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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 January of this year. Some of 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.

Jurisdictional Dispute – The IBEW argued that the relocating, hanging and plugging of portable strings of lights to provide temporary illumination in an exhaust flue had been incorrectly assigned to the Boilermakers (who were installing a gas reduction system in the flue) – The Board, applying the traditional criteria, found that stringers are generally moved by the trades that use them – The Boilermakers were properly assigned the work

BABCOCK & WILCOX INDUSTRIES LTD., IBEW CONSTRUCTION COUNCIL OF ONTARIO; RE BBF, LOCAL 128; File No. 1234-03-JD; Dated January 12, 2004; Panel: David A. McKee (10 pages)

Constitutional Law – Duty of Fair Representation – The applicant complained that his union failed to represent him fairly when it refused to pursue a job placement grievance – The Board found that the work in question, security services at a Canada Immigration Holding Centre, was an integral part of a federal undertaking, therefore the Board lacked jurisdiction to entertain the complaint – Application dismissed

BHAGAT RAM MEHMI; RE UFCW; RE GROUP 4 FALCK; File No. 1717-03-U; Dated January 6, 2004; Panel: Brian McLean (7 pages)

Certification – No *Prima Facie* Case – Representation Vote – Unfair Labour Practice – The CAW applied for certification with respect to a bargaining unit of the incumbent UFCW at the employer's Brampton location (for more details on this matter see: [2002] OLRB Rep. Nov./Dec. 1008) – The UFCW filed an unfair labour practice complaint against the CAW and the employer who both sought to have the complaint dismissed for failing to disclose a *prima facie* case – The UFCW engaged in a lawful strike at the employer's Cobourg facility and set up informational pickets at other locations – The employer charged the UFCW with illegal strike action at the secondary sites (the matter was settled at the Board) – Immediately after the settlement, the UFCW allege that the CAW was allowed onto the employer's Brampton facility to conduct an organizing campaign (allegedly with the employer's *imprimatur*) – The CAW won an overwhelming majority in the representation vote – The Board found that the UFCW was unable to particularlize the allegations of employer complicity in the CAW drive for membership – There was no overt evidence that the employer had in any way provided support for the CAW's campaign – The UFCW also took issue with various aspects of the conduct of the representation vote, but the Board held that there were no improprieties to suggest that the employees' true wishes were not reflected in the vote result – Motion granted – Unfair labour practice complaint dismissed – Certificate issued to CAW

COCA-COLA BOTTLING COMPANY; RE CAW-CANADA; RE UFCW, LOCAL 175; File Nos.

2527-03-R; 2546-03-U; Dated January 29, 2004; Panel: Christopher J. Albertyn (11 pages)

Construction Industry Grievance – Discharge – The union grieved the discharge of an employee working for Comstock at the Bruce Nuclear Facility – The evidence revealed that the employee had been terminated for two violations of the absolute prohibition against chewing gum in the workplace – An agreement between the union steward and the employer representative changed the termination to a lay-off and permitted the employee to retain the ability to work at the facility with a different employer – The Board held that in this instance the matter was settled at the workplace and a higher level of the union could not overrule the settlement and file a grievance – Application dismissed

COMSTOCK CANADA LTD.; RE IBEW, LOCAL 804; File No. 2552-03-G; Dated January 30, 2004; Panel: Christopher J. Albertyn, G. Pickell, A. Haward (4 pages)

Construction Industry Grievance – The applicant trade union grieved the use of a non-unionized company for the delivery of ready mix concrete to various phases of building construction on a site – The issue focussed on whether the drivers in question were delivering materials to be used in construction rather than being engaged in construction – The Board noted the union's concession that sometimes drivers employed by unionized ready mix companies are treated by the applicant as engaged in work outside the construction industry when performing the same work as at issue here – The Board held the drivers' work was not construction – Application dismissed

ELLIS-DON CORPORATION; RE TEAMSTERS LOCAL, UNION NO. 230; RE TEAMSTERS' EMPLOYER BARGAINING AGENCY; File No. 1683-03-G; Dated January 19, 2004; Panel: Caroline Rowan, John Tomlinson, A. Haward (11 pages)

Duty of Fair Representation – Practice and Procedure – In this duty of fair representation complaint, the responding trade union complained that the intervenor employer was refusing to release the union's representative from work to attend a settlement meeting with a Labour Relations Officer – The union sought an order from the Board directing the Officer to issue a summons to witness to the union representative – Without ruling on the possibility or propriety of such an order, the Board held that to compel a witness to attend might compromise the parties' commitment to the mediation process

COREY F.M. GUMIENY; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 324; VOYAGEUR PANEL; File No. 2750-03-U; Dated January 30, 2004; Panel: Patrick Kelly (2 pages)

Discharge – Practice and Procedure – Unfair Labour Practice – The applicant sought to challenge his termination from the employer – The employer argued that the applicant's trade union had earlier filed and withdrawn an application for certification as well as an unfair labour practice complaint relating to the same circumstances – The Board found that the applicant had independent status to bring his own complaint, and the fact that he waited until the withdrawal of the union's application did not make his complaint untimely – The Board narrowed the grounds on which the application could proceed and referred the matter for further processing

MILLER TRANSIT LIMITED; RE JONATHAN HELE; File No. 1939-03-U; Dated January 29, 2004; Panel: Caroline Rowan (3 pages)

Duty of Fair Representation – The applicant complained that she had been denied retroactive pay because the union had failed to advance her interests in the settlement of a group grievance – The Board found that a union steward had issued a "negative option" letter to bargaining unit members, advising them of the grievance and stating they did not have to do anything to become part of the grievance – The applicant received the letter and did nothing, expecting to be included in the resolution of the group grievance – The existence of the negative option letter was not communicated to the union representative who subsequently settled the grievance – The Board found this omission fatal to the union's case: the careless disregard for the consequences of the letter was viewed as gross negligence on the union's part – Application allowed

QUESNEL, EDITH T.; RE OPSEU; MINISTRY OF THE ATTORNEY GENERAL; File No. 3097-02-U; Dated January 7, 2004; Panel: Caroline Rowan (6 pages)

Representation Vote – Termination – A representation vote was held at a time when the

responding party trade union alleged many of its more senior members were absent from the workplace because of Christmas holidays (December 29, 2003) – The union sought a second vote – The Board outlined the quick vote system introduced by Bill 7 and held that there were no exceptional circumstances in this case to warrant departing from the usual practice of votes within five days of receipt of the application – Application allowed, bargaining rights terminated

RO-NA INC.; RE DAVID D. SMALL ET AL; TEAMSTERS LOCAL UNION 91; File No. 2963-03-R; Dated January 19, 2004; Panel: Christopher J. Albertyn, J.A. Rundle, R.R. Montague (3 pages)

Construction – Jurisdictional Dispute – The Labourers disputed the employer's assignment to the Carpenters of general tending work performed in conjunction with the erection and dismantling of scaffolding – The Labourers challenged the extent to which the Board could rely on previous findings and decisions in other cases – The Board held that, given the nature of jurisdictional disputes, there are sound labour relations policy reasons, grounded in the Act, for such reliance – Furthermore, the Labourers were parties to a significant number of the earlier decisions and they were vigorous participants in that litigation – After canvassing the traditional criteria applicable in these disputes, the Board held that there was too little general tending work to warrant the retention of Labourers on these particular jobs – The assignment had been properly made - Application dismissed

TOTAL SUPPORT SERVICES LTD. AND CJA, LOCAL 1256; RE LIUNA, LOCAL 1089; File No. 0981-03-JD; Dated January 16, 2004; Panel: David A. McKee, John Tomlinson, Alan Haward (22 pages)

Employment Standards – No *Prima Facie* Case – Timeliness – When the applicant sought relief under the *Employment Standards Act, 2000* almost two years after her discharge, the employment standards officer ruled he had no jurisdiction to order recovery of money outside of the time limits in the statute – The Board held it had no greater powers in these circumstances than the ESO and it exercised its discretion pursuant to Rule 46 to dismiss the application for review without a hearing – Application dismissed

SALON JIE AND DIRECTOR OF EMPLOYMENT STANDARDS; RE RAFFAELLA GRACE FABIANO; File No. 2755-03-ES; Dated January 12, 2004; Panel: Jack J. Slaughter (2 pages)

Duty of Fair Representation – The applicant alleged her union violated s. 74 of the Act when it failed to negotiate a rescission of her resignation – The employer and the trade union had entered into a reduced collective agreement when the store was about to be transformed into a discount operation – Under the new agreement the complement of full-time employees would be reduced with a buy-out and only twenty FTEs remaining (the applicant was 27th on the seniority list) – The applicant, citing confusion and uncertainty, chose the buyout but shortly thereafter changed her mind and asked the union to approach the employer on her behalf – The union argued it would re-open negotiations for all employees but not selected individuals – The Board found the applicant had voluntarily resigned from her position and there was no possibility that the union could grieve against the employer – Application dismissed

TURCOTTE, LISE; RE NORTHERN ONTARIO JOINT COUNCIL OF THE RWDSU DISTRICT COUNCIL OF THE UFCW AND LOEB CANADA INC.; File No. 2311-03-U; Dated January 28, 2004; Panel: David A. McKee (5 pages)

COURT PROCEEDINGS

Constitutional Law – Interim Relief – Judicial Review – Stay – Unfair Labour Practice – In further court appearances involving these parties (see: [2003] OLRB Rep. Nov./Dec. for a recitation of earlier motions), the First Nation sought to stay the proceedings of the Board and to have the application turned into a trial, and the employer, Great Blue Heron Gaming Company, sought to stay the proceedings of both the Board and the First Nation Dbaaknigewan (the First Nation's labour tribunal) – The Attorney General of Canada sought to have the application for judicial review quashed – The Court held that although the applicants raised a serious issue, they did not meet the tests for irreparable harm – Further, the Court held that the Board had properly exercised its jurisdiction to determine the constitutional issues, thus the balance of convenience favoured the implementation of the Board's orders – Motions for a stay denied, motion for a trial denied - The motion of the Attorney General was deferred to the panel hearing the application

