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Ontario Labour Relations Board HIGHLIGHTS

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Draft Rules of Procedure for Consultation

In light of the proposed amendments to the *Labour Relations Act, 1995* (Bill 144), the Board is putting its consultation process concerning the general changes to its Rules on hold until the amendments to the Act are made. Once the amendments are enacted, we will circulate a revised draft of the Rules to the community for further comment.

Holiday Season Board Schedule

Please see attached Notice to Community.

George McMenemy

George, a full time member with the Board for the past twelve years, has accepted a position as a Business Agent with a trade union in Hamilton.

George's contributions to the Board's adjudicative, social and collegial life will be missed and we congratulate him on this new move.

Scope Notes

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

Construction Industry Grievance – Jurisdictional Dispute – Practice and Procedure – These applications alleged that the employers breached the Labourers Provincial Collective Agreement by assigning work in Smiths Falls to the intervenor (Local 247) rather than the applicant (Local 527) – The collective agreement draws a boundary line on the basis of Counties, between the two local unions, and the dispute arose because the Rideau River which runs through Smiths Falls, for the most part, separates Lanark County (527's area) from the former County of Leeds (247's area) – Smiths Falls is an exception, however, as the whole of the town of Smith Falls is located entirely within the County of Lanark pursuant to the *Territorial Divisions Act, 2002* – The Board examined the actions of the International in an earlier dispute concerning Kemptville and also looked at past practice – The Board did not find the extrinsic evidence persuasive for resolving the alleged ambiguity identified and accordingly returned to the boundaries described in the *TDA* – The Board also examined the dispute pursuant to criteria under its jurisdictional dispute jurisprudence and found that members of Local 527 should have performed the work – Remedies remitted to parties

AJV MASONRY LTD.; RE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527; File Nos. 1112-04-G; 1113-04-G; Dated October 14, 2004; Panel: David A. McKee (16 pages)

Certification – Construction Industry – Employee Bargaining Agency – Following the Board's decision at [2004] OLRB Rep. Mar/Apr 193, two issues remained on these certification applications: whether BACU has become an affiliated bargaining agent (ABA) of the LIUNA, and the geographic scope of the bargaining units – The Board first found that the terms "subordinate" and "directly related" in the definition of ABA must have different meanings, with "subordinate" implying hierarchical control and "directly related" referring to a relationship "created by contract or

constitution, where one of the parties exercises a substantial degree of control, direction, or restriction on the activity of the other" – The Board assessed the Ontario Masonry Accord (which sets out a number of agreements between BACU and LIUNA); the Ontario Masonry Council, 2001 Bargaining; agreements concerning the tile helpers and tile setters in Northern Ontario; Trust and Indemnity Agreements; and local agreements between BACU locals and Labourers' locals; and found, at this time, that the specific terms of the relationships reflected in these agreements and the cumulative effect of all of them, did not create for LIUNA a substantial degree of control, direction or restriction on the BACU – Finally, the Board issued the certificates using as a geographic description all of the Board areas in which there were employees on the date of application – Certifications granted

BACU, JERRY COELHO, TOM OLDHAM, KERRY WILSON, JOHN HAGGIS AND LUIGI SCODELLARO; RE BAC, LOCALS 6, 7 AND 25; RE IUBAC LOCALS 1, 2, 4, 5, 10, 12, 20, 23, 28, 29, AND 31; IUBAC; MASONRY INDUSTRY EMPLOYERS' COUNCIL OF ONTARIO; TERRAZZO, TILE AND MARBLE GUILD OF ONTARIO INC.; File Nos. 1904-99-U; 3003-00-U; 3331-00-U; 1220-01-U; 2148-00-U; 2709-01-U; 3790-03-U; 3868-03-U; 3548-03-R; 3550-03-R; 3552-03-R; 3553-03-R; 3554-03-R; 3555-03-R; 3556-03-R; 3557-03-R; 3558-03-R; 3561-03-R; 3562-03-R; 3579-03-R; 3580-03-R; 3581-03-R; 3582-03-R; 3583-03-R; 3584-03-R; 3585-03-R; 3604-03-R; 3605-03-R; 3610-03-R; 3611-03-R; 3612-03-R; 3613-03-R; 3615-03-R; 3616-03-R; 3617-03-R; 3629-03-R; 3631-03-R; 3633-03-R; 3635-03-R; 3636-03-R; 3653-03-R; 3654-03-R; 3655-03-R; 3656-03-R; 3657-03-R; 3658-03-R; 3693-03-R; 3694-03-R; 3695-03-R; 3696-03-R; 3697-03-R; 3699-03-R; 3703-03-R; 3754-03-R; 3782-03-R; 3783-03-R; 3798-03-R; 3799-03-R; 3800-03-R; 3823-03-R; 3825-03-R; 3826-03-R; 3844-03-R; 3845-03-R; Dated October 14, 2004; Panel: David A. McKee (38 pages)

