

*H*IGHLIGHTS

Ontario Labour Relations Board

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February 2018

NOTICES TO THE COMMUNITY

NEW FULL TIME VICE-CHAIR

The Board welcomes **David Ross** as a new full-time Vice-Chair. Prior to joining the Board, Mr. Ross practiced at a prominent law firm specializing in Labour Relations.

E-FILING

The Board has implemented phase **two** of its e-filing project. Many more forms are now able to be filed with the Board electronically. Additionally, the Electronic Submissions Form may be used to e-file correspondence and submissions, but not applications, membership evidence or books of authority/documents. The Board's Rules of Procedure and Information Bulletins have been amended to facilitate this implementation. Please consult the Board's website for more information.

JOB POSTINGS

The Board has posted an ad on the OPS Careers website at www.gojobs.gov.on.ca:

Board Solicitor (1) (Job ID 117938)
Competition closes on February 26, 2018.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in January of 2018. 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 www.canlii.org.

Arbitration – First Collective Agreement Mediation – First Collective Mediation-Arbitration – Unlawful Lock-Out – Union filed application under s. 101 alleging a continuing unlawful lock-out – Union was certified in 2016 – Collective bargaining commenced and conciliation was applied for and exhausted - Strike or lockout was lawful as of July 2017 – Employer engaged in a lawful lockout in December of 2017 - After changes made to the *Labour Relations Act* effective January 1, 2018 which allowed for first contract mediation and mediation-arbitration, Union applied for first contract mediation - Union took the position that lock-out was now unlawful – S. 43(10) provides that an “employer shall not lock out or threaten to lock out any employees during this time period [a mediator is appointed and 45 days later]” – Union argued that the wording of s. 43(10) was clear and unambiguous: an employer is prohibited from locking out employees after the Minister appoints a first contract mediator under s. 43(10) – Employer pointed to the language in s. 43.1(17) which provides that when the Board directs first contract arbitration, an employer must terminate an ongoing lock-out and reinstate the employees - Employer argued that s. 43(10) was directed at a new or fresh lock-out but not a lock-out already in progress – Board held that the language of s. 43(10) is clear and unrestricted and mirrors s. 79 – Statutory purpose of s. 43 would not be furthered or enhanced by allowing a lock-out (or a strike) to continue during the period of mediation - If

employer's submissions were correct, an employer faced with an application for first collective agreement mediation could immediately, and before the Minister had time to appoint a mediator, commence a lock-out which could then continue throughout the mediation – Besides being absurd, such an interpretation does not enhance the indisputable statutory objective of facilitating the conclusion of a first collective agreements – The *Changing Workplaces Review* final report was not useful in this context because the proposals were simply recommendations that do not show the government's intent or purpose – Employer ordered to cease and desist with the lock-out

A.S.A.P. SECURED INC.; RE: UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION; OLRB File No. 2576-17-U; Dated January 17, 2018; Panel: Bernard Fishbein (11 pages)

Certification – Construction Industry – Practice and Procedure

Applicant filed application for certification on November 10, 2017 – Applicant served a summons to witness to a client of the responding party – Responding party requested that the Board quash the summons to witness and any other served on their clients – Responding party submitted that serving a summons to witness on a client requiring him to attend the Case Management Hearing (“CMH”) at the Board with documents is an abuse of process and blatant attempt to discredit and undermine the relationship the responding party has with its clients – Applicant argued that the responding party has not provided any valid reasons for the Board to quash the summons – The Board exercised its discretion and quashed the various third party summons to witness the applicant served – It is not the Board's practice to have witnesses attend the CMH for the purpose of producing “arguably relevant” documents – Applicant's request is an abuse of process – Until the Board has determined issues in dispute, there is no proper basis for seeking documents from third parties – A subpoenaed witness has no obligation

to produce documents prior to attending the hearing – A CMH is not designed to deal with third party summons to witness – The Board directed applicant to provide those individuals it has served with a summons with a copy of this decision

BANK-STROX RENOVATION INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No. 2037-17-R; Dated January 10, 2018; Panel: John D. Lewis (10 pages)

Related Employers – Applicant asked the Board for a declaration that the responding parties are a single employer for the purposes of the *Act* or a declaration that there has been a sale of all or part of a business by Furfari Paving Co. LTD. (“Furfari”) to the other responding parties – Applicant requested the Board to declare the Toronto and Area Road Builders' Association's Agreement binding on all parties – Parties will be found to be one employer if the following three preconditions are met: first, there is more than one corporation, individual, firm, syndicate or association involved; second, associated or related activities or businesses must be carried on by the relevant entities; thirdly, the activities or businesses must be under common control or direction – To determine associated or related activities, the Board will consider whether the businesses: (a) are of the same character; (b) serve the same general market; (c) employ the same mode and means of production; (d) utilize similar employee skills; and (e) are carried on for the benefit of related principals – Furfari and Georgian Paving LTD (“Georgian”) operate associated or related businesses: Furfari and the road-building portion of the business operated by Georgian are of the same character, employ the same mode and means of production, utilize similar employee skills, and are carried on for the benefit of related principals – However, evidence established that the businesses of Furfari and Georgian are managed entirely separately – No evidence that respondents ought to

be declared to be related employers or that a sale of a business took place – Application dismissed

FURFARI PAVING CO. LTD.; RE: FURFARI CONSTRUCTION CO. LTD.; RE: ROADWORKS ONTARIO LTD.; RE: ROADWORKS PAVING & CONSTRUCTION LTD.; RE: GEORGIAN PAVING LTD.; RE: THE COLAS GROUP OF COMPANIES AND COLASCANADA INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No. 0528-15-R; Dated January 11, 2018; Panel: Lee Shouldice (49 pages)

Employee List – Practice & Procedure – By application filed January 5, 2018, applicant sought order directing respondent hospital to provide list of employees in a bargaining unit in accordance with the newly enacted section 6.1 of the *Labour Relations Act* – Responding Party gave notice under section 6.1(4) asserting that the applicant's proposed bargaining unit could not be appropriate and disagreeing with the number of individuals claimed by the applicant to be in the proposed bargaining unit – The Board found that the applicant's proposed bargaining unit could be appropriate – The Board held that the Act requires the Board to determine an "estimated number of individuals" in the bargaining unit described in the application – The Board held that unlike an application for certification an application for list of employees does not result in bargaining rights being awarded and therefore the act provides for a less rigorous analysis of the number of individuals in the bargaining unit – The Board held that the policy in favor of expedition in making its determination of the number of employees in the bargaining unit is reflected in the Act – The Board determined that the percentage of individuals in the bargaining unit who appear to be members of the union is 20 per cent or more – Application allowed

MARKHAM STOUFFVILLE HOSPITAL; RE: CANADIAN UNION OF PUBLIC EMPLOYEES;

OLRB File No. 2543-17-R; Dated January 11, 2018; Panel: Paula Turtle (7 pages)

Employment Standards – Applicant brought an application to review the decision of an Employment Standards Officer refusing her request to order the respondent, The Hospital for Sick Children, to pay unpaid wages and overtime pay – Respondent argued that the applicant was exempted from claiming overtime under O. Reg. 285/01 as an "information technology professional" or as a supervisory or managerial employee – Evidence from the applicant established that she was routinely limited to administrative work – Evidence did not establish that the applicant was "primarily engaged" in the activities that define an "information technology professional" during the period relevant to her claim – Evidence also established that applicant was not employed in a supervisory or managerial position as she had no subordinate and played no role in directing or disciplining other employees – Hospital erred in failing to record applicant's actual hours of work having recognized the possibility that it might not have the benefit of the "information technology professional" exemption – Application granted -

THE HOSPITAL FOR SICK CHILDREN; RE: MANDANA FARARIA; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 0779-17-ES; Dated January 10, 2018; Panel: Derek L. Rogers (35 pages)

Certification – Practice and Procedure – Incumbent trade union, Service Employees International Union, Local 1 Canada ("SEIU") argued that the applicant's membership evidence was invalid because the applicant did not have trade union status – Applicant, National Organized Workers Union ("NOWU") was not the same as the name on the membership cards National Organized Workers ("NOW") – The Board granted the applicant's request to amend its name from NOWU to NOW – SEIU submitted that NOW is not a trade

union, that its application should be dismissed, and that in the alternative, NOW bears the onus of proving its status as a trade union – A certificate of status granted by the Board is *prima facie* evidence that an organization is a trade union for the purposes of the *Act* – s. 113 of the *Act* creates a presumption that an organization retains trade union status until the Board is presented with sufficient evidence upon which to conclude that the organization is no longer a trade union – The Board rejects the SEIU’s argument that NOW’s decision not to engage in litigation at the Board as an affected party is an indication that NOW is no longer an active trade union – Funding or support by a third party does not necessarily impact a union’s status in an application

**UNIVERSITY HEALTH NETWORK
/PRINCESS MARGARET HOSPITAL; RE:
NATIONAL ORGANIZED WORKERS; OLRB
File No. 1686-17-R; Dated January 16, 2018;
Panel: Kelly Waddingham (12 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
Matrix North American Construction Canada Divisional Court No. 051/18	0056-16-JD	Pending
Brookfield Multiplex Ltd. Divisional Court No. 025/18	1368-15-R	Pending
Canada Bread Company, Limited Divisional Court No. 11/18	3729-14-R 3730-14-R 3731-14-R 3732-14-R 3733-14-R	Pending
Bricklayers (Prescott) Divisional Court No. 18/18	3440-14-U	Pending
Robert Daniel Laporte Divisional Court No. 037/18	2567-15-U	Pending
Highcastle Homes Inc. Divisional Court No. 7/18	3196-15-R 3282-15-U	Pending
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Rouge River Farm Inc. Divisional Court No. 637/17	0213-16-ES	Pending
Sheet Metal Workers' International Association Divisional Court No. 613/17	1536-16-R	Pending
Dennis McCool Divisional Court No. 566/17	0402-16-U	Pending
Cecil Cooray Divisional Court No. 324/16	1594-15-U	June 20, 2018
S. & T. Electrical Contractors Limited Divisional Court No. 562/17	1598-14-U 1806-14-MR	Pending
Reuben Gooden Divisional Court No. 556/17	1113-16-U 1114-16-U 1213-17-U	March 14, 2018
Ramkey Construction Inc. Divisional Court No. 539/17	1269-15-R	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Pending
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Pending

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Kevin Mackay Divisional Court No. 466/17	2972-16-U	Pending
Across Canada Divisional Court No. 244/17	3673-14-R	April 12, 2018
LIUNA (Pomerleau Inc.) Divisional Court No. 257/17	3601-12-JD	Pending
TTC Divisional Court No. 262/17	1995-16-HS	January 25, 2018
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
Women's College Hospital Divisional Court No. 24/17	0830-15-M	Pending
Innovative Civil Constructors Divisional Court No. 611/16	0142-16-R	Abandoned
Yuchao Ma Divisional Court No. 543/16	2438-15-U	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
Carpenters (Riverside) Court of Appeal No. M48481	0630-16-R	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Serpa Automobile (2012) Corporation (o/a Serpa BMW) Divisional Court No. 110/16	0668-15-ES	Discontinued
David Houle Court of Appeal No. M48449	0292-15-U	Application for Leave Dismissed
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Kognitive Marketing Inc. Divisional Court No. 51/15 (London)	0621-14-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending