

*H*IGHLIGHTS

Ontario Labour Relations Board

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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 - Employee status - COPE applied for certification for a bargaining unit of employees employed by the responding party IAM - IAM asserted that general chairpersons (“GCs”), who held elected positions under IAM’s constitution and by-laws, were not “employees” within the meaning of the *Labour Relations Act, 1995* (the “Act”) - IAM also argued that their remuneration and working conditions were determined by the constitution and by-laws, and therefore including them in a bargaining unit would interfere with the internal affairs of the IAM and lead to intractable conflict with the constitution and by-laws - IAM also argued that GCs were, to the extent they were employees, employed in a confidential capacity and therefore excluded pursuant to section 1(3)(b) of the Act - Board concluded that nothing in IAM’s internal organization could deprive access to collective bargaining to persons who were otherwise “employees” within the meaning of the Act - Possibility of conflict with pre-certification circumstances of employment between an

employer and employees was not a basis for preventing access to collective bargaining - No suggestion that any future collective agreement could not be reconciled with constitution and by-laws - Board considered a contrary conclusion by the British Columbia Labour Relations Board but concluded that the policy issues motivating that decision were not present in the Ontario statutory regime - Board concluded that the relationship between the IAM and the GCs was indistinguishable from employment - The fact that the GCs were elected did not change this - All of the details of the GCs’ work resembled employment including control and direction of their work, their accountability to IAM, IAM’s ability to lay them off or recall them, application of IAM’s employment policies, provision of benefits, vacation and sick leave - GCs therefore properly included in bargaining unit - Matter continues

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES' UNION, LOCAL 343 (COPE LOCAL 343), RE: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 140 (IAMAW DISTRICT LODGE 140); OLRB Case No. 2533-22-R; Dated May 29, 2024; Panel: Derek L. Rogers (87 pages)

Certification - Interim Certificate - After vote conducted and undisputed ballots counted, union was in a certifiable position and sought an interim certificate - Uncounted ballots mostly cast by

individuals alleged to be managerial by Employer and therefore excluded from the bargaining unit - Union asserted that they should be in the bargaining unit but in any event were numerically irrelevant to the result of the vote - Employer resisted interim certificate on the basis that in order to meaningfully bargain, it would need information from the individuals in dispute and gathering that information might disclose bargaining strategy to the union - Board concluded that it should exercise its discretion to issue an interim certificate - Purpose of an interim certificate is to ensure that there is no unnecessary delay in commencing collective bargaining - Nothing before the Board in this case suggested that meaningful bargaining could not occur despite dispute over first-level supervisors - Employer could gather information without disclosing bargaining strategy - Interim certificate issued

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175, RE: **DELMANOR PRINCE EDWARD INC.**; OLRB Case No. 0022-24-R; Dated May 7, 2024; Panel: Peigi Ross (9 pages)

Construction Industry - Certification - Practice and Procedure - Union applied for certification under s. 128.1 of the *Labour Relations Act, 1995* (the “*Act*”) - Shortly thereafter, Union filed unfair labour practice application primarily relating to terminations of employees - After the resolution of some issues in dispute, many adjournments of hearing dates and resolution of procedural issues, the hearing into the merits of the application commenced - In the course of cross-examination of the Union’s first witness, it became evident to the Union that individuals the Union expected to testify in support of its case were not likely to do so - Union then sought to amend s. 96 complaint to now also seek relief under s. 11 of the *Act*, and to convert the application for certification to a s. 8 application in order to support such relief - Union did not seek a representation vote - Employer opposed conversion, asserting that the Union’s request was

not in response to new-found information but a strategic decision resulting from it not having the support it thought it did - Employer also asserted that passage of time meant that it would experience prejudice - Board allowed amendments - Union has asserted that its inability to call witnesses in support of the certification application is a result of the terminations of the employees - Such a claim is a compelling reason to allow the conversion of the application - Board noted time and resources had been invested into litigation to date but this was not a reason to deny the amendment request - Amendment allowed - Matter continues

CARPENTERS’ DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **NAHANNI CONSTRUCTION LTD.; AND DETON’CHO/NAHANNI CONSTRUCTION LTD.**; OLRB Case Nos. 0962-22-R & 1091-22-U; Dated May 6, 2024; Panel: Danna Morrison (16 pages)

