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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 August of this year. These decisions will appear in the July/August 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.

Trade Union – Trusteeship – CUPE applied to continue its trusteeship over its locals for a further twelve months, beyond the twelve month extension it had already received from the Board – The Board found that s. 89(2) only allows one extension for up to an additional 12 months – Accordingly there was no authority to permit a further extension – Application dismissed

CANADIAN UNION OF PUBLIC EMPLOYEES; RE CUPE Local 4276 and 4276-01; File No. 2208-07-T; Dated August 12, 2009; Panel: Tanja Wacyk, J.A. Rundle and C. Phillips (3 pages)

Accreditation – Construction Industry – Employer – Among other matters, the trade unions attacked the "employer authorizations" as insufficient for the applicant to rely upon – The Board read the two definitions in the Act of "employers' organization" together and found that an employers' organization "represents" an employer for the purposes of the Act in relation to an accreditation application when that employer authorizes or appoints that organization to act on its behalf in relation to the regulation of relations between employers and employees – The Board found that an employer, on becoming a member of the applicant, was bound by the applicant's constitution and from that it was apparent that every employer who was a member of the applicant at the time the application was made was, for the purposes of s. 136(1)(b) represented by the applicant – Furthermore, while the authorizations could certainly have been more explicit, the Board found that they clearly authorized the applicant to represent them in collective bargaining – The Board found that at the least eleven of thirteen employers had vested authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent – Certificate of Accreditation issued

ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE LIUNA, OPDC; RE Canadian Union of Skilled Workers; File No. 0516-07-R; Dated August 17, 2009; Panel: Harry Freedman, John Tomlinson, Alan Haward (15 pages)

Employment Standards – The employee sought review of an employment standards officer's refusal to award him termination and severance pay – The employer asserted the employee was discharged for wilful misconduct or neglect of duty – The Board found that the employee was absent from work for an extended period without properly communicating his reasons for the absence or keeping the employer apprised of his circumstances – The Board found there were three aspects of note to the situation: (1) the employee was angry with the company for allegations of poor performance; (2) following the employee's initial brief and justified absence, the employer did not know why he was off work; and (3) the employee acknowledged that the employer had the right to seek medical information about the extended absence – The Board found the employee was unable to explain away his lack of

response to the employer's repeated inquiries – Application dismissed

MAGNA POWERTRAIN INC. O/A TORAL CAST INTEGRATED TECHNOLOGIES; RE Kularaj Kulasingam; File No. 2312-08-ES; Dated August 28, 2009; Panel: Brian McLean (7 pages)

Construction Industry Certification - Employer Support – The union asked the Board to dismiss the application for certification submitted by another union on the basis that the employer violated s.15 of the Act by supporting organizing efforts – The Board considered whether the organizing employee was part of management and concluded that he was not in a managerial role but was in a position akin to that of a working foreman - The Board concluded that by assigning the organizing employee a role that allowed him access to a large number of employees covering a broad geographic area at a time when the competing union demonstrated an interest in organizing, it conveyed a message as to which union was preferred by the employer – The Board concluded that employees would not have been able to express their true preference between the competing unions due to the employer's support of one union – Application dismissed.

MICHAEL MONTEITH ENTERPRISES LIMITED AND MONTEITH BUILDING GROUP LTD.; RE LIUNA, OPDC; RE Carpenters Council; UBCJA File Nos. 1131-07-R; 1213-07-R; 1250-07-U; 3307-07-R; 3377-07-R Dated August 31, 2009; Panel: Marilyn Silverman (11 pages)

Construction Industry Certification – Employer – The union applied for certification under s. 128.1, naming the general contractor as the employer of three electricians supplied by a sub-contractor – The union asserted that the general contractor was the employer based on an agreement signed by the general contractor acknowledging they would pay wages in order to guarantee that three electricians would continue to supply their services to meet a project deadline - The Board used the factors set out in *York Condominiums* to determine who employed the electricians on the application date – The Board found that the general contractor adopted the burden of remunerating the electricians, it was responsible for bringing the three electricians back to work after they walked off the job, and it identified and controlled what work was to be performed – The general contractor was therefore held to be the employer on the date of the application – The general contractor operates its parent corporation out of Quebec and has subsidiary corporations that operate in Ontario and the United States – The Board found that it was appropriate to name the Ontario subsidiary as the employer but gave the union 60 days to request reconsideration if it thought that the description of the employer should be more inclusive – Application allowed

RELIANCE CONSTRUCTION OF CANADA LTD. (AND RELIANCE CONSTRUCTION (ONTARIO) LTD. O/A RELIANCE CONSTRUCTION GROUP); RE IBEW Local 586 File Nos. 0795-08-R and 1062-08-U; Dated August 28, 2009; Panel: Mark J. Lewis, John Tomlinson, Richard Baxter (9 pages)

