

*H*ighlights Ontario Labour Relations Board

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

June 2023

NOTICE TO COMMUNITY

The Board Welcomes New Vice Chairs

Full-Time

Mireille Giroux was called to the Ontario Bar in 2013 and has spent her entire career at a prominent union side law firm practicing labour law, mainly in respect of the construction industry. As a practicing lawyer, she regularly appeared as counsel before the Board as well as numerous Arbitrators. Ms. Giroux has also been an adjunct professor at Osgoode Hall Law School where she taught a course on collective bargaining law. She is fluently bilingual in French and English.

Tim Liznick is an experienced labour lawyer who brings a broad range of experience in labour, employment and education law to the Board. A graduate of Queen's University (B.Comm. Hons, MIR) and the University of Western Ontario (LLB), he practiced before various tribunals and courts for over 30 years with a prominent management-side law firm. As a practicing lawyer, he regularly appeared as counsel before the Board.

Part-Time

W. Jason Hanson is a lawyer who was formerly a partner at a major Canadian law firm. A past Chair of that firm's Labour Relations and Employment law group, he represented clients before the Ontario

Labour Relations Board, a wide variety of other employment related tribunals, collective agreement arbitrators, and the courts, including the Ontario Court of Appeal and the Supreme Court of Canada. His practice focussed on labour relations, employment, health and safety and human rights law. He has written on a broad range of employment and labour relations topics and is a co-author of two books on workplace issues. He is a graduate of the University of Toronto (BA) and the University of Windsor (JD).

Allan M. Kaufman holds B.A. and LL.B. degrees from the University of Manitoba, and a Masters of Law degree (B.C.L.) from Oxford University. He practiced employment law in Toronto, primarily representing employees. He also has extensive management experience as Vice President, Legal, for the Canadian subsidiary of the world's largest transportation company. He has served since 1997 as an examiner for Canada's National Committee on Accreditation for foreign lawyers, and as a part-time labour adjudicator for Canada's Ministry of Labour from 2010 to 2020. He was a visiting professor at McGill University and a lecturer at the University of Ottawa law schools. He currently teaches Advanced Business Law at Toronto Metropolitan University.

Brian Mulroney attended Harvard University and the University of Toronto Faculty of Law. He practised law with two prominent employer-side labour and employment firms from 1981 until

2022. He has been a director of a number of charitable agencies in the Greater Toronto Area.

Scott G. Thompson recently retired as a senior partner from a prominent labour and employment law firm and has been regularly recognized as a leading labour and employment lawyer across Canada. He graduated from Dalhousie Law School in 1980 and was in house counsel for the British Columbia Labour Relations Board from 1982 to 1984. In 1991 Scott published the book *Managing Under The Electrical Contractors' Collective Agreement* and has extensive experience in construction industry labour relations, as well as all aspects of labour and employment law.

Paul Young was called to the Ontario Bar in 1984. He practiced exclusively in the labour and employment law field from his call to the bar until his retirement from private practice in 2022. Mr. Young was a partner in a leading labour and employment law firm for over 30 years and acted as the firm's managing partner for eight of those years. During his career, Mr. Young acted for both public and private sector employers, appearing before many labour and employment-related tribunals. He also regularly represented clients at collective bargaining negotiations. Mr. Young holds a law degree from Queen's University and an undergraduate degree from the University of Toronto.

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 – Appropriate Bargaining Unit – Union applied for a bargaining unit consisting of all nurse practitioners (NPs) employed by a particular hospital within the Employer's broader hospital

network – Employer argued that this unit could not be appropriate and that appropriate bargaining unit was all unrepresented NPs employed by the Employer in the broader hospital network – Employer argued that interactions among NPs at different hospitals and mobility, among other things, militated in favour of the broader bargaining unit – Union argued that applied-for unit mirrored the existing RN units, and that the bargaining unit could not include all NPs in any event since there was already a NP bargaining unit at another constituent hospital – Board determined that applied-for unit was appropriate - Level of interchange of NPs between hospitals was not sufficient to cause serious labour relations problems – NPs were not readily mobile from one hospital to another in any event given the specialties of each hospital and NP – Although Employer's proposed bargaining unit could also be appropriate, Union was not required to select the most comprehensive bargaining unit – Certificate issued

ONTARIO NURSES' ASSOCIATION, RE: **UNIVERSITY HEALTH NETWORK**; OLRB Case No. 1302-21-R; Dated May 11, 2023; Panel: Roslyn McGilvery (29 pages)