Related Employer – Settlement – Construction Industry – This case involved an application under s. 1(4) for a declaration that the responding parties constituted one employer for the purposes of the *Labour Relations Act, 1995* – Both the applicants and respondents agreed that the applicants do not possess bargaining rights in relation to any of the respondents – However, in 1995, the applicants and Grant entered into a Minutes of Settlement that affected Grant's operations in the ICI sector – The applicants wished to have a declaration made under s. 1(4) in an effort to force the other responding parties to abide by the Minutes of Settlement signed by Grant in 1995 – The Board found that the activities of the responding parties Grant and CGC were under common control and direction – The Board also found that the Minutes of Settlement was a labour relations vehicle similar to a collective agreement and that granting the request for a single employer declaration would further the labour relations purpose of the Minutes of Settlement – The Board concluded by declaring that D. Grant & Sons Limited and CGC Enterprises Design Manage Construct Inc. constitute one employer for the purposes of the Act

D. GRANT & SONS LIMITED; 1209550 ONTARIO INC.; AND CGC ENTERPRISES DESIGN MANAGE CONSTRUCT INC.; RE LIUNA, LOCAL 1059 AND IUBAC, LOCAL 5; File No. 1673-02-R; Dated October 4, 2004; Panel: Harry Freedman (4 pages)

***Employment Standards Act, 2000* - Settlement** – This case decides what happens if one party fails to "do what it agreed to do" pursuant to a settlement reached under s. 120 of the *Employment Standards Act, 2000* – The applicant entered into an agreement with her former employer that provided for a sum of money for the applicant and released the employer from any further claims – The employer did not pay the applicant the agreed to sum by the date specified in the agreement – The Board first ruled that it retained jurisdiction over the case until the parties to the settlement "do what they agreed to do under the settlement" – The Board then determined that unlike the Rules of Civil Procedure or the former *Employment Standards Act*, the *Employment Standards Act, 2000* does not contain a provision allowing for the non-breaching party to continue a proceeding as if there had been no accepted offer to settle – Instead, the non-breaching party can accept the repudiation of the contract, refrain from performing any further prospective obligations and claim damages that would put her in the same position she would have been in but for the breach – The remedy in this case is a decision that the applicant is relieved of prospective obligations stated in the settlement and a direction for the employer to pay the agreed to sum and interest within 30 calendar days – If the employer does not pay the amount owed, it will become an order to pay in favour of the Director of Employment Standards in trust, along with a 10% administrative fee

FIT FOR LIFE, 1008810 ONTARIO LIMITED O/A, AND DIRECTOR OF EMPLOYMENT

STANDARDS; RE LIANE GEORGE; File No. 3815-03-ES; Dated October 7, 2004; Panel: Ian Anderson (13 pages)

Construction Industry – Jurisdictional Dispute – In addition to assessing its usual factors for determining a work assignment dispute concerning the installation of ceramic fibre blankets between boiler plates and finding that employer practice and preference slightly favoured the Insulators, the Board also commented on the notion of core jurisdiction of the competing unions – Although the ceramic fibre blanket had refractory properties, the Board found it of more significance that the work in dispute was done in relation to a boiler, an integral part of a mechanical system – The Board found the work in dispute came within the core of the craft jurisdiction of the Insulators – Application dismissed

KEL-GOR LIMITED AND INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 95; RE IUBAC, LOCAL 23; File No. 0137-04-JD; Dated October 20, 2004; Panel: Harry Freedman (5 pages)

Construction Industry Grievance – Damages – Jurisdictional Dispute – Remedies – After the Board's decision [2004] O.L.R.D. 1426 (June 4, 2004) finding that the work should have been assigned to the applicant, the Iron Workers sought damages on the basis that the employer's assignment was made in an unreasonable fashion – The Board noted its general approach (damages are not appropriate where an employer is faced with conflicting and irreconcilable claims to work, and cannot avoid breaching one of the collective agreements to which it is bound no matter what it does), and the very narrow exception to this approach (damages may be appropriate where the employer made the assignment in a careless or unreasonable fashion or in bad faith) – Here, the employer listened to and accepted written submissions from both sides when a dispute arose about the jurisdictional claims of the trades and agreed to permit the Iron Workers to file additional materials, but then issued its decision about the work assignment prior to receiving the second brief – After the employer failed to explain its reasoning, the Board found that it acted unreasonably in making the assignment – Concerning damages, the Board remitted the matter back to the parties, noting that what the Iron Workers lost was an opportunity to have the employer consider a second brief, and that the value of this "lost opportunity" was nominal at best

