

## ONTARIO LABOUR RELATIONS BOARD

**0301-10-R** Tariel Gambarashvili, Applicant v. Sheet Metal Workers' International Association Local Union No. 30, Responding Party v. 1440842 Ontario Inc. o/a **Kyiv Architectural Metals**, Intervenor.

**BEFORE:** Harry Freedman, Vice-Chair.

**DECISION OF THE BOARD:** May 13, 2010

1. The Board by decision dated April 28, 2010 terminated this application under section 63 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") for a declaration that the responding party no longer represents the employees in the bargaining units for which it is the bargaining agent in accordance with Rule 24.3 of the Board's Rules of Procedure due to the applicant's failure to file a Certificate of Delivery within two days of having filed this application. As the Board noted in its April 28<sup>th</sup> decision, this application was filed with Board when it was hand delivered on April 23, 2010.
2. Two days, not including Saturdays, Sundays and holidays after April 23, 2010 is April 27, 2010. The applicant had not filed a Certificate of Delivery by that date, which is why the Board terminated this application the next day.
3. The applicant has now filed a request for reconsideration. The request for reconsideration was made on May 12, 2010, the day on which it was received by the Board. The applicant sent the request for reconsideration by Xpresspost on May 11, 2010. The request for reconsideration is timely, having been made within 20 days of the Board's April 28<sup>th</sup> decision, as required by Rule 18 of the Board's Rules.
4. The applicant asserts he delivered the application in a timely way to the responding party and refers to the Certificate of Delivery (Form A-81) and receipts he claims were attached to the request for reconsideration. They were not. The documents the applicant attached to his request for reconsideration were pages from the following website: [www.labourwatch.com](http://www.labourwatch.com) and two copies of the first page of a Notice of Request for Reconsideration (Form C-24).
5. While the Certificate of Delivery and receipts were not attached to the request for reconsideration filed by the applicant, the Board file in this matter does contain a Certificate of Delivery by Applicant (Form A-81) that was sent to the Board by facsimile transmission at about 4 p.m. on April 28, 2010. The Board received those documents after its April 28<sup>th</sup> decision terminating this application was issued.
6. The applicant claims he provided the necessary documents as required and relies on the information provided by the Canadian Labour Watch Association which he says was attached. I assume the attachment he refers to is the material from the labourwatch website.
7. The material the applicant relied is silent with respect to the requirement to file the Certificate of Delivery (Form A-81) with the Board. Despite the applicant's claim about being in compliance with the time for delivery of the Form A-81, he was not.

8. The applicant also states he was unable to hand deliver the Form A-81 on April 27, 2010 “due to vehicle failure (flat tire)”. The applicant states the Certificate of Delivery was faxed to the Board the next day April 28<sup>th</sup>. As noted above, the Board in fact received the Certificate of Delivery on April 28<sup>th</sup>.

9. It appears from the Form A-81 the applicant filed on April 28<sup>th</sup>, the application material was delivered to the responding party by Priority Courier on April 27, 2010. The responding party has not yet filed a response to the application. The employer filed its intervention and list of employees on April 29, 2010.

10. Before the Board determines whether it will reconsider its April 28<sup>th</sup> decision based on the material filed by the applicant, the Board considers it appropriate to permit the responding party (and the employer) an opportunity to respond to the applicant’s request for reconsideration.

11. In any event, as the responding party has not yet filed a response to the application under section 63 of the Act for a declaration that it no longer represents the employees in the bargaining units for which it is the bargaining agent, if it does wish to respond to that application, it must deliver its response to the other parties and file it with the Board within two days (not including Saturdays, Sundays or holidays) of its receipt of this decision.

12. If the responding party or the intervenor wish to make submissions in response to the applicant’s request for reconsideration, they must deliver their submissions to the other parties and file them with the Board within five days (not including Saturdays, Sundays or holidays) of their receipt of this decision.

“Harry Freedman”  
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for the Board