



Dialogue

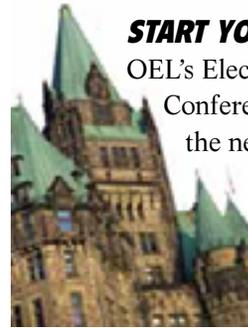
A Publication of the Ontario Electrical League

Issue 34-2 Spring 2012

editorial FOCUS

START YOUR ENGINES....

OEL's Electrical Industry Conference is around the next curve.



on the JOB



Walter Pamic, Chair of OEL's Government Relations Committee meets with Prime Minister Stephen Harper.

Walter Pamic, Power-Tek Electrical Services

Energizing the Electrical Leaders of Tomorrow

In an industry dominated by older and retiring professionals, one man's vision is helping to keep the electrical trade alive for future generations. Walter Pamic, Ontario Electrical League (OEL) member, and owner of Power-Tek Electrical Services,

Inc. (PTES) believes that healthy recruitment of younger trade professionals is the key to continued growth within the industry.

Since launching PTES more than 15 years ago, Walter has watched the electrical

Continued on page 3 ▶

All in a Day's Work

By: Keith Burkhardt, Sherrard Kuzz LLP, Employment & Labour Lawyers

For several decades, the Ontario Labour Relations Board has applied the same two-part test to determine whether an employee is eligible to participate in a union's attempt to unionize an employer, namely:

- Was the employee at work on the day the application was filed with the Labour Board (known as the "application filing date"); and
- Did the employee perform bargaining unit work in the applied for bargaining unit for the majority of his work day on the application filing date?

In the opinion of the Labour Board this test has created a "bright line" rule that streamlines the certification process and recognizes the transient nature of many construction projects. This test has also allowed the Labour Board to address situations where an individual performs work falling within the jurisdiction of multiple

Continued on page 14 ▶

inside

- 1 On the Job
- 1 All in a Day's Work
- 2 President's Message
- 5 Putting Safety to Work
- 6 Buyer Beware: Counterfeit Products
- 10 Q&A with ESA
- 11 Personal Financial Management
- 12 What's Your Exit Strategy?
- 13 Utility Incentives
- 15 Upcoming Electrical Industry Conference Highlights
- 18 Members in the News
- 23 Scholarship Program
- 23 OEL Welcomes a New Member



OEL Chapters Host Code Training Workshops. See page 18.

www.oel.org

To ensure delivery, maintain membership!

S-K article

Continued from page 1

construction trades during the workday.

However, the test does not explicitly deal with an issue faced by many employers; what happens when an employee performs both construction and non-construction work on the day a union applies for certification? Two recent decisions from the Labour Board have attempted to clarify its approach to this issue.

Two Recent Decisions

In Jamwood Developments Inc., the Labourers union challenged the inclusion of three employees who had performed construction and non-construction work on the application filing date. On the application filing date the employees performed construction work for between one and three hours and non-construction work for between five and seven hours. The non-construction work occurred at a different location than the construction work.

The union argued the employees should be excluded from the application because they performed non-construction work for more than half of their shift. The employer argued the non-construction work should not be counted for the purposes of determining the work done on the application filing date. In other words, the only relevant work to consider was the construction work. On that basis all of the work performed was Labourers work. As such, the employees should be included in the application.

The Labour Board agreed with the employer, finding as follows:

“We see no difference...between an employer directing employees to go home because they are not required at a job site and the employer directing them to leave the site and perform work not

related to the construction industry at another site. The performance of work not in the construction industry does not result in any conflict with inclusion in a construction industry bargaining unit.”

The Labour Board’s decision in Jamwood Developments Inc. was supported in a subsequent case, Contours 2000 Inc. In that case, the employees performed work on a construction job site but also in the employer’s shop (considered non-construction work). While the case was ultimately decided on other grounds, the Labour Board noted, had it applied the Jamwood Developments Inc. decision, it would have ignored the time spent in the shop and only considered time spent on the job site.

Lessons Learned for Employers

These cases highlight the importance of diligent record keeping and notes when employees perform a variety of tasks during the work day. It is a common practice for a union to attempt to “cherry pick” employees the union wants in or out of the proposed bargaining unit. In order to be in the best position to defend against this type of “cherry picking” and an application for certification an employer should maintain the following information and documents:

- Accurate timesheets (ideally written by the employee) including the general nature of work performed and when and where it was performed
- Accurate supervisor notes indicating the work performed by each employee and the amount of time spent on a particular task
- Evidence validating the work performed on a job site (i.e. photographs)

- Evidence validating travel throughout the work day (mileage forms and/or parking receipts)

One of the core practice areas at Sherrard Kuzz LLP is the representation of construction companies prior to and during an application for certification. For more information and for assistance responding to union organizing issues, please contact Sherrard Kuzz LLP. ☎



Keith Burkhardt is a lawyer with Sherrard Kuzz LLP, one of Canada’s leading employment and labour law firms, representing management. Keith can be reached at 416.603.0700 (Main), 416.420.0738 (24

Hour) or by visiting www.sherrardkuzz.com.

The information contained in this article is provided for general information purposes only and does not constitute legal or other professional advice. Reading this article does not create a lawyer-client relationship. Readers are advised to seek specific legal advice from Sherrard Kuzz LLP (or other legal counsel) in relation to any decision or course of action contemplated.

DEAR OEL MEMBERS:

I am pleased to announce the partnership between The Ontario Electrical League and Jim Peplinski Leasing. Both of our organizations are proudly Canadian and at the peak of our respective industries.

At this time, we are proud to launch a dedicated OEL/Jim Peplinski Leasing website. It can be found in the OEL member area of our website.

<http://www.jimpeplinski.ca/OEL-PARTNERS/>

Jim Peplinski Leasing is a great partner for the OEL because they are committed to long term relationships. After several meetings with Jim Peplinski Leasing, I feel confident that they know what’s important to OEL members. The things I stressed to Jim Peplinski’s as being important to our members are:

- Exceptional service
- Vehicles to be purchased through OEL members’ local dealers
- Some OEL members prefer used vehicles, some prefer new. Jim Peplinski Leasing can accommodate both
- Preferred pricing for OEL members

STEPHEN SELL
President - Ontario Electrical League

One Goal • A Thousand Assists

Jim PEPLINSKI
LEASING

is proud to
be the official
fleet leasing
partner of



ONTARIO ELECTRICAL LEAGUE

Contact:

IAN HODES
ihodes@jimpeplinski.ca

CHRIS BROWNE
cbrowne@jimpeplinski.ca

1 800 465-1174

