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Ontario Labour Relations Board HIGHLIGHTS

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May 2003

New Vice-Chairs

The Board is pleased to announce the appointment of two new Vice-Chairs.

Tanja Wacyk was called to the Bar of Ontario in 1984. She has been a labour arbitrator and mediator for more than a decade and has particular expertise in employment standards, occupational health and safety and human rights.

Susan Serena was called to the Bar of Ontario in 1981. She was in-house counsel at Ontario Hydro for ten years where she practised labour law and after that, was in the labour department of Ogilvy Renault in Toronto.

Stephen Raymond

Stephen Raymond, who was appointed to the Board as a full-time vice-chair in May 2000, becomes a part-time vice-chair effective May 2003. Mr. Raymond will remain active in labour relations matters providing private arbitration and mediation services.

OLRB Shoot-Out

The Board will be hosting its 4th annual golf tournament in support of the Ministry of Labour's United Way Campaign on Thursday, June 19, 2003 at the Heron Point Golf Links in Ancaster, Ontario. Information regarding the "OLRB ANNUAL SHOOT-OUT", including registration information, is appended to this issue of **eHighlights**. For further details, please contact Tim Parker at 416-326-7442 or by email at tim.parker@mol.gov.on.ca or visit the Board's website at www.gov.on.ca/lab/olrb/home.htm

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in April of this year. Some of these decisions will appear in the March/April issue of the OLRB Reports:

Jurisdictional Dispute – This dispute between CEP and IAM at the Abitibi pulp and paper mill in Fort Frances involved cleaning at a new building – Historically, a small number of IAM "sectionmen", who maintained the rail track system, also carried out the cleaning work at the adjacent Customs building – CEP had always done all the cleaning of all the other mill structures – In 2002, a new much larger Customs building was erected, further away from the rail track than before, which housed not only the Customs function, but also Immigration Canada services – The Board considered the dispute in light of its criteria to assess these matters (namely: employer preference, employer practice, area or industry practice, collective bargaining relationships, job security, skill and training and considerations of economy and efficiency) and found, on balancing all the factors, that Abitibi's assignment of the work to CEP was appropriate

ABITIBI-CONSOLIDATED COMPANY OF CANADA FORT FRANCES DIVISION; RE COMMUNICATIONS, ENERGY & PAPERWORKERS OF CANADA, LOCAL 92 AND IAM, LODGE 771; File No. 1939-02-JD; Dated April 15, 2003; Panel: Patrick Kelly, J.A. Rundle, L. Wood (8 pages)

Certification – Timeliness – Both the respondent and intervenor challenged the certification application on the grounds that the applicant's

proposed bargaining unit was already covered by collective and project agreements – The applicant stated the agreement had expired because there was no specified term and no automatic renewal clause, therefore, s. 58(1) deemed the term to be one year from the date the agreement commenced – The respondent asserted that the duration of the agreement was obvious to a casual observer because the project (construction of Yonge-Sheppard Subway) was highly public and the agreement stated the project terminated upon completion of all work as determined by the employer – The Board found that an interested party should be able to easily determine when an agreement expires – The *Act* does not expect nor require parties to make inquiries, beyond perusing the collective agreement, as to when a project is completed – On reviewing the agreement, the expiry date should be obvious and certain and not subject to the employer's discretion – The application was timely

ELLIS-DON CONSTRUCTION LTD.; RE UNIVERSAL WORKERS UNION LIUNA, LOCAL 183; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA; File No. 3272-00-R; Dated April 8, 2003; Panel: Inge M. Stamp (9 pages)

Employment Standards – Timeliness – The applicant applied for a review of an employment standards officer's refusal to issue an order against the corporation and to make any decision with respect to two directors – The ESO's refusal was based on the fact that the request was received more than six months after the wages were due – The Board found the complaint was not timely – The Board next considered whether, in spite of a statutory limit on its jurisdiction, but given the Court of Appeal's decision in *Halloran v. Sargeant* [2002] OLRB Rep. July/August 765, it should exercise its discretion to relieve against the time limits – The Board found there was nothing oppressive or unfair about the circumstances in which the applicant signed the agreement; there was no misrepresentation or concealment of any material fact; the agreement was not unconscionable; and the applicant was not placed in a vulnerable economic position by the termination of the relationship thereby making his acceptance of a less favourable deal a necessity – The Board accordingly found there was no basis for relieving against the time limits set out in the *Act* – Application dismissed

