ISSN 1195-0226

Ontario Labour Relations Board HIGHLIGHTS

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March 2009

* Notice to Community *

PLEASE TAKE NOTICE of the following changes to the Board's Rules, forms and Information Bulletins, effective March 1, 2009:

A. RULES

21.5 [Amended]
The Director of Employment Standards must file a response to an application to review a compliance order issued under section 108 of the *ESA*, and must file a response to an application to review a Notice of Contravention issued under section 113 of the *ESA*. The response must comply with Rule 7.5 and Rule 21.4 and must be filed with the Board not later than twenty-one (21) calendar days before the hearing that is scheduled in the matter.

[This change moves the date for the Director to respond from 20 days after receipt of Confirmation of the Application from the Board, to 21 days prior to the hearing.]

37.1 [Amended]
A responding party who has filed a Request in compliance with Rules 35.1 and 35.2, must also file a response to the application with the Board not later than two days before the hearing. Before, or at the same time as filing its response, a responding party must deliver a copy of the response to the applicant and to any other responding party who has filed a Request.

[Information Bulletin 20 and Form C-38 are also amended to reflect the change that a response will be due not later than "two days before" the hearing, rather than "9:30 a.m. on the morning of" the hearing.]

B. STATUS DISPUTES IN CARD-BASED CERTIFICATIONS

The identification of individuals in dispute in **card-based certifications in the construction industry** will be processed by the Board as reflected in changes to Information Bulletin # 9 as follows:

Card-based: s. 128.1
Where there is a dispute about the employees listed (or not listed) on Schedule A, the union is usually directed to deliver to the employer and file with the Board its challenges (including any additions) to Schedule A no later than five (5) days from the date of the Board's decision directing a Regional Certification Meeting. The employer is to deliver to the union and file with the Board its position in reply to each of the union's challenges (including any proposed additions) within ten (10) days of that decision. Once the union has responded to Schedule A, neither party will be permitted to add to, or delete from, the list without agreement of the parties or leave of the Board. A Regional Certification Meeting will follow.

C. FORM A-72 RESPONSE TO APPLICATION FOR CERTIFICATION (CONSTRUCTION INDUSTRY)

Form A-72 (Response to Application for Certification - Construction Industry) will be revised effective March 1, 2009 to include the following item: "5a. List all unrepresented trades at work on the Application Filing Date." [see *Raymac Custom Homes* (3231-07-R: December 4, 2008)]

GENERALLY

The Board's Rules of Procedure December 2005 (Revised July 2006; January 1, 2008; March 1, 2009), reflecting the revisions to Rules 21.5 and 37.1, and the already implemented revision to Rule 41.1 [incorporating the *Colleges Collective Bargaining Act, 2008*] are available on-line, as are the Board's **2009 Annotated Rules of Procedure,** as well as the revised forms and information bulletins.

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.

Related Employer – Sale of Business – The Hamilton Police Service Building was undergoing renovations – The Union filed related employer and sale of business applications regarding the City of Hamilton ("City") and the Police Services Board ("PSB") – The City was bound by the Union's provincial ICI Agreement – The Board dismissed the sale of business application because nothing was transferred from the City to the PSB – The Board found that the City and PSB were related employers because: 1) two legal entities existed; 2) although the City and PSB had different principal activities, the City was integrally and inextricably involved in the PSB's construction activities as it approved the PSB budget, maintained and administered the PSB's accounts, prepared the tenders, reviewed the bids, provided its expertise, issued a City vendor number, managed WSIB and insurance issues, handled contract revisions, organized contractor meetings, paid the contractor and was party to the construction contract; 3) the City exercised common control or direction of the construction activities, and four of the seven PSB members were City appointees; 4) there was a potentially valid labour relations reason for making the declaration as the renovations were done with non-union workers constituting a potential erosion of bargaining rights – The Board found, however, that the Carpenters cannot legally obtain the right to represent carpenters in the employ of the PSB, because s. 3(d) of the *LRA* excludes any such employees from the Act, and s. 117 of the *Police Services Act* operates as an additional bar given the Chief's lack of consent – Since s. 1(4) operates to preserve, not extend bargaining rights, and the Union could not obtain bargaining rights in the first place, no relief was granted – The applications were dismissed.

