

# *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 February of this year. These decisions will appear in the January/February 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](http://www.canlii.org).

**Bar – Certification – Membership Evidence – Voluntary Recognition** – CUPW asked the Board to find that the voluntary recognition agreement between the UWU and the employer was not a bar to the certification – The Board found there was a different and less stringent evidentiary burden to establish representational entitlement pursuant to section 66 than in furtherance of an application for certification – The Board found that neither the fact that the union registration cards were filled in and signed prior to knowledge of who the employer was to be, nor the fact that the employer's name was added to the registration cards once it became known, rendered the membership evidence invalid or improper – The voluntary recognition agreement entered into by the Employer and the UWU was upheld – Application for Certification dismissed

**DISTINCTION SERVICE PLUS INC.; RE CANADIAN UNION OF POSTAL WORKERS (CUPW); RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183**; File No. 1856-06-R; Dated February 8, 2008; Panel: Peter F. Chauvin (6 pages)

**Mediation – Practice and Procedure – Summons** – The Board received a request to

permit a Labour Relations Officer to testify in a civil proceeding (see court ruling under Court Proceedings below) about matters respecting information obtained in the discharge of her duties – The Board reviewed the case law and policy underlying section 117, which requires the consent of the Board before an officer may testify in a civil proceeding, and decided there were no grounds for exercising its discretion to allow the Officer to testify – Consent not granted

**JEREMY WOODCOCK; RE UNITED STEELWORKERS OF AMERICA LOCAL 6571; RE GERDAU AMERISTEEL INC.**; File No. 2526-07-U; Dated February 26, 2008; Panel: Peter Chauvin (5 pages)

**Certification where Act Contravened – Construction Industry – Remedies – Unfair Labour Practice** – The union sought remedial certification claiming the employer had dismissed two union organizers – The dismissals occurred the day immediately before the application for certification was filed – The employer subsequently acknowledged breach of the Act through a letter to all employees and the offer of re-employment to the terminated organizers – The union failed to assert that other employees knew about the unfair labour practice activity prior to the application for certification being filed – The union failed to establish that its inability to demonstrate that forty percent or more of the employees in the bargaining unit appeared to be members of the applicant, at the time the application was filed, was as a result of the Employer's unfair labour practice – The Board refused to order remedial certification where the union failed to take any steps to obtain further membership support after unfair labour practice activity – Remedial

certification will only be considered where the union is initially able to demonstrate a causal relationship between the Employer's unfair labour practice activity and the union's inability to achieve support at the time the application was filed – Application for Certification dismissed – Unfair Labour Practice settled

**K.D. CLAIR CONSTRUCTION LTD., K.D. CLAIR WESTERN INC.;** RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, CJA; File Nos. 2609-07-R; 2661-07-U; Dated February 26, 2008; Panel: Harry Freedman, John Tomlinson, Alan Haward (7 pages)

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**Certification – Construction Industry – Dependent Contractor – Status** – In this application for certification, the Applicant alleged that three individuals, McGowan, Page and Baker were all dependent contractors and therefore employees of Salzburg – The individuals conducted 90 to 100% of their work for Salzburg – McGowan and Page both provided work to Salzburg through business entities and were free to accept and refuse any projects, however, they rarely refused projects from Salzburg – There was very little supervision – The Board found that McGowan was a dependant contractor for the purposes of the *Labour Relations Act* – He was in a position of economic dependence upon Salzburg – Their relationship exhibited the same hallmarks as that of an hourly employee – Conversely, the Board found that Page and Baker were not employees of Salzburg – The evidence clearly showed that Page was the employer of Baker – All direction was provided by Page and not Salzburg – Page was an independent contractor, who had entered into a voluntary agreement with the Applicant and therefore was bound by a collective agreement – Matter continues

**SALZBURG INTERIORS & FURNITURE LTD.;** RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, CJA; File No. 1304-07-R; Dated: February 27, 2008; Panel: Lee Shouldice (14 pages)

