

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

Construction Industry – Grievance – Settlement

– Union and Employer settled grievance referred to the Board - Employer defaulted on settlement and Union brought application under s. 96(7) of the *Labour Relations Act, 1995* for remedies resulting from default - Employer did not attend hearing and application under s. 96(7) proceeded on a default basis - Board granted remedies sought except for claim for legal costs as provided for under the collective agreement - The collective agreement permitted legal costs to be awarded where the grievance asserted failure to pay wages or make remittances to a trust fund, and where an arbitrator or the Board determined that the Employer had violated the collective agreement in this manner - In this application, the grievance had been settled, so there was no determination by the Board that the Employer violated the collective agreement as required - Request for costs dismissed

INTERNATIONAL UNION OF BRICKLAYERS
AND ALLIED CRAFTWORKERS, LOCAL 7,

RE: **9350-3670 QUEBEC INC. C.O.B. RA MASONRY**; OLRB Case No. 0062-24-U; Dated July 12, 2024; Panel: M. McCrory (5 pages)

Construction Industry – Grievance – Union referred grievance concerning termination of the four grievors - Employer terminated grievors after they left work early, allegedly without permission, and asserted that this was misconduct worthy of termination and that it also constituted an illegal strike - Union asserted that they had been terminated without just cause and contrary to s. 50 of the *Occupational Health and Safety Act* (the “Act”) - Grievors’ immediate supervisor, a sub-foreman, quit part-way through the day, resulting in foreman assuming authority - Some of the grievors had raised health and safety concerns the previous day, which were brought to the sub-foreman’s attention - On the same day the sub-foreman quit, the grievors left work early - Grievors asserted that they had permission from sub-foreman to leave work early and that they did not know that he had quit - Board determined that there was no reprisal contrary to the *Act* - Grievors’ concerns had been addressed promptly by the Employer - There was also no basis for a finding of an illegal strike since all of the grievors had sought and received sub-foreman permission to leave early, and left for that reason, not because they were acting in concert - Employer disputed that sub-foreman had the authority to allow workers to leave early - Board accepted that in general, it appeared that the sub-

foreman had the appropriate authority and had exercised it, but in this case given that he quit on the day in question, the grievors could no longer rely on his permission - Accordingly, they had no permission to leave early and discipline was appropriate - Penalty of discharge was too severe in the circumstances and was inconsistent with progressive discipline - One week's suspension was appropriate for three grievors - Two weeks was appropriate for grievor who responded to termination with extremely intemperate communications to Employer and owner of project - Grievance allowed

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 773, RE: EPTCON LTD.; OLRB Case No. 1756-21-G; Dated July 10, 2024; Panel: T. Kuttner (22 pages)

First Contract Direction – Construction Industry – Union was certified to represent the Employer's carpenters – Employer was the only unionized residential re-roofer in the Thunder Bay area, which was the majority of its work and also carried on other carpentry work – After collective bargaining did not lead to a collective agreement, Union applied for a no-board report – At conciliation, Employer took the position that it would agree to sign on to a local residential agreement but only once the parties agreed to terms and conditions applicable to roofers/nailers – Employer did not propose any terms and conditions applicable to roofers/nailers other than to defer bargaining for them – Employer also sought to have the sole discretion to identify which employees were roofers/nailers – Parties agreed that collective bargaining had been unsuccessful – Employer indicated that it would not agree to any collective agreement applicable to other employees as a means to maintain leverage in respect of the roofers/nailers – Board concluded that Employer had taken an uncompromising position requiring that no issue would be settled until the "roofers/nailers issue" had been resolved, while not proposing any terms and conditions for

roofers/nailers – That position was principally responsible for the failure of collective bargaining – First contract arbitration directed

CARPENTERS' REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: 1778769 ONTARIO INC. O/A STRASSER & LANG; OLRB Case No. 0146-24-FA; Dated July 19, 2024; Panel: D. Rogers (14 pages)

Interim Relief – Remedies – Applicant was constituent member of council of trade unions - Motion passed by council admitting another trade union to the council - Applicant sought interim order suspending the effect of the motion - Applicant argued that change in composition of council would undermine Applicant's representational rights and obligations and cause it irreparable harm - Applicant argued that the other trade union could falsely represent that employers in respect of which it gained bargaining rights would automatically be bound to the accredited collective agreement to which the other trade union was not a party - Board found that harm alleged was too speculative and in any event not irreparable - Application dismissed

BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1, RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: CANADIAN CONSTRUCTION WORKERS' UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, AND MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY; OLRB Case No. 0820-24-IO; Dated July 12, 2024; Panel: M. McFadden (8 pages)

Termination of Bargaining Rights – Unfair Labour Practice – Applicant filed application for termination of bargaining rights - Union asserted

that application had been initiated by Employer - Prior to filing of termination application, Applicant and Employer had had discussions about improving or maintaining terms and conditions set out in the collective agreement - Employer provided employees with a letter promising certain terms and conditions, including certain improvements, if they terminated the Union's bargaining rights - Employer and Applicant argued that it was Applicant's idea to terminate the Union's bargaining rights but that the employees wanted some certainty about what would happen if they did so - Union argued that the Employer's promises constituted "initiation" within the meaning of s. 63(16) of the *Labour Relations Act, 1995* (the "*Act*") and that it had also violated s. 17, 70 and 73 of the *Act* - Board concluded that the letter constituted direct bargaining with employees contrary to s. 70 and 73 of the *Act* - Letter designed to calm discomfort felt by employees if the Union were decertified - Employer facilitated and had significant and influential involvement in the termination application, which constituted "initiation" within the meaning of s. 63(16) of the *Act* - Application dismissed

MAGGIE PREST, RE: UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175; OLRB Case No. 2289-23-R & 2298-23-U; Dated July 8, 2024; Panel: M. Merchant (10 pages)

judicial review, the Employer argued that it was unreasonable for the Board to have accepted the employee's evidence on some points but not on others - Divisional Court found that Board's decision was reasonable - Court held that it was axiomatic that a trier of fact can accept some, none or all of a witness's evidence - Employer made arguments and asked Court to draw inferences that were not argued before the Board - Court concluded that the Board's decision was not unreasonable for failing to consider drawing an inference that was not argued before it - Application dismissed.

A. & F. DI CARLO CONSTRUCTION INC. RE: DARIEL SAUCEDO, DIRECTOR OF EMPLOYMENT STANDARDS and ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 657/23; Dated July 10, 2024; Panel: Sachs, Corbett, Davies JJ. (4 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.

COURT PROCEEDINGS

Judicial Review - Employment Standards - Employer and employee each filed application for review concerning order of Employment Standards Officer directing payment of wages, including standby pay - Employee disputed date on which he had resigned and therefore last date for which he earned wages - Employer asserted that employee was not entitled to standby pay - Board concluded that parties did not agree that employee would forfeit an entire month's standby pay if he refused one call-in - Employee entitled to standby pay and additional wages up to date of resignation - On

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Ahmad Mohammad Divisional Court No. n/a	1576-20-U	Pending
Clean Water Works Divisional Court No. 401/24	1093-21-R	Pending
SkipTheDishes Divisional Court No. 378/24	0019-24-R	Pending
Bird Construction Company Divisional Court No. 363/24	1706-23-G	Pending
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	December 19, 2024
Yan Gu Divisional Court No. 306/24	0994-23-U	December 12, 2024
Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario Divisional Court No. 131/24	2442-22-U	October 31, 2024
A. & F. Di Carlo Construction Inc. Divisional Court No. 657/23	0614-23-ES 0638-23-ES	Dismissed
Errol McHayle Divisional Court No. 013/24	1396-22-U	September 11, 2024
Four Seasons Site Development Divisional Court No. 661/23	0168-17-R	September 25, 2024
Robert Currie Divisional Court No. 365/23	0719-22-UR 1424-22-UR	Dismissed
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Adjourned
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-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	2499-16-U – 2505-16-U	Pending

(Sudbury)

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
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
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