

*H*IGHLIGHTS

Ontario Labour Relations Board

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 September 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 – Applicant sought certification with respect to a bargaining unit of employees working at and out of a specific site – Intervenor union asserted that it had relevant bargaining rights that would act as a bar to the application – Intervenor relied on a collective agreement between itself and a predecessor employer and alleged that the successor employer was bound by the agreement under s. 69(2) of the *Labour Relations Act, 1995* (the “Act”) since the predecessor’s assets were purchased and amalgamated into the successor employer – The successor employer and the applicant opposed the intervention and denied that the intervenor’s agreement applied to employees subject to the certification application – Board held that s. 69(2) of the Act cannot be used to allow a union to impose its bargaining rights on employees for whom the union did not previously have bargaining rights unless there is intermingling or potentially a conflict of bargaining rights – Section 69 of the Act is a protective section that is designed to prevent the erosion of bargaining rights if the successor employer declines to recognize the union’s bargaining rights. It cannot expand bargaining rights – Since Intervenor’s collective agreement did not apply to the employees at the specific site, the

intervenor did not have a legal interest in the outcome of the proceeding – Intervention request dismissed - Matter continues

CARPENTERS’ DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE YVON BUILDING SUPPLY INC. O/A ARRLIN INTERIOR SUPPLY; OLRB Case No. 2355-23-R; Dated September 18, 2025; Panel: C. Michael Mitchell (9 pages)

Construction Industry - Jurisdictional Dispute – Labourers challenged assignment of scaffolding tending work to members of the Carpenters – SO originally marked up the scaffolding work to be assigned to carpenters and labourers but then subcontracted the work, and the subcontractor T assigned all of the scaffolding work to carpenters – Board found that the relevant criteria in this matter were employer practice, area practice and economy and efficiency – Board rejected argument that practice of “upstream” contractors should be considered, since on an EPSCA site all employers are required to abide by the collective agreements of all of the trade unions – T’s practice was to assign all of the scaffolding work to carpenters – Regarding area practice, the Labourers noted that prior to the 2017 revisions, the work site in question was in a “white area” but it has now been encompassed in Board Area 19 – However, there had been no similar disputes in the new Board Area 19 – Labourers argued that as a result, all of the adjoining Board Areas should be considered the relevant “area” in the area practice factor – Board rejected this argument as there were no special and extenuating circumstances justifying a broader area – Both trade unions had relevant area practice – Board reviewed economy and efficiency considerations noting the relevance of whether or

not there was other work for a labourer to perform when not performing scaffolding tending - Relevant factors favoured an assignment to the Labourers where there was sufficient other work for a labourer to perform - Application allowed in part.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE **STUART OLSON INDUSTRIAL CONSTRUCTORS INC.**; OLRB Case Nos. 2283-21-JD and 2424-21-JD; Dated September 29, 2025; Panel: John D. Lewis (17 pages)

Employment Standards – Directors' Liability – Applicant sought review of a Director Order to Pay and also sought interim remedies – Although Applicant conceded that she was a director of the employer, she submitted that the underlying Order to Pay issued was defective since the employer was not provided with the addresses and contact information of the employees – Board found that the only issue at hand was whether the Applicant was a director at the material times – Given Applicant's concession, there was no further matter to be determined – In any event, Applicant's submission had no merit since there is no requirement that Employer must receive the names and contact information of the employees – Further, Board could not grant Applicant's desired remedy on an interim basis since Rule 39.1 did not permit the Board to quash, rescind or dismiss an Order to Pay on an interim basis – Board similarly did not have the power to "stay" the application by giving the Employment Standards Officer direction to take further steps – Application dismissed.

MARIA TERESITA DOMINGUEZ RAMOZ, A DIRECTOR OF GREAT ROCK MULTISERVICES LIMITED, RE **ABRAM REDEKOP, CARLOS H, DAMIAN PARRA I, FREDDY D ROSA, JUNIAR ROSA CONTREARAS, JOSE ALONSO, HUGO HERNANDEZ, WILHELM NEUDORF, FRANZ NEUDORF, JOSE GUADALUPE, ALEX POCHERO, ISMAEL FLORES, JOSE ANTILLON, JUAN ALONSO, JUIR, SERGIO B MONROY, AURORA, LEONARDO PEREZ, RUBEN ROMERO, BEN SCHMITT, ERIK HERNANDEZ, PETER LETKEMAN, DAVE NEUFELD, LSAAK LETKEMAN, CHRISTOPHER FLORES, HEIN DYCK, SERGIO BOUZUZA, ARTURO ALBOYRS, DAVID WIEBE, AND DIRECTOR OF**

