CITATION: International Union of Operating Engineers, Local 793 v. Aecon Group Inc., 2023 ONSC 586
DIVISIONAL COURT FILE NO.: 301/22
DATE: 20230127

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse, Matheson and Kurz JJ.

APPLICATION UNDER the *Judicial Review Procedure Act*, R.S.O., 1990, c. J.1, as amended and Rule 68 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

B E T W E E N:	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 Applicant	*Robert Gibson and Nick Ruhloff-Queiruga* for the Applicant
- and -	
AECON GROUP INC.; A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS and its LOCAL 128; MILLWRIGHTS REGIONAL COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS and its LOCALS 1007 and 2309; and UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 67 Respondents	*Carl Peterson and Natalie Garvin*, for the Respondent, Aecon Group Inc. *Madeleine Chin-Yee and Joe Ferraro* for the Respondent, A Director under the Occupational Health and Safety Act *Raymond Seelen* for the Respondents, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and its Local 128, Millwrights Regional Council of Ontario, United Brotherhood of Carpenters and Joiners and its Locals 1007 and 2309 *Meg Atkinson and Vinidhra Vaitheeswaran* for the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67

- and -	)	
	)	
THE CROWN IN RIGHT OF ONTARIO Respondent	)	
	)	
- and -	)	
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MINISTRY OF THE ATTORNEY GENERAL Respondent	)	No one appearing for the Respondents, the Crown in Right of Ontario and the Ministry of the Attorney General
	)	
- and -	)	
	)	
THE ONTARIO LABOUR RELATIONS BOARD Respondent	)	*Andrea Bowke* for the Respondent, Ontario Labour Relations Board
	)	
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	)	**HEARD at Toronto:** January 24, 2023 (by videoconference)

BACKHOUSE J.

REASONS FOR JUDGMENT

Nature of Proceeding

[1] The Applicant seeks judicial review of a Reconsideration Decision which upheld an Original Decision by the Ontario Labour Relations Board (the "Board") (jointly the "Decisions"). The Decisions upheld an Inspector's refusal to make an order requiring the Respondent, Aecon Group Inc., to alter its assignment of work restricting workers without a mobile crane certificate from operating the crane on a construction site. The Applicant submits the Decisions are based on unreasonable interpretations of the regulatory training requirements for operating cranes on construction sites. Accordingly, it asks the Court to quash the Decisions and grant its original appeal or alternatively, to remit the matter to be decided by a different panel of the Board. The Board takes no position on the merits of the application. All other Respondents ask the court to dismiss the application.

The Parties

[2] The Applicant, International Union of Operating Engineers, Local 793, is a trade union within the meaning of ss. 1(1) and 126 of the *Labour Relations Act, 1995*[1] (the "*Act*").

[3] The Respondents are also trade unions except for Aecon Group Inc. ("Aecon"). Aecon is a corporation carrying on business in the construction industry in the Province of Ontario. Aecon employed members of the Applicant and Respondent trade unions at the AMCS Project to do construction work which took place at Stelco Inc.'s Lake Erie Works at 2330 Haldimand 3 Road in Nanticoke, Ontario (the "AMCS Project").

Background

[4] This matter began as a complaint submitted by a member of the Applicant union to the Ministry of Labour on July 28, 2021. The complaint reported that an overhead construction crane, which was required to be operated by a tradesperson with a Mobile Crane Operator 1 Certificate of Qualification ("Certificate"), was being operated by an unlicenced operator. The parties agree that Aecon assigned the crane to tradespersons who were not holders of a Certificate.

[5] In response to the Applicant's complaint, Inspector Chadwick of the Ministry of Labour, Training and Skills, conducted a field visit to the AMCS Project site on July 29, 2021, and found no violation. He prepared a Field Visit Report that included the finding that the crane at issue was a permanently installed Kone Overhead Crane which runs on rails mounted atop the runway beam in the main building with a hoist capacity of 40 tons. Based on this finding, the Inspector determined that a Certificate was not required and there was no contravention of s.150 of the O.Reg. 213/91: Construction Projects under the *Occupational Health and Safety Act*[2] (the "*OHSA* s.150 Regulation"). The persons assigned to operate the crane received training in the safe operation of the crane and carried written proof of that training with them. The Inspector declined to issue an order under subsection 61(1) of the *OHSA* directing Aecon to alter its assignment of work to include only those who held a Certificate.

