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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 April of this year. These decisions will appear in the March/April 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.

Certification – Practice and Procedure – Electronic Voting – Board announced that due to the pandemic all votes would be held electronically – Employer opposed an electronic vote, in part on the basis that, as an essential service, its employees were still at work – Employer also argued that the employees may not be familiar with the technology required – Board directed an electronic vote – In-person vote would require Board staff to attend at premises and could lead to a large gathering of people in one place, making physical distancing difficult – Board noted that electronic voting is easily accessible by phone or by computer, and that the Board's help desk would be available to assist with the voting process.

WASTECO GROUP; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; OLRB File No. 0100-20-R; Dated April 24, 2020; Panel: Peigi Ross (6 pages)

Certification – Practice and Procedure – Summons to Witness – Electronic Hearing – Hearing scheduled for mid-March 2020 – Union attempted, unsuccessfully, to serve a summons to a witness – As a result of the pandemic, in-person hearing was cancelled – Union requested an order for substituted service, so that witness could be served by email, and for a video hearing to be held – Board satisfied on the evidence presented that witness had sought to evade service – Board directed witness be served with a summons by email to a specific email address – Summons returnable to a video hearing – Issue of conduct money to be addressed.

SABRINA HOMES INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: F.A. HOLDINGS INC., SABRINA PROPERTY MANAGEMENT INC., SABRINA HOMES (MAYFIELD ACQUISITIONS) INC., SABRINA HOMES (ARTHUR ACQUISITIONS) INC., SABRINA HOMES (CREDITVIEW ACQUISITIONS) INC., SABRINA HOMES (EAST ST ACQUISITIONS) INC., SABRINA HOMES (NIAGARA ACQUISITIONS) INC., SABRINA HOMES (TORONTO ACQUISITIONS) INC., SABRINA HOMES (BURLOAK ACQUISITIONS) INC., SABRINA HOMES (WHITBY ACQUISITIONS) INC..; OLRB File No. 2403-19-R; Dated April 23, 2020; Panel: Bernard Fishbein (4 pages)

Certification – Practice and Procedure – Video Hearing – Closing arguments scheduled to be made at a hearing in April 2020 – As a result of the pandemic, in-person hearing was cancelled – Union requested and Employer opposed finishing the case by way of video hearing – Board granted the request to conclude the matter by way of video hearing, and made various directions to assist with the use of documents in argument – Board noted that it has used video technology for more than a decade and that video technology did not restrict the ability of parties to make their full submissions.

BLYTHWOOD HOMES INC.; RE: CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA;

OLRB File No. 3257-17-R; Dated April 22, 2020; Panel: Kelly Waddingham, Ron Martin and Jack Dowding (10 pages)

Certification - Practice and Procedure – Video Hearing – Hearing on the merits was scheduled to begin in early April 2020 – As a result of the pandemic, in-person hearing was cancelled – Union requested and Employer opposed proceeding by way of video hearing – Board granted the request to have the matter proceed by way of video hearing, and scheduled a Case Management Hearing to address any issues in advance of the hearing on the merits – Board noted that deciding whether to proceed by video was fact specific and required balancing of the parties' interest – Board noted the need for expedition in certification applications, and that this matter had previously been delayed – Board also pointed to lack of clarity around when in-person hearings could resume – Challenges posed by new technology were not sufficient to warrant an adjournment of indeterminate length.

BLOOMFIELD DEVELOPMENTS INC.; RE: BLOOMFIELD HOMES INC. AND/OR BLOOMFIELD URBAN HOMES INC. AND/OR SD HOMES INC.; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No: 1826-19-R; Dated April 27, 2020; Panel: Adam Beatty (5 pages)

Displacement Application – Practice and Procedure – Electronic Voting – Board announced that due to the pandemic all votes would be held electronically – Concern raised about notice to employees and access to voting, given that employees did not have work email addresses – Applicant seeking standard timing for vote – Employer and Intervenor seeking to have vote delayed until after the end of the health crisis – Board held that it would not delay the vote beyond the time necessary to arrange the taking of an electronic vote – Board noted the importance of expedition in holding votes and that the length of the requested delay was indeterminate – Board directed the parties to email only the Board all of the email addresses in its possession for individuals in the voting constituency – Board also directed the Employer to provide mailing addresses and telephone records.

GRANITE RIDGE CARE COMMUNITY SIENNA SENIOR LIVING INC.; RE: CANAIDAN UNION OF PUBLIC EMPLOYEES; RE: HEALTHCARE, OFFICE AND PROFESSIONAL EMPLOYEES UNION, UBCJA, LOCAL 2220; OLRB File No. 3590-19-R; Dated April 1, 2020; Panel: Peigi Ross (7 pages)

Occupational Health and Safety Act – Reprisal – Applicant alleged a five-day suspension was issued against him as a reprisal – Employer responded that Union had filed a grievance with respect to the five-day suspension, and that application was precluded by section 50(2) of the Act – Union subsequently withdrew the suspension grievance, though continued to pursue a grievance challenging termination of the employee's employment – Board held that, in accordance with subsection 50(2), the Applicant had authorized the Union to take the matter beyond the grievance procedure by scheduling the matter for arbitration – In doing so, Applicant elected to have the matter deal with at arbitration – Given this election, recourse under section 50 of the Act was no longer available to him, notwithstanding that the grievance was subsequently withdrawn.

CITY OF WINDSOR; RE: KEITH LANGLOIS; RE: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 543; OLRB File No. 1666-19-UR; Dated April 6, 2020; Panel: Roslyn McGilvery (7 pages)

Unfair Labour Practice Complaint – Interim Order – Interim Reinstatement – Union applied for an interim order, seeking reinstatement of an inside organizer fired during an organizing campaign – Board applied the factors set out in *National Judicial Institute*, 2018 CanLII 51312 (ON LRB), and ordered the Employer to reinstate the employee to her position – While "not a clear-cut case", the Board concluded that the apparent strength of the Union's case, based on the facts advanced at the consultation, was stronger than the Employer's – the balance of labour relations harm favoured the Union –Employer was being required to reinstate a long service employee, whereas the Union faced the loss of one of its two inside organizers.

LIFELABS LP; RE: ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 839; Board File No. 3560-19-IO; Dated April 15, 2020; Panel: Paula Turtle (19 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
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	Adjourned due to pandemic
New Horizon Divisional Court No. 264/19	0193-18-U	May 7, 2020
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
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

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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