

IN THE MATTER OF THE ONTARIO LABOUR RELATIONS ACT, 1995

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

J. LIPANI & SON SOD FARM LTD.

(“the employer”)

- and -

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

(“the union”)

AND IN THE MATTER OF a union policy grievance dated July 15, 2020.

BEFORE: John McNamee, Sole Arbitrator

APPEARANCES: For the employer:

Santo Lipani

For the union:

Ryan McKeen (Counsel)

Henrique Da Silva (Assistant Sector Co-Ordinator)

Nuno Vieira (Business Representative)

A hearing in this matter took place via Zoom, on September 3, 2020.

A W A R D

PROCESS AND JURISDICTION

1. I was appointed as arbitrator to hear the Grievance pursuant to section 49(4) of the Labour Relations Act, 1995. There was no dispute about my jurisdiction. The arbitration convened on September 3, 2020.

2. At the beginning of the hearing I met with the Parties and, at their invitation, oversaw a mediation based on the collective views of the evidence, the instructions of the Union and the Employer and in accordance with section 50 of the Labour Relations Act. As a result of that mediation, and the further reflections of the parties, this is my Order.

PARTIES AND GRIEVANCE

3. The Employer carries on a business in the landscape construction industry in Ontario.

4. The Union and the Employer are bound to the Collective Agreement between the Independent Unionized Landscape Contractors' Association and Labourers' International Union of North America, Local 183 effective on its face from May 1, 2019 to April 30, 2022 and continuing thereafter in accordance with its terms and by statute (the "Collective Agreement").

5. Beginning in May 2020, representatives of the Union have witnessed employees of the Employer, who are not members of the Union, performing bargaining unit work in violation of the Collective Agreement.

6. For the purposes of my Order, it is not necessary to review the details of the Grievance. It is sufficient to note that the Employer does not dispute the allegations made by the Union that it has employed non-union employees to perform work falling within the scope of the Collective Agreement.

TERMS OF ORDER

7. After reviewing the evidence, I have determined and hereby Order the following:
 - a. The Employer is bound to the Collective Agreement;
 - b. The Employer has violated the Collective Agreement by employing persons who are not members of the Union to perform work covered by the Collective Agreement;
 - c. Within seven (7) calendar days from the issuance of this Order the following employees of the Employer shall, subject to the sole discretion of the union, become members of the Union:
 1. Levi Tait
 2. Tony Fotivec
 3. Celestino Malfara
 4. David Al-Miya
 5. Fouad Yaqo
 6. Clancy Boxe
 7. Alan Youkhanna
 8. Jesse Romat
 9. Kerri Artymko
 10. Steven Kramer
 11. Mark Sayler
 - d. The Employer shall pay to the Union the amount of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00) (the "Damages"). This payment shall be made to the Union within seven (7) calendar days from the issuance of this Order;

e. The Damages shall be apportioned as the Union sees fit; however, I have been advised by the Parties that the Damages shall be applied by the Union to initiate the employees listed in paragraph 7(c) into the Union, with the remainder of the Damages classified as "Blouin Drywall" damages; and

f. In the event that any of the employees listed in in paragraph 7(c) herein refuse to become members of the Union, the Employer agrees that it shall not continue to allow such employees to perform bargaining unit work as defined in the Collective Agreement.

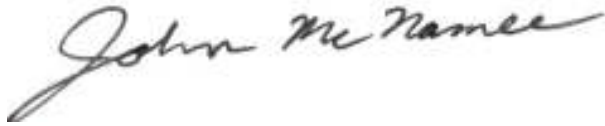
CONCLUSION

8. I have been advised by the Employer that it may terminate the employment of Mr. Mark Sayler who is an individual listed in paragraph 7(c) herein and who pursuant to the terms of this Order may be initiated into the Union. The Parties have agreed, in the event that Mr. Sayler's employment is terminated by the Employer within the calendar year of 2020, that I shall be seized in respect of any grievance filed by the Union alleging that the Employer has wrongfully terminated the employment of Mr. Sayler or otherwise violated his rights pursuant to the terms of the Collective Agreement or pursuant to any applicable legislation. The Parties have further agreed that in the event Mr. Sayler is terminated and a grievance is in fact filed by the union it is agreed that he is entitled to all rights and protections afforded to him pursuant to the terms of the Collective Agreement, including but not limited to the right not to be terminated without "just cause".

9. At the invitation of the Parties, I am seized in respect of any issues arising from the implementation of the terms of my Order. Subject only to the successful implementation of those terms, this Grievance is fully and finally resolved. Notably, my jurisdiction extends to applicable legislation, such that resolved issues include any issues that could arise under Human Rights, Health and Safety, Labour Relations or Employment Standards legislation.

10. I thank the Union and the Employer for the dignified and sensible manner in which these difficult issues were addressed.

DATED at Toronto, this 4th day of September, 2020.

A handwritten signature in cursive script that reads "John McNamee". The signature is written in dark ink and is positioned above a horizontal line.

John McNamee, Sole Arbitrator