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Ontario Labour Relations Board

HIGHLIGHTS

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NOTICES TO THE COMMUNITY

New Part-time Vice-Chair

The Board welcomes **Elizabeth McIntyre** as a new part-time Vice-Chair. She was a named partner at a prominent labour law firm for many years and practiced civil and administrative law with particular expertise in labour and employment law, human rights, occupational health and safety, and health care. In 2010, Ms. McIntyre was honoured by LEAF as one of 15 women lawyers who have made a difference for women and girls in Canada.

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 now available on-line through the Canadian Legal Information Institute www.canlii.org.

Bargaining Unit – **Certification –** The union applied for a bargaining unit of all house crew audio/visual technicians and house crew riggers regularly employed by the Responding Party at the Sheraton Centre located at 123 Queen Street West in Toronto, Ontario (with standard exceptions) – The employer took the position that the bargaining unit applied for was not appropriate – The employer urged the Board to find that the appropriate bargaining unit was all employees employed by the employer in the City of Toronto (with standard exceptions) – The employer argued that because its business is centrally administered and functionally integrated, with significant interchange among employees, serious labour relations harm would arise from a site specific bargaining unit – Additionally, the employer argued that if a single location unit were certified, it would impede organizing among the rest of the employees in the future because some locations only have one or two employees – The Board found that the applicant's proposed bargaining unit was appropriate for collective bargaining – The Board found that the degree of employee interchange was minimal and did not give rise to labour relations harm – The Board further found that no labour relations harm resulted from the employer's functional integration as the employer provides services on a venue by venue basis and the venue applied for has its own equipment and management – Matter Continues

AUDIO VISUAL SERVICES (CANADA) CORPORATION; RE: INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL 58; OLRB File No: 2694-16-R; Dated September 15, 2017; Panel: Paula Turtle, David St. Louis, Thomas Collins (20 pages)

Interim Order – Reinstatement – In this application, the union seeks reinstatement of four individuals who

had been laid off – Two of the four individuals were known to be key inside organizers in the union's organizing drive – The other two employees laid off were union supporters – The responding party denied that interim relief was necessary to prevent irreparable harm and that the balance of harm favours the granting of interim relief – The Responding Party also denied that the lay-offs were related to the exercise of rights under the Act – The Board found that the lay-off of the inside organizers without explanation would give workers pause about whether to exercise their rights under the Act and caused the union to have a fundamental loss of connection to the workplace – Therefore, the Board found that interim relief was necessary to prevent irreparable harm – The Board found that an interim remedy for the lay-off of the union supporters was not necessary to prevent irreparable harm as it was not widely known amongst the employees that those two individuals supported the union – The Board rejected the responding party's argument that it would suffer greater harm because it would result in a surplus of labourers – The Board held that the harm of the stalled organizing campaign outweighed the potential harm of the financial repercussions of returning the laid off inside organizers to work – The Board found that the lay-off of the employees was not unrelated to their exercising their rights under the Act – Accordingly, the Board ordered the interim reinstatement of the inside organizers; further, the Board ordered that the employer notify the union if it takes any future disciplinary action against or lays off the inside organizers, and ordered that the Responding Party post an appended notice to employees.

BRICKSTONE CONSTRUCTION LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; Dated: September 20, 2017; Panel: Patrick Kelly (17 Pages)

Bargaining Unit – Certification – Dependent Contractor – In five separate applications the union seeks to certify bargaining units of delivery drivers who deliver to retail resellers the products of the responding party in five different geographic areas – In each case, the union alleges that the drivers are dependent contractors, and the responding party asserts that the drivers are independent contractors – The Board divided the drivers into six categories of representative witnesses: i) operated out of a larger depot; ii) operated out of a smaller depot; iii) operated under the terms of an older franchise agreement; iv) operated under the terms of the most recent franchise agreement; v) engaged one or more helpers in the completion of their work; and vi) engaged no helpers in the completion of their work – The responding party is a manufacturer of bread products – The responding party utilizes a franchise system to engage its delivery drivers and drivers are required to incorporate a company and execute a franchise agreement – Franchise agreements can be purchased from another driver or can be granted by the responding party – The franchise agreement provides a list of customers and routes that a driver owns (subject to certain conditions) and imposes a number of covenants and procedures, standards for delivery, ordering, billing, etc. – The Board held that drivers who do not employ one or more full time helpers are dependent contractors, and drivers who employ one or more full time helpers are independent contractors – The Board applied the facts to the factors set out in *Algonquin Tavern* – The Board found that drivers are not able to sell their services to the public generally, not free to reject customers identified by the responding party and that the drivers are completely integrated into the business of the responding party – The Board found that the work of the drivers was not sufficiently specialized in the manner intended in *Algonquin Tavern* – The Board found the fact that drivers could sell their franchise/route for a gain as not determinative of the dependency – For drivers who employ helpers, the Board distinguished between cases where helpers assist the driver in making ends meet and those who employ a driver as part of a profit-driven business – The Board concluded that on these facts, those drivers who employ at least one full time helper are employing that helper as part of a profit-driven business – Matter continues