Duty of Fair Representation – Applicant was not called back for shifts by Employer during pandemic – Applicant contacted Union in March, 2021 and did not receive a call back from the Union – Applicant spoke with Employer in July, 2021 and March, 2022 indicating he could expect to be given shifts – Applicant was never called back for shifts and then contacted Union in June, 2022 for assistance in obtaining severance and vacation pay – Union did not return Applicant's calls or otherwise provide assistance – Application filed in July, 2022 - Applicant argued that Union's lack of action violated duty of fair representation under s. 74 of the Labour Relations Act, 1995 – Union argued that Applicant did not request that Union file a grievance and it was not a violation of s. 74 for it to not do so in the absence of a request –

Union also argued that application should be dismissed for delay – Board concluded there had been no delay, as Applicant reasonably awaited Employer’s and Union’s responses and only filed after there had been no response from the Union – Union’s failure to respond or investigate Applicant’s situation after he contacted it three times constituted violation of s. 74 – No indication that the Union had ever turned its mind to his situation despite his requests for assistance – Remedy remitted to parties

TIMOTHY DODDS, RE: UNITED FOOD AND COMMERCIAL WORKERS’ UNION LOCAL 333 AND G4S/ALLIED UNIVERSAL SECURITY; OLRB Case No. 0752-22-U; Dated May 3, 2023; Panel: Brian Smeenk (10 pages)

Duty Of Fair Representation – UFCW, the Applicant’s union, had entered into an agreement to transfer bargaining rights to SEIU, to the knowledge of the members of the bargaining unit - Applicant’s employment was in jeopardy as a result of workplace issues – Applicant asserted that he had resigned on the understanding that he would receive a favourable ROE – After resignation, Employer said it would issue a ROE reflecting the resignation, contrary to Applicant’s and UFCW’s understanding – Applicant communicated with UFCW to address situation on January 26, 2022 – On January 28, 2022, SEIU sent bargaining unit members, including the Applicant, an update confirming that it would be the new bargaining agent effective February 1, 2022 – After transfer, Applicant emailed both SEIU and UFCW regarding his situation and did not receive a response – Application named UFCW as responding party, and asserted that representative had falsely represented that he could resign and receive an ROE that would not jeopardize his ability to obtain employment insurance benefits – UFCW asserted that it had not made any false representations; that employer had simply failed to abide by the bargain the representative had struck with it - UFCW also took the position that it was no longer the

bargaining agent at the material time and therefore owed no duty to the Applicant – Board concluded that UFCW had made no false statement; employer had simply failed to comply with the verbal agreement reached between it and the representative – UFCW had conducted itself fairly in the circumstances – By the time Applicant requested that a grievance be filed, UFCW no longer represented the Applicant so there could be no violation of the duty of fair representation – Application dismissed

RONALD EYFORD, RE: UNITED FOOD AND COMMERCIAL WORKERS (LOCAL 333); OLRB Case No. 0170-22-U; Dated May 29, 2023; Panel: Michael McCrory (16 pages)

Health and Safety – Reprisal – Remedy – Applicant was terminated for cause and filed application alleging termination was a reprisal contrary to the *Occupational Health and Safety Act* (the “*Act*”) - Board dismissed reprisal allegation in earlier decision and then addressed Applicant’s argument that the Board should consider a lesser penalty pursuant to s. 50(7) of the *Act* – Board considered relevant case law and factors in determining whether or not to lessen penalty – This was not a case where the Applicant did not have a genuine health and safety concern, even though her complaint was ultimately determined to be unfounded, so this was not an aggravating factor – Board found that Employer clearly had just cause to discipline the Applicant but in view of her 30 years’ service and clean record, and the absence of a clear warning to her regarding breaches of policy, the penalty of discharge ought to be lessened – Board noted presumptive remedy in the circumstances would be reinstatement with backpay, and remitted issue of remedy to the parties to resolve – Application granted in part

ROSARIO GALUEGO, RE: WORKPLACE SAFETY AND INSURANCE BOARD.; OLRB Case No. 0214-21-UR; Dated May 4, 2023; Panel: Roslyn McGilvery (11 pages)

