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Ontario Labour Relations Board HIGHLIGHTS

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Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in April of this year. These decisions will appear in the March/April 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.

Bargaining Rights – Collective Agreement – Reference – Sale of Business – Voluntary Recognition – Bingo Press was sold to Arrow which was located in Niagara Falls – The union's collective agreement with Bingo Press was limited in geographic scope to St. Catherines – The employer asked the Board to dismiss the union's sale of business application for failing to plead a *prima facie* case – The Board's determination of the motion would decide the Ministerial reference (whether the minister had the authority to appoint a conciliation officer) and accordingly the reference was joined with the sale of business application – The union took the position that its bargaining rights arose from an oral voluntary recognition agreement or from estoppel – The Board found that the bargaining rights and collective agreement transferred to Arrow and the only issue was whether the collective agreement applied to Arrow's operation in Niagara Falls – The Board found that only collective agreements transfer on the sale of business, not oral amendments to scope clauses or oral voluntary recognition agreements – The Board found that the estoppel argument failed for two reasons: first there was no clear promise or representation made by Bingo Press and second, there was no detrimental reliance – Accordingly the union's sale of business application was dismissed for failing to prove a *prima facie* case and the Board's advice to the Minister was that he did not have the authority to appoint a conciliation officer – Application dismissed and advice given

BINGO PRESS & SPECIALTY LIMITED/ARROW GAMES (BAZAAR & NOVELTY); RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS' UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 462; File Nos. 0181-06-M; 3228-05-R; Dated April 17, 2007; Panel: Brian McLean (13 pages)

Employment Standards – The applicant claimed severance pay from Brookfield Lepage, a company providing property management services, after it was replaced by Profac – The applicant was hired by Profac within 13 weeks of the replacement – As both Profac and Brookfield Lepage were building services providers pursuant to the ESA, s. 10 applied – Therefore the applicant's employment with Brookfield was deemed not to have been terminated and her employment with Profac will include her length of employment with Brookfield for the purposes of the ESA – Application dismissed

BROOKFIELD LEPAGE JOHNSON CONTROLS FACILITY MANAGEMENT SERVICES LTD.; RE SNC-LAVALIN PROFAC INC.; RE CAROL BETTS AND DIRECTOR OF EMPLOYMENT STANDARDS; File No. 0883-06-ES; Dated April 3, 2007; Panel: Ian Anderson (6pages)

Health and Safety – Cancoil challenged the Inspector's jurisdiction to make an order under s. 54(1)(f) of the *OHSA* requiring Cancoil to conduct a heat stress assessment – The Board found that on a proper interpretive approach (given the remedial nature of the Act and providing the legislation with a broad and liberal interpretation in

order to protect the health and safety of workers) temperature may be one form of "physical agent" and accordingly a heat stress assessment may be the proper subject of an order by an Inspector pursuant to s. 54 of the Act – Matter Continues

CANCOIL THERMAL CORP.; RE BRAD MOON, INSPECTOR; RE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175; File No. 1207-06-HS; Dated April 26, 2007; Panel: Tanja Wacyk (12 pages)

Bar – Bargaining Unit – Certification – Employee – This application for certification was filed within a year of an earlier application against the same employer – Subsequent to the dismissal of the first application the employer moved its operations from Brampton to Milton (which area was not covered by the bargaining unit proposed in the first application) – Ten employees moved from Brampton to Milton and performed the same jobs – The Board found that the word "position" must be interpreted in context to avoid a result that is inconsistent with sound labour relations or the purposes of the Act – The Board found that the position of an employee is not the same unless it is with the same employer and in a geographic location covered by the scope clause of the original application – Therefore the ten employees transferred to Milton were in different positions than they held in Brampton, and they would not have been in the bargaining unit proposed in the current application had they occupied their original position – Given that the criteria set out in s. 10(3.1) had been met, the Board exercised its discretion to consider the current application since only 10 of the 30 employees at Milton had their wishes for unionization tested within the one year period and more than six months had elapsed between the two applications – Certificate issued

EXCEL TECHNOLOGIES LIMITED; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS ; File No. 3700-06-R; Dated April 30, 2007; Panel: Brian McLean; J.A. Rundle; R.R. Montague (5 pages)

Certification – Construction Industry – Practice and Procedure – The responding party delivered its response to the union in a timely way, but failed to file a timely response with the Board since it had not realized that its facsimile report read "Busy, no response" and was not received by the Board – The Board followed the Divisional Court's decision in *Maystar* and decided to exercise its discretion to allow the late filing on three grounds: the union consented; the union was not prejudiced since they had received the response in a timely way; and when the respondent was informed of the problem they immediately filed their response – Matter continues

GAGNON DEMOLITION INC.; RE LIUNA, LOCAL 625 ; File No. 3886-06-R ; Dated April 11, 2007 ; Panel : Mary Ellen Cummings (2 pages)

