

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

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Annotated Rules of Procedure

The Board is pleased to publish the first edition of the Ontario Labour Relations Board Annotated Rules of Procedure. The Annotated Rules provide key cases for each rule, where cases exist. The Annotated Rules can be accessed from the home page of the Board's website at www.olrb.gov.on.ca.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in February of this year. These decisions will appear in the January/February issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Bar – Certification – Construction Industry –

The Union filed an earlier application for certification in 2003 in which the Employer had given notice under section 8.1 – The application was “forgotten” after the representation vote and remained unresolved – In 2006, the Union filed a fresh application with respect to the same bargaining unit – Neither party made any reference to the 2003 application in their filings with the Board – After the Board brought the 2003 application to the parties' attention, the Union conceded the section 8.1 objection and requested that the 2003 application be dismissed without imposing a bar to future applications in accordance with subsection 10(4) – The Employer argued that because this was a construction industry application and there was a conflict between sections 160 and 10, section 160 took precedence and the mandatory bar in subsection 160(3) applied – The Board held that there was no conflict and subsection 10(4) applied to

preclude the application of the mandatory bar – The Board declined to impose a discretionary bar having regard to the substantial prejudice to the employees' right to seek union representation – The Board found it unnecessary to impose a discretionary bar so as to deter similar circumstances in the future – The 2006 application was allowed to proceed

AMACON CONSTRUCTION LTD. AND/OR AMACON DEVELOPMENT GROUP INC.; RE LIUNA LOCAL 183; File No. 3821-05-R; Dated February 8, 2007; Panel: Peter F. Chauvin; G. Pickell; R. Baxter (7 pages)

Bargaining Rights – Bargaining Unit – Certification – Collective Agreement – Construction Industry –

In these six applications for certification, the issues were: (i) whether the Employers were bound by the EPSCA Agreement on the application date; (ii) whether the applications ought to be dismissed for a lack of labour relations purpose and (iii) the appropriate bargaining unit – The Employers were not members of EPSCA – When bidding for work tendered by Ontario Power Generation (OPG), the Employers must accept a “Labour Requirements Clause” (LRC) which obliged the Employers to abide by the EPSCA Agreement – The Board held that the Employers were not bound by the EPSCA Agreement because (a) the Employers had neither entered into voluntary recognition agreements with the Unions nor authorized EPSCA or OPG to be their agent by virtue of the LRC; (b) the LRC did not establish a direct connection between the Employers and the Unions party to the EPSCA Agreement; (c) contacting the Unions' hiring halls for employees did not constitute a voluntary recognition agreement, and (d) section 57 of the Act had no application as the Employers were not members

of EPSCA – The Board refused the Employers' request to dismiss the applications for certifications as the Board found the Act did not confer on it the discretion to dismiss or refuse to entertain timely applications for certification, even if the applications are devoid of labour relations purpose – The Unions' request for a province-wide bargaining unit was rejected; rather, the appropriate bargaining unit was the Unions' trade or craft in all sectors of the construction industry other than the ICI sector in the Board Areas in which employees were working on the application date – Certificates issued in two; the others referred to Manager of Field Services

CANFORM STRUCTURES LIMITED; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; File Nos. 0170-04-R; 0171-04-R; 0924-04-R; 1800-04-R; 2934-04-R; 4185-04-R; Dated February 2, 2007; Panel: Harry Freedman (17 pages)

Alteration of Jurisdiction – Construction industry – Trade Union – Trusteeship – After a local union withdrew from various programs of its parent union and took steps to affiliate itself with a rival union, the parent revoked the local's charter – The local claimed that the revocation violated sections 147 and 149 of the Act – The Board held that section 149 had no application as the parent did not attempt to retain any of the legal or institutional attributes of the local – A parent union is entitled to sever its relationship with a local, subject only to the just cause requirement of section 147 – The Board is not likely to weigh the merits of the parent's decision as long as it severs the relationship completely and does not do so for a coercive or punitive motive – The revocation of the charter would harm viable and stable collective bargaining and cause serious labour relations problems because (i) no collective agreement would apply to the geographical area under the local's jurisdiction and (ii) it would unravel a previous order made by the Board that prevented the irreconcilable differences between the parties from disrupting the entire construction industry and inflicting significant damage to the economic interests of both employers and members of the union – The parent would not be able to demonstrate just cause for the revocation of the charter unless it simultaneously took steps to transfer the rights, privileges and duties of the local to the employee bargaining agency – The Board found that the parent acted without just cause and declared the attempted revocation to be null and void

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS; RE

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 25; File No. 3479-05-U; Dated February 19, 2007; Panel: David McKee (14 pages)

Construction Industry Grievance – Settlement

– The Carpenters acknowledged they received a certified cheque from the responding party as part of a settlement – They further acknowledged having signed a release – The Carpenters lost the cheque and requested a hearing to enforce the settlement agreement – The Board found the responding party had lived up to its obligations; that the applicant received the consideration contemplated by the release, and that the loss or destruction of the cheque while in the applicant's possession does not make the responding party liable to replace it – Grievance referral dismissed

J & A GENERAL CONTRACTORS INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; File No. 2928-05-G; Dated February 19, 2007; Panel: Harry Freedman; Glenn Pickell; Richard Baxter (2 pages)

Bargaining unit – Certification – Construction industry

– The union sought to expand its existing bargaining units by displacing itself and applying for certification for broader bargaining units – The broader units included employees who were already subject to collective agreements between the applicant and the responding parties but were not at work on the application date, plus all sectors of the construction industry in the Board Areas where the electricians employed by the responding parties were working on the application date – The applicant asserted that a displacement application was the only way for it to expand its bargaining unit which was necessary to ensure that its members would not be deprived of work by the responding parties' use of subcontractors bound by collective agreements with other trade unions – The Board held that the applicant was in the same position as any trade union seeking to displace another; thus the established policy that the appropriate bargaining unit in a displacement application is the unit held by the incumbent union applied unless there were clear and compelling reasons to hold otherwise – In this case there were no clear and compelling reasons as to why this long standing policy ought to be disregarded – The Board held that the appropriate bargaining unit was the one found in the applicant's collective agreement with each responding party – Matter continues

ONTARIO POWER GENERATION INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCILS; RE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE LIUNA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE POWER WORKERS UNION CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C. LOCAL 1000; File Nos. 3448-03-R et al; Dated February 26 2007; Panel: Harry Freedman (8 pages)

Employment Standards – The Employer applied for review of an Order to Pay – Subsection 116(1) of the *Employment Standards Act, 2000* requires, as a pre-requisite to filing the application, the payment of the amount owing to the Director of Employment Standards in trust or the provision of an irrevocable letter of credit acceptable to the Director – The Employer did not pay the full amount specified in the Order to Pay; rather, it withheld an amount in respect of statutory deductions – The Director contended that the amount withheld in respect of statutory deductions was excessive and sought an order from the Board to increase the total amount payable into trust to 70% of the total amount owing – The Board held that nothing in subsection 116(1) expressly allows for the payment into trust of anything less than the full amount of the Order to Pay, nor is there any prejudice to require an applicant to pay the full amount – The Employer was ordered to pay the full amount into trust in order to perfect the application

QUEBECOR WORLD INC.; RE CARLO BINETTI AND DIRECTOR OF EMPLOYMENT STANDARDS; File No. 3132-06-ES; Dated February 13, 2007; Panel: Mary Anne McKellar (3 pages)

Court Proceedings

Construction Industry – Judicial Review – Parties – Related Employer – Sale of Business – Settlement – The Council brought a motion to quash the judicial review, characterizing it as prematurely seeking a review of an interim decision of the Board – In the 69/1(4) application the responding party employers brought a motion to the Board to dismiss the application because of Minutes of Settlement purporting to bind the Council and any of its affiliates from bringing such applications for ten years – The Board found that although the individual who signed the agreement on behalf of Local 586 was also the President of the Council there was no evidence that he had actual or ostensible authority to bind the Council –

