

*H*IGHLIGHTS

Ontario Labour Relations Board

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in March of last year. These decisions will appear in the March/April issue of the OLRB Reports. The full text of recent OLRB decisions is available on-line through the Canadian Legal Information Institute www.canlii.org.

Certification – Practice and Procedure – Bar – Union applied for certification and withdrew application after receiving response in which Employer asserted that bargaining unit contained more than twice the number of employees that the Union had estimated – Union filed fresh application the same day, before a vote was ordered, with a different bargaining unit description that excluded several classifications – Employer argued that a discretionary bar should be imposed, on the basis that the second application was an abuse of process, unduly disruptive and that the first application was withdrawn to avoid an unfavourable vote result – Union argued that since no vote had been ordered, there was no basis for a bar, and that none of the other grounds were made out – Board reiterated its jurisprudence that a discretionary bar is reserved for “special and extreme circumstances” – Since all but one of the employees in the voting constituency voted, any disruption did not affect employees’ ability to vote – Withdrawal and refileing is not, of itself, an abuse of process – Alteration to bargaining

unit description would be addressed in the Board’s determination of whether it was an appropriate bargaining unit – Employees’ wishes had not been tested in the first application and there was no evidence before the Board that the Union withdrew the application to avoid an unfavourable vote result – Request for a bar dismissed – Matter continues

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175, RE: ENTEGRIS INC.; OLRB Case No. 2330-24-R; Dated March 4, 2025; Panel: Timothy P. Liznick (9 pages)

Construction Industry – Certification – Applications for certification under construction industry provisions of the *Labour Relations Act, 1995* – Bargaining unit consisted of employees engaged in railway repair – Board had to determine whether the work performed was construction or maintenance – Board reviewed case law regarding the distinction between construction and maintenance work – Determination of whether work is construction or maintenance requires a consideration of the overall context in which the work is performed – Board held that work that is planned, rehabilitative, non-emergency work was maintenance – Work which involved building new track panels to replace an existing track panel that was to be cut out and replaced was construction – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL and **HOLLAND L.P.**, OLRB Case Nos.: 2059-18-R, 2469-18-R, 2506-18-R, 2577-18-R, 0571-19-R, & 0615-19-R; Dated March 7, 2025; Panel: Caroline Rowan (45 pages)

Construction Industry – Construction Industry Grievance – Boilermakers' Union filed grievance concerning Employer's failure to employ its members – Employer agreed that it had not employed union's members but that it did so because its client directed that work be performed by millwrights or ironworkers, but not members of the Boilermakers' – Employer argued that it could not comply with both the collective agreement and its contract with the client – Work assigned to ironworkers – Ironworkers' Union confirmed that it did not claim jurisdiction over the work in question – Board found that the client had, in fact, made it a condition of the contract with Employer that it not employ Boilermakers' members – Board found that Employer violated the collective agreement – Employer's argument that the client had effectively banned Boilermakers' members from the site and the site ban cases should apply was rejected – Site ban cases conclude that the collective agreement was not violated in the case of a site ban by a non-party to the collective agreement – In this case the Employer was a party to the collective agreement – Employer could not justify violation on the basis that it preferred one contractual obligation to another – Employer further argued that no damages should be payable since had the Employer refused to abide by the client's direction, it would not have obtained contract and under no circumstances would the Boilermakers' members have performed the work – Employer's choice to accept the contract and violate the collective agreement could not be countenanced – Damages payable – Grievance allowed

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS,

LOCAL 128, RE: **PROCESS GROUP INC.**, RE: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 736, OLRB Case No. 2301-23-G; Dated March 4, 2025; Panel: Maheen Merchant (9 pages)

Employment Standards – Application for review of employment standards officer's decision which found that the *Employment Standards Act, 2000* (the "*Act*") did not apply to the Applicant – While the Employer operated under the laws of Ontario, the Applicant worked in Singapore and was never physically present in Ontario at any point in his employment – Applicant argued that in the absence of a written employment contract, it was implied that their contract would be governed by the laws of Ontario – Applicant further argued that s. 1(3) of the *Act* applied to remote work situations and was intended to prevent jurisdictional conflicts – Employer argued that for the *Act* to apply, at least some part of the work needs to be performed physically in Ontario – Board found that it would not "imply" jurisdiction – Board concluded that the *Act* requires an employee to have had some degree of physical presence in Ontario in order for it to apply – Board found that given the Applicant's admission that he was never physically present in Ontario during the period of his alleged employment, the *Act* did not apply – Application dismissed

JIRI PIK, RE: **CURE DATA INC.**, THE DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No.: 1532-24-ES; Dated March 28, 2025; Panel: Brian D. Mulroney (15 pages)

Related Employer – Practice and Procedure – Responding parties asserted solicitor and client privilege over documents related to their merger – Documents consisted of correspondence between in-house and external counsel and representatives of both responding parties – Union argued that privilege had been waived because documents

providing legal advice to one party were provided to representatives of the other party – Board discussed “common interest privilege”, which exists where documents that are otherwise privileged are shared with another party that has a common objective or interest, and was satisfied that it applied in these circumstances – Privilege was also not waived in witness’s testimony – Mere reference to legal advice having been obtained was not sufficient to waive privilege in respect of that advice – Matter continues

IBEW CONSTRUCTION COUNCIL OF ONTARIO, RE: **JOHNSON CONTROLS BE LTD.**, JOHNSON CONTROLS CANADA LP, JOHNSON CONTROLS L.P., AND TYCO INTEGRATED FIRE & SECURITY CANADA INC., RE: UNIFOR AND ITS LOCAL 252, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 636, AND UA LOCAL 853 SPRINKLER FITTERS OF ONTARIO, OLRB Case No. 0715-22-R; Dated March 17, 2025; Panel: Peigi Ross (17 pages)

rejected – Success in the judicial review would not bring the proceeding before the Board to an end as voter eligibility would still need to be determined – Fragmentation and delay were real concerns – Application dismissed

SKIPTHE DISHES RESTAURANT SERVICES INC., RE: CANADIAN UNION OF POSTAL WORKERS, and ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 378/24; Dated March 18, 2025; Panel: N. Backhouse, D. L. Corbett, S. Nakatsuru, JJ. (10 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7 th Floor, 505 University Avenue, Toronto.

COURT PROCEEDINGS

Judicial Review – Practice and Procedure – Responding Party to application for certification filed late response – Board concluded that application was properly delivered, as it was delivered to address provided by Responding Party on its provincial and federal corporate profile reports as its registered office address and its principal place of business, which was a law firm – Board declined to consider notice under section 8.1 of the *Labour Relations Act, 1995* (the “*Act*”); even assuming the Board did have the discretion to relieve against the time limit set out in s. 8.1 of the *Act*, this was not a compelling case for relief – Responding Party sought judicial review – Divisional Court found that the application was premature – Responding Party’s argument that there were exceptional circumstances justifying judicial review of an interlocutory decision was

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Ellis-Don Construction Ltd Divisional Court No. 126/25	0195-23-G	Pending
Ronald Winegardner Divisional Court No. DC-25-00000098-0000	2094-23-U	Pending
TJ & K Construction Inc. Divisional Court No. DC-24-0002949-00-JR (Ottawa)	1743-24-ES 1744-24-ES	Pending
Justice Ohene-Amoako Divisional Court No. 788/24	2878-22-U	Pending
Peter Miasik Divisional Court No. 735/24	1941-23-U	May 27, 2025
Ahmad Mohammad Divisional Court No. 476/24	1576-20-U	Pending
SkipTheDishes Divisional Court No. 378/24	0019-24-R	Dismissed
Bird Construction Company Divisional Court No. 363/24	1706-23-G	Withdrawn
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	September 11, 2025
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	June 5, 2025
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
Joe Mancuso Divisional Court No. 28291/19	2499-16-U – 2505-16-U	Pending
	(Sudbury)	
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending

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Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending