

*H*IGHLIGHTS

Ontario Labour Relations Board

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November 2025

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in October of this year. These decisions will appear in the September/October 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.

Construction Industry - Certification - Voluntary Recognition - IUOE applied for certification - Employer argued application was barred by voluntary recognition agreement ("VRA") between Employer and CLAC - IUOE argued that VRA was invalid pursuant to section 66 of the *Labour Relations Act, 1995* (the "Act") - Parties agreed that the VRA was not a pre-hire agreement and that CLAC had to demonstrate that it had majority support of the employees in the bargaining unit at the time the VRA was executed - CLAC argued that either the ratification vote it held, or the membership evidence it filed, demonstrated majority support - Board concluded that 11 employees were notified of the ratification vote, and six voted, but that an additional six employees who would have been in the bargaining unit were not notified of the ratification vote, and that only two employees who did vote were in the bargaining unit - Although CLAC may have made its best efforts, the ratification vote did not demonstrate majority support - With respect to the membership evidence, some of the cards submitted pre-dated the VRA by more than six months - No reason in this case to depart from the Board's normal approach that such cards are stale-dated, even though they were filed in support of a VRA as opposed to an application for certification - Board also rejected Employer's argument that it should not terminate CLAC's bargaining rights and certify IUOE

for a small subset of its employees - Board declined to exercise its discretion in this way - VRA declared invalid pursuant to s. 66 of the *Act* - Matter continues

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, APPLICANT RE: **L. FOURNIER ET FILS INC.** OLRB Case No. 2139-23-R; Dated October 31, 2025; Panel: Neil Keating (19 pages)

Construction Industry - Grievance - Employment Standards - Union filed grievances challenging grievors' layoff as an unjust termination, and also sought termination and severance pay under the *Employment Standards Act, 2000* (the "Act") - Employer argued that grievors were excluded from these employment standards by virtue of O. Regs. 285/01 and 288/01, because they were construction employees within the meaning of the *Act* and regulations - Those provisions excluded persons engaged in on-site construction and employees engaged in off-site work who were commonly associated in work or collective bargaining with on-site employees - Union argued that exclusions should be interpreted narrowly - Union argued that the exclusion was not applicable because they have not been "commonly associated in collective bargaining" with on-site employees since from the time they became covered by a collective agreement to when they were laid off, no collective bargaining had occurred - Board concluded that the fact that the grievors were covered by the same collective agreement as on-site employees meant that they were "commonly associated in collective bargaining" even though no collective bargaining had taken place during their employment - Matter continues

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 353, APPLICANT, RE: **FITZPATRICK ELECTRICAL CONTRACTORS**. OLRB Case No. 0166-25-G; Dated October 28, 2025; Panel: Brian Smeenck, KC (11 pages).

Employment Standards - Director's Liability - After Order to Pay against employer remained unpaid, Director Orders to Pay ("DOTPs") issued in respect of two employees for amounts permitted under the *Employment Standards Act, 2000* - Applicant director sought review of the DOTPs - Applicant argued that she was attempting to purchase the employer's business and that her name may have been added to the corporation's filings as a result - Applicant argued that she was never actually a director since the purchase of the business did not occur - Applicant argued that she had not had any active role in the business - Applicant became director in April, 2023 and purchase of business fell through in September, 2023 - Applicant wrote several emails to her lawyer indicating she wanted to "cancel" the deal and that she would not be responsible for the business - Employee testified that Applicant had hired him in July, 2023 and Applicant acknowledged that she had had a more active role in the restaurant but ceased when the purchase fell through - Director of Employment Standards argued that the law does not contemplate a "non-active" director - Board concluded that there was no dispute that the Applicant was a director at the relevant times, and whether or not she was "active" was irrelevant - Although the Applicant claimed that the main shareholder blocked her from having her name removed as a director, the *Canada Business Corporations Act* provided that a director ceases to hold office when the director resigns - Whatever the applicant's intentions, she did not resign prior to the relevant period - Her statements to her lawyer that she wanted to be "taken" out of this "deal" were not resignations - Application for review dismissed

SHAZIA SHAHID QURESHI A DIRECTOR OF 14111168 CANADA INC., OPERATING AS: POPEYES LOUISIANA KITCHEN, RE: PUNEET SHARMA, ADITYA RANA, AND DIRECTOR OF EMPLOYMENT STANDARDS. OLRB Case No. 0502-25-ES; Dated October 23, 2025; Panel: Allan Kaufman (17 pages).

Health and Safety – Reprisal – Applicant operations manager filed application under s. 50 of the *Occupational Health and Safety Act* (the "Act") asserting that she was re-assigned to a far less productive portfolio of clients, and then terminated, after making a harassment complaint against co-workers – After her complaint, she took a medical leave, and co-workers were promoted - Employer argued there was no nexus between the complaint and the termination, and that termination was based on performance issues – Parties agreed that Applicant's complaint and request for an investigation amounted to seeking enforcement of

the *Act* – Following her complaint and return from medical leave, Applicant was assigned to a portfolio that was far less productive and less desirable - Employer argued that new assignment was an "opportunity" on which Applicant did not capitalize and that her termination was the result of her poor performance - Board found that Employer did not provide any performance-related documentation to support its argument and that Employer's decision-making process lacked transparency - Evidence contradicted many of the Employer's justifications - Board found that Employer failed to satisfy the reverse onus to prove that the termination was not tainted by the Applicant's exercise of rights under the *Act* – Application granted

VANESSA BRAGANZA, RE: RANDSTAD CANADA. OLRB Case No. 1768-23-UR; Dated October 17, 2025; Panel: Brian D. Mulroney (45 pages)

Public Sector Labour Relations Transition Act, 1997 - Bargaining Unit - After merger of two health units, parties could not agree on bargaining unit composition - Merged employer, ONA and CUPE argued that there should be two bargaining units - one for nurses and one for all other employees - These parties submitted that over the large geographic area in question, and given the community of interest among nurses who were focused on clinical health, professional services and best nursing practices - OPSEU/SEFPO took the position that there should be a single all-employee bargaining unit, arguing that the case law favoured a larger bargaining unit, and that the larger pre-existing bargaining unit was multi-disciplinary, such that a single bargaining unit was least disruptive - Board noted that its task was to determine which bargaining unit structure best met the purposes of the *Public Sector Labour Relations Transition Act, 1997* (the "Act") and that neither bargaining unit configuration was said to create labour relations difficulties or jurisdictional disputes - Board noted that having two bargaining units would avoid the most serious consequences of a labour disruption, such that it would encourage best practices ensuring the delivery of quality and effective public services, one of the purposes of the *Act* - There is a pattern across other public health units of nursing and non-nursing units - Insufficient evidence of potential labour relations problems flowing from having two units - Majority of employees were employed either in a nursing or a non-nursing unit, meaning that a two-unit structure would create the least disruption - Two bargaining units ordered - Matter continues

THE BOARD OF HEALTH FOR THE NORTHEASTERN HEALTH UNIT RE: ONTARIO NURSES' ASSOCIATION, CANADIAN UNION OF PUBLIC EMPLOYEES, AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION / SYNDICAT DES

EMPLOYÉES DE LA FONCTION PUBLIQUE DE L'ONTARIO. OLRB Case No. 2452-24-PS; Dated October 9, 2025; Panel: Peigi Ross (20 pages)

Related Employer - Construction Industry -

Applicant submitted that the Responding Parties, OPG and Atura, constituted one employer for the purposes of the *Labour Relations Act, 1995* (the "Act") – Atura brought preliminary motion that Board did not have jurisdiction on the basis that OPG operated a federal undertaking and that managers who are not "employees" within the meaning of the Act would be covered by the collective agreement if Board granted the application – Atura's labour relations were provincially regulated – OPG's nuclear employees were federally regulated, but federal government had delegated regulatory authority to what was at the time Ontario Hydro – All of OPG's employees were provincially-regulated and OPG and Applicant had entered into a single collective agreement covering these employees – Atura argued that nuclear employees were still federally-regulated despite delegation of authority – Board held that it did not need to decide whether labour relations in respect of OPG's nuclear employees are within Ontario's jurisdiction to determine that it had jurisdiction over the provincially-regulated employees of Atura and OPG – Effect of single employer declaration would not change any collective agreement terms; it would simply add employees to the bargaining unit – Logical result of Atura's argument would be that neither the *Act* nor the *Canada Labour Code* applied to these employees – Similarly, even if some affected employees were not "employees" within the meaning of the *Act*, that would not affect Board's authority under s. 1(4) of the *Act* – Preliminary objection dismissed – Matter continues

SOCIETY OF UNITED PROFESSIONALS, RE: ONTARIO POWER GENERATION INC., AND PORTLANDS ENERGY CENTRE INC., PORTLANDS ENERGY CENTRE LP, 2685277 ONTARIO INC. AND NV LP COLLECTIVELY C.O.B. AS ATURA POWER. OLRB Case No. 0747-23-R; Dated October 20, 2025; Panel: Maheen Merchant (11 pages).

Related Employer - Construction Industry – Union sought a declaration that responding parties V and A were a single employer within the meaning of section 1(4) of the *Labour Relations Act, 1995* – Union was certified for a bargaining unit of V's employees – Union asserted that V and A had common directors, were

controlled and directed by the same individuals, and were engaged in the same business – V and A argued that while D, S and R owned both companies, V was run by D and S, while A was run by R and R had no involvement with V – V and A also argued that their businesses were different, since V manufactured vinyl windows and A manufactured aluminum window units, and they served different markets – Board found that although V and A had common ownership and shared some administrative functions, they did not carry on associated or related business since their businesses are not of the same character, not serving the same general market, not using the same manufacturing facilities, and not employing the same means of production or employees with the same skill sets – Core functions of operation, such as contracts, workforce, materials and production, remain independent and distinct – In addition, Board would decline to exercise its discretion to make a single employer declaration in any event since there is no erosion of the union's bargaining rights – Application dismissed

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: VINYL WINDOW DESIGNS LTD. O/A PERFORMANCE WINDOWS AND DOORS, AND AWD FACADES LTD. OLRB Case No. 0883-21-R; Dated October 3, 2025; Panel: Maureen Doyle (70 pages)

COURT PROCEEDINGS

Judicial Review - Duty of Fair Representation -

Applicant brought duty of fair representation application against union relating to the treatment of several grievances – Board determined that some of the grievances identified were proceeding and some were not properly before the Board – In respect of the grievances the union had agreed to resolve as part of a global settlement after assessing their merits, there was no suggestion that the union had conducted itself in an arbitrary or discriminatory manner or had acted in bad faith – Board dismissed application and subsequent request for reconsideration – On judicial review, the Divisional Court concluded that the application simply sought to re-argue the application and did not make any argument that the Board's decision was unreasonable – Board's decision was detailed and responded to the submissions made to it – Reconsideration decision was consistent with Board's jurisprudence – Board's decisions were reasonable – Application dismissed

DAVID JOHNSTON RE: ONTARIO LABOUR RELATIONS BOARD, UNIFOR, LOCAL 1987 AND PAN-OSTON LTD. Divisional Court No. 450/25;

Dated October 31, 2025; Panel: Stevenson S.F.J., Sachs
and Mew JJ (11 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
David Johnston Divisional Court No. DC-25-00000450-00JR	0780-23-U	Dismissed
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	October 21, 2025
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

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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
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 (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 Sese 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
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