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**Damages – Health and Safety – Remedies – Reprisal** – The Board found in an earlier decision that the termination of the employee was not in breach of the OHSA, but occurred as a result of an argument between the president of the company and the employee – The Board discusses the policies underlying its discretion under s. 50(7), where it finds just cause to discipline, to substitute a penalty that seems just and reasonable in the circumstances – Since his employment was not subject to a collective

agreement and he had no Employment Standards entitlements, the Board found that the employee's remedial position should be no better than if he pursued a claim for breach of contract of employment at common law – The Board, however, declined to exercise its discretion to award damages (which it found to be one month) since there was no evidence that the employee had any health and safety concerns or had exercised rights under the Act – Application dismissed

**TRI-GREEN CONSTRUCTION INC.;** RE DARRYL HICKEY; File No. 2570-05-OH; Dated February 28, 2008; Panel: Ian Anderson (5 pages)

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## Court Proceedings

**Duty of Fair Representation – Judicial Review** – The Board had dismissed four duty of fair representation complaints by the applicant against his union – The court found that the standard of review was patent unreasonableness and that the Board's decisions not only met that test, but were all correct – Application dismissed

**GRANTLEY, HOWELL;** RE UNITED STEELWORKERS OF AMERICA, LOCAL 7135; OLRB; File Nos. 3552-00-U; 0933-01-U; 1271-01-U (Court File No. 04/178); Dated April 13, 2006

Leave to Appeal to Supreme Court of Canada Dismissed; Dated February 28, 2008; Panel: Binnie, LeBel, Deschamps

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**Mediation – Practice and Procedure – Summons – Superior Court of Justice (Small Claims Court)** – The Board brought a motion to quash a summons issued to a Labour Relations Officer to testify in a civil proceeding – The Court found that s. 117 was clear on its face—without the Board's consent the officer can not be made to testify regarding things done or not done in the course of their employment – The Board had refused to grant its consent and that decision (see above) was before the Court – Motion granted

**WOODCOCK, JEREMY WILLIAM;** RE RONALD GOODCHILD; Small Claims Court File No. 49281/07; Dated February 28, 2008; Panel: V. Hazlett Parker (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, 7<sup>th</sup> Floor, 505  
University Avenue, Toronto.

## Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
<b>Ottawa Fertility Centre</b> v. Ontario Nurses Association, OPSEU, CUPE Local 4000, Ottawa Hospital and OLRB Divisional Court No. DV-08-1394	1531-06-PS	Pending
<b>Puri Sons Inc. o/a Tally Ho Manor</b> v. Director of Employment Standards et al Divisional Court No. 30/08	1490-06-ES; 1491-06-ES	Pending
<b>Ottawa-Carleton Public Employees Union (CUPE), Local 503</b> v. City of Ottawa et al Divisional Court No. 423/07	1386-06-R	Pending
<b>Dev Misir</b> v. Muluneshi F. Agago et al Divisional Court No. 281/07	0769-06-ES	Pending
<b>Dr. Oliver Bajor</b> v. OLRB Divisional Court No. 258/07	0353-06-ES	Pending
<b>Jacobs Catalytic Ltd.</b> v. IBEW Local 353 et al Divisional Court No. 117/07	3737-05-U	Heard January 10 & 11, 2008, reserved
<b>Dana Horochowski</b> v. OECTA; York Catholic DSB Divisional Court No. 93/07	1115-04-U	Pending
<b>Janet Kitson</b> v. OLRB et al Divisional Court No. 492/06	4205-02-U	Pending
<b>Johnson Controls Ltd.</b> v. Brookfield Lepage Divisional Court No. 406/06	1634-04-R	Adjourned – sine die
<b>Abduraham, Abdoulrab</b> 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.
<b>City of Hamilton</b> v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Pending
<b>Gus Nedelkopoulos v. OLRB</b> Divisional Court No. 78978/06 NEWMARKET	1838-05-U 2644-05-U	March 10, 2008
<b>Maystar General Contractors Inc.</b> v. IUPAT, Local 1819 Divisional Court No. 481/06 Court of Appeal No. C47489	0812-06-R	Court of Appeal March 25, 2008
<b>Grantley Howell</b> v. USWA SCC No. 32411	3552-00-U; 0933-01-U; 1273-01-U	Leave to SCC dismissed February 28, 2008
<b>Mississaugas of Scugog Island</b> v. CAW-Canada SCC No. 32452	1271-03-U; 1336-03-M; 1414-03-M	Seeking leave to SCC