

H Ontario Labour Relations Board **HIGHLIGHTS**

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Notice to the Community - Effective April 1, 2021, Notices of Project Agreements and related submissions will be posted on the Ontario Labour Relations Board's website:

<http://www.olrb.gov.on.ca/Construction-EN.asp>.

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 available on-line through the Canadian Legal Information Institute www.canlii.org.

Application for Certification – Managerial Exclusion – Union applied for certification of a bargaining unit of employees – Employer argued that its “front-line supervisors” should be excluded from the bargaining unit pursuant to section 1(3)(b) of the *Labour Relations Act* – Board accepted that the supervisors did not make any unilateral decisions without seeking input from more senior management - However, Board concluded that there was a centralized decision-making process in which the front-line supervisors were heavily involved in fact finding and decision making, including sitting on the management side of the table during grievance meetings, hearings and investigations – Front-line supervisors were relied

upon by the employer to be the “eyes and ears” of the senior management team with respect to supervising their direct reports – They were also involved in the decision making process regarding matters that involve the terms and conditions of employment and confidential labour relations matters – Board held the front-line supervisors were excluded from the bargaining unit pursuant to section 1(3)(b) of the Act – Matter continues.

THE WINDSOR-ESSEX CHILDREN'S AID SOCIETY; RE: ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO; OLRB Case No: 0901-18-R; Dated April 29, 2021; Panel: M. David Ross (18 pages)

Public Sector Labour Relations Transition Act, 1997 – Delay – Abuse of Process – Application pursuant to the provisions of the *Public Sector Labour Relations Transition Act, 1997*, concerning integration of two community health centres - Motion brought by union to dismiss PSLRTA application on the basis of undue delay and/or abuse of process – Period of time between changeover date and PSLRTA application was considerable (more than three and a half years) – Board concluded, however, that delay, in and of itself, did not compel Board to dismiss application and union had not been prejudiced in its ability to respond to application – Board also concluded that application was not an abuse of process – Even accepting employer could have foreseen upcoming operational challenges, employer did not change its

position and it was open to employer to access PSLRTA's provisions "at whatever point it felt it necessary to do so" – Motion to dismiss application for delay and/or abuse of process dismissed – Matter continues.

PARKDALE QUEEN WEST COMMUNITY HEALTH CENTRE; RE: ONTARIO NURSES' ASSOCIATION; RE: UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175; OLRB Case Nos: 1857-20-PS and 1952-20-U; Dated April 1, 2021; Panel: Kelly Waddingham (18 pages)

Ministerial Reference – Constitutional Law – Jurisdiction – Ministerial Reference filed pursuant to subsection 115(1) of the *Labour Relations Act, 1995* – Minister referred the following question to the Board for its advice: Are the relevant bargaining unit employees of the employer subject to provincial jurisdiction and, therefore, governed for labour relations purposes by the Ontario *Labour Relations Act, 1995*? – Employer, at one time, operated as a federally regulated entity performing interprovincial transportation, and subsequently ceased its federal operations – Employer also performed work at an automotive plant, with a bargaining unit of employees – Collective agreement referred to Ontario statutes and provincial conciliation services were used in three successive rounds of bargaining – Employer resumed its interprovincial transportation operations and argued that its employment relations were federally regulated – Board concluded employer's operations were divisible, with automotive plant operations being severable from interprovincial transportation operations – Board concluded there was no interdependence between the work performed by bargaining unit employees and employer's federal undertaking such that the work could be said to be integral or vital to the employer's federally regulated activities – Answer to question posed by Minister was yes, relevant bargaining unit employees are subject to provincial jurisdiction and, therefore, governed for labour relations purposes by Ontario's *Labour Relations Act*.

PENSKE LOGISTICS CANADA LTD.; RE: UNIFOR AND ITS LOCAL 200; OLRB Case No: 2066-20-MR; Dated April 6, 2021; Panel: Peigi Ross (35 pages)

Unfair Labour Practice – Motion to Dismiss – Employer filed unfair labour practice complaint against the union and an individual, acting in his capacity as local union vice-president – Employer alleged a breach of the *Labour Relations Act* when the VP sent a series of emails to a labour arbitrator and later reported to managers that he got the arbitrator fired – Union brought motion to dismiss the application for failing to raise a *prima facie* breach of the Act - Board noted that it generally does not police the conduct of parties in arbitration proceedings, which is a private proceeding – Even if a party could breach the Act by its language or actions at an arbitration proceeding, Board would be reluctant to interfere in arbitration proceeding since s. 48 of the Act specifically confers power on the arbitrator to control the process – While emails and remarks in this case were not professional, they were not instances of coercion or intimidation and do not fall within the conduct prohibited by s. 76 of the Act - Even if all the facts alleged in this application are true, they could not amount to a breach of the Act - Motion granted – Application dismissed.

RE: ALGOMA STEEL INC.; RE: UNITED STEELWORKERS ON BEHALF OF ITSELF AND LOCAL 2251; RE: MARK MOLINARO C/O UNITED STEELWORKERS, LOCAL 2251; OLRB Case No: 1411-20-U; Dated April 16, 2021; Panel: Matthew R. Wilson (9 pages)

COURT PROCEEDINGS

Judicial Review – Duty of Fair Representation – Application filed under section 74 of the *Labour Relations Act*, alleging the union had breached its duty of fair representation – Board dismissed the application on the basis of undue delay, and denied a subsequent request for reconsideration – On judicial review, applicant complained Board's

decision was unreasonable because the delay was less than 12 months, the Union had not proven actual prejudice and she had explained the delay – Court noted the Board had “developed a body of jurisprudence on how to assess delay in the context of s.74 complaints” and that the Board’s decision in this case was consistent with that jurisprudence – Court recognized the Board had discretion under section 96 of the Act to dismiss for undue delay and that there was no “bright line” text but rather Board was required to make “factually based determinations on a case by case basis” – In the instant case, Court held the Board considered the relevant case law, the submissions of the parties and the statutory framework, and reasonably weighed the factors to make a determination – Application dismissed.

AUDREY THOMAS; RE: UNITED FOOD AND COMMERCIAL WORKERS LOCAL 333; RE: INTERCONTINENTAL HOTEL; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 436/19; Dated April 23, 2021; Panel: Aston, Backhouse, Favreau JJ. (7 pages)

Judicial Review – Duty of Fair Representation –

Application filed under section 74 of the *Labour Relations Act*, alleging the union had breached its duty of fair representation – Board dismissed the application on the basis of undue delay and rejected the applicant’s *Charter* argument – On judicial review, the applicant complained the Board breached its duty of procedural fairness to him, was biased, breached his rights under section 15 of the *Charter*, and that the Board’s decision was unreasonable – Court concluded, *inter alia*, that Board had not breached procedural fairness in setting page limits for submissions and requiring applicant to focus his arguments – Court noted a presumption of impartiality applies to Board’s decision-makers and applicant presented no evidence of bias – Board’s conclusions about delay were reasonable – Court concluded Board was correct in its determination that “the applicant had not identified any applicable provision of law or exercise of the Board’s discretion that made a distinction on the basis of any enumerated or

analogous grounds under s. 15 of the *Charter*” - Application dismissed.

TODD ELLIOTT SPECK; RE: ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO; RE: ONTARIO (TREASURY BOARD SECRETARIAT); RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 371/19; Dated April 29, 2021; Panel: Pattilo, Bloom, Kukri JJ. (25 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
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
AWC Manufacturing LP Divisional Court No. 304/21	1320-20-ES	Pending
Bomanite Toronto Ltd. Divisional Court No. 271/21	2057-19-G	February 3, 2022
Cambridge Pallet Ltd. Divisional Court No. 187/21	0946-20-UR	October 27, 2021
Kaydian Carney Divisional Court No. 110/21	1583-18-UR	October 7, 2021
Mir Hashmat Ali Divisional Court No. 275/20	0629-20-U	Pending
Guy Morin Divisional Court No. 20-DC-2622	(Ottawa) 2845-18-UR 0892-19-ES	Pending
SNC Lavalin Nuclear Inc. Divisional Court No. 473/20	3488-19-ES	Withdrawn
KD Poultry Divisional Court No. 20-DC-2611	(Ottawa) 0618-19-ES 1683-19-ES 1684-19-ES 2165-19-ES	June 2, 2021
Paul Gemme Divisional Court No. 332/20	3337-19-U	November 25, 2021
Fortis Construction Group Inc. Divisional Court No. 395/20	1638-17-R	May 11, 2021
Aluma Systems Inc. Divisional Court No. 456/20	2739-18-JD	September 21, 2021
Anthony Hicks Federal		Dismissed
Capital Sports & Entertainment Inc. Divisional Court No. 20-DC-2593	1226-19-ES	Pending
Joe Mancuso Divisional Court No. 28291/19	(Sudbury) 2499-16-U – 2505-16-U	Pending
Abdul Aziz Samad Divisional Court No. 019/20	3009-18-ES	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending

Community Care Access Centers Divisional Court No. 720/19	0085-16-PE 0094-16-PE	May 12-13, 2021
Audrey Thomas Divisional Court No. 436/19	2508-18-U	Dismissed
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
Kuehne + Nagel Ltd. Divisional Court No. 393/19	0433-18-R	Pending
Todd Elliott Speck Divisional Court No. 371/19	1476-18-U	Dismissed
New Horizon Court of Appeal No. C68664	0193-18-U	June 1, 2021
Doug Hawkes Divisional Court No. 249/19	3058-16-ES	May 17, 2021
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Adjourned due to pandemic
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
Deloitte Restructuring Inc. Divisional Court No. 238/18	2986-16-R	Dismissed
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Adjourned due to pandemic
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Allowed
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Allowed
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

Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending