ISSN 1195-0226

Ontario Labour Relations Board HIGHLIGHTS

Editors: Voy Stelmaszynski, Solicitor
Leonard Marvy, Solicitor

May 2009

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.

Certification – Construction Industry – Intervention – In this application for certification by the Carpenters, the employees in the proposed bargaining unit were engaged in form builder work on the application filing date – The Labourers sought to intervene, arguing that the proposed bargaining unit employees were covered by their collective agreement with Elmara – The issue before the Board was whether the Labourers' position was jurisdictional or representational – The Board ruled that the Labourers' position was jurisdictional: it was clear from the wording of the collective agreement that the Labourers represent form builders who are construction labourers but not those who are carpenters or carpenters apprentices – The Labourers did not establish, as is required for intervener status, that they represent or are the bargaining agent for a minimum of one employee in the bargaining unit that was the subject of the application – Intervention denied – Certificate issued

ELMARA CONSTRUCTION CO. LTD.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINTERS OF AMERICA, LOCAL 494 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625; File No. 2757-07-R; Dated April 30, 2009; Panel: Lee Shouldice (7 pages)

Employment Standards – Application for review of two Orders to Pay issued under the *Employment Standards Act, 2000* – At issue was whether a former employee of Polar Bear was entitled to a specific calculation of overtime pay on the basis that the hours he spent travelling to client locations, for which he was paid a lower rate than his work rate, constituted working hours – The Board found that, while travelling, the employee was performing work for the company which was corollary to his principal duties – Nothing in the Act or Regulations expressly indicates that travel time to a client's worksite should not be considered working time – The purpose of the Act is to confer benefits, and exceptions to entitlement are to be construed narrowly – The employee was entitled to overtime pay as calculated by the Employment Standards Officer – Application dismissed.

POLAR BEAR GEO-THERMAL SYSTEMS INC.; RE MICHEAL MAI; AND ELISSA MAI AND DIRECTOR OF EMPLOYMENT STANDARDS; File No. 3112-08-ES; Dated April 9, 2009; Panel: Mary Anne McKellar (7 pages)

Certification – Construction Industry – The issue in this application for certification was whether the work performed by the employer was properly construction industry work – In order to be performing construction industry work, an employer must be first engaged in constructing, altering, decorating, repairing or demolishing structures or works and this activity must be at a construction site – The employer in this case supplies pumping trucks whose sole function on a job site is to pump concrete from a ready-mix delivery truck to the point of installation in forms – The Board determined that the activity of concrete pumping trucks is more closely integrated with the

formwork process, which is construction work, than with the delivery of materials, which is not construction work – The Employer is an employer in the construction industry – Certificate issued

STAR CONCRETE PUMPING INC.; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; File No. 0449-08-R; Dated April 28, 2009; Panel: David McKee (12 pages)

Construction Industry – Sale of a Business – The issue before the Board was whether there was a sale or partial sale of a business of Pro Drywall ("Pro") to Frontline Contracting ("Frontline") – Shortly after Pro ceased operations, Frontline was incorporated by two previous employees of Pro – Frontline purchased certain assets from Pro including its operating premises – Additionally, the sole shareholder of Pro assisted in financing Frontline's operations and was employed by Frontline as an estimator – The Board determined that these events constituted the sale of a business under section 69 of the Act and that under section 69(2), Frontline was bound to the same collective agreements as Pro – Application under section 69 granted

714232 ONTARIO LTD. O/A PRO DRYWALL; FRONTLINE CONTRACTING INC.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 397; File Nos. 3799-05-R; 1870-06-R; Dated April 14, 2009; Panel: Mark J. Lewis (13 pages)

Collective Agreement – Construction Industry – Termination – The Carpenters and the employer, applied for the Board's consent, pursuant to s. 58(3), to the early termination of the collective agreement covering the employer's employees in all sectors other than the ICI – The collective agreement pertained to the residential sector of the construction industry in the Greater Toronto Area and accordingly s. 150.2 applied – The Board noted that the provisions of s. 150.2 introduced a degree of stability into labour relations in the residential sector by establishing common expiry dates – However, although collective agreements must expire at the same time, nothing in the provisions, barred the early termination of a collective agreement, particularly where the purpose of the early termination is not to undermine the provision's purposes – The Board also noted that s. 58(3) permits the Board to consent to early termination of a collective agreement before it ceases to operate in accordance with its provisions or this Act – Given that the parties' agreement made it clear that they were not seeking early termination in order to negotiate a new collective agreement, but rather to allow Local 1030 to abandon its bargaining rights, the Board consented to the early termination – Consent granted

