

# *H*IGHLIGHTS

Ontario Labour Relations Board

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Aaron Hart, Solicitor

November 2018

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## NOTICES TO THE COMMUNITY

### Holiday Season Board Schedule

The Board's holiday operations schedule is attached and can be found on the Board's website.

## SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in September of this year. These decisions will appear in the September/October 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](http://www.canlii.org).

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**Certification – Construction Industry** – Status dispute over individual who had passed away after date of Application – Union withdrew its challenge to the individual's status on the date of application – A vote was held and the deceased individual's widow voted on his behalf – The widow's ballot was segregated – Employer argued widow's vote should count as it reflected the true wishes of deceased individual – Employer argued widow's vote should be an exception to the Board's long-standing policy of not allowing proxy votes – Board held it was not possible to know how the individual would have voted in a secret ballot process – Not an exception to Board policy of not counting proxy votes – Board held vote by widow not to be counted – Certificate issued to applicant Union

**COWDEN-WOODS DEVELOPMENTS LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: COWDEN-WOODS DESIGN BUILDERS LTD.;** OLRB File No. 0153-17-R & 0316-17-R; Dated October 31, 2018; Panel: Matthew R. Wilson (6 pages)

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**Certification – Construction Industry** – Union sought representation of unrepresented trades at work for Employer on date of application, excluding industrial, commercial and institutional ("ICI") sector – Application under section 166 of Labour Relations Act to determine what sector certain work falls into – The project in question was a mixed-use hotel/commercial/residential condominium construction project – Employer argued project falls under ICI sector – Alternatively, Employer argued work performed was severable and partially a project under ICI sector – Board reviewed six other mixed-use hotel-condominium projects previously classified as residential sector projects by the Board – Employer provided no evidence of collective agreements applied to work on the project in question – Close to 75% of project was residential space – Board used a majority of end-use test to make its determination – Board held project was in the residential sector – Board held project should not be severed into two sectors – The work performed was not distinct or severable – Union certified in all sectors other than ICI

**HERMANNS CONTRACTING LIMITED; RE: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793;** OLRB File No. 1660-

12-R & 0418-18-R; Dated October 5, 2018; Panel: Jack J. Slaughter (20 pages)

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**Certification – Reconsideration** – Reconsideration sought by non-party – Union certified Security Company A – Security Company B entered financial arrangements with Security Company A and sought declaration it was successor employer – Parties executed Minutes of Settlement agreeing sale of business had occurred and Security Company A bound by Security Company B's collective agreement – Security Company C sought reconsideration of decision – Security Company C had a contract for a job site where Security Company A previously had the contract – Security Company C sought reconsideration two months after Board's decision was given – Board held the request for reconsideration was untimely – Board's Rules of Procedure state reconsideration not considered where filed 20 days after response, without Board's permission – Board held Security Company C should have been aware as proceedings not secret and the Board's decisions were publically available – Further, Security Company C was aware a related employer application had been filed against it – Board held it was not prepared to exercise its discretion to extend time limit – Despite reconsideration being untimely, no employee of the job site in question filed a complaint to Board – Employer cannot argue rights or interests of its employees – Rights or interests of employer's employees not a sufficient ground to revoke decision – When proceedings began, not possible for parties to know Security Company C would have an interest for events that had not yet happened – Revoking decision would upset balance of negotiations and trade-offs for settlement to be reached – Security Company C's legal rights were not affected when proceedings commenced – Security Company C's interests came into existence just before settlement finalized and Board decision issued – Security Company C argued no collective agreement being applied to job site and thus the site was non-unionized – Board held this argument goes to quality, not existence of bargaining rights – Request for Reconsideration dismissed

**PRIMARY RESPONSE INC.;** RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 333; RE: GARDA CANADA SECURITY CORPORATION; RE: UNITED STEEL, PAPER AND FORESTRY, RUBBER,

MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS); OLRB File No. 2832-17-R, 2927-17-R & 3067-17-R; Dated October 26, 2018; Panel: Bernard Fishbein (11 pages)

