ISSN 1195-0226

Ontario Labour Relations Board HIGHLIGHTS

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September 2011

Scope Notes

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

Employment Standards – The Employer appealed an ESO's Order to Pay for public holiday pay – The Employer was a temporary placement agency whose employees did not have a regular work schedule – Employees would indicate their availability by signing in on the morning of any day for which they wished to be assigned work; work was then assigned based on the availability of work – As the public holidays in question fell on days that would ordinarily be a working day for the employees and the employees were not on vacation, the Board found section 26 of the ESA applied – Section 26(2) prevents employees from claiming public holiday pay if they fail, without reasonable cause, to work all of the last regularly scheduled day of work before the public holiday or all of the first regularly scheduled day of work after the public holiday – The Employer argued that since the employees did not work the day before and after the holiday, they were not entitled to pay – The Board found that the circumstances in which temporary help employees work vary widely and that the exception in s. 26(2) did not apply in this case – The term "regularly scheduled" day of work does not necessarily correspond with the days of operation of the employer – Further, the employees had just cause for not working the day before or after the holiday as this was a term of their employment contract – Order to pay affirmed

137077 CANADA INC. o/a HANDYMAN PERSONNEL INDUSTRIAL DIVISION; RE JONATHAN SULLIVAN AND DIRECTOR OF EMPLOYMENT STANDARDS; File No. 3160-0-ES; Dated August 4, 2011; Panel: Tanja Wacyk (9 pages)

Construction Industry – Health and Safety – *Trades Qualification and Apprenticeship Act* – The Carpenters were used to install certain prefabricated cup sinks and faucets in the countertop during the construction of the new laboratory – An inspector issued an Order that the work must be done by plumbers pursuant to the Regulations under the TQAA – The Board found that the installation of the sinks and faucets (by placing them in the holes and bolting them down) was a part of installing the counters themselves – Therefore, as built in fixtures, the work was carpenters' work within the meaning of the Regulations – The Board made it clear it was not concluding that the work was not plumbers' work, rather only that it was not exclusively plumbers' work according to the Regulations – Given one exception (the threading of copper lines in the hot and cold faucets was not work connected to the installation of the counters and accordingly belonged exclusively to the plumbers), the Board allowed the appeal

ACTION GROUP INC. AND DAN DIGNARD, INSPECTOR**;** RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF

THE UNITED STATES AND CANADA, LOCAL 593; File No. 3746-09-HS; Dated August 31, 2011; Panel: Mark J. Lewis (9 pages)

Construction Industry – Health and Safety – *Trades Qualification and Apprenticeship Act* – The Carpenters appealed an Order of the Inspector finding that mounting bed locator frames in hospital rooms was performed contrary to the regulations under the OHSA and the TQAA – The Board found that the primary function of the frames was to provide the precise location for the beds through the use of the fixed headboards, so that they can be easily and accurately lined up under the head walls – Although the frames included electrical fixtures, apparatus and conductor enclosures , the Board found the frames were not electrical fixtures, apparatus and conductor enclosures in and of themselves, but rather built-in fixtures – The fact that the Carpenters pulled the electrical conduit through the holes in the frames was no different from when they cut holes in drywall and pulled conduit through the drywall – Once they have pulled the conduit through the frame they did not run the conduit through the raceways or make any electrical connections – Inspector's order rescinded

ELLIS-DON CORPORATION AND DAN DIGNARD, INSPECTOR**;** UNITED BROTHER-HOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1946; File No. 3216-09-HS; Dated August 9, 2011; Panel: Mark J. Lewis (8 pages)

Related Employer – Sale of a Business – Stay – Union Successor Rights – The union applied to have existing bargaining rights recognized under s. 1(4) and/or s. 69 of the *Labour Relations Act, 1995* – One of the respondents was an undischarged bankrupt – It was argued that proceedings should be stayed pursuant to s. 69.3(1) of the *Bankruptcy and Insolvency Act* which prevents a creditor from engaging in proceedings against a debtor or a debtor's property for the recovery of a claim provable in bankruptcy – The Board found that a mere claim by a union to preserve its pre-existing bargaining rights with a successor employer did not justify a stay in proceedings – Proceedings under s. 1(4) and/or s.69 are not proceedings for the recovery of a claim provable in bankruptcy despite previous Board jurisprudence – Where the trade union or the applicant claims further or additional relief which may involve recovering funds or requiring payment from the bankrupt, then the impact of the BIA, the necessity of a stay and requirement for the union to seek the approval of the bankruptcy court can be considered – Matter continues

MGI PACKERS INC.; MAPLE FREEZERS LIMITED; CONTINENTAL TRADING COMPANY LIMITED; CONTINENTAL MEAT PACKERS INC.; CONTINENTAL TRADING COMPANY INC.; MAPLE FREEZERS INC.; BURNSTAR FINANCIAL HOLDINGS INC.; HENRY MULLER; 1553602 ONTARIO LIMITED; RICHARD CLARE; GENCOR FOODS INC.; 1553602 ONTARIO LIMITED; RICHARD CLARE; GENCOR FOODS INC., 1553603 ONTARIO LIMITED; RE UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 175; File No. 2091-03-R; Dated August 2, 2011; Panel: Bernard Fishbein (8 pages)

