



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **1964-24-R**

Labourers' International Union of North America, Local 1059, Applicant
v **519 London Excavating Inc.**, Responding Party

BEFORE: Neil Keating, Vice-Chair

APPEARANCES: Ben Katz, Hong Hua (Emily) LI, Joshua Stewart, Joseph Calvo and Ryan Savage appearing for the applicant; Alexei Chkouro appearing for the responding party

DECISION OF THE BOARD: January 30, 2026

1. This is an application for certification filed with the Board under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended, (the "Act"). In the context of this application the Labourers' International Union of North America, Local 1059 ("Local 1059") has applied to represent a bargaining unit of construction labourers employed by the responding party in the ICI sector province wide as well as in all other sectors of the construction industry in Board geographic Area 3.

Overview

2. In this application the responding party asserts that it employed no individuals in the applied for bargaining unit, at the one agreed-upon active jobsite, on the application filing date. The responding party asserts that the individuals present at the one active job site on the application filing date were employed by an entity known as PHT Construction ("PHT"). There is no dispute that that the four individuals in dispute performed bargaining unit work on the application filing date.

3. A Case Management Hearing ("CMH") was convened in this matter at which time the Board heard submissions in respect of the Local 1059's motion requesting that the Board decide this matter, pursuant

to Rules 29.1 and 41.3 of the Board's Rules of Procedure (the "Rules"), based on the material on file. As of the CMH the status of the following individuals remained in dispute (together the "Individuals in Dispute"):

- 1) Acbakr, Hasan;
- 2) Ilicha, Filib;
- 3) Ilicha, Touma; and
- 4) Talia, Sarkon.

4. Local 1059 asserts that a hearing is not required for the Board to find that four individuals in dispute were employees of the responding party on the application filing date.

5. By decision dated January 21, 2025, the Board directed the parties to file status submissions in advance of the CMH. In accordance with that decision Local 1059 filed initial status submissions on January 28, 2025. The responding party, who was not represented by counsel, also filed submissions on January 28, 2025, although those submission were not due until February 4, 2025; the responding party included documents consisting of a contract between the responding party and PHT, certain banking records as well as an invoice, with its submissions.

6. On February 11, 2025, Local 1059 filed reply submissions that, among other things, put the responding party on notice that it was taking the position that the responding party had failed to make out a *prima facie* case that PHT was the true employer of the Individuals in Dispute.

Positions of the Parties

Local 1059

7. Local 1059 began its submissions at the CMH with reference to the contract filed by the responding party. Local 1059 asserts that a review of that contract reveals that it is, on its face, a labour supply contract. The material provision of that contact that addresses the nature of what PHT was to provide to the responding party, according to Local 1059 states: "Provide labour to install concrete sidewalk, curb and ramps". Further, Local 1059 points out that the submission of the responding party provides, in part, "The contract was specific to

providing labour for installing concrete sidewalk, curb and ramps for the project...”

8. Local 1059 submits that in the face of the contract that is clearly a labour only arrangement and the responding party’s acknowledgement that the arrangement was specific to providing labour, it was incumbent on the responding party to provide sufficient particulars to establish it was not the true employer of the Individuals in Dispute. Further, Local 1059 notes that it expressly put the responding party on notice if its position such that the responding party knew that it was required to provide fulsome pleadings on the true employer issue. Local 1059 says the type of pleading required in the circumstances was described by the Board at paragraph 18 of its decision in *David Maurice McCrossan o/a The Cannington Group (“Cannington Group”)*, 2022 CanLII 12300 (ON LRB):

18. At this point, prior to making its status submissions, the Employer knew without doubt that the Union was taking the position it was the Employer and the basis for its allegation. If Cannington was going to take the position that STM was the employer, not it, it was incumbent on it to plead material facts that showed there was a real issue to be litigated. Either it would take the position that STM was a genuine subcontractor with responsibility for particular aspects of the project for whom the four proposed additions worked and provide sufficient detail that demonstrated there was a real issue to litigate, or it would plead that this was a labour supply arrangement but differed from other labour supply cases decided by the Board in particular detailed ways that would justify the Board sending it to hearing to litigate. (As will be shown below, the Board has on numerous occasions declined to permit labour supply arrangements to be litigated unless something materially different from prior caselaw is alleged to have occurred).