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## COURT PROCEEDINGS

**Judicial Review** – Employer filed an Application for Judicial Review of a Board decision certifying a union – Union sought certification for all construction labourers in the industrial, commercial and institutional sector of the construction industry and all other construction sectors in Board Area 8 – The union received the certificates it sought– On the application filing date, there were only two workers performing bargaining unit work – Board refused to consider evidence after the date of the Application for Certification – Applicant sought adjournment of the Application for Judicial Review pending the release of a Supreme Court of Canada decision regarding standard of review – Applicant also argued the Board should have considered post-application date evidence in making its decision – Applicant also argued the Board improperly dealt with pre-application date evidence of two employees – Applicant further argued the Board should have considered the position the Union had taken in previous cases – Applicant argued it was not the employer of the two workers on the date of the Application for Certification and the bargaining unit work had been contracted out – In the alternative, the Applicant argued membership of the bargaining unit would be different and larger after the date of the Application – Applicant also argued in the further alternative, the two individuals performing work were foremen and ought to be excluded from the bargaining unit – Divisional Court would not adjourn decision based on pending Supreme Court of Canada case – Board's decision to not hear post-application date evidence was not unreasonable given the evidence was neither relevant nor reliable – No dispute two workers performed bargaining unit work – No real argument the two employees were not employed by the Applicant – It was reasonable for the Board not to consider the Union's prior positions in previous cases – Application for Judicial Review dismissed by the Divisional Court

**BROOKFIELD MULTIPLEX CONSTRUCTION CANADA LIMITED;** RE: BROOKFIELD MULTIPLEX HSP HOLDINGS LIMITED; RE: BROOKFIELD MULTIPLEX

CANADA HOLDINGS LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 025/18; Dated October 1, 2018, Panel: Conway, Lederer, and Lemay JJ. (6 pages)

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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, 7<sup>th</sup> Floor, 505 University Avenue, Toronto.

**Judicial Review** – Union filed an Application for Judicial Review regarding three Board decisions – Union argued the decisions were unreasonable and that it was denied procedural fairness – Union argued an individual had to be a licensed sheet metal worker under the Ontario College of Trades and Apprenticeship Act or a registered apprentice in order to be in the bargaining unit – Board rejected this argument – In its first decision, the Board did not include the licensing requirement in its determination of the bargaining unit – the Union argued two individuals should be excluded from the bargaining unit because they were not licensed – In its second decision, the Board rejected this argument and the Union's application for certification was dismissed – Union sought reconsideration – Board dismissed the request for reconsideration – On judicial review, the Applicant argued it was denied procedural fairness because reasons were not given by the Board and it was given no opportunity to make submissions – Union also argued the Board made unreasonable decisions and licensing should be a requirement for determination of the bargaining unit – Divisional Court held that the Union was not denied procedural fairness – Applicant had not sought reconsideration of the Board's first decision – Board's description of bargaining unit was consistent with Board's past definitions of construction bargaining units – Board focused on work performed by an individual on date of application for certification – Board would not prescribe work that an individual might do in the future – Board's decision fell within range of possible, acceptable outcomes – Board's decision was reasonable – Divisional Court dismissed the Union's Application for Judicial Review

**SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION;** RE: O'BRIEN FABRICATIONS LTD.; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 613/17; Dated October 12, 2018, Panel: Marrocco, Swinton, and Thorburn JJ. (8 pages)

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### Pending Court Proceedings

| Case name & Court File No.  | Board File No.  | Status           |
|---|---|------------------|
| <b>Tomasz Turkiewicz</b><br>Divisional Court No. 601/18                                   | 2375-17-G   | Pending          |
| <b>Amec Foster Wheeler Americas Limited</b><br>Divisional Court No. 537/18                | 2743-16-R<br>3025-16-R  | Pending          |
| <b>The Daniels Group Inc.</b><br>Divisional Court No. 535/18                              | 0279-16-R   | Pending          |
| <b>D. Andrew Thomson</b><br>Divisional Court No. 238/18 (Sudbury)                         | 1070-16-ES  | Pending          |
| <b>Tomasz Turkiewicz</b><br>Divisional Court No. 262/18                                   | 2374-17-R   | Pending          |
| <b>Deloitte Restructuring Inc.</b><br>Divisional Court No. 238/18                         | 2986-16-R   | Pending          |
| <b>Alicia R. Allen</b><br>Divisional Court No. 199/18                                     | 0255-17-UR  | Pending          |
| <b>Provincial Employers' Bargaining Agency - Labourers</b><br>Divisional Court No. 141/18 | 2221-15-U   | Pending          |
| <b>Trisect Construction Corporation</b><br>Divisional Court No. 087/18                    | 2553-15-R   | March 19, 2019   |
| <b>Matrix North American Construction Canada</b><br>Divisional Court No. 051/18           | 0056-16-JD  | January 28, 2019 |
| <b>Brookfield Multiplex Ltd.</b><br>Divisional Court No. 025/18                           | 1368-15-R   | Dismissed        |
| <b>Canada Bread Company, Limited</b><br>Divisional Court No. 11/18                        | 3729-14-R<br>3730-14-R<br>3731-14-R<br>3732-14-R<br>3733-14-R | Pending          |
| <b>Bricklayers (Prescott)</b><br>Divisional Court No. 18/18                               | 3440-14-U   | Pending          |
| <b>Robert Daniel Laporte</b><br>Divisional Court No. 037/18                               | 2567-15-U   | Pending          |
| <b>Highcastle Homes Inc.</b><br>Divisional Court No. 7/18                                 | 3196-15-R<br>3282-15-U  | March 11, 2019   |
| <b>China Visit Tour Inc.</b><br>Divisional Court No. 716/17                               | 1128-16-ES<br>1376-16-ES                                      | Pending          |
| <b>Rouge River Farm Inc.</b><br>Divisional Court No. 637/17                               | 0213-16-ES  | January 24, 2019 |

