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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 August of this year. These decisions will appear in the July/August 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.

Application for Termination of Bargaining Rights – Electronic Voting – Applicant and Employer requested an in-person vote; Union requested electronic vote – Concern expressed that employees would have difficulty casting ballot in electronic vote as many did not have computers and spoke English as a second language – Employer submitted, notwithstanding pandemic, employees were attending at work and workplace was large enough to accommodate a vote – Board experience with electronic voting has been positive, both in voter turnout rates and voting procedures – Ballots could be cast by telephone and outside of working hours – Board's helpdesk available where employees can receive assistance in voting process – Board ordered electronic vote with extended help desk hours.

RATAN KUMAR DEY; RE: UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175; OLRB Case No: 1155-20-R; Dated August 25, 2020; Panel: Matthew R. Wilson (3 pages)

Certification – Construction Industry – Jurisdiction – Board determined threshold issue of whether any portion of CNL's undertaking was provincially regulated giving Board jurisdiction to process application for certification – CNL's core function is to operate, maintain and decommission nuclear facilities owned by federal Crown corporation AECL – Board determined that there was direct federal jurisdiction over CNL's labour relations as its work, business or undertaking's essential operational nature brings it within a federal head of power – Application dismissed.

CANADIAN NUCLEAR LABORATORIES LTD.; RE: CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS); RE: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71; RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586;OLRB Case No: 2904-16-R; Dated August 17, 2020; Panel: Yvon Seveny (45 pages)

Certification – Construction Industry – Maintenance – Board determined work performed on date of application was construction work, and whether work was construction labourers' work –

Employer used infrared technology to remediate surface defects to extend the cycle of asphalt surfaces – On date of application, Board noted: work was not done as part of a program of regular/ routine maintenance, significant amounts of material were added and removed during the work, work restored waterproofing of asphalt, equipment and tasks were commonly associated with construction projects – Work performed was construction and not maintenance work – Certificates issued**.**

INFRARED PAVEMENT REPAIR CORPORATION; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB Case No: 0664-19-R, 0863-19-R; Dated August 6, 2020; Panel: Jack J. Slaughter (21 pages)

Certification Application – Construction Industry – **Tribunal Adjudicative Records Act -** During exchange of submissions on status disputes, Employer requested a copy of Form A-74, Declaration Verifying Membership Evidence, that Union had filed in support of application – Request made pursuant to *Tribunal Adjudicative Records Act, 2019* – Board's longstanding practice not to provide employers with Form A-74 at this stage of proceedings – Section 2(1) of *TARA* requires a tribunal to make "those adjudicative records in its possession that relate to proceedings" commenced after *TARA* "comes into force available to the public" – Board concluded, at least at status dispute stage of proceedings, Form A-74 was not an "adjudicative record" as defined by *TARA* – Request dismissed – Application continues.

CALIBER STRUCTURES LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB Case No: 2642-19-R; Dated August 31, 2020; Panel: Bernard Fishbein (24 pages)

Employment Standards Act – Application for Review – **Video Hearing –** Employer requesting in-person hearing, objecting to proceeding by video hearing – Board noted that since March 2020 proceedings had been conducted by video on regular basis – Despite announcement that Board would consider requests for in-person hearings, presumption remains that hearing proceed by video – No compelling or specific reason for an in-person hearing advanced – Employer request denied – Matter continues.

DR. SORIN BOERIU DENTISTRY PROFESSIONAL CORPORATION; RE: DANIELLA BONNELL; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No: 3198-19-ES; Dated August 25, 2020; Panel: Matthew R. Wilson (3 pages)

Jurisdictional Dispute – Construction Industry – Rules of Procedure – Board considered a brief filed well in excess of the 20-page limitation under Rule 28.7 of Board's Rules of Procedure – Board noted that, while it has no desire to count pages or measure briefs with a ruler, page limitation was imposed to curb unduly lengthy briefs in jurisdictional disputes – Board noted written briefs were intended to expedite jurisdictional dispute process – Brief amended – Matter continues.

CTS (ASDE) INC; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: CROSSLINX TRANSIT SOLUTIONS CONSTRUCTORS; RE: SONCIN CONSTRUCTION CORPORATION; RE: CARPENTERS' AND ALLIED WORKERS, LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: HEAVY CONSTRUCTION ASSOCIATION OF TORONTO; OLRB Case No: 0829-19-JD; Dated August 17, 2020; Panel: Bernard Fishbein (xx 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
Paul Gemme Divisional Court	3337-19-U	Pending
Fortis Construction Group Inc. Divisional Court	1638-17-R	Pending
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

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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
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