9. Local 1059 says that a hearing is not required in every circumstance involving a dispute as to the true employer and that this is such a case. Local 1059 commended the Board to the decision in *Gay Company Limited*, 2017 CanLII 76914 (ON LRB) (“*Gay*”) as being illustrative of the approach the Board should take in this case; Local 1059 says the approach from *Gay* is particularly applicable in the present circumstances where the responding party’s pleadings, and the contract that was filed, reflect a labour supply arrangement. In support of its position, Local 1059 had specific reference to paragraphs 25-26 of *Gay*, which provide as follows:

25. This panel does not quarrel at all with the above comment from *Bomben, supra*, or the related comment from true employer cases in general that each case turns on its own facts. However, that does not answer the question – how often do those same or similar facts have to be determined? It is not the case that every time a responding party says that it is not the true employer that it is therefore entitled to a hearing requiring the calling of evidence. Such an approach would defeat and render redundant the point of holding a CMH. While the Board takes a contextual approach to determinations about true employer cases that does not mean that it does so in a vacuum and without regard to what it has previously determined in similar cases each time a responding party asserts it is not the true employer.

26. This is particularly true where the Board has developed a body of case law about a particular temporary labour provider such as Labour Ready. *Thorium, supra*, was decided in 2010. Since that time the Board has developed a significant body of case law around determinations involving temporary labour providers such as and including Labour Ready. That body of case law is intended not only to guide the Board's determinations but also to inform the labour relations community on what basis such cases are likely to be determined. There is significant value to the principles of consistency and certainty in labour relations matters. In the interests of clarity, consistency, certainty and fairness the Board should not arbitrarily deviate from applying the criteria that it has developed to guide the labour relations community as to what anticipated outcomes should be with respect to the issues they raise. It is the Board's view that this best accords with the enunciated purposes of the Act in section 2 which includes the promotion of expeditious resolutions of work place disputes.

10. Looking at the responding party's submissions through the lens of the Board's case law involving labour supply arrangements, the Labourers submit that the responding party has failed to advance any material facts to differentiate its arrangement with PHT from other labour supply cases where the client, in this case the responding party, has been found by the Board to be the true employer. Additionally, and in any event, the Labourers state that the responding party has not pled any facts to show that PHT had overall or fundamental control over the work of the Individuals in Dispute.

11. An assessment of the contractual provisions related to unionized labour shows, according to Local 1059, that the responding party was alive to the reality that it could be found to be the true employer in the circumstances of the labour only contract it entered into with PHT. That provision provides as follows:

Sub-contractor: PHT Construction acknowledges that on the date of signing this contract there are no acting members of the Union (any Union) employed by the sub-contractor: PHT Construction. Contractor: PHT construction must inform 519 London Excavation in writing immediately if any or all employees become a members (sic) of Local Union (any Union).

12. Local 1059 highlighted that the contract is silent regarding materials at the jobsite, however in Local 1059's submission it is clear that PHT did not, for example, supply the concrete that was used by the Individuals in Dispute; Local 1059 referred to the responding party's submissions which disclose that the responding party used another supplier or subcontractor as the concrete supplier. Local 1059 says that the responding party's submission that PHT provided tools and equipment to the employees is not sufficient because it is devoid of facts relating to what tools and equipment it alleges were provided by PHT. Otherwise, Local 1059 asserts that the responding party's submissions are deficient in that they do not provide facts that could support the conclusion that PHT had overall responsibility for the Individuals in Dispute on the application filing date.

