ISSN 1712–4506 (Online)

Ontario Labour Relations Board HIGHLIGHTS

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June 2020

UPDATES FROM THE BOARD

On May 14, 2020, the Ontario Labour Relations Board introduced "Information Bulletin 37: Video Hearings". This Information Bulletin describes the guidelines that parties, non-parties and participants are expected to adhere to during a video hearing. A copy of this Information Bulletin is available on the Board's website: http://www.olrb.gov.on.ca/english/infob/infbul37.pdf
http://www.olrb.gov.on.ca/english/infob/infbul37.pdf

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

Certification – Electronic Membership Evidence – Union submitted electronic membership evidence in support of a certification application - Board noted decision in *Toronto and York Region Labour Council*, 2019 CanLII 123094, and concluded it was open to the Board to accept electronic membership evidence – Board considered the authenticity of the electronic membership evidence submitted, including step-by-step description of how the Union collected the membership evidence and the audit trail of the electronic exchanges of the cards filed - Board accepted electronic membership evidence where the pertinent steps in the process for collecting the membership evidence were found to have mirrored, or sufficiently mirrored, those approved in *Toronto and York Region Labour Council.*

ACTION CANADA FOR SEXUAL HEALTH AND RIGHTS; RE: CANADIAN UNION OF PUBLIC EMPLOYEES; OLRB File No. 0146-20-R; Dated: May 1, 2020; Panel: Paula Turtle (4 pages)

Certification – Representation Vote – Vote Procedure - Representation vote held at two different locations of the Employer – For several hours, polls were open simultaneously at both poll locations – Board employed long-standing practice of "double enveloping" ballots cast by all employees at one of the vote locations, to avoid counting two ballots of a single employee, where there was opportunity to vote at more than one location - Employee's ballot was put in an envelope that had "secret ballot" written on it, then that envelope was placed in another envelope and the employee's name was written on the outside of that envelope – Voters' lists at both locations were compared – If an employee cast a ballot at both locations, the double enveloped ballot of that employee was destroyed without being opened – Employer sought to challenge the double-enveloping practice – Employer asserted employees were confused by the process and feared their vote might become known because their name was on the outside envelope – Employer asserted standing to challenge double enveloping process as contrary to the *Canadian Charter of Rights and Freedoms* – Board denied the Employer's requests for both private and public interest standing – Employees had notice of the proceedings and were advised of their right to participate by Board postings in the workplace – To allow the Employer

to invoke employee's rights, where employees have chosen not do to so themselves, would not be an appropriate exercise of the Board's discretion to grant standing - Board should be wary of employers who seek to "bootstrap" interests onto alleged rights of its employees.

KIK HOLDCO COMPANY INC.; UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS); OLRB File No: 2875-19-R; Dated May 4, 2020; Panel: Paula Turtle (13 pages)

Displacement Application for Certification – Trade Union Status – Applicant had not previously been found by the Board to be a trade union within the meaning of section 1(1) of the *Labour Relations Act* – Trade union status established – Documents filed by the applicant demonstrated that it had met the five-step test outlined in *Local 199 U.A.W. Building Corporation*, [1977] OLRB Rep. July 472, prior to the filing of its application – Any technical defects in the forming of a relationship between an applicant and an affiliate cannot serve to defeat a finding of trade union status where the applicant has established that it meets the criteria for that status.

OTTAWA REGIONAL HOSPITAL LINEN SERVICES INC.; RE: OTTAWA REGIONAL HOSPITAL LINEN SERVICES EMPLOYEE'S UNION – CSN / SYNDICAT DES TRAVAILLEUSES ET TRAVAILLEURS DE L'OTTAWA REGIONAL HOSPITAL LINEN SERVICES – CSN; RE: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 3931; OLRB File Nos. 3418-19-R, 3419-19-R, 3420-19-R, 3421-19-R; Dated May 19, 2020; Panel: Michael McCrory (10 pages)

Application for Certification – Video Hearing – Request for Reconsideration – Board issued a decision requiring that the application continue by way of a video hearing – Employer wrote to the Board with its objections – While the essence of the Employer's objections had already been considered, the Board was willing to make a "slight deviation from the usual principle" on reconsideration that the Board does not entertain re-argument of (or arguments that could have been made at) the original hearing – As a result of the pandemic, sources may not previously have been available and there was "an ever evolving process" – Board possesses jurisdiction to require an application to proceed by way of virtual hearing – Employer's security concerns should be abated by upgrades to technology, and while problems may occur, the chances of occurrence were relatively small – Proceeding by video hearing was consistent with the Board's decision in *Blythwood Homes Inc*., 2020 CanLII 30888, and with the Board's newest Information Bulletin No. 37 on "Video Hearings".

BERKIM CONSTRUCTION INC., BERKIM GROUP INC., AND BERKIM HOLDINGS LIMITED.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB File No. 0029-19-R; Dated May 19, 2020; Panel: Maurice A. Green (7 pages)

COURT PROCEEDINGS

Applicant sought judicial review of three Board decisions – In the November 2018 Board Decision, the Board rejected the Applicant Union's allegation that the Respondent Employer's refusal to provide the Master Service Agreement ("MSA") was a violation of section 70 of the *Act* and determined that the allegations with respect to section 17 of the *Act* were premature – In the December 2018 Board Decision, the Board determined that the refusal to provide certain portions of the MSA violated section 17 of the *Act* and ordered partial disclosure – In the January 2019 Board Decision, the Board rejected a request by the Applicant to disclose one further provision of the MSA – Applicant alleged that all three Board decisions were unreasonable– Divisional Court held that reasonableness is the appropriate standard of review for all three decisions – Court held that the Board's conclusion that refusing to disclose the MSA is not a violation because the MSA is not information pertaining to particular employees and does not form part of the collective agreement was reasonable - Divisional Court held that the Board's conclusion in the November 2018 Decision that the section 17 application was premature was reasonable because the parties had not exchanged proposals was reasonable – Divisional Court found that the Board reasonably decided that it should consider the scope of the duty to bargain in good faith, and the disclosure required, in light of the bargaining demands of the employer – The Divisional Court also held that the December 2018 decision was reasonable as the Board followed its established jurisprudence – The Divisional Court concluded

that in the circumstances of the timeline of the Union's request with respect to further disclosure the Board's acceptance of Employer Counsel's as to the content of the disputed materials was reasonable – Application Dismissed.

THE SOCIETY OF UNITED PROFESSIONALS V. **NEW HORIZON SYSTEM SOLUTIONS**; 2020 ONSC 3153; Dated May 20, 2020; Panel: Swinton J., Penny J. and Kristjanson J. (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
Aluma Systems Inc. Divisional Court	2739-18-JD	Pending
Anthony Hicks Federal		
Capital Sports & Entertainment Inc. Divisional Court No. DC-20-2593	1226-19-ES	Pending
Rochelle Sherwood Divisional Court No. 074/20	1551-19-U 1557-19-UR	Pending
Joe Mancuso Divisional Court No. 28291/19 **(Sudbury)**	2499-16-U – 2505-16-U	Pending
Abdul Aziz Samad Divisional Court No. 019/20	3009-18-ES	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
Audrey Thomas Divisional Court No. 436/19	2508-18-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
Kuehne + Nagel Ltd. Divisional Court No. 393/19	0433-18-R	Pending
Todd Elliott Speck Divisional Court No. 371/19	1476-18-U	Adjourned due to pandemic
New Horizon Divisional Court No. 264/19	0193-18-U	May 7, 2020
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	Adjourned due to pandemic
Hector Yao Divisional Court No. 063/19	1841-18-ES	Dismissed
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic

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Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
Deloitte Restructuring Inc. Divisional Court No. 238/18	2986-16-R	November 18, 2019
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Adjourned due to pandemic
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	October 21, 2019
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