Interim Order – Unfair Labour Practice – QSG was bound to collective agreements with the Labourers covering tilesetters and covering carpet and other flooring installers – Carpenters displaced Labourers in respect of the bargaining unit of carpet and other flooring installers – Labourers then advised QSG that it was abandoning its bargaining rights in respect of tilesetters – Labourers also advised builders’ employer bargaining agencies (TRCLB and DRCLB) that QSG was no longer eligible to perform tile work for its members since it was no longer a unionized subcontractor – QSG filed unfair labour practice applications and also sought an interim order that Labourers could not abandon bargaining rights – QSG declared that it was currently involved in nearly 90 projects that would be affected by the abandonment, and that more than 90 installers would lose work as a result – QSG asserted that its business could potentially be permanently damaged - Board considered *NJI* factors, determining that balance of harm, balance of convenience/inconvenience and the apparent strength of the applicant’s case/defence of the responding party were the most relevant factors – Potential harm to QSG was evident and significant, since the legality of it carrying on present or future work for any TRCLB or DRCLB builder was in doubt, which exposed builders to potential damages claims and potential construction delays and disruptions – In contrast, potential harm to Labourers in maintaining bargaining rights pending resolution of unfair labour practices was minimal – Regarding the apparent strength of the parties’ respective cases, Board observed that the case raised novel legal issues regarding a union’s ability to unilaterally abandon bargaining rights – Case raised genuine, albeit novel, issue that could succeed – Balance of harm and convenience/inconvenience weighed heavily in favour of granting interim relief – Board directed that effect of Labourers’ abandonment of bargaining rights was temporarily suspended on an interim basis and directed schedule for litigation of

underlying unfair labour practice application on an expedited basis – Application granted

QUALITY STERLING GROUP, RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB Case Nos. 0313-23-U & 0314-23-IO; Dated May 29, 2023; Panel: Jesse Kugler (17 pages)

Successor Employer – F operated Paradise movie theatre – Union represented projectionists employed by F – Union asserted that P was a successor to F within the meaning of s. 69 of the *Labour Relations Act, 1995* (the “*Act*”) - F ceased operating movie theatre in 2006 – In 2012, theatre building renovated, including removal of projectionists’ room, for the purposes of hosting live events as well as showing films – P incorporated in 2016 and leased Paradise theatre building, reopening theatre in 2019 – P did not purchase any assets of F’s business - In renovated building, films are projected using digital technology rather than film reels – Union argued that P had acquired Paradise Theatre name and goodwill associated with F’s theatre formerly operated in the building – P argued that it had acquired none of the elements of F’s business and in any event the new theatre had no work for projectionists – Board concluded that no vestige of F’s business survived the period of time between 2006 and 2019 – No “dynamic activity” or “economic vehicle” existed to be transferred from F to P – No evidence that the location of the building or the Paradise name constituted goodwill transferred from F to P – Value and importance of any goodwill associated with the name had diminished to nothing by the time P started its operations – P was a business started from scratch – Application dismissed

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL 58,

RE: FESTIVAL CINEMAS INC. OPERATING AS PARADISE CINEMA, AND PARADISE THEATRE ENTERTAINMENT CORP.; OLRB Case No. 2682-19-R; Dated May 29, 2023; Panel: Roslyn McGilvery (24 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
RT HVAC Holdings Inc. Divisional Court No. 131/23	0721-21-R 0736-21-R	October 23, 2023
All Canada Crane Rental Corp. Divisional Court No. 037/23	1405-22-G	September 28, 2023
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Pending
Temporary Personnel Solutions Divisional Court No. 529/22	3611-19-ES	August 23, 2023
Mulmer Services Ltd. Divisional Court No. 504/22	2852-20-MR	June 8, 2023
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
1476247 Ontario Ltd. o/a De Grandis Concrete Pumping Divisional Court No. 401/22	0066-22-U	April 25, 2023
Elementary Teachers' Federation of Ontario Divisional Court No. 367/22	0145-18-U	April 3, 2023
Michael Peterson, et al. Divisional Court No. 003/22	2301-21-R & 0046-22-R	Dismissed
Strasser & Lang Divisional Court No. 003/22	2301-21-R & 0046-22-R	Dismissed
Sleep Country Canada Divisional Court No. 402/22	1764-20-ES 2676-20-ES	June 6, 2023
Capital Sewer Services Inc. Divisional Court No. 280/22	1826-18-R	May 30, 2023
The Ontario Secondary School Teachers' Federation Divisional Court No. 187/22	0145-18-U 0149-18-U	April 3, 2023
Susan Johnston Divisional Court No. 934/21	0327-20-U	Motion for Leave to Appeal to Court of Appeal
Joe Placement Agency Divisional Court No. DC-21-00000017-0000 (London)	0857-21-ES	Pending
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending

Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-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
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	June 27, 2023
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18 Court of Appeal No. C69929	2375-17-G 2375-17-G 2374-17-R	Application for leave to appeal to Supreme Court of Canada
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	Pending
Enercare Home Divisional Court No. 521/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	Application for leave to appeal to Supreme Court of Canada
Ganeh Energy Services Divisional Court No. 515/17 Court of Appeal No. C69933	3150-11-R 3643-11-R 4053-11-R	Application for leave to appeal to Supreme Court of Canada
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sese 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
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending