

H Ontario Labour Relations Board **HIGHLIGHTS**

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Changes

Diane Gee has been appointed Alternate Chair of the Ontario Labour Relations Board and Chair of the Pay Equity Hearings Tribunal, effective August 1, 2008. Diane was a Vice-Chair at the OLRB from 1994 to 2002, and has been in private practice for the past six years. She brings a wealth of experience as adjudicator, as labour relations counsel and as an organizational leader to both institutions. We warmly welcome Diane back to the Board and to her new responsibilities.

Mary Ellen Cummings will, after over ten years as Alternate Chair of the OLRB and Chair of the PEHT, move to part-time status and continue pursuing her already very successful arbitration practice. We take this opportunity to thank Mary Ellen for her invaluable contributions as leader, mentor and colleague, and look forward to the benefit of her wisdom and guidance in her new role.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in June of this year. These decisions will appear in the May/June issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Crown Employees Collective Bargaining Act – Practice and Procedure – Unfair Labour Practice – Witness – The matter involves events that occurred over twenty-five years ago that only came to light recently – The parties asked the Board to first determine whether it had the jurisdiction to hear a complaint that sections of the old CECBA had been breached (assuming the

allegations made out a case, the complaint was timely, and the Board would grant a remedy) – Relying on the *Legislation Act*, the Board found that the complainants' rights came into existence under old CECBA, and its repeal did not affect those rights; new-CECBA repealed the old, such that new-CECBA proceedings were to be followed; and no contrary intention appeared – The Board also noted that rights must be vindicated in some forum and a purposeful analysis leads to the conclusion that the Board's specialized expertise is more appropriate, in these circumstances, than the courts – Accordingly, the Board has the jurisdiction to hear the complaint – Matter continues

GOVERNMENT OF ONTARIO (MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES; RE OPSEU, ROBERT GORDON, MICHAEL MCKINNON, WILLIAM BRADLEY, ROBERT MOREAU, JOE D'ANDREA AND STEPHEN LONSDALE; File No. 0840-07-U; Dated June 9, 2008; Panel: Ian Anderson (9 pages)

Construction Industry – Interim Relief – Jurisdictional Dispute – Practice and Procedure – Strike – Local 793 sought an interim order that would return "flagman" work from Local 506 to its members pending the resolution of the main application – Ellis-Don, which is bound by collective agreements to Local 506, subcontracted work to Metric, which is bound by collective agreements to Local 793, but not Local 506 – Metric assigned the "flagman" work to Local 793 – Local 506 was effective in lobbying Ellis Don to change the work assignment and give it to 506 – The Board found no basis for issuing an interim order simply because the general contractor responsible for the project decided to change the work assignment after one of the unions

adversely affected by the initial assignment was effective in lobbying – On the declarations filed the Board did not find any direct evidence of a threat to engage in a strike, cause a strike or otherwise disrupt the work at the project – Absent the above evidence, and given an explicit and credible denial of any threat having been made, the Board found that an interim order would be inappropriate – Application dismissed; matter continues

METRIC CONTRACTING SERVICES CORPORATION; RE IUOE, LOCAL 793; RE LIUNA, LOCAL 506, ELLIS-DON CONSTRUCTION LTD.; File No. 0452-08-M; Dated June 12, 2008; Panel: Harry Freedman (8 pages)

Duty of Fair Representation – Practice and Procedure – The Board was asked for an Order to remove an agent as representative of the complainants – The Board found the representative was providing legal services in contravention of the *Law Society Act* (he was not licensed, nor exempted from the requirements) – The Board found it had the authority to make the order requested pursuant to its procedural powers and s. 23 of the *SPPA* – The Board noted parties' desires to be represented by the individual of their choice, however this must now be considered in light of the recently enacted paralegal licensing requirements which have changed the landscape – Although the Board recognized there may be circumstances where it might permit such a representative to continue, this case, which had been freshly filed, was not one of them -- Representative removed as agent for complainant

NANCY GULYAS, SYLVIA JOHNSON et al; RE OPSEU AND ITS LOCAL 380; RE MUSKOKA ALGONQUIN HEALTHCARE; File No. 0292-08-U; Dated June 26, 2008; Panel: Brian McLean (4 pages)

