

H Ontario Labour Relations Board **HIGHLIGHTS**

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September 2021

NOTICES TO THE COMMUNITY

Board Closure – September 30, 2021

On September 30, 2021, the Ontario Public Service will be observing the National Day for Truth and Reconciliation. Accordingly, the Ontario Labour Relations Board will be closed. Hearing and mediation dates scheduled for September 30th have been cancelled. For purposes of the Board's Rules of Procedure, September 30, 2021 is a "day the Board is closed".

Board Solicitor Posting

The Ontario Labour Relations Board has posted a competition: Board Solicitor (Ontario Public Service Careers – Job ID 169212). The competition closes on October 1, 2021. More information can be found on the website at: www.gojobs.gov.on.ca.

Amendments to Information Bulletin No. 9

Effective Friday, September 24, 2021, the Board has amended Information Bulletin No. 9, "Resolving Disputes in Certification Applications in the Construction Industry". The amendments are contained in the section entitled "Identification of Legal and Factual Issues in Dispute", specifically the subsection entitled Card-based: s.128.1, Status Disputes". The amended version is now on the

Board's website. The amended text provides further description of pleading requirements.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in August of this year. These decisions will appear in the July/August 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 – Construction Industry – Delivery of Application – Board granted certificates to applicant in absence of response from employer – Employer delivered a late response, requesting Board set aside decision granting certificates, and asserting that the email used by the union for delivery of the application was not regularly monitored – Board concluded email address was actively used by the employer to advertise and market its business – Board noted that, as with delivery by facsimile, responding parties who choose not to monitor their email addresses are responsible for the consequences of their failure to do so – No compelling case for relief sought by employer – Request denied.

SKYDOME DRYWALL INC.; RE: ONTARIO COUNCIL OF INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES; OLRB Case

No 0694-21-R; Dated August 25, 2021; Panel: Lee Shouldice (9 pages)

Construction Industry – First Agreement Arbitration – Union seeking terms and conditions from its industry standard agreement to maintain a level playing field among unionized contractors – Employer arguing its business was narrower than other companies bound to the industry standard agreement, and an “inability to pay” based on financial statements – Board awarding union’s position – Board concluding that inability to pay not made out on the facts – While some of the companies bound to the industry standard agreement performed other work, the industry standard agreement was the only one before the Board that applied to the work in question – Comparability and replication criterion established.

ACROSS CANADA CONSTRUCTION LTD.; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB Case No. 0253-18-FA; Dated August 6, 2021; Panel: Jack J. Slaughter (33 pages)

Duty of Fair Representation – Remedies – Board granted application in duty of fair representation complaint, remaining seized solely for purposes of resolving any issues involving compliance with remedial orders – Counsel for the applicant seeking “leave to file cost submissions” – Board allowed submissions from the parties, but denied request for cost order – Board noting and applying well-established jurisprudence that the Board does not award legal costs, namely those costs incurred to correct or change a state of affairs through litigation – Request denied.

KING’S UNIVERSITY COLLEGE FACULTY ASSOCIATION (KUCFA); RE: MATTHEW G. YEAGER; OLRB Case No. 2748-20-U; Dated August 3, 2021; Panel: Derek L. Rogers (7 pages)

Sale of Business – Transfer of contract for cleaning services resulted in a sale of business within the meaning of section 69.1 of the *Labour Relations Act* – Applicant argued Board should exercise its

discretion to alter bargaining unit structure, on the basis that sale resulted in a single site collective agreement and an otherwise city-wide collective agreement – Board concluded that neither the nature nor the extent of the intermingling had given rise to labour relations difficulties, or called into question the logic of the existing bargaining unit structures – While the structures may not be ideal, they remained viable – Board declined to exercise its discretion under the Act to alter the bargaining unit structure – Application dismissed.

HALLMARK HOUSEKEEPING SERVICES; RE: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2 BREWERY AND PROFESSIONAL WORKERS’ UNION; Re: DOMUS BUILDING CLEANING COMPANY LIMITED; RE: HOSPITALITY & SERVICE TRADES UNION LOCAL 261; OLRB Case No. 0003-19-R; Dated August 27, 2021; Panel: Kelly Waddingham (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
Holland, L.P. Divisional Court No. 673/21	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	June 21, 2022
Ontario Catholic School Trustees' Association Divisional Court No. 650/21	2067-20-M	May 24, 2022
Ontario Catholic School Trustees' Association Divisional Court No. 645/21	2067-20-M	May 24, 2022
PipeFlo Contracting Corp. Divisional Court No. 625/21	0170-21-G	Pending
Mammoet Canada Eastern Ltd. Divisional Court No. 609/21	2375-19-G	April 20, 2022
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Eugene Laho Divisional Court No. 336/21	1869-20-U	February 9, 2022
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	October 21, 2021
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	May 16, 2022
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
Paul Gemme Divisional Court No. 332/20	3337-19-U	November 25, 2021
Aluma Systems Inc. Divisional Court No. 456/20	2739-18-JD	September 21, 2021
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
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Pending
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	Application for Leave to Appeal to CA – M52577
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	Pending
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Application for Leave to Appeal to CA – M52413
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Application for Leave to Appeal to CA – M52413
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