Construction Industry - Grievance - Practice and Procedure - Applicants IBEW CCO and Local 353 jointly referred grievance to Board alleging breach of IBEW/ECAO Principal Agreement relating to residential construction work in the Greater Toronto Area and in Hamilton – Principal Agreement consists of “provincial sections” and Local Appendices - Employer disputed referral on the basis, *inter alia*, that the applicants did not have standing to pursue the grievance – Foundation of Employer’s argument was that the Local Appendices to the Principal Agreement were each separate collective agreements – Board concluded that a plain reading of the Principal Agreement demonstrated that the appendices were not separate collective agreements but documents that supplemented the Principal Agreement – Local Appendix for Local 353 contained terms and conditions governing residential work – For Hamilton work, however, the Local Appendix did not contain terms governing residential work but instead referred the reader to the Local Union office

– The Hamilton Residential Low Rise Agreement was a stand-alone collective agreement – However, while Local 105 had appointed the IBEW CCO as its agent to pursue the grievance, a single referral of a grievance could not pertain to multiple collective agreements – Applicant directed to file a separate referral in respect of Hamilton grievance – Board also dismissed timeliness objection and no *prima facie* case objection to grievance – Matter continues

IBEW CONSTRUCTION COUNCIL OF ONTARIO AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, RE: **SPEEDY ELECTRICAL CONTRACTORS LIMITED**, RE: GREATER TORONTO ELECTRICAL CONTRACTORS ASSOCIATION; OLRB Case No. 2450-23-G; Dated May 1, 2024; Panel: Maheen Merchant (17 pages)

Practice and Procedure - Witnesses - Union made request for photographs and metadata arising from witness's answers during cross-examination - Witness's cross-examination suspended at that point, and witness cautioned to not discuss his testimony with anyone - Documents were produced by Employer to Union as a result of the request, and Union created a supplementary book of documents containing materials produced - Upon resumption of cross-examination, witness disclosed that he had had a brief meeting shortly before hearing resumed with Employer counsel and the Employer, in which he was shown certain photographs from the recent document production to the Union and he gave his "take" on the photographs - Witness stated that he was not asked to discuss any of his testimony to date, was not asked specific questions about the photos and was not told anything about the photos - Union brought motion to strike all of witness's evidence on the basis that it was tainted - Board concluded that caution to witness had been breached - It was evident that the discussion could easily relate to his prior testimony, since the document request arose from his prior testimony -

Relevant Rule of Professional Conduct stated that counsel "ought not" to discuss any issue relating to the case with the witness during cross-examination - Appropriate remedy was not to strike evidence but to allow submissions concerning the weight to be given to it in view of the discussion prior to the resumption of cross-examination - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: **HOMESTEAD LAND HOLDINGS LIMITED**; OLRB Case No. 1928-22-R; Dated May 24, 2024; Panel: John. D. Lewis (15 pages)

Related Employer - Construction Industry - Carpenters filed application under s. 1(4) of the *Labour Relations Act, 1995* alleging that B and TFP constituted a single employer - Parties agreed that B and TFP carried on associated or related activities under common control or direction but did not agree that there had been any erosion or subversion of the Union's bargaining rights - Carpenters had long-standing bargaining rights covering certain of B's construction labourers and B performed significant work on subcontract from TFP - In a settlement of a previous proceeding, TFP agreed that if it performed work for any entity bound to a collective agreement with the Carpenters, it would apply the terms and conditions of that collective agreement - TFP also carried on work on a non-union basis for other entities - TFP later determined that it would self-perform some of the work previously performed by B - LIUNA was certified to represent TFP's construction labourers - B ceased active operations shortly thereafter - Board concluded that there was no labour relations reason to grant the declaration - Nothing in settlement governing Carpenters' relationship with TFP created bargaining rights with TFP or required TFP to subcontract to B - No erosion of bargaining rights - Application dismissed

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF

CARPENTERS AND JOINERS OF AMERICA AND ALLIED CONSTRUCTION EMPLOYEES LOCAL 1030, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **BRAMCOR GROUP (ONTARIO) LTD.**, THE FENCE PEOPLE LIMITED, RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB Case No. 0824-22-R; Dated May 7, 2024; Panel: Jack J. Slaughter (15 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
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	Pending
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	July 10, 2024
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	July 23, 2024
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	(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
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 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
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending