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Ontario Labour Relations Board

HIGHLIGHTS

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June 2019

NOTICES TO THE COMMUNITY

New part-time Vice-Chairs

The Board welcomes two new part-time Vice-Chairs.

Len Marvy returns to the Board as a part-time Vice-Chair after serving the Board from 2002 to 2018 as its solicitor, and after a career in public service as counsel to Management Board Secretariat and the Ministry of Community and Social Services. He adds his vice-chair duties to his existing practice as a mediator-arbitrator. Len holds an LL. B. from the University of Toronto, having previously earned Master of Education and Bachelor of Arts degrees.

Robert Salisbury joins the Board as a part-time Vice-Chair. He holds a Juris Doctor degree from Osgoode Hall Law School and a Master of Resource Management from the University of Akureyri (Iceland). Rob has served as a staff lawyer with Simcoe Legal Services, and was formerly a partner of a national law firm. Rob is a current Vice-Chair of the Workplace Safety and Insurance Appeals Tribunal.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in May of this year. These decisions will appear in the May/June 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.

Unfair labour practice – Accredited employers' organizations – Bargaining in bad faith – ETBA and IBEW CCO are the designated employer and employee bargaining agencies in respect of the ICI sector of the construction industry – GTECA is a member of ETBA and the accredited employer organization in respect of electrical construction work in the residential sector of the construction industry, and bargains with IBEW Local 353 – GTECA and Local 353 also bargain the local appendix to the Principal Agreement negotiated between ETBA and IBEW CCO – The local appendix included terms pertaining to high-rise residential construction – ETBA, including GTECA, agreed to a bargaining framework with IBEW CCO which included a framework for bargaining local appendices – Shortly thereafter, GTECA's high-rise committee determined that it would seek to separate terms and conditions covering high-rise residential construction from the Principal Agreement into a separate collective agreement (as was already the case in respect of low-rise residential construction) – GTECA delivered notice to bargain stand-alone high rise agreement prior to conclusion of bargaining for Principal Agreement – Local appendix was in fact negotiated by GTECA and Local 353 and it was included in the settlement for the renewal Principal Agreement, which was approved by both parties – Thereafter, some bargaining in respect of stand-alone high rise agreement occurred with no objection from Local 353, but it was terminated by the union, which believed that any such amendments would have to be made to the Principal Agreement which had already been settled – GTECA filed application the next day,

arguing that Local 353 bargained in bad faith and refused to recognize GTECA's status as the exclusive accredited bargaining agent – Unions took position that collective agreement was already in place and Local 353 had no obligation to bargain with GTECA for stand-alone agreement – GTECA argued that at the time notice to bargain was served, no final Principal Agreement had been reached and it therefore had the right to bargain stand-alone agreement – GTECA also argued that having engaged in some negotiations for such an agreement, it was a violation of the Act for Local 353 to terminate those negotiations – Board concluded that having agreed to and participated in the process for renewing the Principal Agreement, GTECA could not resile from the agreement reached – While it may have had the right to require Local 353 to negotiate a stand-alone agreement, it did not do so prior to concluding the local appendix forming part of the Principal Agreement – GTECA's position would allow it to refuse to honour agreements it had already reached, which was fundamentally contrary to stable labour relations – Application dismissed

GREATER TORONTO ELECTRICAL CONTACTORS ASSOCIATION; RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353; OLRB File No. 0369-19-U; Dated May 29, 2019; Panel: Lee Shouldice (13 pages)

Employment standards – Employee status – Application to review a decision of an Employment Standards Officer finding that the claimant was an employee of the Applicant and not an independent contractor – Applicant recruited IT personnel to provide services to third parties – Applicant entered into either "employment contracts" or "consulting agreements" with IT personnel based on specialist's preference – Applicant argued that it entered into a "consulting agreement" with claimant's numbered company instead of an employment contract with claimant herself – Applicant also argued that claimant bore the chance of profit or risk of loss in that she could choose to retain other employees or how much time and effort to devote to a project – Board considered the various factors articulated in the jurisprudence – Board noted that there was no negotiation in respect of the standard form "consulting agreement" – While the form of the agreement implied an independent contractor relationship had been created, the Board was more concerned with the substance, not the form, of the relationship – Claimant was paid on an hourly basis and Applicant's agreement with third party (which formed part of consulting agreement) specified her daily hours of work and that she was to report to work at third party's premises – Invoices by which claimant was paid were generated by Applicant – Claimant could only arrange for an assistant if approved by the third party, and assistant's compensation would be negotiated between Applicant and third party – No opportunity for profit or risk of loss when claimant paid an hourly rate for daily hours determined by Applicant and third party – Not a situation where claimant contracted to deliver a specific body of work for a specific price and could therefore earn more profit or experience more loss based on how efficiently the work was performed or how well the cost of the project was estimated – Application dismissed