Employment Standards – Fraud – Settlement – Twenty-three claimants had reached a settlement with one of three directors of SLMsoft Inc. – A term of the settlement released all three directors from any obligations, upon receipt of the entire payment by the director who signed the settlement – The payment was never made – The Board determined that the term of the settlement forfeiting the employees' entitlement to seek relief from directors only arose upon payment of the money – The Board also found that a director's purported letter of resignation was fraudulent and that it induced the claimants to enter into the settlement – Pursuant to s. 120(5) the claimants were entitled to an order voiding the settlement agreement on the basis of fraud – Matter re-listed for Hearing

SLM SOFT INC.; RE GOVIN MISIR, A DIRECTOR; RE EDDIE LAW, A DIRECTOR; DR. BUDHENDRANAUTH DOOBAY, A DIRECTOR; RE MURAT TAYFUN CAN ET AL AND DIRECTOR OF EMPLOYMENT STANDARDS; File Nos. 2966-03-ES; 3389-03-ES; 3390-03-ES; Dated April 23, 2007; Panel: Tanja Wacyk (24 pages)

***Ambulance Services Collective Bargaining Act, 2001* – Essential Services Agreement – Interest Arbitration – Lock-Out – Strike –** The union and the employer entered into an essential service agreement pursuant to the *ASCBA* where the number of employees who must work during a strike or lock-out were the exact same number that would be employed in the normal course – The employer's application asked the Board to find that "no meaningful lock-out can occur" in the circumstances and to direct binding arbitration to settle the collective agreement, while the union's application asked the Board to find that the employer had breached the essential services agreement – The Board found that for a lock-out (or strike) to be "meaningful" it must permit "the application of economic sanctions in order to further and support the collective bargaining process" – Since no employees would be locked out as a result of the essential service agreement, the Board concluded that the essential service agreement between the parties effectively

precludes the employer from engaging in a lock-out – Employer's application allowed; final and binding interest arbitration directed; union's application dismissed

SUN PARLOUR EMERGENCY SERVICES INCORPORATED (ESSEX DIVISION); RE SEIU, LOCAL 1.ON; File Nos. 3961-06-M; 0028-07-M; Dated April 23, 2007; Panel: Kevin Whitaker (7 pages)

Court Proceedings

Construction Industry – Judicial Review – Jurisdictional Dispute – The Bricklayers brought an application for judicial review of the Board's decision finding that the employer's assignment of stone masonry work on the Victoria Memorial Museum Building in Ottawa to the Plasterers was correct – All parties agreed that the standard of review was patent unreasonableness when the Board deals with jurisdictional disputes – The court found that the Board "conducted a thorough and careful review of the factors that Board jurisprudence has evolved as relevant and helpful" and that there was a clear "line of reasoning leading to the conclusions reached" – Accordingly the decision was not patently unreasonable and the application was dismissed

(Board decision not reported)

IUBAC, LOCAL 7 ; RE OPERATIVE PLASTERERS, CEMENT MASONS, RESTORATION STEEPLEJACKS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598 ; RE COLONIAL BUILDING RESTORATION; RE LIUNA, LOCAL 527; RE 921879 ONTARIO LIMITED; RE MASONRY INDUSTRY EMPLOYERS COUNCIL OF ONTARIO; RE ONTARIO MASONRY CONTRACTORS ASSOCIATON; File No. 3261-04-JD; 3504-04-JD (Court File No. 06-DV-1209); Dated April 12, 2007; Panel: Leitch, R.S.J.; Lane and Hambley, JJ. (8 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
Jacobs Catalytic Ltd. v. IBEW Local 353 et al Divisional Court No. 117/07	3737-05-U	Pending
Dana Horochowski v. OECTA; York Catholic DSB Divisional Court No. 93/07	1115-04-U	Pending
Stephane Verreault v. UA Local 787 & Teamsters Local 419 Divisional Court No.71/07	0840-05-U	June 20, 2007
Hurley Corporation v. OLRB; SEIU L. 2.on Divisional Court No. 23/07	2915-06-R	Pending
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
Johnson Controls Ltd. v. Brookfield Lepage Divisional Court No. 406/06	1634-04-R	Adjourned – sine die
TTC v. Amalgamated Transit Union Divisional Court No. 261/06	0618-06-U; 0620-06-U	March 21, 2007 (reserved)
Abduraham, Abdoulrab v. Novaquest Finishing Divisional Court No. 327/06	2222-04-ES, 2223-04-ES, 2224-04-ES	June 4, 2007
City of Hamilton v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Pending
Guild Electric Limited et al v. IBEW, Local 1739 Divisional Court No. 202/06	4179-05-U; 4307-05-M	January 10, 2007 (reserved)
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
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	Court of Appeal – Oct. 9, 10, 11, 2007
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