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Ontario Labour Relations Board

HIGHLIGHTS

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the November/December 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 - Bargaining Unit - Applicant filed certification application in respect of certain employees working in the District of Algoma - Employer, a construction and maintenance contractor and supplier of aggregates, argued that bargaining unit should also include employees working in the District of Sudbury - Employer argued that the Applicant's bargaining unit was not appropriate because the Employer's operations in Algoma were not functionally separate from its operations in Sudbury - Board reiterated that its task was not to find the most appropriate bargaining unit but to ensure that the bargaining unit was appropriate and would not cause serious labour relations problems and that normally the bargaining unit applied for was to be preferred - One factor to be considered was interchange of employees - In this case, the workforce in both districts was very similar and that each district supported the other in the sense that employees from one district routinely worked in the other - Employees from both districts were regularly assigned to work side-by-side on projects - Some positions were in continuous movement between districts - While interchange did not occur on every project, the scope and extent of interchange and the functional integration of the two districts meant that the fragmentation of the two districts was likely to cause serious labour relations problems - Further, a labour disruption in one district was likely to adversely affect the employees in the other district – Board was not satisfied that these problems could be adequately addressed in collective bargaining, since other collective agreements addressed exceptions, rather than the norm as would be the case here - Appropriate bargaining unit included Districts of Algoma and Sudbury - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL RE: **BEAMISH CONSTRUCTION INC.**; OLRB Case No. 0680-21-R; Dated: November 24, 2025; Panel: Michael McCrory (15 pages)

Certification - Construction Industry - Applicant filed certification application in respect of a bargaining unit of construction labourers - Applicant sought to have certain persons struck from the Employer's list of employees on the basis that the Employer had not pleaded a *prima facie* case that they should be included - In respect of several individuals who were said to be employed by a labour subcontractor and not the Employer, Employer had set out the tasks they were said to have performed as a group - Applicant argued that many of the tasks could be tasks of a trade other than construction labourer, such as sweeping and cleanup to prepare for painting, or operation of a skid steer - In respect of another individual, the Applicant argued that the Employer had conceded that the individual, a security guard said to be employed by a subcontractor, had performed some construction labourer's work, namely traffic control, such that if she were found to be an employee of the Employer, she would be in the bargaining unit - Board found that Employer had adequately pleaded a case that the first group of individuals had performed bargaining unit work, in that it had set out the job site, hours of work and the type of work performed, which was sufficient - In respect of the security guard, the fact that she was agreed to have performed some labourer's work was not the end of the

inquiry - Non-construction employees should not determine the outcome of an application for certification in the construction industry - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL RE: **ARMOUR HEIGHTS DEVELOPMENTS INC.**, AND ARMOUR HEIGHTS CONSTRUCTION MANAGEMENT LTD.; OLRB Case Nos. 1553-24-R and 1758-24-R; Dated November 7, 2025; Panel: Jack J. Slaughter (11 pages)

Certification - Construction Industry - Union filed certification application against MEI and MOL under the construction industry provisions of the *Labour Relations Act, 1995* - Neither responding party filed a response - Board issued decision concluding that the Union was in a certifiable position but for the question of the correct identity of the employer - Union advised it sought certificate only as against responding party MEI - Responding party MEI then filed a response asserting that the Board should exercise its discretion to admit the late response - MEI asserted that it was not obvious to it from the application that it was the subject of the application, since it was based in Quebec and had no relationship to MOL, arguing that the naming of two responding parties was a "defect" - MEI argued that there was no real prejudice to the Union - Only issue in dispute was whether employees in question had performed maintenance work or construction work on the application filing date - Union argued that it was clear from application and from Board's confirmation of filing that application had potential impact on MEI's legal rights - 12 day delay was significant - Board concluded MEI's explanation for the delay was insufficient - Application clearly named MEI as responding party and it employed employees at the sole job site listed on application - Naming multiple responding parties was not a defect - Warnings in Notice to Employer and Confirmation of Filing made it clear that MEI's legal rights were in issue - While delay may be less important where the dispute was whether the work was to be characterized as construction or maintenance, in this case the work had ended by the time the response was filed, leaving the Union no opportunity to investigate MEI's position - MEI's response was not filed for a further 10 days after the Board's decision indicating the Union was in a certifiable position, for which there was no explanation - Board declined to exercise its discretion to accept the late-filed response - Certificate issued

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 RE: **MACO ENERGY INC.**; OLRB Case No. 1269-23-R; Dated: November 26, 2025; Panel: Neil Keating (12 pages)

Construction Industry Grievance - Employment Standards - Estoppel - Union referred grievance to the Board under s. 133 of the *Labour Relations Act, 1995* after Employer failed to pay overtime to certain employees - Previous collective agreements provided that overtime was not payable to employees engaged in work on water towers - Current collective agreement was amended to remove this exclusion - Employer asserted that the Union had represented to it via text message that it would be able to continue not paying overtime in respect of jobs it already had ongoing - Union brought motion under Rule 41.3 arguing that grievance could be determined based on the materials then before the Board, which included the text message - Board concluded it could determine the grievance based on the materials before it - Any alleged estoppel would be contrary to s. 5 of the *Employment Standards Act, 2000* (the "*ESA*"), which prohibits contracting out of the *ESA* - Board followed jurisprudence holding that an arbitrator cannot give effect to an estoppel that would result in a breach of the *ESA* - Grievance allowed

