

# *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 January of last year. These decisions will appear in the January/February 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](http://www.canlii.org).

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### **Construction Industry – Jurisdictional dispute –**

Disputes concerned ICI projects including the installation of hard tile and stone – Both unions represent workers in the same craft as BUC had successfully displaced BACU as the bargaining agent for tile workers employed by the subcontractor in the application in a previous open period – General contractor was bound to the collective agreement with BACU and subcontractor was bound by the collective agreement with BUC; work in dispute was assigned to members of BUC – BACU requested that the Board “look upstream” and find that their collective agreement with the general contractor applied in the circumstances – Board noted that this was not a traditional jurisdictional dispute in the sense that the members of both unions were performing the same craft – Board noted that the workers who performed the work in dispute as members of BUC were largely the very same workers who performed identical work on different projects previously as members of the BACU – General contractor had

long-standing relationships with limited set of tile contractors, the employees of which were all now represented by BUC – One application dismissed on the basis that the responding party general contractor acted as construction manager on the project and therefore BACU had no collective agreement with any of the relevant employers – In the other application, although the collective bargaining relationship with the “upstream” contractor could be given more weight than that of the subcontractor, and there was practice evidence supporting BACU’s case, the Board gave considerable weight to the fact that the workers had chosen *en masse* to be represented by the BUC and not the BACU and BACU – Application dismissed

BRICK AND ALLIED CRAFT UNION OF CANADA AND ONTARIO PROVINCIAL CONFERENCE OF THE INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFT WORKERS AND BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 31, RE: **ELLIS-DON LIMITED**, THE BUILDING UNION OF CANADA, CASTLEWALL MARBLE AND TILE INC.; OLRB Case Nos. 1943-22-JD and 1947-22-JD; Dated January 10, 2025; Panel: Michael McFadden (12 pages)

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### **Construction Industry - Grievance Referral –**

Union alleged that the Employer failed to accommodate grievor’s disability – Grievor was accommodated for over fourteen years until he sustained another injury which exacerbated his

existing back injury – No dispute that prior to current injury, the grievor had been performing useful work through the performance of bundled tasks - Grievor was on medical leave for several months and then medically cleared his return to work – Upon his return, Employer refused to place him back into his bundled work duties citing that those tasks had already been absorbed into pre-existing roles and that there was not enough work to justify a full-time position for the grievor – Grievor was laid off as a result - Board found that the timing of the Employer's decision to discontinuing the grievor's bundled assignment was directly related to his need for medical leave and that he was singled out for review – Board determined that the Employer failed to discharge its procedural duty to accommodate the grievor by failing to discuss the efficiency issues with the grievor and the union, and by failing to consider whether other duties could be added to grievor's duties or if he could be accommodated in a different position – Board allowed grievance in part, awarding compensation for lost wages in the period of the grievor's clearance from medical leave and his layoff, as well as damages for injury to dignity, feelings and self-respect – Remitted issue of whether the grievor can be accommodated without undue hardship back to the parties – Board remained seized with respect to disputes regarding accommodation and/or compensation

CANADIAN UNION OF SKILLED WORKERS,  
RE: **HYDRO ONE INC.**; OLRB Case No. 1228-22-G; Dated January 15, 2025; Panel: Caroline Rowan (32 pages)

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**Construction Industry – Certification** – Status disputes concerned whether certain employees working on the application filing date either all fell outside or all fell inside the scope of the bargaining unit – Parties agreed on the work performed by all six employees on the application date – Appropriate case to consider union's Rule 41.3 motion – No dispute that the employees' work included preparing the site for form installations and erecting

forms on footing – Employer asserted that employees performed other work in addition to this work, but did not assert that they performed another trade's work for the majority of the day – Stripping and assembling forms could be carpenter's work and the clean up and material handling on the application date was all work in support of carpenters' work - Board was satisfied that the workers were performing carpenter's work for the majority of the day on the application date – Matter continues

CARPENTERS' REGIONAL COUNCIL,  
UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, RE: **PIEMONTE  
GENERAL CONTRACTORS LIMITED**;  
OLRB Case No. 1309-24-R; Dated January 15,  
2025; Panel: Maheen Merchant (16 pages)

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**Certification – Practice and Procedure** – Applicant sought to displace intervenor – Intervenor requested a second representation vote – Intervenor had previously alleged that a number of classifications should be added to the voters' list on the basis that the Employer was treating them as non-union employees contrary to the collective agreement – Intervenor did not provide names of such individuals other than it did add six names to the voters' list prior to the vote – In its post-vote submissions, Intervenor listed 60 additional employees it said should have been able to vote, and argued that there should be a second vote as a result – Board found that there was no indication that the Intervenor did not know who the additional employees were prior to the vote, and that post-vote submissions were far too late to suggest that they should have been entitled to vote – Nothing prevented the Intervenor from adding them to the list prior to the vote – Having agreed to the voters' list prior to the vote, it would be inequitable and an abuse of the Board's processes to order a new vote on these grounds – Application granted

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 3000 (LIUNA LOCAL 3000), RE: **HUMBER RIVER HEALTH**, and NATIONAL ORGANIZED WORKERS UNION, Intervenor; OLRB Case No. 1999-24-R; Dated January 9, 2025; Panel: Michael McCrory (9 pages)

