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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 December of last year. These decisions will appear in the November/December 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 – Bargaining Unit – Construction – Union sought bargaining unit of construction labourers employed by the employer in all non-ICI sectors of the construction industry in Board Area 8 – Union asserted that there were two individuals, M and J, who were in the bargaining unit on the date of application – Employer challenged those two individuals as they asserted that the union and those two individuals conspired to manipulate the circumstances on the application filing date – Employer asserted that two other individuals, T and Z were in the bargaining unit on the application filing date – Union challenged the inclusion of T and Z on the list of employees as it asserted that T was managerial and that Z was not at work on the application filing date – Employer challenged M and J on the basis that they were not scheduled to work and their presence at the site was engineered to improperly facilitate the application - On the application date, M and J were not scheduled to work, but were called in by T (a foreman for the employer) – Board rejected impropriety theory that was advanced by Employer to explain presence of two employees at worksite on Application Date – Board was satisfied that instant certification application was not a fraud and that the work performed by labourers on Application Date was not a scam – There was no attempt to manipulate the percentage of employees in the bargaining unit who were members of the Applicant – Board determined that the employee list on the Application Date was composed of all four labourers and ordered that stage one of the Certification Application be determined by a representation vote – T was also not excluded from the vote under s. 1(3)(b) of the Act, as an employee who does not exercise material managerial responsibilities under s. 1(3)(b) of the Act cannot be excluded from the list – Board found that Z was in the bargaining unit on the application filing date – The mere fact that an organizer observes a workplace does not establish an overriding principle of inherent reliability in organizer's evidence – Matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No. 0030-16-R & 0199-16-U; Dated December 20, 2018; Panel: Michael McFadden (36 pages)

Collective Agreement – Construction Industry Grievance – Reconsideration Unions referred grievances alleging that following a successful application for certification, the employer did not apply the collective agreement – Employer also filed two grievances against the unions - The Employer Association ("MTABA") sought to intervene – A case management hearing was held and the Board ruled orally that MTABA had status to intervene – Board heard arguments relating to certain procedural issues and with respect to

Employer's response to the Unions' grievances – Employer filed a request for reconsideration with respect to MTABA's status to intervene – Board determined that Employer did not meet criteria for reconsideration and dismissed request – No new evidence that was previously unavailable and no new objections or arguments that Employer had no opportunity to raise earlier – In respect of Employer's response to the grievance, Board found that s. 140(1) and s. 162(2) of the *Labour Relations Act* prohibit individual bargaining or other arrangements other than the statutorily mandated collective agreements – These provisions create a level playing field for all employers participating in the industry and to prevent bargaining which would undermine the stability of the industry – Provisions must be applied in a firm and consistent manner – There is no exemption for work bid, or contracted for, prior to the Union obtaining its bargaining rights – Employer did not plead sufficient facts to make out a breach of any duty to administer the collective agreements in good faith by the Union (assuming one exists) – Board dismissed this defence – Matter continues

MULTIPLEX CONSTRUCTION CANADA LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506; OLRB File No. 0951-18-G, 0974-18-G, 1007-18-G, 1020-18-G, 1022-18-G, 2501-18-G, 2529-18-G & 2549-18-G; Dated December 18, 2018; Panel: Jack J. Slaughter (15 pages)

Application for Certification – Bargaining Unit – Construction – Union asserted that three individuals were employees of the Responding Party – Responding Party asserted that the individuals were not its employees, but were employees of a third party agency or of a construction manager – In addition, the employer asserted that one of those individuals (JP) was an independent contractor and not an employee – Board concluded that all three individuals were employees of the Responding Party and in the bargaining unit – Board concluded that labour supply company was not the employer as it acted only as a pay conduit for the employees – Board concluded that JP was an employee and was economically dependent on the Responding Party – Board concluded that in applying the fundamental control test, the remaining two individuals were employees of the Responding Party as they were hired by, paid by and directed by the Responding Party – The Board noted that the construction management company did not have the power to discipline the employees – In reaching its conclusion, the Board did not rely on any post-application date evidence – Application granted – Certificate issued

MUTUAL (HUNT CLUB) CORPORATION O/A INFINITY DEVELOPMENT GROUP; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: ARUN ANAND; RE: ARJUN ANAND; RE: INFINITY CAPITAL DEVELOPMENT GROUP INC.; RE: INFINITY (PLAINS ROAD) CORPORATION; RE: INFINITY (ALDERSHOT) DEVELOPMENTS INC.; OLRB File No. 3075-16-R, 0581-17-U & 1557-17-R; Dated December 20, 2018; Panel: Harvey A. Beresford (22 pages)

Collective Bargaining – Order for Productions – Applicant renewed request for production of an unredacted copy of the master services agreement between Employer and sole business client, which had previously been dismissed by the Board as premature – A trade union may be entitled to access otherwise confidential information held by an employer during collective bargaining if that access is necessary to permit the union to engage in a meaningful and intelligent assessment of the employer's offer – If an employer asserts a collective bargaining position based on a rational explanation, that employer may be obligated to disclose information that might be otherwise confidential to the union, to permit the union to reasonably assess the *bona fides* of the employer's bargaining position – The Board's focus in determining such requests should be only the employer's collective bargaining proposals, and not the union's collective bargaining proposals – The information an employer may be obligated to disclose in the circumstances described in the principles above may go beyond items directly connected to existing terms and conditions of employment and may, for example, include an Employer's pricing arrangements – Only such information as is required to allow a union to evaluate the *bona fides* of an employer's bargaining positions should be ordered disclosed – Even where such disclosure is ordered, some redactions or other conditions may be necessary to protect the confidentiality of commercially sensitive

information – Board rejected the Employer's position and ordered portions of the master services agreement to be disclosed – Application granted

NEW HORIZON SYSTEM SOLUTIONS; RE: THE SOCIETY OF UNITED PROFESSIONALS; OLRB File No. 0193-18-U; Dated December 27, 2018; Panel: Michael McFadden (9 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
Tomasz Turkiewicz Divisional Court No. 789/18	2375-17-G	Pending
Audio Visual Services (Canada) Corporation Divisional Court No. 732/18	2694-16-R	Pending
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	Pending
The Daniels Group Inc. Divisional Court No. 535/18	0279-16-R	Pending
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
Provincial Employers' Bargaining Agency - Labourers Divisional Court No. 141/18	2221-15-U	Pending
Trisect Construction Corporation Divisional Court No. 087/18	2553-15-R	March 19, 2019
Matrix North American Construction Canada Divisional Court No. 051/18	0056-16-JD	May 22, 2019
Canada Bread Company, Limited Divisional Court No. 11/18	3729-14-R 3730-14-R 3731-14-R 3732-14-R 3733-14-R	April 3, 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	Pending
Highcastle Homes Inc. Divisional Court No. 7/18	3196-15-R 3282-15-U	March 11, 2019

(January 2019)

China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Rouge River Farm Inc. Divisional Court No. 637/17	0213-16-ES	January 24, 2019
Dennis McCool Divisional Court No. 566/17	0402-16-U	March 7, 2019
Ramkey Construction Inc. Court of Appeal No. M49563	1269-15-R	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