Court Proceedings

Judicial Review – *Public Sector Labour Relations Transition Act* – ONA brought an application for a declaration that a "health services integration" under the PSLRTA had occurred – A fertility treatment clinic (OFC) operated pursuant to a contractual arrangement with the Ottawa Hospital whereby the hospital provided support staff, equipment, laboratory space and facilities – When OFC was moved to new premises, the employees who followed were only offered employment on the basis that they were new employees; OFC did not recognize the bargaining rights that existed in the Hospital setting – The Board held that a health services integration had occurred and exercised its discretion to declare that the PSLRTA applied to the integration – On Judicial Review the court found that the Board properly determined that the OFC was an "employer" who met the definition of "health services integration" under s. 2 of the PSLRTA – The court found OFC's argument that s. 2(b) only applies to employers who provide non health care services to the health services sector to be contrary to the plain reading of the section which states that it applies to an employer whose primary function is the provision of services within the health services sector – Additionally, there was ample evidence to suggest that there had been a health services

integration (dissolution, transfer, continuance and discontinuance of services provided by the OFC as a result of its move from the hospital) – Finally, the court found the Board's
decision to exercise its discretion by applying the *Act* to the integration consistent with the purposes of the *Act* – Accordingly, the Board's decision was within a range of acceptable and rational outcomes – Application dismissed

THE OTTAWA FERTILITY CENTRE INC.; RE ONTARIO NURSES' ASSOCIATION; ONTARIO PUBLIC SERVICE EMPLOYEES UNION; CANADIAN UNION OF PUBLIC EMPLOYEES; LOCAL 4000; THE OTTAWA HOSPITAL; AND OLRB; Board File No. 1531-06-PS (Court file No. 08-DV-1394) Dated August 5, 2009; Panel: Leitch, Metivier and Hambly, JJ (14 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
Blue Mountain Resorts v. Ontario Ministry of Labour Divisional Court No. 373/09	0939-07-R	Pending
Julie Desgrosseillers v. North Bay General Hospital Divisional Court No. DV-830-09 **SUDBURY**	0827-08-U	Pending
National Waste Services v. CAW-Canada Divisional Court No. 338/09	0939-07-R	Pending – Stay motion Oct. 14/09
Robert McLaughlin v. Graphite Specialty Products, et al Divisional Court No. 09/191 **LONDON**	2221-07-OH	Pending
Rainbow Concrete v. International Union of Operating Engineers Divisional Court No. 332/09	0116-06-R	Pending
Roy Murad v. Les Aliments Mia Foods Divisional Court No. 291/09	1999-07-ES	Pending
Greater Essex County District School Board v. IBEW, Local 773 et al Divisional Court No. 212/09	1776-04-R et al	Pending
Donald Amodeo v. Ontario Ministry of Labour Divisional Court No. 147/09	2837-07-U 2839-07-OH	Pending
Universal Workers' Union, L.I.U.N.A. Local 183 v. Canadian Construction Workers' Union; OJCR Construction Ltd. Divisional Court No. 111/09	0050-08-R	Pending
I.U.P.A.T. Local 1795 et al, v. Cadillac Fairview Corporation et al Divisional Court No. 142/09	1732-06-R	Pending
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 79/09	0290-08-U; 0338-08-U	Dismissed - July 8/09; seeking leave to CA
Presteve Foods v. (CAW-CANADA) Local 444 Divisional Court No. 1730/08 **LONDON**	1676-08-U	April 14, 2009 – dismissed; seeking leave to CA
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045-06-U et al	Pending
Comfort Hospitality Inc. o/a Days Inn v. Director Employment Standards et al Divisional Court No. 344/08	2573-07-ES	Pending
Govin Misir v. S. Lalgudi Vaidyanathan et al Divisional Court No. 566/07	2966-03-ES; 3389-03-ES; 3390-03-ES	Pending
L.I.U.N.A. v. Barclay Construction et al Divisional Court No. 310/08	0837-06-R	Pending
Ottawa Fertility Centre v. ONA et al Divisional Court No. DV-08-1394 **OTTAWA**	1531-06-PS	Dismissed – Aug 5/09
Ottawa-Carleton Public Employees Union (CUPE), Local 503 v. City of Ottawa et al Divisional Court No. DC-09-00001471-0000 **OTTAWA**	1386-06-R	Heard June 10/09; reserved
Jacobs Catalytic Ltd. v. IBEW Local 353 et al Divisional Court No. 117/07 Court of Appeal C49737	3737-05-U	C.A. April 22, 09 – reserved
Janet Kitson v. OLRB et al Divisional Court No. 492/06	4205-02-U	Pending