PROCOM CONSULTANTS GROUP LTD.; RE: KIRTI SHRINGI; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 2450-18-ES; Dated May 17, 2019; Panel: Kelly Waddingham (12 pages)

Unfair labour practice – Interference in trade unions – Intererence with employees' rights – SEIU and CUPE each represented employees of three hospitals in service bargaining units – Historically, SEIU and one of the three hospitals, St. Michael's, had bargained all terms and conditions and conditions locally rather than both locally and centrally – CUPE bargained both locally and centrally (with the OHA) in respect of the other two hospitals – Hospitals integrated services under *Local Health System Integration Act, 2006* – Application filed under PSLRTA in respect of the integration – As a result of the application, all three hospitals ceased local bargaining with both unions – Central bargaining continued with all other hospitals, including in respect of the two CUPE-represented hospitals at issue in this matter and in respect of other SEIU-represented hospitals – CUPE and OHA reached a central settlement resulting in wage increases for employees in the two CUPE units – The new, integrated employer did not advise SEIU that central bargaining was continuing in respect of the CUPE service units – SEIU argued that employer's failure to advise it that bargaining was continuing with CUPE, while knowing that the integration would lead to a competition between CUPE and SEIU in respect of the representation of the employees, interfered with SEIU's and employees' rights contrary to the Act – Board rejected these arguments – No suggestion that SEIU was deliberately misled – SEIU involved in central

bargaining with CUPE and had opportunity to learn what was happening with respect to the two CUPE units – No duty on integrated employer to explain the status of bargaining with all of the predecessor employers – Application dismissed

PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S HEALTHCARE; RE: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA; RE: CANADIAN UNION OF PUBLIC EMPLOYEES; OLRB File Nos. 1352-18-PS & 1353-18-U; Dated May 13, 2019; Panel: Paula Turtle (12 pages)

Termination – Construction industry – Application to terminate bargaining rights filed during the construction industry "open period" – Employer and USW parties to collective agreement in respect of non-construction employees – Employer and Ironworkers parties to collective agreement in respect of construction employees – Ironworkers took position that none of the individuals at work on the application filing date were employed in the Ironworkers' bargaining unit and that they were employed pursuant to the USW collective agreement – Ironworkers submitted that no remittance had ever been made by Employer in accordance with collective agreement – USW agreed individuals were employed under its collective agreement – Parties made status submissions and filed documents in accordance with Board's Information Bulletin #32 – Employer filed submissions asserting that work performed by disputed individuals was bargaining unit work – Board reviewed submissions and noted that neither the applicant nor the Employer had submitted that the individuals were employed pursuant to the Ironworkers' collective agreement – Board concluded there were no employees at work in the bargaining unit on the application filing date – Application dismissed

S&T INDUSTRIAL INC.; RE: JOSEPH MANCUSO; RE: IRONWORKERS UNION LOCAL 786 AND ONTARIO IRONWORKERS DISTRICT COUNCIL; OLRB File No. 0005-19-R; Dated May 16, 2019; Panel: Lee Shouldice (5 pages)

COURT PROCEEDINGS

Judicial review – Certification – Application for judicial review of a Board decision in a certification proceeding – Judicial review related to scope of Board's discretion under s. 128.1 of the Act – Respondents in judicial review objected to judicial review proceeding as the applicant had not first sought reconsideration of the Board's decision – Court noted prior jurisprudence concluding that failure to seek reconsideration did not constitute a bar to seeking judicial review of a Board decision – Court held that it nonetheless retained the discretion to dismiss an application as premature where reconsideration not sought – Court noted existence of decisions that appear to be in conflict regarding the nature of the Board's discretion under s. 128.1 of the Act, which may raise an important policy issue as contemplated by the Board's approach to reconsideration – On a reconsideration, Board would be able to address these conflicting authorities – Court concluded that reconsideration offers an adequate alternative remedy that should be pursued prior to seeking judicial review – Court noted that although Board's Rules of Procedure provide a 20-day time limit for seeking reconsideration, all respondents agreed that timeliness would not be raised if reconsideration sought – Application dismissed

THE DANIELS GROUP INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: THE BUILDING UNION OF CANADA; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 535/18; Dated May 23, 2019; Panel: Thorburn, D. Edwards, and Favreau JJ. (5 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
ASL Agrodrain Limited Divisional Court No. 19-DC-2492 **(Ottawa)**	1840-18-R	Pending
New Horizon Divisional Court No. 264/19	0193-18-U	Pending
Doug Hawkes Divisional Court No. 249/19	3058-16-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
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	Dismissed
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

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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
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	October 21, 2019
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	October 21, 2019
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