The Responding Party

13. The responding party, who was not represented by counsel at the CMH, but instead by its principal, Alexei Chkouro ("Chkouro"), who disclosed that he relied upon artificial intelligence software to assist in the preparation of the responding party's submissions. Those submissions frame the true employer analysis with reference to the test set out in "Pointe-Claire v. Quebec", which although no citation was provided seems to be an obvious reference to the Supreme Court of Canada's decision in *Pointe-Claire (City) v. Quebec (Labour Court)* ("*Pointe Claire*"), 1997 CanLII 390 (SCC), [1997] 1 S.C.R. 1015. The responding party's submissions, contain headings for each of the following factors from *Pointe Claire*:

- i) The party exercising direction and control over the workers performing the work;

- ii) The party bearing the burden of remuneration;
- iii) The party imposing discipline;
- iv) The party hiring the worker;
- v) The party with authority to dismiss the worker;
- vi) The party which is perceived to be the employer by the worker; and
- vii) The existence of an intention to create an employer/employee relationship.

The responding party then provided brief submissions under each heading that supported its position that PHT is the true employer of the Individuals in Dispute.

14. The responding party asserted that it entered into a contract with PHT for the complete supply of labour and tools and that PHT is completely independent of the responding party. Otherwise, Chkouro expressed concerns regarding the impact a successful application for certification would have on his business operations. Chkouro stated that he simply used PHT on two jobs to do concrete work which he described as "finicky" and that he did not understand why Local 1059 is seizing upon that and "picking on" him. Chkouro insisted that Local 1059's focus on the word "labour" in the contract was unwarranted and in his submission that is "all they have". Chkouro asserted that the materials before the Board are not sufficient to warrant his company being certified in the circumstances.

15. The responding party argues, if not expressly then by inference, that the materials before the Board are not sufficient to allow the Board to make a determination on the true employer issue. The responding party, through Chkouro, says it does not want to be controlled or told by Local 1059 that it will be unionized and, again by inference, can be taken to be asserting that a hearing is required in order for it to have its say in this matter.

Decision

16. Having regard to the material on file, the submissions of the parties and the authorities provided at the CMH, the Board is satisfied that a hearing is not required for it to make a determination on the true employer issue.

17. Rule 39.1 of the Rules allows the Board to dismiss an application where it does not make out a case for the orders or remedies requested:

39.1 Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. In its decision, the Board will set out its reasons.

18. Further, Rule 41.3 states:

41.3 Where the Board is satisfied that a case can be decided on the basis of the materials before it, and having regard to the need for expedition in labour relations matters, the Board may decide an application by limiting the parties' opportunities to present their evidence or to make their submissions, or without a hearing.

19. Paragraph 19 of the Board's decision in *Novenco Consultants Limited*, 2012 CanLII 24352 (ON LRB), in my view, aptly describes the Board's approach in Rule 41.3 motions, as follows:

The Board is mindful that the parties have agreed upon certain facts, and that other facts remain in dispute. The Board is likewise mindful of the need to be wary of deciding disputed facts in the absence of oral evidence. However, at the same time, the Board is an expert tribunal entitled to make inferences and conclusions based on its labour relations expertise. The Board is similarly able to determine, having regard to labour relations principles and practice, what weight and relevance should be attributed to the disputed facts.

20. In the present circumstances I agree with Local 1059's characterization of the contract between PHT and the responding party that was produced; on its face it is a labour only contract. In that contract the responding party agrees to pay PHT a lump sum in exchange for PHT supplying the necessary labour to install concrete sidewalks, curbs and ramps. The responding party's pleadings as described above indicate that the responding party sourced the concrete that was used by PHT from a supplier and that it was therefore not supplied by PHT.

21. There is no indication in the contract or pleadings of the responding party that PHT provided any other construction services to the responding party. In my view there are no material facts pled that could lead to the conclusion that PHT supplied anything other than

labour to the responding party such that the arrangement between PHT and the responding party falls within the category of cases involving labour supply, which have a well-established body of case law that lend themselves toward a determination under Rule 41.3. I agree with the Board's comments in *Gay, supra*, cited above that without pleadings from the responding party that differentiate its arrangement with PHT from a classic labour only scenario that in the interests of "clarity, consistency, certainty and fairness the Board should not arbitrarily deviate from applying the criteria that it has developed to guide the labour relations community as to what anticipated outcomes should be with respect to the issues they raise". The Board's case law has signalled to the community that it will not find a labour only arrangement to be a true subcontracting scenario but rather the client receiving the benefit of the labour will be found to be the true employer.

22. Importantly, the responding party failed to provide any pleadings that address who or what entity was responsible for on site supervision, an issue upon which many of the cases involving labour supply turn. The responding party stated, in its submissions, that it "did not have control over the working hours, methods or supervision of subcontractors" but it failed to provide any material facts to support that statement. Using the correct terminology with the assistance of artificial intelligence is not a sufficient pleading that would require the Board to inquire further into that assertion; there is simply no meat on the bare bones, boiler plate, statement that was generated either by or with the assistance of artificial intelligence. Had the responding party pled, for example, that PHT supervised the Individuals in Dispute's daily work by providing an individual(s) who acted as an onsite supervisor, then a hearing may have been warranted on the true employer issue. As it relates to the burden of remuneration, it can be gleaned from the material and submissions before me that PHT acted merely as a paymaster in respect of the Individuals in Dispute. PHT invoiced the responding party for a lump sum amount, as agreed, and it can be reasonably inferred, in turn, that PHT paid each employee for their labour out of those funds. Otherwise, the responding party's pleadings touching upon the *Pointe Claire, supra*, factors set out above are devoid of material facts or relate to factors to which much weight is not given when the Board is assessing a labour only contract in the construction industry.

23. I do not attribute much weight or relevance to the fact that PHT may have provided the employees with some unidentified tools to perform the concrete work (a fact that is disputed) and, as a result, that pleading is insufficient to overcome the weight and relevance of the

undisputed facts set out in the pleadings and documents before the Board that reflect the type of labour supply arrangement that has repeatedly resulted in the Board finding that the client or beneficiary of the labour is the true employer, which in this case is the responding party.

24. I do have some sympathy for the responding party as a self represented litigant before the Board, that fact cannot, however, serve to materially alter the standard of pleading required by the Board. In any event, the contractual language referenced above that imposed disclosure obligations on PHT related to its knowledge of unionized employees performing work for the responding party shows that the responding party is not entirely unsophisticated when it comes to labour relations matters. Further, the Board's decisions and notices as well as Local 1059's application and submissions, all of which were all delivered to the responding party, would have made the importance of the responding party putting its best case forward apparent and signalled to the responding party the possibility that the Board could make an adverse finding against it that could be determinative at the CMH stage, including on the issue of the true employer of the Individuals in Dispute. Faced with this knowledge the responding party chose to seek counsel from artificial intelligence rather than legal counsel and the Board's assessment of the case the responding party has presented has to be based on its merit.

25. In all the circumstances the responding party has failed to demonstrate that a hearing is required to decide the true employer issue. The only reasonable conclusion the Board can make based on the material before it is that PHT supplied only labour to the responding party. That labour was made up of the Individuals in Dispute; consistent with the Board's case law the Individuals in Dispute are employees of the responding party, within the meaning of the Act.

26. Consequently, I find that the responding party is the true employer of the Individuals in Dispute. The Individuals in Dispute will be included on the employee list in this matter.

27. Having made that finding the Board can now process this application in the normal course, by assessing Local 1059's level of support in the bargaining unit, that was previously found to be appropriate in the Board's decision of January 21, 2025.

DISPOSITION

28. At the CMH Local 1059 agreed to proceed only against 519 London Excavating Inc.; the title of proceedings will be amended accordingly.

29. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant), the Board is satisfied that more than 55% of the employees in the bargaining unit were members of the applicant on the date the application was filed.

30. The applicant has asked that it be certified pursuant to section 128.1 relying solely on the number of persons in the bargaining unit who are members of the applicant. It is entitled to do so under section 128.1. There is nothing raised in the application that would cause the Board to consider directing a representation vote.

31. The Board is satisfied that it should certify the applicant.

32. Section 128.1(24) of the Act, which states as follows, provides for the issuance of more than one certificate if the applicant has the requisite support:

If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126,

...

(b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13)(a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;

...

33. Therefore, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of The Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council in respect of

all construction labourers in the employ of 519 London Excavating Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working forepersons and persons above the rank of non-working foreperson.

34. Further, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant trade union in respect of all construction labourers in the employ of 519 London Excavating Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working forepersons and persons above the rank of non-working foreperson.

35. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 45 business days.

"Neil Keating"
for the Board