CITY OF HAMILTON AND POLICE SERVICES BOARD (HAMILTON); RE GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL AND ALLIED WORKERS, LOCAL 18; File No. 1409-07-R; Dated February 17, 2009; Panel: Jack J. Slaughter, John Tomlinson and Richard Baxter (11 pages)

Bargaining unit – Certification – Practice and Procedure – Representation Vote – Stay – After determining the status of one individual, the Board agreed to stay the counting of the ballots, pending its determination of a reconsideration request by the employer concerning the status of the disputed individual – After denying the employer's reconsideration request, the employer asked the Board to continue the stay pending its judicial review application – The Board decided it would be inappropriate to stay the counting of the ballots primarily for practical reasons: if the union were to win the vote, there remained significant litigation, and if they lost the vote, the application would come to an end – Furthermore the application was already significantly delayed and there was no significant prejudice to the employer or employees if the ballots were counted and the Board's decision was later overturned – Matter referred to Manager of Field Services to count ballots

FALLS MANAGEMENT COMPANY AND/OR COMPLEX SERVICES INC. C.O.B. AS CASINO NIAGARA; RE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA; File No. 4028-06-R; Dated February 3, 2009; Panel: Brian McLean, R. O'Connor and S. McManus (2 pages)

Construction Industry – Non-construction employer – The School Board applied for a declaration that it was a non-construction employer – The Board examined the construction work performed by the School Board to answer two questions: (i) was the work done as part of the School Board's activities or the third party's activities, and (ii) if for the benefit of a third party, can one identify any money that the third party paid in exchange for those services – The Board examined some fifteen projects over a three-year period and found that the School Board fell outside the definition of non-construction employer for one project, the Civic Centre – The School Board receives an administrative fee ($30,000) from the Civic Centre for the provision of construction management services – While the School Board shared in this cost proportionally with the three other occupants (Corporation of the County of Essex; Windsor-Essex Catholic District School Board and the Essex Region Conservation Authority), the Board found that the School Board performs work in the construction industry for

which it expects, and in fact does receive, compensation from three unrelated persons – Applications dismissed

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE IBEW, LOCAL 773; File Nos. 1776-04-R; 1778-04-R; 1794-04-R; 1796-04-R; 1797-04-R; Dated February 26, 2009; Panel: David A. McKee (24 pages)

Health and Safety – Practice and Procedure – Timeliness – On an appeal of an inspector's order under section 61 of the *Occupational Health and Safety Act*, the appellant faxed its materials to the responding parties within the time required by the Rules of Procedure sent its materials to the Board via regular mail – The package was postmarked February 6, 2009 but the time stamp indicated that it was processed by the Board on the morning of February 13, 2009, making the application one day late – The Board does not have discretion to extend the 30 day timeline prescribed by section 61 – Rule 3.4 defines the "date of filing" as the date a document is "received" by the Board – Regular mail delivered to the Board is received by a shared services office that distributes mail to all government agencies located in the same building as the Board – Since the appellant faxed its materials to the responding parties in a timely manner and mailed the package a week before it was received by the Board, it was reasonable to conclude that the package was "received" by the Board on February 12, 2009 and therefore not late – Although the appellant failed to file its materials with the Board within five days of delivering the materials to the responding parties as required by Rule 6.12, Rule 3.2 permits the Board to shorten and lengthen any time in the Rules – Furthermore, Rule 40.7 permits the Board to relieve against the strict application of the rules as it considers advisable – The responding parties were not prejudiced by the late filing – The Board extended the time under Rule 6.12

KENORA DISTRICT SERVICE BOARD; RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5911 AND STEVEN BRISCOE, INSPECTOR; File No. 3335-08-HS; Dated February 17, 2009; Panel: Harry Freedman (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.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Dr. Peter Khaiter Divisional Court No. 79/09	0290-08-U; 0338-08-U	Pending
Complex Services Divisional Court No. 623/08	4028-06-R	Abandoned Feb. 13/09
Pre-Steve Foods Divisional Court No. 1730/08 **LONDON**	1676-08-U	April 14, 2009
MacKenzie Construction Group Divisional Court No. 532/08	1096-08-R	Pending
Schuit Plastering & Stucco Divisional Court No. 537/08	0210-08-R	April 14, 2009
Dr. Peter Khaiter Divisional Court No. 431/08	4045-06-U et al	Pending
Christian Labour Association of Canada Divisional Court No. 382/08	3798-05-R; 3958-05-U	May 20, 2009
Lorraine Fraser Divisional Court No. 1719 **LONDON**	0059-06-ES; 0061-06-ES	April 17, 2009
Comfort Hospitality Inc. 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
LIUNA v. Barclay Construction et al Divisional Court No. 310/08	0837-06-R	Pending
LIUNA, Local 183 (PineValley Enterprises) Divisional Court No. 201/08	0910-07-R	Pending
BCC Constructors v. International Union of Painters Divisional Court No. 138/08	3174-06-R	Pending
Ottawa Fertility Centre v. Ontario Nurses Association, OPSEU, CUPE Local 4000, Ottawa Hospital and OLRB Divisional Court No. DV-08-1394 **OTTAWA**	1531-06-PS	Week of April 6/09
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	Pending
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
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