CANADA BREAD COMPANY LIMITED; RE: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS; OLRB File Nos. 3730-14-R, 3731-14-R, 3732-14-R, 3733-14-R; Dated: September 14, 2017; Panel: Michael McFadden (46 pages)

No *Prima Facie* Case - Delay - Unfair Labour Practice – This is an application alleging that the responding parties, the Ontario Hockey League and its 17 member teams breached sections 72(a) and (b) and 86 of the *Labour Relations Act* – The responding party brought a motion seeking to have the application

dismissed for delay and for failing to raise a *prima facie* case – The applicant alleges that between 2012 and 2014 it attempted to recruit members and organize a union of junior hockey players in the OHL – At some point between 2012 and 2014 the commissioner for the OHL issued a directive to member teams announcing updates to policies including remuneration, education reimbursement and tax related details and advised member teams to refrain from using language referring to the players in a manner that implied an employment relationship – Additionally in 2014 the standard player contract was amended - The Board dismissed the Application against the member teams as the application was not delivered to the teams and the applicant made no allegations against the teams – The Board dismissed the application against the OHL on the basis of delay and failing to disclose a *prima facie* case – The Board found that the applicant learned of the basis for the application more than two years before filing the application and held that that delay was excessive – The Board held that changing this particular standard player contract in the manner that it did and giving directive to member teams with respect to the use of language did not amount to a *prima facie* violation of ss. 72(a) and (b) of the Act – Application Dismissed

ONTARIO HOCKEY LEAGUE (OHL): RE: CANADIAN HOCKEY LEAGUE PLAYER'S ASSOCIATION; OLRB File No. 0699-17-U; Dated September 18, 2017; Panel: Matthew R. Wilson (12 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
Dennis McCool Divisional Court No. 566/17	0402-16-U	Pending
S. & T. Electrical Contractors Limited Divisional Court No. 562/17	1598-14-U 1666-14-G 1806-14-MR	Pending
Reuben Gooden Divisional Court No. 556/17	1113-16-U 1114-16-U 1213-17-U	Pending
Ramkey Construction Inc. Divisional Court No. 539/17	1269-15-R	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
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	Pending
Kevin Mackay Divisional Court No. 466/17	2972-16-U	Pending
Across Canada Divisional Court No. 244/17	3673–14–R	Pending
LIUNA *(Pomerleau Inc.)* Divisional Court No. 257/17	3601–12–JD	Pending
TTC Divisional Court No. 262/17	1995–16–HS	January 4, 2018
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
Women's College Hospital Divisional Court No. 24/17	0830–15–M	Pending

Innovative Civil Constructors Divisional Court No. 611/16	0142–16–R	Pending
Yuchao Ma Divisional Court No. 543/16	2438–15–U	Pending
946900 Ontario Limited Divisional Court No. 239/16	3321–14–ES	November 2, 2017
Carpenters (*Riverside*) Divisional Court No. 363/16	0630–16–R	October 10, 2017
Labourers' International Union of North America, Local 183 *(Alliance Site Construction Ltd.)* Divisional Court No. 133/16	3192–14–JD	October 26, 2017
R. J. Potomski Divisional Court No. 12/16 **(London)**	1615–15–UR 2437–15–UR 2466–15–UR	Pending
Serpa Automobile (2012) Corporation (o/a Serpa BMW) Divisional Court No. 095–16	0668–15–ES	Pending
David Houle Divisional Court No. 1021–16 **(Sudbury)**	0292–15–U	October 10, 2017
Qingrong Qiu Divisional Court No. 669/15	2714–13–ES	October 5, 2017
Kognitive Marketing Inc. Divisional **Court** No. 51/15 **(London)**	0621–14–ES	November 28, 2017
Valoggia Linguistique Divisional Court No. 15–2096 (**Ottawa)**	3205–13–ES	Pending