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, THE ONTARIO COUNCIL OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES AND INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES LOCALS 205 AND 1590 RE: **DAYSON INDUSTRIAL SERVICES INC.;** OLRB Case No. 1961-25-G: Dated November 13, 2025; Panel: Geneviève Debané (14 pages)

Construction Industry - Sector Dispute - Applicant Employer sought declaration that certain work was performed in the residential sector of the construction industry, while the responding party unions took the position that it was performed in the ICI sector - Work involved flooring at buildings owned by the Egyptian Embassy - Buildings in question were two adjacent residential buildings which were to be combined into one building including both staff offices, public areas, as well as living quarters - Original contract was to construct a "detached dwelling" but was later modified to include work to "modify the [building] to include a Diplomatic Mission" - Applicant argued that only about 5% of the building's area was used for institutional purposes and that Board should determine that the construction was residential because the predominant end use was residential - Union argued that the purpose of the construction was to convert the building from residential use only to use as a diplomatic mission, such that the construction was in the ICI sector based on end use - Although many of the rooms had "residential" names in the plan (such as "media room", "den", "sitting

room"), Union argued that it made no sense based on the plan that all of these rooms would be for these purposes, and that they were in fact intended to be used as offices or meeting rooms - Union argued that the only rooms actually laid out for residential use were bedrooms and bathrooms, which were less than 5% of the total layout - Overall use of the building was as an embassy and therefore ICI, regardless of the existence of some residential features which, as part of the embassy, were also to be considered institutional - Board concluded that the key factor was end use as work characteristics and bargaining patterns were neutral - Buildings had previously been used as an embassy for decades - Board did not find unions' speculation regarding the floor plan and intended use of various rooms to be helpful - However, while the construction documents referred to the project as residential, the end use of the building and the purpose of the construction was to rebuild and renovate the Egyptian embassy - Employer's assertion that only 5% of the floor space was institutional was not supported by the evidence - Board concluded that the project was in the ICI sector

CLASSIC TILE & MARBLE, LTD. / 8176850 CANADA INC. (PRESTO CONSTRUCTION) RE: INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 7; OLRB Case No. 0552-23-R; Dated November 24, 2025; Panel: C. Michael Mitchell (25 pages)

Termination - Employer Initiation - Application was the third application under s. 63 of the *Labour Relations Act, 1995* ("the *Act*") to terminate the Union's bargaining rights - Union argued that application was initiated by the Employer as contemplated by s. 63(16) of the *Act* - The first two applications were dismissed for various defects - Board noted that in the first two applications, the list of names of employees supporting the application had been delivered to the Employer and the Union, contrary to s. 63(4) of the *Act* - Board reviewed circumstances of the filing of the first two applications, which included that the applicant had used the Employer's computer and courier account to deliver and file the application - Further, applicant had prepared intervention on behalf of the Employer in response to the second application, which included a statement on behalf of the Employer that the staff no longer wanted to pay union dues and did not need the union - Access to these had been provided by one of the owners of the company - Applicant stated that she had partially reimbursed the Employer for the courier expense - After the first two applications had been dismissed, the owner told her to not use its courier account - Applicant asserted that the third application was delivered and filed using prepaid credit cards, but the evidence did not support this claim - Board drew inference that Employer or someone on its behalf paid for the delivery of the third application - In considering all of the circumstances of the filing of all three applications, the Board concluded that the use of the work computer by the applicant, which would have suggested to a reasonable observer that the Applicant was using her access to these resources on behalf of the Employer - The first two applications, which were posted in the workplace, contained statements on behalf of the Employer that the staff did not need a union - Petitions against the Union were also posted in the workplace and the signatories of the second and third petitions would have been able to read the comments of other employees - All of these factors taken together were circumstantial evidence that the Employer had significant or influential involvement in the application amounting to initiation - Application dismissed - Bar imposed

APRIL CODERRE RE: UNITED FOOD & COMMERCIAL WORKERS CANADA, LOCAL 175 & 633 AND **MANDY AND RAJ'S VALU-MART**; OLRB Case No. 2298-24-R; Dated: November 27, 2025; Panel: Brian D. Mulroney (11 pages)

Unfair Labour Practice - Bargaining in Bad Faith - Union asserted that Employer had violated s. 17 of the *Labour Relations Act, 1995* by denying that a collective agreement had been reached subject to ratification, and thereafter attempting to raise new proposals that had never been the subject of bargaining - Collective bargaining occurred over the course of several days - Owner and general manager of the Employer were both present for the first two days of bargaining - Owner did not attend third day of bargaining but general manager represented that he was available by phone - General manager and Union representative signed memorandum of settlement on third day, which included both certain concessions in response to the Employer's bargaining position and a clause providing for ratification of the document "by their respective principals" - General manager then emailed Union representative indicating there had been a miscommunication and the owner did not agree with the amendment to the collective agreement - Employer then made a proposal that would have resulted in a wage reduction for certain employees, which it had not previously proposed - Board found that Employer had bargained in bad faith - General manager represented to Union that he had the authority to bargain and that owner was available by phone - General manager represented that he had made a call to the owner regarding the wage increases agreed to and Board accepted that the general manager had been in contact throughout the day - Employer called no evidence to support its position - Board rejected Employer's argument that ratification clause meant that since general manager did not agree with the memorandum of

settlement, there was no collective agreement - Employer's proposed interpretation of the clause was not reasonable - Employer not permitted to resile from the settlement reached in collective bargaining - Board ordered that the memorandum of settlement constituted the collective agreement between the parties - Application allowed

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 1295 RE: **LONDON HOSPITALITY INC. O/A DAYS INN LONDON**; OLRB Case No. 1699-25-U; Dated November 7, 2025; Panel: Peigi Ross (17 pages)

COURT PROCEEDINGS

Judicial Review - Certification - Construction Industry - Board granted application for certification in favour of Union - Dispute in application before the Board primarily concerned the status of certain working foreperson - Union and Employer advanced different arguments for how their status should be determined - Board concluded that the "majority of the day" analysis was properly applied, meaning that the disputed employees were not in the bargaining unit for the purpose of the application - On judicial review, Employer argued that it was unreasonable for the Board to apply the "majority of the day" test and that it had unreasonably applied it, creating an untenable legal framework - Divisional Court rejected these arguments - Board properly identified that there were different strains of jurisprudence concerning this issue - The fact that in an interim decision in the file, the Board had indicated that it was possible for a working foreperson to be included in the bargaining unit despite not having performed bargaining unit work for the majority of the day was not a conclusion that the "majority of the day" test was inapplicable to these employees and did not dictate the result in the file - Board reasonably determined the applicable test and then reasonably applied it - Result was not an untenable legal framework - The fact that there was inconsistent Board jurisprudence did not make the Board's decision unreasonable or require judicial intervention - Application dismissed

THOMAS CAVANAGH CONSTRUCTION LIMITED, RE: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND ONTARIO LABOUR RELATIONS BOARD; Divisional Court No. 231/25; Dated: November 27, 2025; Panel: ACJ McWatt, Sachs and McKelvey JJ (13 pages)

Judicial Review - Duty of Fair Representation - Board dismissed the Applicant's four applications under the *Labour Relations Act, 1995* (the "*LRA*"), the *Occupational Health and Safety Act* and the *Public Service of Ontario Act* - A single allegation, namely, whether or not the Union had violated the duty of fair representation set out in the *LRA* by not challenging the Employer's denial of the Applicant's job applications following her layoff, was considered by the Board at a consultation - Board heard evidence and submissions on this point and concluded that the Applicant had not asked the Union to file a separate grievance concerning this issue and that the Applicant was never advised that it would be pursued in the context of her existing grievances - On judicial review, Applicant argued that the Board was biased against her, that she had been denied procedural fairness and that the Board's decision was unreasonable - Divisional Court found no air of reality to the Applicant's claims of bias - Board had afforded the Applicant procedural fairness, allowing her to file hundreds of pages of material and gave the Applicant considerable opportunity to pursue her case - Applicant did not point to any error in the Board's decision that would render it unreasonable - Application dismissed

MINA MALEKZADEH, RE: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 79, JENNIFER FARRELL, STELLA COADY, CHARLES VANVLIET, MICHAEL A. CHURCH and CALEYWRAY LAWYERS and CITY OF TORONTO, TINA SCOTT, JASON BAKER, RHONDA BRITTON and AMANDI C. ESONWANNE; Divisional Court No. 553/22; Dated: November 17, 2025; Panel: Varpio, Corbett and O'Brien JJ (7 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, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Holland, L.P. Divisional Court No. 641/25	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	Pending
Thurler Milk Divisional Court No. DC-25-00003048-0000	2521-24-ES	Pending
Riocan Management Inc. Divisional Court No. 614/25	0807-22-G	Pending
Paresh C. Ashar Divisional Court No. 546/25	2062-18-UR	Pending
Mary Spina Divisional Court No. 078/25	2542-24-U	Pending
Cai Song Divisional Court No. 493/25	2510-23-U 2766-23-UR	January 5, 2026
Sobeys Capital Inc. Divisional Court No. 385/25	1383-22-R	October 28, 2025
Tricar Developments Inc. Divisional Court No. 336/25	2132-21-G	Adjourned
Troy Life & Fire Safety Divisional Court No. 342/25	1047-23-JD	December 11, 2025
Michael Kay Divisional Court No. 296/25	2356-23-U	April 9, 2026
Liseth McMillan Divisional Court No. 293/25	2463-23-U	Pending
Thomas Cavanagh Construction Divisional Court No. 231/25	3322-19-R 0718-22-U	Dismissed
Ellis-Don Construction Ltd Divisional Court No. 126/25	0195-23-G	Adjourned
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

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Peter Miasik Divisional Court No. 735/24	1941-23-U	May 27, 2025
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Dismissed
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 **(Sudbury)**	2499-16-U – 2505-16-U	Pending
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
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