

# *H*ighlights Ontario Labour Relations Board

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## NOTICES TO COMMUNITY

Please see the Notice to Community, dated January 20, 2023, posted on the Board's website and linked [here](#).

## SCOPE NOTES

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

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**Certification** – Board considered whether seven employees had sufficient connection to the workplace to have votes counted – None of the employees were at work on the application filing date – Each had been absent from workplace for periods ranging from 37 to 134 days – Disputed employees returned to work after the application was filed – Employer argued that four of the employees were on approved leaves of absence on application filing date – Employer argued Board should not apply historical 30/30 rule and should instead use the “five work assignments in the school year” test – Union did not ask Board to apply historical 30/30 rule – Union argued Board should apply requirement that employees must have worked at least one shift in the 30 days prior to the

application filing date – No “bright line” test – Board looks to individual circumstances in the specific workplace to determine whether there is substantial enough connection between the individual and the workplace to justify the individual having a “say” in the determination of the exclusive bargaining agent – Post-application filing date evidence not considered – No documentary evidence to support the assertion that employees were on approved leave – Board required to examine each of the employees on their individual circumstances – No bright line test to determine the sufficiency of the connection between a casual employee and the workplace – Board will examine the relationship of the employees in the context of their work environment – Board assessed standard in this case at 20 days in the school year prior to the application filing date – Votes directed to be counted – Matter continues

CANADIAN UNION OF PUBLIC EMPLOYEES, RE: **CARRAWAY INC**; OLRB Case No: 2302-21-R; Dated December 23, 2022; Panel: Peigi Ross (31 pages)

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**Certification** – Employer challenge under section 8.1 of the Labour Relations Act (the “Act”) – Parties disputed list of employees for voter eligibility – Dispute concerned “temporal scope” – Application filed March 2022 – Union argued that only individuals who worked from the beginning of the 2021-2022 school year to the application filing date should be included – Employer argued that individuals who worked between the beginning of

the 2019-2020 school year to the application filing date should be included – Union brought motion under Rule 41.3 to have Board determine temporal scope issue – Employer argued Union’s proposal inequitable – Test to determine whether an employee should be considered part of the proposed bargaining unit well established – Whether Employee has an ongoing relationship with, or sufficient connection to, the workplace – Nature of employment means majority of the bargaining unit will have a more casual attachment to the workplace than in more typical employment situations – Employer’s proposal was too broad – Union proposal fell within range of the cases before the Board – Employer’s arguments based on the pandemic could not succeed – Board rejected Employer’s position on temporal scope and accepted the position set out by the Union – Only individuals who worked as an LRS from the beginning of the 2021-2022 school year to the application filing date to be included in bargaining unit – Matter continues

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, RE: **PEEL DISTRICT SCHOOL BOARD**, OLRB Case No: 2248-21-R; Dated December 13, 2022; Panel: Lindsay Lawrence (12 pages)

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**Construction Industry – Certification – Displacement Application** – Incumbent union (“Bricklayers”) sought to dismiss displacement application pursuant to section 15 of the Labour Relations Act (the “Act”) – Bricklayers alleged employer support as ground to dismiss displacement application by raiding union (“BUC”) – Bricklayers argued that Employer altered the list of employees eligible to cast ballots by ordering eight employees who supported Bricklayers to stay home on application filing date – Board considered whether or not the actions of the Employer constituted the provision of “other support”, such that BUC ought not to be certified by the Board – Purpose of section 15 is to preserve the arm's length relationship between unions and employers – No evidence of any collusion between the Employer and BUC – Board considered whether Employer

changed composition of the bargaining unit to facilitate raiding union – Insufficient evidence to prove Employer interference – Allegations under section 15 dismissed – Ballots to be counted

THE BUILDING UNION OF CANADA, RE: **TERRAZO, MOSAIC & TILE COMPANY LIMITED**, RE: BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 31, BRICK AND ALLIED CRAFT UNION OF CANADA, RE: THE ONTARIO PROVINCIAL CONFERENCE OF THE INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTS, OLRB Case No: 2363-21-R; Dated December 6, 2023; Panel: Lindsay Lawrence (12 pages)

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**Construction Industry – Grievance Referral** – Union grieved on behalf of two employees that Employer refused to pay weekly Room and Board allowance in accordance with Provincial Collective Agreement – Parties had bargained for a renewal collective agreement and had reached a Memorandum of Agreement which the Union recommended for ratification – Membership had rejected the proposed settlement and went on strike – Parties had reached a second Memorandum of Agreement, ending the strike – Issue was whether Article 4.1 d) i), which provides for weekly Room and Board allowance, and which was incorporated into the renewal agreement, continued in effect as submitted by the Union or if it was superseded by the provisions in the second Memorandum of Agreement, which provides that increases to the daily rate on all schedules are to be paid on a per day basis as submitted by the Employer – Board found nothing in the language of Art. 2(a) of the second Memorandum of Agreement to indicate that the parties’ intent was to delete Art. 4.1 d) i) of the expired Collective Agreement – By contrast, Board found, in the first Memorandum of Agreement, several changes to the Schedules of the Collective Agreement where the parties explicitly deleted or removed current contract language – Board concluded general provisions of Art. 2(a) of the second Memorandum of Agreement must yield to the specific provisions of Appendix “A” Art. 4.1 d) i) of the expired Collective Agreement which have been incorporated into the provisions of the

renewal Collective Agreement – Payment of Room and Board Allowance at a weekly rate to continue in effect if the provisions of Appendix “A” Art. 4.1 d) i) had been met – Grievance allowed.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, RE: **ALL CANADA CRANE RENTAL CORP.** RE: ONTARIO ERECTORS ASSOCIATION INC., OLRB Case No: 1405-22-G; Dated December 22, 2022; Panel: Thomas Kuttner (20 pages)

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**School Boards – Collective Bargaining** – Union brought application under subsection 28(4) of the School Boards Collective Bargaining Act, 2014, S.O. 2014, c. 5 (the “SBCBA”) asking Board to decide whether “hiring practices” was a matter for central or local bargaining – “Hiring practices” refer to the manner in which teachers and occasional teachers are hired by local school boards – Union argued hiring practices should be subject of local bargaining – OPSBA and Crown argued hiring practices should be subject of central bargaining – Board required to interpret and apply the relevant provisions of the SBCBA – Board directed by subsection 28(8) of the SBCBA to consider four factors in determining whether hiring practices should fall within the scope of central bargaining: 1) impact on the implementation of provincial education policy; 2) impact on expenditures; 3) whether the matter raises common issues between the parties to the collective agreements that can more appropriately be addressed in central bargaining than in local bargaining; 4) such other factors the Board considers relevant – Parties agreed factor 2 irrelevant – Board analyzed factors 1, 3, and 4 – Negotiation of hiring practices could have a significant impact on the implementation of Policy/Program Memorandum 165 issued by the Ministry of Education – History and context of past negotiations over hiring practices is an “other factor” supports a finding that hiring practices should fall within central bargaining - Factors 1 and 4 favored a finding that hiring practices fall within the scope of central bargaining - Factor 3 neutral – Hiring practices therefore fell within the scope of

central bargaining at the central bargaining table for the 2022 round of collective bargaining.

ELEMENTARY TEACHERS’ FEDERATION OF ONTARIO, RE: **THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF EDUCATION**, AND THE ONTARIO PUBLIC SCHOOL BOARDS’ ASSOCIATION, OLRB Case No: 1420-22-M; Dated December 6, 2022; Panel: Jesse Kugler (32 pages)

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**Unfair Labour Practice – Interim Order** – Applicant was employee of the City of Toronto and member of Union who was removed as Union Vice-President after complaints – Applicant brought ULP alleging Union contravened subsection 89.1(3) of the Labour Relations Act (the “Act”) by removing him – Applicant requested interim order pursuant to section 98 requiring Union stay the implementation of the complaints’ trial decision until the ULP is decided by the Board and reinstate him – Board considered the relevant factors in deciding whether to grant interim order – Applicant argued *National Judicial Institute* factors easily met and Unions took the opposite view – Unions argued in particular that the complaints filed against the Applicant, the trial and appeal decisions in respect of those complaints and the Applicant’s removal from office were internal union matters and beyond the scope of subsection 89.1(3) of the Act – In considering the purposes of the *Act*, that the defences that the Union may have outweigh the apparent strength of the Applicant’s case, the balance of convenience and inconvenience, and the absence of irreparable harm, it does not make labour relations sense to grant the interim orders requested – Board concluded this was not an appropriate case to grant interim order – Application dismissed.

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JASON CHAN, RE: **CANADIAN UNION OF PUBLIC EMPLOYEES**, RE: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79, OLRB Case No: 1931-22-IO; Dated December 21, 2022; Panel: Michael McCrory (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, 7<sup>th</sup> Floor, 505 University Avenue, Toronto.

### Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
<b>BGIS Global Integrated Solutions Canada LP</b> Divisional Court No. 614/22	0598-22-R	Pending
<b>Mina Malekzadeh</b> Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Pending
<b>Temporary Personnel Solutions</b> Divisional Court No. 529/22	3611-19-ES	Pending
<b>Mulmer Services Ltd.</b> Divisional Court No. 504/22	2852-20-MR	June 8, 2023
<b>Simmering Kettle Inc.</b> Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
<b>1476247 Ontario Ltd. o/a De Grandis Concrete Pumping</b> Divisional Court No. 401/22	0066-22-U	April 25, 2023
<b>Elementary Teachers' Federation of Ontario</b> Divisional Court No. 367/22	0145-18-U	Pending
<b>Michael Peterson, et al.</b> Divisional Court No. 003/22	2301-21-R & 0046-22-R	December 5, 2022
<b>Strasser &amp; Lang</b> Divisional Court No. 003/22	2301-21-R & 0046-22-R	December 5, 2022
<b>CTS (ASDE) INC.</b> Divisional Court No. 295/22	0249-19-G 2580-19-G 2581-19-G	January 30, 2023
<b>Aecon Group Inc.</b> Divisional Court No. 301/22	1016-21-HS	January 24, 2023
<b>Sleep Country Canada</b> Divisional Court No. 402/22	1764-20-ES 2676-20-ES	June 6, 2023
<b>Capital Sewer Services Inc.</b> Divisional Court No. 280/22	1826-18-R	May 30, 2023
<b>The Ontario Secondary School Teachers' Federation</b> Divisional Court No. 187/22	0145-18-U 0149-18-U	April 3, 2023
<b>City of Hamilton</b> Divisional Court No. 967/21	1299-19-G 1303-19-G 1304-19-G	December 12-13, 2022
<b>Susan Johnston</b> Divisional Court No. 934/21	0327-20-U	November 2, 2022
<b>Joe Placement Agency</b> Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	Pending

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<b>Holland, L.P.</b> Divisional Court No. 673/21	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	February 2, 2023
<b>Candy E-Fong Fong</b> Divisional Court No.	0038-21-ES	Pending
<b>Symphony Senior Living Inc.</b> Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
<b>Capital Sports &amp; Entertainment Inc.</b> Divisional Court No. 20-DC-2593	1226-19-ES	Abandoned
<b>Joe Mancuso</b> Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
<b>The Captain's Boil</b> Divisional Court No. 431/19	2837-18-ES	Pending
<b>EFS Toronto Inc.</b> Divisional Court No. 205/19	2409-18-ES	Pending
<b>RRCR Contracting</b> Divisional Court No. 105/19	2530-18-U	Pending
<b>AB8 Group Limited</b> Divisional Court No. 052/19	1620-16-R	Pending
<b>Tomasz Turkiewicz</b> Divisional Court No. 262/18, 601/18 & 789/18 Court of Appeal No. C69929	2375-17-G 2375-17-G 2374-17-R	Appeal granted
<b>China Visit Tour Inc.</b> Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
<b>Front Construction Industries</b> Divisional Court No. 528/17	1745-16-G	Pending
<b>Enercare Home</b> Divisional Court No. 521/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	Appeal granted
<b>Ganeh Energy Services</b> Divisional Court No. 515/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	Appeal granted
<b>Myriam Michail</b> Divisional Court No. 624/17 (London)	3434-15-U	Pending
<b>Peter David Sinisa Sese</b> Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48402	0095-15-UR	Pending

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