[6] The Applicant appealed to the Ontario Labour Relations Board (the "Board"). In both its Initial Decision of February 28, 2022 and its Reconsideration Decision of April 27, 2022, the Board held that Inspector Chadwick did not err.

Statutory Framework

[7] The *OHSA* Regulation s.150 as it existed at the time the administrative proceedings commenced on August 25, 2021 is set out in full in Appendix A. In brief, s. 150 prohibits a worker from operating "a crane or similar hoisting device" described under subsection (1) unless the worker holds an active certificate of qualification issued under the *Ontario College of Trades and Apprenticeships Act, 2009*[3] ("*OCTAA*"). A hoisting engineer – mobile crane operator 1 certificate of qualification (a "Certificate") is required where the worker operates a crane or similar hoisting device capable of raising, lowering or moving any material that weighs more than 30,000 pounds.

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[1] *Labour Relations Act*, 1995, S.O. 1995, c.1, Sched.A.
[2] *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1.
[3] *Ontario College of Trades and Apprenticeships Act, 2009*, S.O. 2009, c. 22.

Subsection (2) establishes an exception where the worker operates a crane other than ones described in subsection (1). For subsection (2) to apply, the worker must carry with them written proof indicating that he or she is trained in the safe operation of that crane, or the worker must be instructed in the operation of the crane and accompanied by a person with written proof of training.

[8] Section 21 of the O.Reg. 275/11 under the *OCTAA* (the "*OCTAA* Regulation") sets out the scope of practice for a hoisting engineer – mobile crane operator 1. It defines "mobile crane" as follows:

> "mobile crane" means a mechanical device or structure that incorporates a boom that,
>
> (a) is capable of moving in the vertical and horizontal plane,
>
> (b) is capable of raising, lowering or moving a load suspended from the boom by a hook or rope, and
>
> (c) is mounted on a mobile base or chassis,
>
> and includes a telescoping or articulated boom but does not include equipment that is used exclusively for fire-fighting or by automotive wreckers and tow trucks to clear wrecks and haul vehicles.

Original Decision of the Board- February 28, 2022

[9] In the Original Decision dated February 28, 2022, the Board determined that the Inspector did not err in his decision. The Board applied the modern principle of statutory interpretation from *Rizzo v. Rizzo Shoes Ltd. (Re)*[4] and other interpretive principles to determine whether the s. 150 *OHSA* Regulation required operators of the crane at the AMCS Project to hold a Certificate.

[10] Disagreeing with all the parties on this point, the Board found that the provision could have been drafted more clearly. An ambiguity arose from the interaction of s. 150(1) and (2). Subsection (2) applies to "cranes and other similar hoisting devices other than those described in subsection 150(1)." However, subsection (1) is not organized by the type of crane but by the certificate of qualification required by the crane operator and the hoisting capacity of the machine. To determine what fell within the ambit of subsection (1), the Board examined the provision as a whole and in light of the context and purpose of the *OHSA* s.150 Regulation. It found that the *OCTAA* Regulation was incorporated by reference into s. 150. Section 21 of the *OCTAA* Regulation sets out the specific scope of practice for the Certificate under s. 150(1)(a) of the *OHSA* Regulation (the hoisting engineer – mobile crane operator 1 certificate of qualification). The scope of practice defines "mobile crane" as a crane with a boom or one mounted on a base or chassis. The Board found that the crane at the AMCS Project did not meet this definition as it was permanently installed. It held that the Applicant's interpretation, which would apply s. 150(1) to all cranes, was untenable given the other subsections in s. 150 and the s. 21 scope of practice. Further, there was

[4] *Rizzo v. Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R.27.

no evidence to support the Applicant's position that a certificate of qualification to operate a mobile crane would make it safer to operate a permanently installed overhead crane.

