to a collective agreement with the local union but only with local union’s provincial council – Board concluded that the collective agreement was entered into by the provincial council as an uncertified council of trade unions – Board has repeatedly found that in such situations the provincial council holds bargaining rights as agent for the local unions, such that Local 183 did have bargaining rights with the employer through voluntary recognition – Additionally, Local 183 had bargaining rights and a collective agreement through operation of s. 146(1) of the Act – Certificate of accreditation to issue.

GREATER TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION, RE LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE THE OSHAWA AREA SIGNATORY CONTRACTORS ASSOCIATION; OLRB Case No: 0360-21-R; Dated May 5, 2022; Panel: Jack J. Slaughter (25 pages)

Construction Industry – Certification – Bars to certification – Ironworkers’ application for certification said to be barred by existing collective agreement entered into by CUSW – CUSW had previously applied to be certified in respect of electricians and ironworkers – CUSW subsequently withdrew application as it related to ironworkers and was certified for electricians’ bargaining unit – Collective agreement subsequently reached covered “all construction employees” – Ironworkers argued that collective agreement was a nullity as it related to ironworkers – Board reviewed jurisprudence related to extension of bargaining rights to new groups of employees – CUSW not entitled to represent ironworkers as it had not established majority support in new bargaining unit at the time the collective agreement was entered into – Agreement also did not constitute a valid pre-hire agreement as CUSW did not supply any ironworkers pursuant to the agreement – Collective agreement therefore not a bar to application for certification – Matter continues.

IRON WORKERS DISTRICT COUNCIL OF ONTARIO, RE **TRON CONSTRUCTION & MINING INC.** AND/OR TRON CONSTRUCTION & MINING LIMITED PARTNERSHIP, RE CANADIAN UNION OF SKILLED WORKERS; OLRB Case No: 1896-19-R; Dated May 13, 2022; Panel: Caroline Rowan (31 pages)

Construction Industry – Grievance referral – Timeliness – Employers objected to grievance proceeding before the Board on the basis that it was filed outside the time limits set out in the collective agreement – Grievance objected to use of “ExakTime”, a timekeeping application required to be installed on employees’ cell phones – One employer had used application since 2014 and the other since 2020 – Grievances filed in 2020 – Employers asserted both grievances filed outside 20 day time limit provided for by the collective agreement – Union asserted that it was not aware of use of application until 2020 – Employers asserted that employees used application twice a day, every day, and union ought reasonably to have been aware of its use – Employers argued that grievances were not continuing, in that they were introduced at a specific time and alleged violation of collective agreement was not of a repetitive nature – Employers also argued that Union was estopped from advancing grievances - Board concluded that collective agreement did not allow for “discoverability” as the time limits for this type of grievance ran from the date the event complained of occurred, not from the date the Union learned of it - Board concluded that grievances were of a continuing nature – Union was also not estopped from pursuing grievances – No basis for concluding that Union was on notice of employers’ practice and that its silence in response constituted acquiescence in that practice – No detrimental reliance identified by employers – Grievances to continue.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE **ATLAS DEWATERING CORPORATION**, RE GREATER TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; OLRB Case Nos: 0693-21-G &

0695-21-G; Dated May 24, 2022; Panel: Derek L. Rogers (43 pages)

Construction Industry – Jurisdictional Dispute – Labourers claimed traffic control work should have been assigned to its members rather than members of CUSW – Work arose in the course of electrical work and was of brief duration – Collective agreement and skills and safety factors favoured Labourers since collective agreement explicitly covered traffic control work and Labourers provided extensive training to members in traffic control, while CUSW’s collective agreement made no reference to traffic control and CUSW provided no specific training to its members (CUSW members were trained by the employer) – Practice evidence factors were neutral because both unions had extensive and comparable evidence of work assignments both by the employer and in the relevant Board Area – Economy and efficiency favoured CUSW as it was more efficient to have one of the specific trades whose work was being interrupted by a delivery to perform the traffic control for the delivery – Not efficient to have a labourer taken away from another task to carry out traffic control for a brief period of time (less than an hour) especially while CUSW members’ work already interrupted by the delivery – Board also declined to dismiss application on the basis that it related to a very small period of time, since the work was normally clearly within the Labourers’ jurisdiction – In weighing the factors, Board concluded that the factors were equally balanced in each trade union’s favour – Since onus was on the Labourers to satisfy the Board that the work assignment should be overturned, the application was dismissed.

CANADIAN UNION OF SKILLED WORKERS, RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND ITS AFFILIATED LOCAL 183, AND **HYDRO ONE NETWORKS INC.**; OLRB Case No: 1663-21-JD; Dated May 10, 2022; Panel: M. David Ross (29 pages)

Public Sector – Integration of public services –

Two hospitals integrated within the meaning of the *Public Sector Labour Relations Transition Act, 1997* (the “Act”) – Board previously determined that there would be a single hospital-wide paramedical unit – Dispute arose between the parties as to whether physicians’ assistants, who were not previously part of any bargaining unit, should be included in paramedical unit – Hospital argued that they should be excluded on the basis that they did not share a community of interest with the rest of the paramedical unit in light of their duties and function within the Hospital – Hospital also argued that it would not be in keeping with the purposes of the Act to “sweep in” a group that was historically not included in any bargaining unit into the paramedical unit – Union relied on previous arbitration award finding that physicians’ assistants were included in a paramedical bargaining unit – Board concluded that differences between physicians’ assistants and other paramedical employees were not sufficient to warrant their exclusion – Goal of the Act was to create rational bargaining structures, and a bargaining unit containing only physicians’ assistants would promote the fragmentation the Act sought to avoid – Including physicians’ assistants in the bargaining unit was more consistent with the Act than not including them – Board determined that they should be included in the new bargaining unit.

SCARBOROUGH AND ROUGE HOSPITAL, RE OPSEU, Locals 311, 581 and 575; OLRB Case No: 2443-16-PS; Dated May 20, 2022; Panel: Adam Beatty (15 pages)

Board’s jurisdiction to hear application – Board concluded that application was properly before it and not moot – Parties subsequently advised that they had agreed that all of the matters in issue were included within the scope of central bargaining and Board issued decision advising that matter was concluded – Motion before Divisional Court that application for judicial review was moot – Divisional Court concluded matter was moot as the central parties and the Crown had reached agreement that the issues in dispute were central, not local – Application of principles set out in *Borowski* did not support the Court exercising its discretion to hear the matter despite resolution of live issue – Matter decided by Board was not a matter of such public importance that Court should intervene to review what was essentially an interim procedural decision by the Board – Application dismissed.

ONTARIO CATHOLIC SCHOOLS TRUSTEES’ ASSOCIATION (OCSTA) AND THE CROWN IN THE RIGHT OF ONTARIO (MINISTRY OF EDUCATION) RE: ONTARIO ENGLISH CATHOLIC TEACHERS’ ASSOCIATION (OECTA) and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File Nos. 645/21 & 650/21; Dated May 26, 2022; Panel: Sachs, Backhouse, and McCarthy JJ.; (4 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

School Boards Collective Bargaining – Judicial Review – Application by the Union under section 28(5) of the *School Boards Collective Bargaining Act* (the “Act”) against trustees’ association and the Crown for a determination as to whether certain proposals placed on the local negotiating table by three School Boards were items that had been agreed upon as being central items – Dispute as to

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
CTS (ASDE) INC. Divisional Court No. 295/22	0249-19-G 2580-19-G 2581-19-G	Pending
Aecon Group Inc. Divisional Court No. 301/22	1016-21-HS	Pending
Sleep Country Canada Divisional Court No.	1764-20-ES 2676-20-ES	Pending
Capital Sewer Services Inc. Divisional Court No. 280/22	1826-18-R	Pending
Laksaman Fernando Mihinduklasuriya Divisional Court No. 079/22	1623-14-U 1738-14-ES	Pending
The Ontario Secondary School Teachers' Federation Divisional Court No. 187/22	0145-18-U 0149-18-U	April 3, 2023
Dr. Daneshvar Dentistry Professional Corporation Divisional Court No. 123/22	0758-21-ES	Withdrawn
City of Hamilton Divisional Court No. 967/21	1299-19-G 1303-19-G 1304-19-G	December 12-13, 2022
Susan Johnston Divisional Court No. 934/21	0327-20-U	November 2, 2022
Royal Group Inc. Divisional Court No. 911/21	2440-20-U	Pending
Joe Placement Agency Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	Pending
Holland, L.P. Divisional Court No. 673/21	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	Pending
Black and McDonald Ltd. Divisional Court No. 502/21	2425-20-G	Dismissed
Ontario Catholic School Trustees' Association Divisional Court No. 650/21	2067-20-M	Dismissed
Ontario Catholic School Trustees' Association Divisional Court No. 645/21	2067-20-M	Dismissed
Mammoet Canada Eastern Ltd. Divisional Court No. 609/21	2375-19-G	April 20, 2022
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
Cambridge Pallet Ltd. Divisional Court No. 187/21	0946-20-UR	May 16, 2022
Guy Morin Divisional Court No. 20-DC-2622 (Ottawa)	2845-18-UR 0892-19-ES	September 15, 2022
Capital Sports & Entertainment Inc. Divisional Court No. 20-DC-2593	1226-19-ES	Pending
Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	June 8, 2022
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	Pending
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	May 25, 2022
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	May 25, 2022
Ganeh Energy Services Divisional Court No. 515/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	May 25, 2022
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