GOLFWRIGHT SPORTS INC., AND DIRECTOR OF EMPLOYMENT STANDARDS; RE MIKE DUCHARME; File No. 2779-02-ES; Dated April 14, 2003; Panel: David A. McKee (8 pages)

Evidence – Health and Safety – Practice and Procedure – In this appeal under s. 61 of the *Occupational Health and Safety Act*, the Board was asked to order production of reports, recommendations and standing orders regulating inmate control at correctional institutions that were not the subject of the proceedings at issue – The applicant explained the documents were relevant because the other institutions had the same general design as the correctional facility at issue (Maplehurst) and the reports may comment on the effect that the design and installation of sallyports might have had on staff's ability to control and prevent unrest – The Ministry of Public Safety and Security ("MPSS") argued the unrest was not related to the design of the institution and unless the applicant can establish a link between the earlier incidents and the design, then there is no basis for production – The Board reviewed the threshold test (arguably relevant to the issues in dispute) for pre-hearing production of documents and found that the applicant had demonstrated a rational link or connection between the documents it sought and the issues in the case, namely, safety at Maplehurst – There was some arguable relevance to a review of the incidents at other institutions with the same or similar designs to understand what factors may have caused earlier incidents of inmate unrest – The Board ordered production of all the requested documents except standing orders

MINISTRY OF CORRECTIONAL SERVICES (NOW MINISTRY OF PUBLIC SAFETY AND SECURITY) MAPLEHURST CORRECTIONAL COMPLEX AND G.W. (WAYNE) IRESON, INSPECTOR AND MINISTRY OF LABOUR; RE OPSEU; File Nos. 0654-01-HS; 0688-01-HS; 0776-01-HS; Dated April 23, 2003; Panel: Harry Freedman (6 pages)

Bargaining Unit – Certification – Representation Vote – The applicant union sought to displace the incumbent bargaining agent by carving out thirty employees in one location from a 280 employee province-wide bargaining unit – The respondents argued the appropriate voting constituency must be consistent with the province-wide unit that was described in the collective agreement – The Board found that the province-wide unit was the appropriate voting constituency – However, in determining whether to order a vote in that

constituency, the *Act* requires the Board to examine whether the applicant has support of 40% or more in the proposed bargaining unit and *not* the voting constituency – Based on the membership evidence filed, the Board could not be certain 40% or more of the unit were union members – The Board directed a vote of the province-wide unit, the ballot box sealed and the ballots not to be counted until ordered

NOVA HOUSEKEEPING SYSTEMS LIMITED (CENTRAL PARK LODGE AND RESPONSIVE MANAGEMENT); RE CUPE; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183; File No. 4326-02-R; Dated April 3, 2003; Panel: Stephen Raymond, J.A. Rundle, H. Peacock (3 pages)

Certification – Membership Evidence – Practice and Procedure – Reconsideration – Representation Vote – On a second reconsideration, the Board declined to vary its reconsideration decision of March 14, 2003 in which it declined to vary a decision ordering a vote – The Board confirmed that: a) the Form A-4 is not a part of the information required by statute, but rather a part of the information required by the Board's application materials; b) the Board may in exceptional circumstances relieve against the requirements of a Form A-4; c) the Board is prohibited by subsection 8(4) from holding a hearing to address issues concerning the Form A-4 – Request denied

RYERSON UNIVERSITY; RE CUPE; File No. 2533-02-R; Dated April 25, 2003; Panel: Brian McLean (5 pages)

Damages – Discharge – Health and Safety – Reprisal – The applicant's job was contracted out and he was laid off shortly after a disagreement with his employer over the use and availability of a respirator mask – The Board found that the applicant's lay-off was not in violation of the *Occupational Health and Safety Act*, however the employer's reason for not recalling the employee (because he had started "these proceedings") was found to be a reprisal for seeking enforcement of the *Act* and accordingly a breach – Damages were awarded – Application granted, in part

TAYLOR BEANGE DOORS & FRAMES; RE GEORGE ST. LAURENT; File No. 2138-01-OH; Dated April 15, 2003; Panel: Marilyn Silverman (4 pages)

Practice and Procedure – Sale of Business – Termination – Timeliness – An application for termination was filed within the last three months of a collective agreement which was honoured by the successor employer pursuant to s. 69 of the *Act* – The Board confirmed that once notice to bargain was given by the respondent union section 69(10) of the *Act* rendered the application untimely by having the same effect as an original certificate – The application was untimely – Application dismissed