Duty of Fair Representation – Practice and Procedure – The Board was asked to order that an agent not be permitted to represent a party before the Board – The Board found that the agent did not meet the recently enacted paralegal licensing requirements, nor did he meet any of the exemptions set out in the Law Society's By-laws – The Board found that it could exercise its discretion to make an order under its procedural powers and s. 23 of the *SPPA* – The Board removed the agent as representative of record in the case before it, but decided at this time not to make a blanket order – The Board did note that continued appearances by an unauthorized individual in new proceedings before the Board or

a failure by the individual to arrange the orderly transfer of existing files to authorized representatives might lead the Board to consider a broader order – Representative removed as agent for complainant

TRACIE JONES; RE OPSEU; RE MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES; File No. 0781-06-U; Dated June 26, 2008; Panel: Ian Anderson (7 pages)

Court Proceedings

Construction Industry Grievance – Judicial Review – The Board found that fire restoration work, performed by IBEW members, was regulated under the Provincial Agreement, rather than the GPMA, since the work was repair rather than maintenance – The Board also found that estoppel did not apply – At the request of the Union, the successful party, the Board issued further reasons – A majority of the court found: the appropriate standard of review to be reasonableness; the Board had the jurisdiction to issue supplemental reasons; that those reasons, while still “far from the thorough and careful reasons that are generally issued by members of this Board,” were adequate; that the Board did not incorrectly define the issues; and that the Board did not err in applying the doctrine of estoppel – The court made it clear that simply because the Board reached a different conclusion in the application of the doctrine of estoppel from the decision of another panel, this did not make the decision unreasonable – Its decision was within the range of reasonable outcomes, given the facts before it – Application for judicial review dismissed

JACOBS CATALYTIC LTD.; RE IBEW, LOCAL 353; THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO, GENERAL PRESIDENTS' MAINTENANCE COMMITTEE FOR CANADA AND THE OLRB; File No. 3737-05-G (Court File No. 117/07); Dated June 4, 2008; Panel: Cumming and Swinton (15 pages); and R. Smith JJ. (8 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
Govin Misir v. S. Lalgudi Vaidyanathan et al Divisional Court No. 566/07	2966-03-ES; 3389-03-ES; 3390-03-ES	Pending
LIUNA v. Barclay Construction et al Divisional Court No. 310/08	0837-06-R	Pending
Solid Gold Inn Divisional Court No. 224/08	3823-07-ES	Pending
LIUNA, Local 183 (PineValley Enterprises) Divisional Court No. 201/08	0910-07-R	Pending
LIUNA, Local 183 (Saddlebrook) Divisional Court No. 201/08	3414-06-R et al	Pending
BCC Constructors v. International Union of Painters Divisional Court No. 138/08	3174-06-R	Pending
Edgewater Gardens Long Term v. OPSEU Divisional Court No. 08-0015	3166-07-R	Pending
Jacobs Catalytic Ltd. v. IBEW Local 353 Divisional Court No. 66/08	2127-05-G; 3437-05-G	Pending
Ottawa Fertility Centre v. Ontario Nurses Association, OPSEU, CUPE Local 4000, Ottawa Hospital and OLRB Divisional Court No. DV-08-1394 OTTAWA	1531-06-PS	Pending
Puri Sons Inc. o/a Tally Ho Manor v. Director of Employment Standards et al Divisional Court No. 30/08	1490-06-ES; 1491-06-ES	Pending
Ottawa-Carleton Public Employees Union (CUPE), Local 503 v. City of Ottawa et al Divisional Court No. 423/07	1386-06-R	Pending
Dev Misir v. Muluneshi F. Agago et al Divisional Court No. 281/07	0769-06-ES	October 2, 2008
Dr. Oliver Bajor v. OLRB Divisional Court No. 258/07	0353-06-ES	Heard May 29, 2008, reserved
Jacobs Catalytic Ltd. v. IBEW Local 353 et al Divisional Court No. 117/07	3737-05-U	Dismissed – June 4, 2008 Seeking leave to C.A.
Dana Horochowski v. OECTA; York Catholic DSB Divisional Court No. 93/07	1115-04-U	October 20, 2008
Janet Kitson v. OLRB et al Divisional Court No. 492/06	4205-02-U	Pending
Abduraham, Abdoulrab v. Novaquest Finishing Divisional Court No. 327/06	2222-04-ES, 2223-04-ES, 2224-04-ES	Dismissed – August 13/07 Seeking leave to C.A.
City of Hamilton v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Pending