YUKON CONSTRUCTION INC.; RE CENTRAL ONTARIO REGIONAL COUNCIL OF CARPENTERS AND ALLIED WORKERS, U.B.C.J.A. ON BEHALF OF ALLIED CONSTRUCION EMPLOYEES, LOCAL 1030; AND UNIVERSAL WORKERS UNION; L.I.U.NA. LOCAL 183; I.U.O.E. LOCAL 793 AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRONWORKERS, LOCAL 721; File No. 3511-08-M; Dated April 7, 2009; Panel: Mark J. Lewis (4 pages)

Court Proceedings

Judicial Review – Settlement – Termination – Presteve Foods ("Presteve") brought an application for judicial review of two decisions by the Board relating to the interpretation of a settlement agreement Presteve signed with the CAW with respect to a decertification vote – Presteve argued the Board had unreasonably concluded that the CAW did not breach the agreement when it held a meeting with Presteve workers that was in addition to the one meeting specifically provided for in the settlement agreement – The Court upheld the Board's decision on a standard of reasonableness concluding that the settlement agreement was not restrictive and did not prohibit the CAW from meeting with employees on other occasions – Application dismissed

[Board decision not reported]

PRESTEVE FOODS; RE C.A.W. LOCAL 441 AND OLRB; Board File No.1676-08-U (Court File No. 1730/08); Dated April 14, 2009; Panel: Valin, Wilson, Ray JJ. (1 page)

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
Greater Essex County District School Board v. Plumbers, Local 552 Divisional Court No. 177/09	3122-04-G	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	000-08-R	Pending
L.I.U.N.A., Ontario Provincial District Council v. Graham Bros. Construction Ltd. et al Divisional Court No. 122/09	2505-08-R	Pending
Central Ontario Regional Council of Carpenter, Drywall and Allied Workers, U.B.C.J.A. v. Rochon Building Corporation Divisional Court No.127/09	3333-03-R	Pending
I.B.E.W. Local 586 v. Christian Bourgeois, Regulvar Canada Inc. et al Divisional Court No. 95/09	3404-06-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	Pending
Presteve Foods v. (CAW-CANADA) Local 444 Divisional Court No. 1730/08 **LONDON**	1676-08-U	April 14, 2009 - reserved
The MacKenzie Construction Group Inc. v. I.U.P.A.T. Local Union 1891 Divisional Court No. 532/08	1096-08-R	Pending
Schuit Plastering & Stucco Inc. et v. Universal Workers Union, L.I.U.N.A. Local 183 Divisional Court No. 537/08	0210-08-R	April 14, 2009 - reserved
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045-06-U et al	Pending
Construction Workers Local 52, Affiliated with the C.L.A.C. v. Pre-Eng Contracting Ltd.; et al Divisional Court No. 382/08	3798-05-R; 3958-05-U	May 20, 2009
Lorraine Fraser Viscount Residence v. Kuipers Residential Home et al Divisional Court No. 1719 **LONDON**	0059-06-ES; 0061-06-ES	April 17, 2009 - reserved
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
Universal Workers Union, L.I.U.N.A. Local 183 v. Canadian Construction Workers Union et al Divisional Court No. 201/08	0910-07-R	Pending
BCC Constructors v. I.U.P.A.T. Divisional Court No. 138/08	3174-06-R	Dismissed for Delay April 20, 2009
Ottawa Fertility Centre v. ONA et al	1531-06-PS	Week of April 6/09 -

Case name & Court File No.	Board File No.	Status
Divisional Court No. DV-08-1394 **OTTAWA**		reserved
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	Week of June 8/09
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
Abduraham, Abdoulrab v. Novaquest Finishing Court of Appeal No. C48942	2222-04-ES, 2223-04-ES, 2224-04-ES	Heard January 27, 2009 – reserved
Mohamed C.Z. Khan v. Royal Alliance Divisional Court No.461/08	2153-01-OH	Seeking leave to C.A