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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 March 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 Application – Appropriate Bargaining Unit – Employer made a section 8.1 objection, arguing the Union's proposed bargaining unit could not be an appropriate bargaining unit – In a prior decision, the Board reserved its decision on the section 8.1 objection and directed a representation vote – Board concluded: (1) the applicant's proposed bargaining unit could be appropriate within the meaning of section 8.1 of the Act but, (2) the proposed bargaining unit was in fact not an appropriate unit under subsection 9(1) of the Act – Consideration given to functional coherence and undue fragmentation, along with a risk of potential jurisdictional disputes – Board directed that ballots cast in representation vote be counted.

RNR PATIENT TRANSFER SERVICES INC.; RE: TEAMSTERS LOCAL UNION NO. 879; OLRB File No. 0722-19-R; Dated March 9, 2020; Panel: Patrick Kelly (24 pages)

Employment Standards Act – Orders to Pay – Employer applied for review of two Orders to Pay pursuant to section 116 of the *Employment Standards Act, 2000* – Employer disputed Employment Standards Officer's finding that the claimants were paid wages based on their scheduled shifts and not on the actual time an employee clocked in and out of the workplace – Board held that employees are entitled to be paid for time worked – The time the employees clocked out of work was to be used for calculating pay, not the hours scheduled – Employees continued performing job duties up until the time they clocked out.

ALEX JOANNIDES HOLDINGS INC. OPERATING AS CANADIAN TIRE BROCKVILLE; RE: LISE SWOLFS; RE: GENEVIEVE GRAVELLE; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 3846-18-ES & 3859-18-ES; Dated March 6, 2020; Panel: Kelly Waddingham (3 pages)

Occupational Health and Safety Ac*t* – Section 61 appeal – Ministry of Labour, supported by Employer, requested adjournment of the application pending the disposition of a prosecution against the Employer – Board's practice has been to adjourn applications under section 61 of the Act where there is an overlap in facts and issues to avoid prejudice to the prosecution – Board noted nothing precluded the employees or the Union from raising health and safety issues in the workplace, including involving the Ministry's inspectors, notwithstanding adjournment – Employer could be prejudiced in defence to the prosecution, if it was compelled to disclose documents or tender evidence in Board proceeding – Application adjourned pending disposition of prosecution.

SOUTHLAKE REGIONAL HEALTH CENTRE; RE: ONTARIO NURSES' ASSOCIATION; RE: A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; OLRB File No. 3534-18-HS; Dated March 11, 2020; Panel: Matthew Wilson (8 pages)

Termination Application – Date of Application Test – Applicant applied for a declaration that the responding party no longer represents the employees in a bargaining unit – Responding Party submitted that, because of the Covid-19 pandemic, the application filing date test should not apply- Board noted the application filing date test was well-established, and was constitutionally sound, with reference to *Govan Brown & Associates*, 2018 CanLII 27199 (ON LRB) – Board regularly issues certificates in the construction industry when the application was filed on a non-regular workday, such as a weekend, when the majority of the regular workforce were not at work on that day – If an employer performs work in the construction industry during the pandemic, its employees were entitled to have their wishes considered by the Board in the ordinary course – Electronic vote ordered in light of the pandemic.

HANDY BROS. HEATING, COOLING LIMITED; RE: MORGAN ROBBINS; RE: CONSTRUCTION WORKERS LOCAL 53, CLAC; OLRB File No. 3582-19-R; Dated March 27, 2020; Panel: David Ross (3 pages)

Unfair Labour Practice – Deferral to Arbitration – Union alleged disputes formed a pattern over time, as opposed to a series of discreet events, which constituted reprisal – Board concluded that, if what the Union alleged occurred and could be proven, the alleged misconduct would be a clear, if not total, repudiation of the collective bargaining process – Allegations involved application of key sections of the Act, regardless of whether they also constituted a breach of any provision of the collective agreement – Board concluded it was in a better position to grant necessary remedies, if allegations proven – Deferral to arbitration is a matter of the Board's procedural discretion under section 96 of the Act – Board did not exercise its discretion to defer – Dispute to be heard.

WORKPLACE SAFETY AND INSURANCE BOARD ONTARIO; RE: ONTARIO COMPENSATION EMPLOYEES UNION, CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1750; OLRB File No. 0651-19-U; Dated March 5, 2020; Panel: Patrick Kelly (17 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
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	May 19, 2020
Hector Yao Divisional Court No. 063/19	1841-18-ES	February 20, 2020
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019

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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