

H Ontario Labour Relations Board **HIGHLIGHTS**

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

May 2024

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in April of this year. These decisions will appear in the March/April 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 – Grievor sustained a workplace injury, which he reported to the Employer and which he addressed by taking a few days off to recover - Upon his return to work, he requested and was eventually assigned light duties - Grievor was then laid off with several other employees - Union asserted that grievor was laid off contrary to the collective agreement, the *Human Rights Code* (the “Code”) and the *Workplace Safety and Insurance Act* (the “WSIA”) - Union also asserted that Employer had failed to properly assess his restrictions, ensure he received medical care, and failed to assign him appropriate duties, and further that it had failed to report the injury as required by the *WSIA* - Employer asserted that the Grievor was laid off due to not being needed on the project to which he had been temporarily loaned, and the Employer had no obligation to re-assign him - Employer also asserted that Grievor had never indicated assigned duties were problematic or that he was experiencing difficulty - Board declined to inquire into alleged violation of *WSIA* - Despite

Board’s jurisdiction to interpret and apply employment-related statutes, the *WSIA* was a comprehensive regime governing the workplace parties’ obligations in cases of workplace injuries and the WSIB had the exclusive jurisdiction to address the Employer’s reporting obligations - Board concluded that Employer had not violated its duty to accommodate - Employer had no obligation to direct the Grievor to seek medical help; Grievor was free to make his own choices in respect of his medical care - Grievor also did not indicate any concern with the accommodations provided by the Employer at the time - Finally, Board found that the Employer had not violated the layoff provisions of the collective agreement by laying off the Grievor - Employer had no obligation to retain the Grievor because he had been employed longer than others in his classification, since it had complete discretion to select employees for layoff within each classification - Employer’s decision to lay Grievor off rather than disrupt existing assignments by reassigning him to a different project was reasonable - Grievance dismissed

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 50, RE:
SCHINDLER ELEVATOR CORPORATION;
OLRB Case No. 1965-22-G; Dated April 19, 2024;
Panel: Jesse Kugler (22 pages)

Construction Industry – Grievance – Union certified to represent Employer’s construction labourers in a number of Board Areas across the

province - Grievance filed by two local unions alleged Employer had failed to comply with accredited collective agreement following certification – Before and after filing of grievances, parties had attempted to bargain a transition period relating to the different geographic areas affected by the certificates – Some local unions agreed to transition agreement but grieving locals did not – Employer defended grievance on the basis that the local unions’ failure to bargain transition agreements was contrary to their duty of fair administration of the collective agreement – Unions brought motion under Rule 41.3 asking Board to dismiss this defence – Board concluded that Unions had not represented that they would enter into a transition agreement but only that they were amenable to discussing one – Unions did not act capriciously or arbitrarily – Board made no finding that the concept of “good faith administration” applied, but assuming it did, it was not violated in this case – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493, RE: **BEACON LITE (OTTAWA) LTD.**, RE: UTILITY CONTRACTORS' ASSOCIATION OF ONTARIO, AND ONTARIO TRAFFIC CONTROL CONTRACTORS' ASSOCIATION; OLRB Case Nos. 1720-23-G and 1929-23-G; Dated April 2, 2024; Panel: Robert W. Kitchen (22 pages)

Construction Industry – Grievance – Union filed grievance asserting that subcontracting of installation of security cameras at construction site to a non-union subcontractor violated collective agreement – Cameras installed for the purpose of providing security while construction is ongoing but will be removed once construction completed – Employer argued that cameras were chattels and not fixtures, and therefore their installation was not work in the construction industry – Union argued that cameras supported construction and temporary nature of installation was irrelevant, and that cameras were affixed to the land and therefore

fixtures – Board concluded that cameras were chattels – Board agreed that temporary vs. permanent distinction did not determine whether or not work was in the construction industry, but was helpful in assessing whether the work involved chattels or fixtures – Cameras were not to become the property of the owner upon completion but were the property of the security contractor, which installed them to assist in carrying out its security functions – Cameras did not add to or restore the facility being constructed – Grievance dismissed

IBEW CONSTRUCTION COUNCIL OF ONTARIO, RE: **ELLISDON CORPORATION**,; OLRB Case No. 1808-22-G; Dated April 2, 2024; Panel: Neil Keating (13 pages)

Unfair Labour Practice – Duty to Bargain – Parties were engaged in bargaining for a renewal collective agreement for two bargaining units - Parties discussed appointing an interest arbitrator - Complaint asserted that parties had agreed to settle the collective agreement by interest arbitration and that Employer’s refusal to do so violated s. 17 of the *Labour Relations Act, 1995* - Union asserted that the parties exchanged names of potential interest arbitrators for the purpose of settling the entire agreement by interest arbitration - Employer asserted that the parties exchanged names solely for the purpose of having an arbitrator issue a consent order once an agreement was reached - Union argued that there would be no need to exchange names solely for the purpose of issuing a consent order - Jurisprudence supported the argument that failing to abide by a commitment to resolve a collective agreement by interest arbitration could constitute bargaining in bad faith - Board determined that there was, in this case, no such commitment - Parties did not agree on what was said in telephone conversations between the parties’ spokespeople - After conversations and agreement on arbitrator, Union sought a no-board report and did not take steps to submit dispute to arbitration for several months after arbitrator agreed to - Although the parties had agreed to an

arbitrator, they did not agree on the arbitrator's role
- No agreement reached that could be the basis for a finding that the Employer had bargained in bad faith - Application dismissed

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 3000, RE: **THE VICTORIAN ORDER OF NURSES FOR CANADA – ONTARIO HASTINGS, NORTHUMBERLAND, PRINCE EDWARD**; OLRB Case No. 1629-23-U; Dated April 8, 2024; Panel: Brian D. Mulroney (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.

Unfair Labour Practice – Interference in Union – Union sought disclosure of the full report of an investigation into a harassment complaint, having been provided only with a summary report – Union asserted that Employer's failure to provide full report violated s. 70 of the *Labour Relations Act, 1995* - Union argued that full report was required to allow Union to fully represent its members and that there was no *bona fide* reason for declining to disclose the report – Employer argued that there was no *prima facie* case that s. 70 was violated by non-disclosure – Board found that the collective agreement specifically addressed the circumstances in which a full investigation report would be disclosed to the Union (i.e., where discipline was imposed) – Union had the information intended to be provided pursuant to the collective agreement to permit it to determine whether or not to file a grievance – S. 70 does not require an Employer to provide the Union with all information relating to an issue it may seek to grieve – Employer's reliance on the collective agreement terms governing such reports was a *bona fide* reason for not disclosing the full report – Application dismissed

QUEEN'S UNIVERSITY FACULTY ASSOCIATION, RE: **QUEEN'S UNIVERSITY AT KINGSTON**; OLRB Case No. 1723-23-U; Dated April 3, 2024; Panel: Timothy P. Liznick (12 pages)

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
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
Bradford West Gwillimbury Public Library Divisional Court No. 611/23	1523-23-FA	September 10, 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	May 1, 2024
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