ROBERTS GROUP INC., THE; RE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 736; File No. 0434-03-G; Dated October 20, 2004; Panel: David A. McKee, John Tomlinson, George McMenemy (10 pages)

Employment Standards – The Board upheld a Notice of Contravention for breaching section 91(12)(a) for refusing to answer questions – After hearing that the employment standards officer had been the same one who investigated a previous complaint the appellant was dissatisfied with, the appellant told the officer he no longer wished to answer questions and hung up – After she called back, he hung up a second time – The Board found such action brought the appellant within the language of section 91 by defeating the policy objective inherent in the section – Notice of Contravention upheld

STAMM, GARRY M.; RE DIRECTOR OF EMPLOYMENT STANDARDS; File No. 0276-04-ES; Dated October 8, 2004; Panel: Patrick Kelly (7 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
Hardev Kumar v. USWA, Local 13571, et al Divisional Court 574/04	0151-04-U	Pending
Naseen Jamal v. OPSEU, et al Divisional Court No. 56704	2464-03-U	Pending
Christopher Kabala v. Attorney General of Canada, Ombudsman Ontario, et al Divisional Court No. 575/04	0458-00-ES	Pending
Premier Fitness Clubs Inc. & 992434 Ontario Inc. v. Hopeton Bailey, et al Divisional Court No. 537/04	0341-03-ES	Pending
Assurant Group v. Ignacia Menor Fillion, et al Divisional Court No. 528/04	2999-03-ES	Pending
Maurice Leblanc v. TTC, and ATU, Local 113 Divisional Court No. 468/04	2326-00-U	Pending
Autoland Chrysler (1981) Ltd., Michael Leahey v. Teamsters Union, Local 879 Divisional Court No. 463/04	1151-03-R	Pending
Girotti St. Catharines Ltd. v. Millwrights Union Local 1007 – Divisional Court No. 368/03 Motion for Leave to Appeal No. M31292	3060-02-G	Dismissed March 11, 2004 Pending
Joseph S. Rooke v. Stelco Hamilton, OLRB & Ministry of the Attorney General for Ontario Divisional Court No. 404/04	1584-02-OH; 2647-02-OH	Pending
Dr. Nicholas Hawrylyshyn, et al, o/a **Square One Dental Centre.** v. Queen in Right of MOL, et al Divisional Court No. 343/04	1721-02-ES	Pending
OPSEU v. PIPS, **The Ottawa Hospital**, OLRB Divisional Court No. 378/04	0372-04-R	Pending Motion to stay dismissed July 9/04
UBCJA, Local 494 v. **Build Force Construction Ltd.**, 1404406 Ontario Ltd., Unicor Construction Inc. (Stated Case) Divisional Court No. 368/04	1190-03-R; 1189-03-G	Pending
Alistair McEachran v. The Society of Energy Professionals and **Ontario Power Generation Inc.** Divisional Court No. 298/04	0179-03-U	Pending - Jan. 19/05
Sheet Metal Workers' Int'l Assoc. Local 30 v. **Crossby-Dewar Projects Inc**., Int'l Assoc. Heat & Frost Local 95 Divisional Court No. 144/04	1643-03-JD	Pending

Case name & Court File No.	Board File No.	Status
Vincent Borg v. OPSEU, The Crown in Right of Ontario et al Divisional Court No. 83/04	1208-02-U	Pending
Grantley Howell v. OLRB Divisional Court No. 04/178	0933-01-U; 1273-01-U; 3552-00-U	Pending
Association of Professional Ambulance Employees v. City of Toronto, Toronto Emergency Medical Services et al Divisional Court No. 44/04	2456-01-R	Pending
Labourers' International Union of North America v. **Universal Workers Union**, et al Divisional Court Nos. 22/04	2320-03-M 2049-03-U	Pending – Feb. 7/05
James Andrew Gerrie v. CAW Local 385; Coca-Cola Bottling Ltd. Divisional Court No. 2/04	2290-00-U	Pending – Nov. 16/04
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court 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 No. 17/04	0797-01-JD	Pending – Nov. 8 & 9/04
Canadian Pacific Railway Co. v. Milk & Bread Drivers, Dairy Employees, Caterers, Local 647 Divisional Court No. 9/04	2864-03-R	Pending
Cecilia Collier v. TTC Divisional Court No. 706/03	0632-02-U	Pending – Dec. 17/04
Electrical Power Systems Construction Association and **Comstock Canada Ltd.** v. Sheet Metal Workers' International Association, Local 30 Divisional Court 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 – Feb.14/05
William McNaught v. TTC, et al Divisional Court No. 254/02 Court of Appeal No. C41584	3616-99-U; 3297-99-OH	Application allowed Nov. 6/03; leave to appeal granted Mar. 26/04 Pending – Oct. 15/04