EMPLOYMENT STANDARDS; OLRB Case Nos. 2653–24–ES and 1753–25–IO; Dated September 26, 2025; Panel: Rishi Bandhu (5 pages)

Health and Safety - Reprisal - Application under s. 50 of the *Occupational Health and Safety Act* (the "Act") - Responding party employer argued that application should be dismissed for delay and as an abuse of process - Employer argued that Applicant's termination had been fully addressed through grievance arbitration - Employer further argued that events giving rise to the application had occurred more than two years prior to the filing of the application - Board found that a party unaware of their statutory rights ought to be given some latitude, but the delay in this case was excessive - Board further concluded that the Employer's lack of response to the Applicant's complaint did not justify the delay, since the material date was the termination, not the complaint - Board further concluded that the "matter" was fully dealt with at the arbitration concerning her termination grievance - Section 50(2) of the *Act* applied, and the Applicant had elected to proceed with the matter at arbitration rather than at the Board - As a result, the Board did not need to consider the broader concept of an abuse of process - Application dismissed.

DONIKA ASLLANI, RE LOBLAWS INC.; OLRB Case No. 2046-24-UR; Dated September 24, 2025; Panel: Scott G. Thompson (13 pages).

Unfair Labour Practice – Remedial Certification – Union brought unfair labour practice application seeking remedial certification under s. 11 of the *Labour Relations Act, 1995* (the "Act") - Union asserted that Employer violated s. 70, 72 and 76 of the *Act* – Union alleged that the Employer's manufacturing manager told employees that the shop would close or be turned into a sheet metal shop if the union were certified – Board accepted Union's evidence and found that Employer threatened the economic security of employees contrary to the *Act* – Union further alleged that Employer intimidated and retaliated against Union's inside organizer – Board found that the organizer's bonus was removed due to his union activity, contrary to the *Act* - Board rejected the union's argument that another employee was dismissed contrary to the *Act* – Board found that his employment was terminated due to persistent lateness, in accordance with company policies - Board noted that the fact that the employee was reinstated on an interim basis in an earlier Board decision was not material to this conclusion - Union

argued that remedial certification was only appropriate remedy - Employer argued that any violations of the *Act* were not the reason the Union could not obtain 40% support among the bargaining unit - Board held that an objective, rather than subjective, test should be applied to determine whether anything short of remedial certification would remedy the breach - Board found that the employer threatened the employees' job security at the very outset of the union's campaign and knowledge of that threat spread quickly through the small group of affected employees - Board concluded that remedial certification was the only appropriate remedy - Certificate to issue - Matter remitted to parties to resolve bargaining unit description and quantum of damages.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 834, RE **AIM INDUSTRIAL INC.**; OLRB Case Nos. 0953-23-R and 0955-23-U; Dated September 9, 2025; Panel: Maheen Merchant (32 pages)

COURT PROCEEDINGS

Judicial Review - Employment Standards - Applicant sought judicial review of Board's decision dismissing its application for review - In its application for review, the Applicant argued that the individual responding parties were not its employees and had not performed the work for which they sought payment but that the work was in fact performed by international students - Board dismissed application for review, concluding based on the material before it that it was more likely than not that the individuals were the Applicant's employees - On judicial review, the Applicant argued that a witness was improperly permitted to hear evidence of other witnesses, that the Board's factual finding that the individuals were the Applicant's employees was in error, and that the Board ought to have considered whether the quantum of unpaid wages set out in the Order to Pay ought to have been varied - The Divisional Court found that there was no evidence that the witness was, in fact, present during the testimony of other witnesses - The Court declined to give effect to the Applicant's challenges to the factual findings made by the Board, noting that the Board considered much of the evidence before it, from both parties, was problematic and that it was not the Court's role to reweigh that evidence - The Board's conclusion that the case could be decided on narrow grounds while rejecting much of the evidence was

not unreasonable - Finally, the Court concluded that the Applicant had advanced its case before the Board on an "all or nothing" basis and had not challenged the quantum of unpaid wages, but had only taken the position that the individuals were not its employees or had not performed the work - The Board was not required to address an argument that was never put to it - Application dismissed.

2469695 ONTARIO INC. O/A ULTRAMAR, RE GURSHARN MATHARU, MANPREET MATHARU, HARJOT MATHARU, DIRECTOR OF EMPLOYMENT STANDARDS AND ONTARIO LABOUR RELATIONS BOARD; Divisional Court No. 278/24; Dated September 17, 2025; Panel: Backhouse, Nakatsuru, and O'Brien JJ (4 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.

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	Pending
David Johnston Divisional Court No. DC-25-00000450-00JR	0780-23-U	October 14, 2025
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
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	Dismissed
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 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