The Reconsideration Decision-April 22, 2022

[11] The Board's power to reconsider its decision on an appeal from an Inspector's decision is found under s. 61(8) of the *OHSA*. Though the Board's discretionary powers are worded broadly under s. 61(8), they are limited in application by the operation of s. 61(6), which provides that decisions of the Board are final. As such, the Board will not usually interfere with a decision unless one of the following grounds is made out:

> 1. A party wishes to make representations or objections not already considered by the Board that it had no opportunity to raise previously;
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> 2. A party wishes to adduce evidence which could not previously have been obtained with reasonable diligence and which would be practically conclusive of the issue or make a substantial difference to the outcome of the case; or
>
> 3. The request raises significant and important issues of Board policy which the Board is convinced were decided wrongly in first instance.[5]

[12] The Board held that the Applicant did not satisfy any of these grounds. It determined that the Board in the Original Decision did not make factual assumptions that improperly narrowed the type of cranes covered by s. 150(1). The Board clearly set out in its reasons why it could not wholly rely on the text of s. 150, properly concluding that the "plain readings" offered by opposing parties were equally plausible and so not dispositive. It was reasonable for the Board to conclude, absent evidence to the contrary, that a Certificate to operate a mobile crane was not appropriate training for a permanently installed overhead crane. While the Applicant may disagree with the interpretation reached, disagreement is not grounds for reconsideration. Nor is reconsideration an opportunity to reargue issues that were fully argued before the Board in the Original Decision. The Board upheld the Original Decision.[6]

Position of the Parties

Issue 1-Is the Application Moot?

[13] The Respondent, Millwrights and Boilermakers, submits that the dispute between the parties to this Application has been rendered academic. The underlying dispute is whether those persons assigned by Aecon to operate the overhead crane at the AMCS Project construction site were properly qualified to do so.

[14] Millwrights and Boilermakers submit the dispute has vanished for two reasons. First, Aecon is no longer operating the crane in question. Construction on the AMCS Project was completed in July 2022 and the facility is now being operated by DTE. Aecon no longer has any

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[5] Reconsideration Decision, at paras. 4-5, citing *Xstrata Canada Corporation*, 2010 CanLII 15340 (Ont. L.R.B.), at para. 10; *Toronto Police Services Board*, 2008 CanLII 17121 (Ont. L.R.B.), at para. 2.
[6] Reconsideration Decision, at paras. 6-18.

employees operating the crane. An order directing Aecon to assign different employees to operate the crane now serves no practical purpose. Second, the s.150 *OHSA* Regulation in question no longer governs the operation of the crane in question. As per s. 20 of O.Reg. 213/91, it applies exclusively to construction projects. Since the AMCS Project has been concluded, the s.150 *OHSA* Regulation no longer governs the operation of the crane.

[15] Training standards for the operation of the crane are now governed by s. 51(1) of the R.R.O. 1990 Reg. 851: Industrial Establishments under the *OHSA*. It captures all "lifting devices" (except those that are elevating devices to which O.Reg. 209/01 applies). The requirement under s. 51(1) makes no reference to certificates of qualification.

[16] Millwrights and Boilermakers submits that while the adversarial context persists with respect to the present matter in light of a jurisdictional dispute between the parties raised in a grievance and currently adjourned *sine die*, it should be given little weight in determining whether or not the present matter is moot. It submits that the jurisdictional dispute is procedurally flawed due to the extensive delay.

[17] In its Factum, the Applicant submitted that the Application is not moot. At the hearing, it conceded that while it is moot, the Court should exercise its discretion to hear the Application. It submits that unlike *Borowski v. Canada (Attorney General)*[7] where the legislative context of the decision evaporated when the relevant section of the *Criminal Code* was struck down, the regulation at issue in the instant case is still in force. Further, in the instant case it is submitted that the Court's decision will resolve a jurisdictional dispute between the parties and clarify the law to avoid future disputes of this nature.[8] It argues that the Court's interpretation of the *OHSA* s.150 Regulation could have a direct bearing on the parties' jurisdictional grievance as it would determine whether Aecon improperly assigned the operation of the crane. The effect would be practical, not tactical, contrary to the Boilermakers and Millwrights' argument. The Applicant submits there is potential for the same dispute to arise again if a crane like the one at the AMCS Project is used in future construction projects without requiring workers to carry a Certificate. It argues that there is a public interest in the Court ruling on the proper scope of protections for workers under the s.150 *OHSA* Regulation.

Issue 2: Was it reasonable for the Board to conclude that a Certificate under the *OHSA* s. 150 Regulation was not required to operate the overhead crane at the AMCS Project?

[18] The Applicant submits the Board's interpretation of s. 150 is unreasonable for three reasons:

1. The Decisions run contrary to established principles of statutory interpretation. In the Original Decision, the Board imported the term, "mobile crane", into s. 150(1), contrary to the plain text of the provision. Simultaneously, the Board ignored the absence of limitations or exclusions in the phrase "a crane or similar hoisting device", leading the Board to conclude, incorrectly, that s. 150(1) does not apply to overhead cranes. Further, the Board's interpretation renders s. 150(1.1) superfluous

[7] *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342.
[8] *Borowski*, at page 353.

as there would be no need for the legislature to specifically exclude excavators as they are obviously not mobile cranes.

2. The Board failed to consider key evidence the Applicant put before it, the Infrastructure Health and Safety Association Training Requirement Chart (the "IHSA Chart"). The IHSA is responsible for developing training programs to meet the standards set out by the Ministry of Labour. This chart sets out industry standards for health and safety training in the operation of cranes and clarifies that the appropriate form of training is based on the hoisting capacity of the crane and not the type. The Reconsideration Decision was wrong to say the IHSA Chart could not be relied upon and wrong to ignore this evidence when it found that there was no evidence to show that training and qualification on a mobile crane would assist in operating an overhead crane.

3. The Board's interpretation deprives workers of the protection of additional training to deal with the additional risks of operating a crane with greater hoisting capacity. This is inconsistent with the purpose of the *OHSA*, a remedial public welfare statute with a protective purpose that necessitates a generous interpretation per the Court of Appeal's decision in *Ontario (Ministry of Labour) v. Hamilton (City)*.[9]

[19] Aecon submits the Board's interpretation of the statute is reasonable. The Board offered clear and cogent reasons for its preferred interpretation, demonstrated its understanding of the issues and arguments raised by the parties and appropriately weighed the evidence before it, including the IHSA Chart. The Applicant's preferred interpretation is overly narrow and fails to consider the entire context of s. 150 and the scope of practice under s. 21 of the *OCTAA* Regulation. The Board explained that an examination of the context was necessary because of the ambiguity manifested in the interaction of ss. 150(1) and (2). Based on the scope of practice, it was reasonable for the Board conclude that s. 150(1)(a) applies to mobile cranes, not overhead cranes. The Board reasonably concluded that overhead crane safety training would fall under s. 150(2), in alignment with the safety purpose of the *OHSA*. The Applicant offered no evidence that the Certificate was inherently superior to training required under s. 150(2).

Analysis

Standard of Review

[20] The parties agree the standard of review is reasonableness.

[21] In *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*,[10] Gillese J.A., writing for the Court, states:

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[9] *Ontario (Ministry of Labour) v. Hamilton (City)*, 2002 CanLII 16893, at para. 16; FAPL, at paras. 65-74.
[10] *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780.

> [77] In terms of the governing statutory scheme, s. 114 of the *LRA*[11] gives the OLRB exclusive jurisdiction to exercise the powers conferred on it and s. 116 contains a strong privative clause. The OLRB is a highly specialized tribunal with considerable expertise....

[22] At paragraph 61 of *Turkiewicz*, Justice Gillese states:

> I would add that the reviewing court must bear in mind the expertise of the administrative decision maker with respect to the questions before it. At para. 31 of *Vavilov*,[12] the Supreme Court states that "expertise remains a relevant consideration in conducting [a] reasonableness review." Being attentive to a decision maker's demonstrated expertise may reveal to a court why a decision maker reached a particular outcome or provided less detail in its consideration of a given issue (para. 93). Moreover, decision makers' specialized expertise may lead them to rely, when conducting statutory interpretation, on "considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise" (para. 119). As such, relevant expertise of the administrative decision maker must be borne in mind by a court conducting a reasonableness review, both when examining the rationality and logic of the decision maker's reasoning process and the decision itself, in light of the factual and legal constraints bearing on it.

Issue 1: Is the Application Moot?

[23] The doctrine of mootness provides that absent issues that engage the public interest, the court should not decide an issue that is no longer live between the parties.[13] The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice.

[24] The underlying dispute is whether those persons assigned by Aecon to operate the overhead crane at the AMCS Project were properly qualified to do so. The relief sought at first instance was an order directing Aecon to alter its assignment of work to include only those who held a

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[11] *Labour Relations Act*, 1995, S.O. 1995, c.1, Sched.A.
[12] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.
[13] *Borowski*, at p. 353.

Certificate. Construction on the AMCS Project was completed in July 2022 and the facility is now being operated by DTE. Aecon no longer has any employees operating the crane. The order sought by the Applicant directing Aecon to assign different employees to operate the crane would now serve no practical purpose. Moreover, the s.150 *OHSA* Regulation in question no longer governs the operation of the crane in question.

[25] Given these circumstances and the Applicant's concession, I find that the Application is moot. I turn now to whether there are special circumstances that warrant the Court exercising its discretion to hear the application.

Should the Court Exercise its Discretion to Hear the Application?

[26] In considering whether to exercise discretion to hear an application, the Court must consider whether there are "special circumstances" that warrant the Court's discretion to expend "scarce judicial resources" and hear a matter. These "special circumstances" require the Court to consider whether:

i. "the court's decision will have some practical effect on the rights of the parties notwithstanding that it will not have the effect of determining the controversy which gave rise to the action";

ii. the dispute is of a recurring nature and is of a brief enough duration that "the dispute will have always disappeared before it is ultimately resolved"; and

iii. the case raises an issue of sufficient "public importance" that "a resolution is in the public interest" despite the cost of judicial involvement.[14]

[27] In *Canada (National Revenue) v. McNally*, the Federal Court of Appeal urged reviewing courts to prudently exercise their discretion to hear moot cases given that "the task of courts…is to pronounce on legal principles only to resolve a real dispute." Judicial pronouncement of legal principles in the absence of a real dispute, the court noted, "can smack of gratuitous law-making, something that is reserved exclusively to the legislative branch of government."[15]

[28] While it is not the role of the Court in this application for judicial review to issue a finding with respect to the timeliness or appropriateness of the Applicant's jurisdictional dispute, that grievance has been in abeyance since September, 2021. It could have been determined before now. The Board has consistently held that trades who wish to protect their work assignments need to pursue any disputes in a timely manner. Whether or not the jurisdictional grievance proceeds, a different criteria applies to a jurisdictional dispute between unions than is at issue on this judicial review.

[29] On the record before the Court, it is not possible to determine if the dispute which is raised in this Application is of a recurring nature or whether the facts in this case are unique to the particular crane and training the workers received in operating the crane. In these circumstances, it cannot be said that hearing the matter will resolve a jurisdictional dispute between the parties

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[14] *Borowski* at pages 358-363.
[15] *Canada (National Revenue) v. McNally,* 2015 FCA 248, at para. 5.

and/or clarify the law to avoid future disputes of this nature. Accordingly, the adversarial context provided by the jurisdictional dispute cannot be afforded significant weight in the mootness analysis.

[30] It has not been established that this dispute is a matter which is recurring but of such a brief duration that it might otherwise evade review by the court. The present matter was delayed by approximately six months (*i.e.*, from the assignment of the work on January 15, 2021, to the Applicant member's complaint to the Ministry of Labour in July 2021). Notwithstanding this fact, the Board was able to issue both the Original Decision and the Reconsideration Decision before the project was completed. Should this issue arise again, it appears that the Applicant (or any other party that takes the Applicant's position) would be able to pursue the matter before the completion of the project rendered it moot.

[31] A health and safety matter could raise an issue of sufficient "public importance" such that "a resolution is in the public interest". However, on the facts of this case, it does not. The Board found that there is no evidence that suggests that training and qualification on a mobile crane would assist in the safe operation of an overhead crane. It further found that it makes more sense that the crane operator have written proof of training indicating that she or he is trained in the safe operation of the particular crane in question.[16]

[32] The Board has been delegated exclusive jurisdiction over the *OHSA* and its regulations. There are no prior cases before this case which interpret the *OHSA* s.150 Regulation. The Original Decision and the Reconsideration Decision are, at present, the only authorities on the matter. Should an issue arise in the future regarding who is qualified to operate a particular crane, the Board should have the opportunity to apply its expertise to develop jurisprudence with respect to this. As this matter is moot, a decision from the Court would involve gratuitous law making and would detract from the jurisdiction of the Board. The factor of the Court's role in the legislative process favours dismissing this appeal.

[33] The situation in this case is distinguishable from the facts in *Vic Restaurant Inc. v. City of Montreal*, 1958 CanLII 78 (SCC) relied upon by the Applicant where the disposition of the appeal to have a by-law declared *ultra vires* was relevant to 10 pending criminal charges against the restaurant for breach of the by-law. The court found that the restaurant had an "actual interest" in the court's determination which would have a "direct and immediate practical effect". The same cannot be said of the instant dispute.

[34] For these reasons, the Court should not exercise its discretion to hear this matter.

Consideration of this Application on the merits

Issue 2: Was it reasonable for the Board to conclude that a Certificate under the *OHSA* s. 150 Regulation was not required to operate the overhead crane at the AMCS Project?

[35] If I am wrong that this Court should not exercise its discretion to hear this matter, I would nevertheless find that the Board's determination that a Certificate under the *OHSA* s.150

[16] Original Decision, paragraph 45; Reconsideration Decision, Page 6.

Regulation was not required to operate the overhead crane at the AMCS Project was reasonable for the following reasons.

[36] The Board examined the context of the *OHSA* s.150 Regulation and the *OCTAA* Regulation to produce a harmonious reading of s. 150(1) The Board considered and properly rejected the extrinsic evidence relied on by the Applicant, the IHSA chart. The Applicant's interpretation, unlike the Board's, is not consistent with the entire context of the *OHSA* and related legislation. Moreover, the Applicant's interpretation assumes without evidence that the operation of cranes that are not mobile cranes is made safer through certification requirements that apply to mobile cranes. The Board is protected by the strongest privative clauses known to our law[17] and the issues decided by the Board in this case lie within the core of the Board's specialized expertise. Deference is owed to both the Original Decision and Reconsideration Decision which I find were both reasonable.

Conclusion

[37] In the result, the Application is dismissed with the following costs orders as agreed upon by the parties:

(a) The Applicant shall pay costs in the all inclusive amount of $6000.00 to each of Aecon and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67;

(b) The Applicant shall pay costs in the all inclusive amount of $3000.00 to each of Millwrights Regional Council of Ontario and the International Brotherhood of Boilermakers, Iron Ship builders, Blacksmiths, Forgers and Helpers and its Local 128.

Backhouse J.

I agree

Matheson J.

I agree

Kurz J.

Released: January 27, 2023

[17] *LRA*, ss.114,116.

APPENDIX A: RELEVANT STATUTORY PROVISIONS

O.Reg. 213/91: Construction Projects

Cranes, Hoisting and Rigging

150. (1) Subject to subsection (2), no worker shall operate a crane or similar hoisting device unless the worker holds a certificate of qualification or a provisional certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, or the worker is an apprentice and is working pursuant to a training agreement registered under that Act, that is not suspended, in the trade of,

(a) hoisting engineer — mobile crane operator 1, if the worker is operating a crane or similar hoisting device capable of raising, lowering or moving any material that weighs more than 30,000 pounds;
(b) hoisting engineer — mobile crane operator 1 or hoisting engineer — mobile crane operator 2, if the worker is operating a crane or similar hoisting device capable of raising, lowering or moving only material that weighs more than 16,000 pounds but no more than 30,000 pounds; or
(c) hoisting engineer — tower crane operator, if the worker is operating a tower crane. O. Reg. 88/13, s. 1; O. Reg. 885/21, s. 1.

(1.1) Subsection (1) does not apply when a worker is using excavation equipment to place pipes into a trench. O. Reg. 631/94, s. 3.

(2) No worker shall operate a crane or similar hoisting device, other than one described in subsection (1), unless,
(a) the worker has written proof of training indicating that he or she is trained in the safe operation of the crane or similar hoisting device; or
(b) the worker is being instructed in the operation of the crane or similar hoisting device and is accompanied by a person who meets the requirements of clause (a).

(3) A worker shall carry his or her proof of training while operating a crane or similar hoisting device.

O.Reg. 275/11: Scope of Practice – Trades in the Construction Sector

Hoisting engineer — mobile crane operator 1

21. (1) The scope of practice for the trade of hoisting engineer — mobile crane operator 1 includes maintaining and operating mobile cranes that are capable of raising, lowering or moving any material that weighs more than 16,000 pounds. O. Reg. 275/11, s. 21 (1).

(2) For the purposes of this section and section 22,
"mobile crane" means a mechanical device or structure that incorporates a boom that,
(a) is capable of moving in the vertical and horizontal plane,
(b) is capable of raising, lowering or moving a load suspended from the boom by a hook or rope, and
(c) is mounted on a mobile base or chassis,
and includes a telescoping or articulated boom but does not include equipment that is used exclusively for fire-fighting or by automotive wreckers and tow trucks to clear wrecks and haul vehicles.

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- and -

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THE ONTARIO LABOUR RELATIONS BOARD

REASONS FOR JUDGMENT

Backhouse J.

Released: January 27, 2023