(November 2018)

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| <b>Sheet Metal Workers' International Association</b><br>Divisional Court No. 613/17              | 1536-16-R                              | Dismissed                               |
| <b>Dennis McCool</b><br>Divisional Court No. 566/17   | 0402-16-U                              | Pending                                 |
| <b>S. &amp; T. Electrical Contractors Limited</b><br>Court of Appeal No. <b>ADD COURT FILE NO</b> | 1598-14-U<br>1806-14-MR                | Motion for Leave to Appeal<br>Dismissed |
| <b>Ramkey Construction Inc.</b><br>Court of Appeal No. <b>ADD COURT FILE NO.</b>                  | 1269-15-R                              | Pending                                 |
| <b>Front Construction Industries</b><br>Divisional Court No. 528/17                               | 1745-16-G                              | Pending                                 |
| <b>Enercare Home</b><br>Divisional Court No. 521/17   | 3150-11-R<br>3643-11-R<br>4053-11-R    | Pending                                 |
| <b>Ganeh Energy Services</b><br>Divisional Court No. 515/17                                       | 3150-11-R<br>3643-11-R<br>4053-11-R    | Pending                                 |
| <b>LIUNA (Pomerleau Inc.)</b><br>Divisional Court No. 257/17                                      | 3601-12-JD                             | Pending                                 |
| <b>Myriam Michail</b><br>Divisional Court No. 624/17<br><b>(London)</b>                           | 3434-15-U                              | Pending                                 |
| <b>Peter David Sinisa Sesek</b><br>Divisional Court No. 93/16<br><b>(Brampton)</b>                | 0297-15-ES                             | Pending                                 |
| <b>Yuchao Ma</b><br>Divisional Court No. 543/16   | 2438-15-U                              | Dismissed                               |
| <b>Byeongheon Lee</b><br>Court of Appeal No. M48402   | 0095-15-UR                             | Pending                                 |
| <b>Byeongheon Lee</b><br>Court of Appeal No. M48403   | 0015-15-U                              | Pending                                 |
| <b>R. J. Potomski</b><br>Divisional Court No. 12/16<br><b>(London)</b>                            | 1615-15-UR<br>2437-15-UR<br>2466-15-UR | Pending                                 |
| <b>Qingrong Qiu</b><br>Court of Appeal No. M48451   | 2714-13-ES                             | Pending                                 |
| <b>Kognitive Marketing Inc.</b><br>Divisional Court No. 51/15<br><b>(London)</b>                  | 0621-14-ES                             | Pending                                 |
| <b>Valoggia Linguistique</b><br>Divisional Court No. 15-2096<br><b>(Ottawa)</b>                   | 3205-13-ES                             | Pending                                 |

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November 5, 2018

## **NOTICE TO THE COMMUNITY**

Please be advised that the Ontario Labour Relations Board will neither schedule nor hold hearings from December 24, 2018 to January 2, 2019 inclusive. Matters of an urgent nature, however, may be scheduled on an expedited basis, as determined by the Board, during this period. Applications will be processed in the usual manner on the dates that the Board is open for business including: December 24, 27, 28, 31, 2018 and January 2, 2019.

Please note the hearing schedule for s. 133 grievance referrals over the holiday season.

Thank you for your attention to the above. Please have a safe and very happy holiday season.

| DATE REFERRAL FILED | HEARING DATE    |
|---------------------|-----------------|
|                     |                 |
| December 10, 2018   | January 3, 2019 |
| December 11         | January 3       |
| December 12         | January 4       |
| December 13         | January 4       |
| December 14         | January 7       |
| December 17         | January 7       |
| December 18         | January 8       |
| December 19         | January 8       |
| December 20         | January 9       |
| December 21         | January 9       |
| December 24         | January 10      |
| December 27         | January 10      |
| December 28         | January 11      |
| December 31         | January 14      |

Catherine Gilbert  
Director/Registrar