The Board dismissed the employers' motion and the sale of business/related employer applications continued before the Board, although the hearing on the merits had not yet commenced – The employers filed for judicial review – The court found this to be an exceptional or extraordinary situation that should properly be reviewed prior to the Board dealing with the merits – The court also assisted the parties in providing affidavit evidence to reflect the evidence that was before the Board

JOHNSON CONTROLS LTD., JOHNSON CONTROLS NOVA SCOTIA U.L.C., JOHNSON CONTROLS L.P., JOHNSON CONTROLS WORLD SERVICES LTD., BROOKFIELD MANAGEMENT SERVICES LTD. AND BROOKFIELD LEPAGE JOHNSON CONTROLS FACILITIES MANAGEMENT SERVICES LTD.; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO; File No. 1634-04-R (Court File No. 406/06); Dated February 13, 2007; Panel: Cumming J.

<p>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.</p>

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Stephane Verreault v. UA Local 787 & Teamsters Local 419 Divisional Court No.71/07	0840-05-U	Pending
Hurley Corporation v. OLRB; SEIU L. 2.on Divisional Court No. 23/07	2915-06-R	Pending
Trustee for LIUNA 183 v. OLRB et al Divisional Court No. 559/06	2049-03-U et al	February 12, 2007 (reserved)
Comstock Canada et al v. United Association of Journeymen and Apprentices in the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 Divisional Court No. 522/06	2558-03-JD	Pending
Janet Kitson v. OLRB et al Divisional Court No. 492/06	4205-02-U	Pending
Maystar General Contractors Inc. v. The International Union of Painters and Allied Trades, Local Union 1819 Divisional Court No. 481/06	0812-06-R	December 6, 2006 (reserved)
Johnson Controls Ltd. v. Brookfield Lepage Divisional Court No. 406/06	1634-04-R	February 9, 2007 (motion) Pending
TTC v. Amalgamated Transit Union Divisional Court No. 261/06	0618-06-U; 0620-06-U	March 21, 2007
Abduraham, Abdoulrab v. Novaquest Finishing Divisional Court No. 327/06	2222-04-ES, 2223-04-ES, 2224-04-ES	Pending
Place Mont Roc v. United Steelworkers (Stated Case) Divisional Court No. 233/06	1684-05-U; 3719-05-U	Pending
City of Hamilton v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Pending Motion to strike affidavit allowed in part – January 29, 2007
Guild Electric Limited et al v. IBEW, Local 1739 Divisional Court No. 202/06	4179-05-U; 4307-05-M	January 10, 2007 (reserved)
Elena, De Monelli Foerster v. Toronto Catholic District School Board (Civil Suit) Divisional Court No. 06-CV-310231PD1	1373-04-U	March 19, 2007
Bricklayers Local 7 v. 921879 Ontario Ltd. et al Divisional Court No. 06-DV-1209 OTTAWA	3261-04-JD; 3504-04-JD	April 3, 2007
Gus Nedelkopoulos v. OLRB Divisional Court No. 78978/06 NEWMARKET	1838-05-U 2644-05-U	Pending
Greater Essex County District School Board v. International Brotherhood of Electrical Workers, Local 773 et al Divisional Court No. 126/06	1702-04-R; 3120-04-R; 3172-04-R; 3173-04-R; 3174-04-R	Dismissed – Jan. 22/07 Seeking leave to appeal
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Withdrawn
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Dismissed – May 31, 2006, leave to appeal to C.A. granted – Oct. 30/06
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U 3552-00-U	Dismissed – April 3, 2006, seeking leave to appeal to C.A.

Scaduto, Frank Divisional Court No. 382/05	1798-03-U; 4338-02-U	Pending
Tuquabo, Dawitt Divisional Court No. 03-DV-000935	2377-02-U	Dismissed Feb. 14/05; leave to appeal dismissed Jun 29/05; leave to appeal to S.C.C. dismissed Feb. 1, 2007