COURT OF APPEAL FOR ONTARIO

CITATION: Greater Essex County District School Board v. International Brotherhood of Electrical Workers, Local 773, 2012 ONCA 791
DATE: 20121120
DOCKET: C55503

O'Connor A.C.J.O., Simmons and Rouleau JJ.A.

BETWEEN

Greater Essex County District School Board

Applicant (Appellant)

and

International Brotherhood of Electrical Workers, Local 773; The International Unions of Bricklayers and Allied Craftsmen, Local 6; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552; The International Unions of Painters and Allied Trades, Local 1494; Labourers' International Unions of North America, Local 625 and the Ontario Labour Relations Board

Respondents (Respondents)

Leonard P. Kavanaugh, Q.C. and Suzanne M. Porter, for the applicant (appellant)

Craig Flood and Ronald Lebi, for the respondent trade unions

Leonard Marvy, for the respondent, Ontario Labour Relations Board

Heard and released orally: November 8, 2012

On appeal from the judgment of the Divisional Court (Leitch, Swinton and Hoy JJ.), dated January 12, 2012.

ENDORSEMENT

[1] We dismiss the appeal. We agree with the Divisional Court that the decision of the Ontario Labour Relations Board (the “OLRB”) was reasonable.

[2] In our view, it was reasonable to interpret the definition of “construction industry” in s. 1 of the *Ontario Labour Relations Act* (the “*OLRA*”) to include the construction management activities of the school board carried out by Mr. Faulkner. These activities were akin to those carried out by a general contractor. We are also of the view that it was reasonable for the OLRB to conclude that the receipt of compensation by the school board for the construction management activities constituted the operation of a business within the definition of an employer in s. 126 of the *OLRA*. In reaching this conclusion, the OLRB relied upon its prior decisions made over a period of 45 years.

[3] We are satisfied that the relationship between the school board and the three other owners of the property in issue did not preclude the OLRB from finding that they were “unrelated persons” within the definition of a “non-construction employer.” The owners of the property governed their relationship through an agreement which provided *inter alia* that the three other owners would pay compensation to the school board for providing construction management activities. Each of the parties are separate legal entities with different mandates. We agree with the Divisional Court that in forming this relationship, they would have acted at arm’s length.

[4] In these circumstances, we do not consider the conclusion that the owners were unrelated persons to be unreasonable. We recognize that in reaching this conclusion, the OLRB mistakenly said that the property was owned by only three of the four actual owners. That mistake, however, in our view, did not affect the OLRB's eventual conclusion on this issue. In para. 93 of its reasons, the OLRB clearly found that all of the owners were unrelated persons.

[5] We do not accept that the Divisional Court erred in not setting aside the decision of the OLRB for providing insufficient reasons. The reasons read in context of the record as a whole provided a sufficient basis to understand the reasons why the OLRB reached its conclusion.

[6] Finally, we agree with the Divisional Court that the prior decisions of the OLRB were not binding on the respondent unions who were not parties to those applications.

[7] In the same vein, we note that the OLRB decision that underlies this appeal is not an *in rem* decision as to whether the school board is a non-construction employer.

[8] Costs to the respondent unions in the amount of $15,000, inclusive of all applicable taxes.

"D. O'Connor A.C.J.O."
"Janet Simmons J.A."
"Paul Rouleau J.A."