TRECROCE, STAN O/A CASWELL FOOD & BEVERAGE; RE TRACY PRUCE; RE NORTHERN ONTARIO JOINT COUNCIL OF THE RETAIL, WHOLESALE & DEPARTMENT STORE UNION DISTRICT COUNCIL OF THE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION; File No. 4192-02-R; Dated April 16, 2003; Panel: Patrick Kelly, J.A. Ronson, R.R. Montague (4 pages)

Duty of Fair Representation – Employment Standards – Unfair Labour Practice – The applicant's position was that a mandatory term in the collective agreement requiring direct deposit of employees' pay cheques was a violation of the *Employment Standards Act*, 2000 and accordingly a violation of the trade union's duty of fair representation – The Board found the collective agreement term did not violate the *ESA*, 2000 but even if it did, the collective agreement term was not entered into in an arbitrary, discriminatory or bad faith manner – Application dismissed

WELLINGTON, SHARON; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORT-ATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA); File No. 3709-02-U; Dated April 23, 2003; Panel: Brian McLean (3 pages)

Court Proceedings

Duty of Fair Representative – Judicial Review – The Board dismissed an application under s. 74 and 96 for delay, without giving the complainant an opportunity to address the reasons for the delay – The Court found this decision contrary to the principles of natural justice, set it aside, and remitted it to the Board for further consideration

DERVENT THOMPSON; RE PEPSI-COLA CANADA LTD.; TEAMSTERS LOCAL 938 AND OLRB; File No. 1870-01-U; Dated April 4, 2003 (Court File No. 314/02); Panel: Lane, Brockenshire, Cameron JJ (4 pages)

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Some of 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 Library, now located on the 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Greater Essex County District School Board Divisional Court File No. 276/03	3398-00-R	Pending
Windsor-Essex Catholic District School Board Divisional Court File No. 277/03	3426-00-R	Pending
OPSEU v. Ontario Hospital Association Divisional Court File No. 83/03	3631-02-U	Pending
Andy Schollig c.o.b. Tischler Woodworking Divisional Court File No. 44/03	2464-01-G	Discontinued as part of Board settlement
Haimanot Abebe et al v. Distinctive Designs Furniture Divisional Court File No. 30/03	3704-01-ES	Pending – June 19/03
Ont. Council Int'l Painters & Allied Trades v Blastco Corporation Divisional Court No.711/02	1416-02-G	Application dismissed May 20, 2003
Canadian Health Care Workers v. CAW-Canada, Central Park Lodges et al Divisional Court No. 646/02	1951-01-R; 2179-01-R; et al	Pending
CAW-Canada & its Local 385 v. Coca-Cola et al Divisional Court No. 751/02	0179-01-R; et al	Pending
Marc A. Crockford et al v. UFCW et al Divisional Court No. DV-543/02	1350-99-U; 2809-99-U	Pending
Ont Prov Conference Int'l Union of Bricklayers v. Int'l Bricklayers and Craftworkers, et al Divisional Court No. 352/01	1904-99-U; 2352-98-U; et al	Application dismissed for delay April 24, 2003 Reasons to follow
IBEW Local 586 v. K2 Contracting et al Divisional Court Nos 01-DV-666; 01-DV-667	0007-96-R; et al	Pending – June 2003
Northwest Agro-Forestry Services v. CEP et al Divisional Court No. 277/00	0835-99-R	Pending
Ottawa-Carleton Public Employees Union Local 503 – CUPE v. Ottawa Transition Board, et al Divisional Court No. 02-DV-723	2353-00-PS	Pending
Rosalina Papa v. HERE Local 75, et al Divisional Court No. 283/01	0426-00-U	Pending
Rocco Tassone v ATU Local 113, et al Divisional Court No. 84/02	3527-96-U	Pending – Nov. 18/03
Dervent Thompson v. OLRB Divisional Court No. 314/02	1870-01-U	Set aside and remitted to Board - April 4, 2003
The Shopping Channel v. USWA Divisional Court No. 299/00	1123-99-U; et al	Pending
William McNaught v. TTC, et al	3616-99-U;	Heard Dec. 12/02; reserved

Case name & Court File No.	Board File No.	Status
Divisional Court No. 254/02	3297-99-OH	
Dundas Realities Ltd. v. MOL, et al Divisional Court No. 01-5359	3256-99-ES	Pending
Tender Choice Foods Inc. v. Mirjana Jazvin Divisional Court No. 454/02	3058-01-ES	Adjourned