

*H*ighlights Ontario Labour Relations Board

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

October 2023

NOTICE TO COMMUNITY

New Vice-Chair

The Board welcomes **Maheen Merchant** as a new full-time Vice-Chair.

Ms. Merchant was called to the Bar in 2012. She is a graduate of the University of Toronto and holds an LLB from the University of Leicester. She completed her Master of Laws degree from Osgoode Hall Law School in 2020, specializing in constitutional law. Prior to her appointment to the Board, Ms. Merchant practiced labour law exclusively since joining a trade union as in-house counsel in 2015, focusing on the construction industry. She previously worked in private practice in commercial, real estate and construction-related litigation.

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

Certification – Construction Industry – Status Dispute – Application for certification under

section 128.1 of the *Labour Relations Act, 1995* (the “Act”) – Dispute regarding status of five unpaid high school co-op students working through Ontario Youth Apprenticeship program (OYAP) – Dispute over whether being paid is necessary requirement for employer-employee relationship – Employer relied on *Hotwire* and submitted that Board has previously determined unpaid OYAP co-op students to be employees for the purposes of the *Act* – Union argued that remuneration is a bright line factor in determining an employment relationship – Board held five unpaid co-op students meet definition of employee for purposes of the *Act* – Board noted many hallmarks of employment relationship were met – Employer exerted fundamental control, ensured safety of the students, created hands-on learning opportunities and provided training – Absence of compensation does not negate employment relationship for purposes of the *Act* – Students are included in bargaining unit for the purposes of the application - Matter continues

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 105, RE: **MERLA ELECTRICAL SERVICES LTD.**; OLRB Case No. 2866-22-R; Dated September 22, 2023; Panel: John D. Lewis (13 pages)

Certification – Construction Industry – Status Dispute – Application for certification under section 128.1 of the *Labour Relations Act, 1995* (the “Act”) – In dispute was whether the fire

stopping work of an employee was electrician bargaining unit work – Union argued that fire stopping was done as part of (and in concert with the work carried out pursuant to) contractual obligation of electrical contractor – Union also argued that employee performed electrical work of moving and replacing some electrical boxes – Employer argued that fire stopping is the work of the carpenter trade and disputed that any work was done replacing electrical boxes – Union demonstrated that fire stopping is included in electrical apprenticeship training and is a responsibility of electrical trades – Board found that even if other trades claim fire stopping, it could nonetheless be the work of an electrical apprentices and therefore bargaining unit work – Application granted

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586, RE: **SELTREK ELECTRIC LTD.**; OLRB Case No. 0054-23-R; Dated September 18, 2023; Panel: C. Michael Mitchell (12 pages)

Jurisdictional Dispute – Construction Industry

– Ironworkers filed application concerning assignment of work in relation to removal and installation of conveyor system – Work involved rigging and handling, loading sections on trucks using forklifts and chain falls and rollers for movement – Ironworkers argued that removal and installation work should have been assigned to its members given modular character of new conveyor – Millwrights argued that remaining substantive work at site was precision alignment of modular sections, within purview of Millwrights - Board determined that typical criteria applied in jurisdictional disputes did not provide a clear answer, but based on the Ironworker/Millwright rigging trade agreement, determined that conveyor system structural work is designated to Ironworkers, and installation and alignment of mechanical components that make conveyor function are designated to Millwrights – Board found fundamental work remaining was alignment of modular sections, and concluded that assignment

to Millwrights for that aspect of work should not be disturbed – Board found power moving equipment for moving old conveyor should have been assigned to Ironworkers based on the trade agreement – Application dismissed with minor exceptions

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 736, RE: **AECON INDUSTRIAL EAST, AECOM CONSTRUCTION EAST, AECOM GROUP INC., AND MILLWRIGHTS UNION LOCAL 1007, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA**; OLRB Case No. 2082-20-JD; Dated September 1, 2023; Panel: Michael McFadden (11 pages)

Certification – Practice And Procedure - Union filed application for certification – Employer purported to give late notice under section 8.1 of the the *Labour Relations Act, 1995* (the “Act”), disagreeing with a trade union’s estimate of number of employees in proposed bargaining unit – Board had previously indicated that no s. 8.1 notice had been given, and Union objected to late notice – Union later sought to concede employer’s s. 8.1 notice – Board confirmed mandatory nature of s. 8.1 time limit - Applicant’s attempt to concede responding party’s section 8.1 objection also invalid since notice itself was invalid - Matter continues

UNITE HERE LOCAL 75, RE: **VISTA WATERLOO LIMITED PARTNERSHIP DBA CROWNE PLAZA KITCHENER-WATERLOO HOTEL**; OLRB Case No. 0334-23-R; Dated September 6, 2023; Panel: Jesse Kugler (6 pages)

Construction Industry - Grievance – Union Representation – Grievance referral under s. 133 of the *Labour Relations Act, 1995* (the “Act”) – Grievance alleged Employer terminated grievor without just cause – Prior to termination, grievor

was interviewed over the phone by supervisor regarding removal of copper pipe on January 20, 2023 without union representation – Union argued Employer breached section 70 of the *Act* by terminating Grievor without union representation – Employer argued section 70 does not grant automatic right to Union representation during disciplinary meetings and that such rights must come from collective agreement – Core issue was whether section 70 imposes positive obligation on Employer to offer union representation to grievor during phone interview or termination meeting – Board found employer did not interfere with Union’s rights arising from collective agreement – Board’s jurisprudence confirms that section 70 does not impose a requirement to provide Union representation during disciplinary meetings where collective agreement is silent on the issue – Matter continues

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50, RE: **FUJITEC CANADA INC.**; OLRB Case No. 2788-22-G; Dated September 1, 2023; Panel: Neil Keating (10 pages)

First Contract Direction – Employer sought first contract arbitration direction pursuant to s. 43 of the *Labour Relations Act, 1995* (the “*Act*”), alleging Union had taken uncompromising position – After many days of negotiations, Union had commenced strike that was in its tenth week as of the date of the decision – Wage rates and term of the agreement were the significant issues left to be determined – Employer alleged that Union had given ultimatum with respect to wages and was unwilling to consider an agreement with a term ending after 2024 – Union asserted that it took firm positions consistent with other collective agreements in the library sector – On wage increases, Employer argued that Union was unwilling to settle a collective agreement containing wage increases less than a flat \$1.35 to all rates in 2023 and 2024 and that this position was unjustified – Union argued that wage rate increase justified based on similarly classified

library employees and other municipal employees – Board determined that bargaining was unsuccessful and the failure of bargaining was due at least in part to the Union’s uncompromising position with respect to wages without justification – Board noted that there was no objective justification for the \$1.35 proposal and that it was based on the “wants of the membership” only – Reasonableness of Union’s position had decreased as the strike went on – First contract arbitration appropriate – Application granted

BRADFORD WEST GWILLIMBURY PUBLIC LIBRARY, RE: CANADIAN UNION OF PUBLIC EMPLOYEES.; OLRB Case No. 1253-23-FA; Dated September 29, 2023; Panel: Timothy P. Liznick (21 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
Robert Currie Divisional Court No. 365/23	0719-22-UR 1424-22-UR	Pending
RT HVAC Holdings Inc. Divisional Court No. 131/23	0721-21-R 0736-21-R	October 23, 2023
All Canada Crane Rental Corp. Divisional Court No. 037/23	1405-22-G	September 28, 2023
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Pending
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
1476247 Ontario Ltd. o/a De Grandis Concrete Pumping Divisional Court No. 401/22	0066-22-U	Motion for Leave to Appeal to Court of Appeal
Elementary Teachers' Federation of Ontario Divisional Court No. 367/22	0145-18-U	April 3, 2023
The Ontario Secondary School Teachers' Federation Divisional Court No. 187/22	0145-18-U 0149-18-U	April 3, 2023
Susan Johnston Divisional Court No. 934/21	0327-20-U	Motion for Leave to Appeal to Court of Appeal
Joe Placement Agency Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	November 22, 2023
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	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
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending

(October 2023)

Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
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