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**Unfair Labour Practice – Statutory Freeze** – Union alleged that the Employer had improperly reduced the hours of work for employees during negotiations for a first collective agreement, contrary to s. 86 of the *Labour Relations Act, 1995* – Employer claimed that the reduction was due to decreasing occupancy rates in the retirement community where the employees worked – Board found that the alleged occupancy reduction claim was unsupported and did not justify the reduction in hours, and that a change to a recurring, regular shift was not “business as usual” or within the reasonable expectations of the employees – Statutory freeze violated - Board ordered the payment of damages to two known employees and remitted the issue of remedy for other employees back to the parties – In view of newly signed collective agreement, Board declined to order Employer to reinstate previous shifts

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 3000, RE: **CITY VIEW RETIREMENT COMMUNITY LTD**; OLRB Case No. 2234-22-U; Dated January 24, 2025; Panel: Roslyn McGilvery (15 pages)

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**Construction Industry - Grievance** – Collective agreement required Employer to “engage only contractors and/or subcontractors” bound to the agreement to perform work covered by the agreement – Dispute over whether Employer had “engaged” a contractor or subcontractor when Employer’s tenant engaged a non-union contractor to build an entirely new building on the Employer’s mall parking lot property – Employer asserted that the tenant was the party responsible for the

construction per the lease agreement, not the Employer – Lease agreement was for 15 years with the option to extend and the Employer would own the building following the conclusion of the agreement – Board took a practical and nuanced approach to the contractual arrangements and activities in the construction – Board found that the Employer engaged the contractor because it had sufficient control and direction over the construction of the building and it benefited from the construction of the building as it added floor space and capacity to the mall – Grievance allowed

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, RE: **RIOCAN MANAGEMENT INC.**, and **RIOCAN HOLDINGS INC.**; OLRB Case No. 0807-22-G; Dated January 31, 2025; Panel: Jack Slaughter (33 pages)

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## COURT PROCEEDINGS

**Judicial Review – Unlawful Reprisal** – Board dismissed an appeal filed under s. 61 of the *Occupational Health and Safety Act* (the “*Act*”) on the basis that the application was filed approximately 18 months after the inspector declined to make an order under the *Act* – The *Act* provided a 30-day time limit for the filing of appeals – Although the Board had the discretion to extend the time limit under s. 61, it declined to do so in this case – Applicant had not provided a cogent explanation for the delay in commencing the appeal, other than the bald assertion that the Employer’s conduct had caused the delay – Applicant had emailed the inspector to indicate his disagreement with the inspector’s refusal to issue any orders more than a year before application was brought to the Board – On judicial review, the Divisional Court found that the Board’s conclusions were reasonable – Board’s determination to dismiss the application for delay rather than to consider it on its merits was not a question of procedural fairness – Application for judicial review dismissed.

**JITESH PARIKH**, RE: WALMART CANADA CORPORATION, ONTARIO LABOUR RELATIONS BOARD, and A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; Divisional Court File No. 409/24; Dated January 22, 2025; Panel: Sachs, Backhouse, S.T. Bale JJ. (5 pages)

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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<sup>th</sup> Floor, 505 University Avenue, Toronto.

### Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
<b>Ellis-Don Construction Ltd</b> Divisional Court No. 126/25	0195-23-G	Pending
<b>Ronald Winegardner</b> Divisional Court No. DC-25-00000098-0000	2094-23-U	Pending
<b>TJ &amp; K Construction Inc.</b> Divisional Court No. DC-24-0002949-00-JR (Ottawa)	1743-24-ES 1744-24-ES	Pending
<b>Justice Ohene-Amoako</b> Divisional Court No. 788/24	2878-22-U	Pending
<b>Peter Miasik</b> Divisional Court No. 735/24	1941-23-U	May 27, 2025
<b>Jitesh Parikh</b> Divisional Court No. 409/24	0408-24-HS	Dismissed
<b>Ahmad Mohammad</b> Divisional Court No. 476/24	1576-20-U	Pending
<b>SkipTheDishes</b> Divisional Court No. 378/24	0019-24-R	February 13, 2025
<b>Bird Construction Company</b> Divisional Court No. 363/24	1706-23-G	April 10, 2025
<b>2469695 Ontario Inc. o/a Ultramar</b> Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	September 11, 2025
<b>Mina Malekzadeh</b> Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Adjourned
<b>Simmering Kettle Inc.</b> Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Dismissed for delay
<b>Candy E-Fong Fong</b> Divisional Court No.	0038-21-ES	Pending
<b>Symphony Senior Living Inc.</b> Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
<b>Joe Mancuso</b> Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
<b>The Captain's Boil</b> Divisional Court No. 431/19	2837-18-ES	Pending

(February 2025)

<b>EFS Toronto Inc.</b> Divisional Court No. 205/19	2409-18-ES	Pending
<b>RRCR Contracting</b> Divisional Court No. 105/19	2530-18-U	Pending
<b>China Visit Tour Inc.</b> Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
<b>Front Construction Industries</b> Divisional Court No. 528/17	1745-16-G	Pending
<b>Myriam Michail</b> Divisional Court No. 624/17 <b>(London)</b>	3434-15-U	Pending
<b>Peter David Sinisa Sesek</b> Divisional Court No. 93/16 <b>(Brampton)</b>	0297-15-ES	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48402	0095-15-UR	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48403	0015-15-U	Pending
<b>R. J. Potomski</b> Divisional Court No. 12/16 <b>(London)</b>	1615-15-UR 2437-15-UR 2466-15-UR	Pending
<b>Qingrong Qiu</b> Court of Appeal No. M48451	2714-13-ES	Pending
<b>Valoggia Linguistique</b> Divisional Court No. 15-2096 <b>(Ottawa)</b>	3205-13-ES	Pending