Non-Construction Employers In Ontario – Meeting The Definition In The Labour Relations Act, 1995



Many employers in Ontario that engage in construction work only for their own needs and benefit work very well together with the construction trade unions that represent their construction employees. However, Ontario's "non-construction employers" should be aware that the *Labour Relations Act, 1995* (the "LRA") offers them the opportunity to apply to the Ontario Labour Relations Board (the "OLRB") for a declaration that they are not subject to unionization by construction trade unions.

For example, a municipality may only construct picnic shelters, playground equipment, etc. in local parks. A school board may only renovate and repair school buildings. A retailer of consumer goods may only build, renovate or expand the retailer's own stores. Such employers, who do no work in the construction industry for which they expect compensation from an unrelated person, constitute "non-construction employers" for the purposes of the LRA.

A non-construction employer is entitled, on application to the OLRB, to a declaration that a trade union no longer represents the employer's construction employees. When such a declaration is granted, the trade union's collective agreement immediately ceases to apply. Similarly, if a trade union applies to the OLRB for the right to represent a non-construction employer's construction employees, the application will be dismissed.

The key, in either case, is for the employer to meet the definition of "non-construction employer" as set out in the LRA. According to the OLRB, if the employer performs work in the construction industry, these are the questions to be answered:

1. Is the construction work part of, or necessary for, the business of an unrelated third party?
2. If so, does the employer expect to receive compensation that is in exchange for the construction work?

If both answers are "yes", then the employer is *not* a non-construction employer. Thus, for example, a retailer of consumer goods that performs construction work in facilities that its licensees occupy and that "charges back" the licensees for that work is *not* a non-construction employer. In contrast, a retailer that performs construction work solely on the retailer's own facilities *is* a non-construction

employer.

Article by Dan Black

Davis LLP