Construction Industry – Project Agreement – The Local gave a timely notice of disapproval of the project agreement pursuant to s. 163.1(8) – The project agreement proposed that the application of the Provincial Collective Agreements to the project would be amended by a reduction in wages by 5% and a standard work week of five, 8 hour days with overtime only after 40 hours – The Local argued the Project Agreement created a greater rate of reduction in "total wages and benefits" paid to its members compared to other trades – The Board agreed with the conclusion in *Shell Canada Products* that the application of a straight percentage reduction to employees who have their normal work week increased with premium pay becoming payable only after they work in excess of the lengthened work week, increases the proportional reduction of their total wages and benefits – The Board rejected other arguments from SCA that the Local was improperly benefiting by its objection or it was acting in bad faith when it noted that there could be nothing improper about a trade union seeking to obtain a result that is mandated by the Act – The Board concluded that the proper manner in which to determine the proportionate reductions in the total wages and benefits of each group of employees represented by a trade is to calculate the total of all hourly payments (other than payments to an employer association fund) that an employer must make under a Provincial Collective Agreement in respect of each hour of work performed by a bargaining unit employee, as compared to the payments an employer is obliged to make for each hour of work of a bargaining unit employee under the Project Agreement, assuming the employee in both cases works a full 40 hour week – Further submissions directed

SARNIA CONSTRUCTION ASSOCIATION AS AGENT FOR NOVA CHEMICALS; RE INTERNATIONAL BROTHERHOOD OF BOILER-MAKERS, IRON, SHIPBUILDERS, BLACK-SMITHS, FORGERS AND HELPERS, LOCAL UNION 128, ET AL; File No. 0942-11-PR; Dated August 24, 2011; Panel: David A. McKee (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
Greater Essex County District S.B. Divisional Court No. 403/11	1004-08-M	Pending
Sanford Pensler, A Director of Korex Don Valley ULC et al v.CEP L. 132 et al Divisional Court No. 328/11	0598-10-ES	Pending
John McCredie v. OLRB et al Divisional Court No. 1890/11	1155-10-U	Pending
Classic POS Inc. Divisional Court No. 301/11	4059-10-ES	Pending
Ineke Sutherland o/a Designworks Divisional Court No. 238/11	4061-10-ES	Pending
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 213/11	0816-10-U 0817-10-U	Pending
Humber River Regional Hospital v. SEIU Divisional Court No. 101/11	1092-09-R 1132-09-R 1133-09-R	Pending
SNC-Lavalin Divisional Court No. 78/11	1405-03-R	October 25, 2011
Promark-Telecon Inc. v. Universal Workers Union, L. 183 Divisional Court No. 600/10	0745-09-R 0754-00-R 0765-09-R 0782-09-R	Pending
Dean Warren v. National Hockey League Divisional Court No. 587/10	2473-08-U	Pending
Richard Hotta (Proteus Craftworks) v. Mahamad Badiuzzaman, et al Divisional Court No. 613/10	1953-07-ES	Pending
Pharma Plus Drugmarts Divisional Court No. 551/10	0579-08-R 0580-08-R 1662-09-R	June 30, 2011; Reserved
SNC-Lavalin Divisional Court No. 482/10	2442-07-R 2936-07-R	October 14, 2011
Mr. Shah Islam v. J. Ennis Fabrics Divisional Court No. 506/10	1786-09-ES	Pending
Greater Essex Catholic District S.B. Divisional Court No. 462/10	3122-04-G	June 2, & 3, 2011; Reserved
Rainbow Concrete (Mark Corner) Divisional Court No. 437/10	2904-09-U 2905-09-FC 3292-09-M	Sept. 12 & 13, 2011
John McKenney v. Upper Canada District S.B. Divisional Court No. 10-DV-1652 **Ottawa**	2687-08-U	Pending
Rainbow Concrete Divisional Court No. 856-10	3292-09-M	Sept. 12 & 13, 2011
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 383/10	0290-08-U 0338-08-U	Pending
Rainbow Concrete Divisional Court No. 850-10	2904-09-U 2905-09-FC	Sept. 12 & 13, 2011
Independent Electricity System Operator v. Canadian Union of Skilled Workers, LIUNA et al Divisional Court No. 78/10	3322-03-R 2118-04-R	Granted – Feb. 18, 2011 Pending - CA

Case name & Court File No.	Board File No.	Status
Pro Pipe Construction v. Norfab Metal and Machine Divisional Court No. 408/09	2574-04-R	Pending
Blue Mountain Resorts v. MOL Divisional Court No. 373/09	1048-07-HS 0255-08-HS	Dismissed May 18, 2011 Seeking leave to appeal to C.A.
Roy Murad v. Les Aliments Mia Foods Divisional Court No. 291/09	1999-07-ES	Pending
Greater Essex County District School Board v. IBEW, Local 773 et al Divisional Court No. 212/09	1776-04-R et al	November 9, 2011
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045-06-U et al	Pending
Comfort Hospitality Inc. o/a Days Inn v. Director Employment Standards et al Divisional Court No. 344/08	2573-07-ES	Pending
L.I.U.N.A. v. Barclay Construction et al Divisional Court No. 310/08	0837-06-R	Pending