MISSISSAUGA OF SCUGOG ISLAND FIRST NATION; RE NATIONAL AUTOMOBILE, AERO-SPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 444, GREAT BLUE HERON GAMING COMPANY, OLRB; File Nos. 1271-03-U; 1336-03-M; 1414-03-M (Court File Nos. 07/04 and 10/04); Dated January 22, 2004; Panel: MacFarland J. (8 pages)

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Some of 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 Library, now located on the 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
James Andrew Gerrie v. Ms. Charlotte Budd and Vice-Chair Timothy Sargeant Divisional Court File No. 2/04	2290-00-U	Pending
Great Blue Heron v. Mississaugas of Scugog Island First Nation et al Divisional Court File No. 7/04	1271-03-U; 1336-03-M; 1414-03-M	Pending Motion for stay denied – Jan. 22/04
Mississaugas Scugog Island First Nation v. Great Blue Heron et al Divisional Court File No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Pending Motion for stay denied – Jan. 22/04
Elementary School Teachers' Federation v. OSSTF, Dist. 14 Kawartha Pine Ridge DSB et al Divisional Court File No. 17/04	0797-01-JD	Pending
Canadian Pacific Railway Co. v. Milk & Bread Drivers, Dairy Employees, Caterers, Local 647 Divisional Court File No. 9/04	2864-03-R	Pending
Labourers' International Union of North America, et al v. **Universal Workers Union**, et al Divisional Court No. 22/04	2320-03-M 2049-03-U	Pending
City of Hamilton v. OPSEU Divisional Court No. 03-156-DV - HAMILTON	0185-03-U	Pending
Cecilia Collier v. TTC Divisional Court File No. 706/03	0632-02-U	Pending
Electrical Power Systems Construction Association and **Comstock Canada Ltd.** v. Sheet Metal Workers' International Association, Local 30 Divisional Court File No. 679/03	1894-02-G	Pending
Dawit Tuquabo v. USWA L 9597, Securitas Canada Ltd. Court File No. 03-DV-000935 – OTTAWA	2377-02-U	Pending
Slavtcho Petrov Detchev v. OLRB, Ministry of Labour, **Canadian Feed Screws Mfg. Ltd**. Divisional Court File No. 618/03	2701-00-ES	Pending – Mar. 30, 2004
Director of Employment Standards v. William Brown**, North York Chevrolet Oldsmobile Ltd**. Divisional Court File No. 559/03	2235-02-ES	Pending – Apr. 2, 2004
Thyssen Elevator Ltd. cob as Thyssenkrupp Elevator v. National Elevator & Escalator Assoc., Int'l Union of Elevator Constructors Divisional Court File No. 410/03	2087-01-U	Pending
Girotti St. Catharines Ltd. v. Millwrights Union Local 1007 Divisional Court File No. 368/03	3060-02-G	Pending – Mar. 9, 2004
Teamsters, Chemical, Energy and Allied Workers, Local Union 1880 v. **Dominion Colour Corp**. Divisional Court File No. 391/03	0425-02-U	Pending – Feb. 27, 2004
CAW-Canada v. **National Grocers Co. Ltd**. and UFCW, Locals 1000A, and 175/633 Divisional Court File No. 382/03	0137-02-R; 0139-02-R; 0179-02-R; 0450-02-U	Pending – Apr. 30, 2004

Case name & Court File No.	Board File No.	Status
Greater Essex County District School Board Divisional Court File No. 276/03	3398-00-R	Pending
Windsor-Essex Catholic District School Board Divisional Court File No. 277/03	3426-00-R	Pending
OPSEU v. **Ontario Hospital Association** Divisional Court File No. 83/03	3631-02-U	Pending
Canadian Health Care Workers v. CAW-Canada, **Central Park Lodges** et al Divisional Court No. 646/02	1951-01-R; 2179-01-R; et al	Pending – March 2, 2004
CAW-Canada & its Local 385 v. **Coca-Cola** et al Divisional Court File No. 751/02	0179-01-R; et al	Dismissed October 10/03; applic. for leave to appeal Oct 15/03
Ottawa-Carleton Public Employees Union Local 503 – CUPE v. **Ottawa Transition Board**, et al Divisional Court File No. 02-DV-723	2353-00-PS	Heard – Nov. 27/03 - Reserved
Rosalina Papa v. HERE Local 75, et al Divisional Court No. 283/01	0426-00-U	Pending
William McNaught v. TTC, et al Divisional Court File No. 254/02	3616-99-U; 3297-99-OH	Application allowed Nov. 6/03; applic. for leave to appeal Nov. 7, 2003
Tender Choice Foods Inc. v. Mirjana Jazvin Divisional Court File No. 454/02	3058-01-ES	Pending – April 7, 2004