ISSN 1712–4506 (Online)

Ontario Labour Relations Board HIGHLIGHTS

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October 2020

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in September of this year. These decisions will appear in the September/October 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.

Application for Certification – Construction Industry – Jurisdiction – Employer argued it was subject to federal, not provincial, jurisdiction – While Employer agreed it performed construction services, and employed several traditional construction trades, it argued derivative constitutional jurisdiction, namely that it was subject to federal jurisdiction because it was engaged in design, deployment, modernization and maintenance of the telecommunications network for Bell Canada – Board held binding authority on the issue was the decision of the Ontario Court of Appeal in *Ramkey v. Labourers International Union of North America et al.*, 2019 ONCA 859 (leave to appeal denied by the Supreme Court of Canada, 2020 CanLII 32276) – Bell's federal undertaking was not dependent on Employer's construction employees – Contracts were not exclusive and several companies performed the same type of work for Bell – there was no intermingling between employees of Bell and of the Employer – Specializing in telecommunications work was a decision solely of the Employer – Employer cannot escape Ontario construction laws by choosing to work solely for federal telecommunications undertakings – Employer fell within provincial jurisdiction - Certificate Issued.

TRJ TÉLÉCOM INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB Case No: 2082-16-R; Dated: September 14, 2020; Panel: Geneviève Debané (13 pages)

Application for Certification – Construction Industry – Request for Reconsideration – Board issued a certificate to the Carpenters – Painters subsequently filed a request for reconsideration and an intervention – Employer was obligated to, but did not, provide a copy of the Carpenters' certification application to the Painters – Representations made by Employer in its response to the certification application did not constitute proper notice of that application to the Painters, did not clearly disclose the bargaining unit sought by the Carpenters, and did not clearly identify Employer's position that even if the Painters, at one point held residential bargaining rights for Employer's painters and drywall tapers, it had abandoned those rights – Board reconsidered its decision on the basis that there were new facts that had come to light which were previously unknown to the Painters, namely the scope of the bargaining unit sought by the Carpenters – Painters had been denied opportunity to make representations concerning its pre-existing bargaining rights –

Important policy matter raised, namely that parties to certification applications cannot acquire, or seek to acquire, bargaining rights that were not open to being obtained because they were held by another union – Certificate revoked – Intervention granted – Matter continues.

SBT CONSTRUCTION LTD.; CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; OLRB Case No: 0664-20-R; Dated: September 28, 2020; Panel: John D. Lewis (12 pages)

***Occupational Health and Safety Act* – Suspension of an Order –** Employer ordered take every precaution reasonable in circumstances to protect workers that were unable to maintain 2m physical distancing from the hazard of COVID-19 exposure – Employer seeking suspension of order – Board noted consistently applied criteria for assessing suspension requests, including: whether the suspension of the order would endanger worker safety; the relative prejudice accruing to the parties from the suspension or lack of the suspension of the order; and whether the applicant has made out a strong *prima facie* case for the appeal of the order – Board concluded a suspension of the order would likely endanger worker safety, and that Employer had failed to persuade Board it had a strong *prima facie* case, having regard to the precautionary principle set out in *Inovata Foods Corp.*, 2020 CanLII 49519 (ON LRB) – Suspension application dismissed – Appeal continues.

STE. ANNE'S COUNTRY INN AND SPA; RE: A DIRECTOR UNDER THE *OCCUPATIONAL HEALTH AND SAFETY ACT*; OLRB Case No: 1098-20-HS; Dated September 1, 2020; Panel: Matthew R. Wilson (5 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
Paul Gemme Divisional Court	3337-19-U	Pending
Fortis Construction Group Inc. Divisional Court	1638-17-R	Pending
Aluma Systems Inc. Divisional Court	2739-18-JD	Pending
Anthony Hicks Federal		
Capital Sports & Entertainment Inc. Divisional Court No. DC-20-2593	1226-19-ES	Pending
Rochelle Sherwood Divisional Court No. 074/20	1551-19-U 1557-19-UR	Pending
Joe Mancuso Divisional Court No. 28291/19 **(Sudbury)**	2499-16-U – 2505-16-U	Pending
Abdul Aziz Samad Divisional Court No. 019/20	3009-18-ES	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
Audrey Thomas Divisional Court No. 436/19	2508-18-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
Kuehne + Nagel Ltd. Divisional Court No. 393/19	0433-18-R	Pending
Todd Elliott Speck Divisional Court No. 371/19	1476-18-U	November 18, 2020
New Horizon Court of Appeal No. C68664	0193-18-U	Pending
Doug Hawkes Divisional Court No. 249/19	3058-16-ES	Pending
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Adjourned due to pandemic

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Hector Yao Divisional Court No. 063/19	1841-18-ES	Dismissed
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
Deloitte Restructuring Inc. Divisional Court No. 238/18	2986-16-R	November 18, 2019
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	Adjourned due to pandemic
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Pending
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	October 21, 2019
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
Kognitive Marketing Inc. Divisional Court No. 51/15 **(London)**	0621–14–ES	Pending
Valoggia Linguistique Divisional Court No. 15–2096 **(Ottawa)**	3205–13–ES	Pending