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Ontario Labour Relations Board

HIGHLIGHTS

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

Application for Certification – Charter of Rights and Freedoms – Human Rights Code – Natural Justice – Practice and Procedure – Reconsideration – Request for Reconsideration filed by the employer seeking to reconsider the Board's conclusion in an earlier decision that it would not hear *viva voce* evidence with respect to an allegation that by virtue of provisions of its constitution and certain collective agreements union cannot be certified pursuant to section 15 of the *Labour Relations Act* – The Employer requests reconsideration on the basis that the earlier decision denied it procedural fairness and natural justice and on the basis of important policy issues – Pursuant to rule 39.1 of the Board's Rules of Procedure, the Board is not required to hold a hearing where the application does not make out a case for the orders or remedies requested – Board had earlier determined that there was no violation of section 15 of the *Act* as there was no discrimination in respect of a person who was the subject of this application for certification – The Employer also alleged it was denied procedural fairness as a 10 page limit was imposed on its reply submissions – Page limit did not violate procedural fairness as employer did not raise the issue before its position was dismissed, because it does not point to any aspect of the Union's submissions it was unable to address or any argument it was unable to advance – Employer attempted to raise a Charter argument – Board held that raising a Charter argument for the first time in reconsideration is not the proper basis for a reconsideration request – Additionally Board noted that the Employer did not provide any authority for its argument that a section 15 objection could succeed on claims of discrimination by persons with no connection to the application – Reconsideration denied

KUEHNE + NAGEL LTD.; RE: UNIFOR; OLRB File No. 1172-18-R; Dated April 8, 2019; Panel: Roslyn McGilvery (16 pages)

Grievance – Practice and Procedure
–Union delivered a grievance to the Employer alleging that the employer violated the collective agreement – The Employer referred the grievance to the Board – Union referred the grievance to arbitration before a private arbitrator in accordance with the collective agreement – The Union raised a preliminary matter as to whether the Board ought to decline to hear the grievance pursuant to subsection 133(4) of the *Act* given that it had referred the grievance in accordance with the grievance procedure in the collective agreement – On a referral under section 133, the Board has the full authority under the collective agreement to apply all remedial terms and conditions contained in the collective agreement – Processing of a grievance referral commences when the referral is received by the Board – Collective agreement language cannot nullify a party's right to refer a grievance to the Board under section 133 – Motion dismissed – Matter continues

LEGACY MASONRY INC. AND 1498593 ONTARIO INC.; RE: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY; OLRB File No. 3749-18-G; Dated April 8, 2019; Panel: Lee Shouldice (17 pages)

Duty to Bargain in Good Faith – Unfair Labour Practice – Union filed an application under section 96 of the *Act* alleging that the Employer breached its duty to bargain in in good faith under sections 17 and 60 of the *Act* – Union alleged that the Employer failed to disclose during bargaining that the purported result of a job evaluation conducted by the employer would result in wage roll backs of 82% – The Employer advised the Union of the job evaluation less than two months after an interest arbitration settled the parties' collective agreement – The Union filed a policy grievance and individual grievances relating to the results of the job evaluation – Employer brought a preliminary motion asking that the Board defer the application pending the resolution of the grievances through the grievance procedure under the collective agreement – Board held that that there were three relevant questions to be considered: 1) Will deferral encourage the practice and procedure of collective bargaining? 2) Is the nature of the dispute primarily contractual or does it involve statutory rights? 3) Would the relief available in the arbitration process be adequate to remedy the alleged conduct of the employer? – Board found that parties expressly turned their minds in bargaining to a process of addressing job evaluation complaints – Parties agreed that disagreement regarding job evaluation and/or rate of pay is to be resolved through the arbitration procedure in their collective agreement – Accordingly Board found answers to questions 1 and 3 were yes – Board defers matter to the arbitration process – Matter ddjourned

PETERBOROUGH REGIONAL HEALTH CENTRE; RE: ONTARIO PUBLIC SERVICE EMPLOYEES UNION; OLRB File No. 2834-18-U; Dated April 11, 2019; Panel: Caroline Rowan, Chair (10 pages)

COURT PROCEEDINGS

Affidavit – Judicial Review – Practice and Procedure – Motion – Applicant in judicial review brought motion to rely on an affidavit – Applicant's position is *inter alia* that the Board made unreasonable findings of fact and findings of fact in the absence of evidence and contrary to the evidence – In order to establish that the Board made unreasonable findings of fact as well as findings of fact in the absence of evidence or evidence to the contrary – Court held that the guiding principles to determine whether an affidavit in a judicial review is derived from the *Keeprite* decision – As there was no allegation of a breach of the rules of natural justice or lack of procedural fairness, the only basis to admit affidavit evidence is a complete absences of evidence on an essential point – Court found that the as Board's decision recorded that it received evidence on the "primary functions" that were the subject of its findings, there was clearly some evidence – Court held that assuming there was no evidence the applicant had not demonstrated that the finding of fact for which it is alleged there was no evidence was not on an "essential point" – Court held that this is not an "exceptional" or "rare circumstance in which the affidavit would demonstrate the "exacting jurisdictional test" of a complete absence of evidence – Motion dismissed – Matter continues

BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1; RE: PRESCOTT MASONRY & RESTORATION INC.; RE: BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 2; RE: MASONRY INDUSTRY EMPLOYERS COUNCIL OF ONTARIO; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: MASONRY INDUSTRY EMPLOYERS COUNCIL OF ONTARIO, MASONRY CENTRE; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 018/18; Dated April 26, 2019; Panel: Kiteley J. (7 pages)

Judicial Review – Practice and Procedure – Motion – Motion to review decision of a single judge of the Court of Appeal – Applicant brought a judicial review of a Board decision before a single judge of the Superior Court rather than to Divisional Court – The Applicant sought to appeal the interlocutory orders arising from that judicial review – Her appeal was quashed on the grounds that the Court of Appeal lacked jurisdiction over appeals from interlocutory orders of the Superior Court – The Applicant brought a motion to a single judge of the Court of Appeal seeking *inter alia* to dispense with the requirement that she sign an undertaking in order to obtain release of audio

recordings from the Court of Appeal proceedings, permitting her to transcribe the proceedings and challenging the constitutionality of section 136 of the *Courts of Justice Act* – This motion was dismissed – Applicant appealed the decision and also sought to video record the instant motion to review – Applicant argued that "open courts" principle requires the court to permit video recording of its proceedings and dissemination of those recordings subject to exceptions where justified – Court held that "open courts" principle is one constitutional principle amongst many – Exercise of judicial discretion must conform to requirements of rule of law including requirement that exercise of discretion not be arbitrary, that it respect precedents and rules established by other institutions – Applicant argued that she should be entitled to record for the purposes of education and to document any abuse of process which might occur during the proceeding – Request denied – Applicant did not demonstrate any special circumstance to grant leave to record the proceedings – Court held that an "unsubstantiated distrust in the legal system does not generate an entitlement" to create a video record of the proceedings" – Court held that for the same reasons, applicant did not provide any reason that would justify releasing her from the obligation not to disseminate audio recordings – Motion Dismissed

MYRIAM MICHAIL; RE: ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION; RE: MARSHALL JARVIS; RE: BRUNO MUZZI; RE: FERN HOGAN; RE: JOANNE SCHLEEN; RE: SHELLEY MALONE; RE: SHEILA BRESCIA; RE: LONDON DISTRICT CATHOLIC SCHOOL BOARD; RE: ONTARIO LABOUR RELATIONS BOARD; Court of Appeal File No. M49883 (C65674); Dated April 24, 2019; Panel: Rouleau, Miller and Fairburn JJ.A. (10 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
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
Hector Yao Divisional Court No. 063/19	1841-18-ES	Pending
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Pending
Tomasz Turkiewicz Divisional Court No. 789/18	2375-17-G	Pending
Audio Visual Services (Canada) Corporation Divisional Court No. 732/18	2694-16-R	June 25, 2019
Kelly White Divisional Court No. 671/18	2032-17-ES	Pending
Tomasz Turkiewicz Divisional Court No. 601/18	2375-17-G	Pending
Amec Foster Wheeler Americas Limited Divisional Court No. 537/18	2743-16-R 3025-16-R	July 25, 2019
The Daniels Group Inc. Divisional Court No. 535/18	0279-16-R	May 23, 2019
D. Andrew Thomson Divisional Court No. 238/18 **(Sudbury)**	1070-16-ES	Pending
Tomasz Turkiewicz Divisional Court No. 262/18	2374-17-R	Pending
Deloitte Restructuring Inc. Divisional Court No. 238/18	2986-16-R	Pending
Alicia R. Allen Divisional Court No. 199/18	0255-17-UR	Pending
Matrix North American Construction Canada Divisional Court No. 051/18	0056-16-JD	May 22, 2019
Bricklayers (Prescott) Divisional Court No. 18/18	3440-14-U	June 18, 2019
Robert Daniel Laporte Divisional Court No. 037/18	2567-15-U	June 13, 2019
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending

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Rouge River Farm Inc. Divisional Court No. 637/17	0213-16-ES	January 24, 2019
Ramkey Construction Inc. Court of Appeal No. M49563	1269-15-R	Application for Leave to Appeal Granted – Appeal 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	Pending
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Pending
LIUNA *(Pomerleau Inc.)* Divisional Court No. 257/17	3601–12–JD	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
Kognitive Marketing Inc. Divisional Court No. 51/15 **(London)**	0621–14–ES	Pending
Valoggia Linguistique Divisional Court No. 15–2096 **(Ottawa)**	3205–13–ES	Pending