

*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 July of this year. These decisions will appear in the May/June 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 – Construction Industry –

Responding party in application for certification argued that certain membership evidence should be disregarded by the Board pursuant to s. 128.1(5) of the *Labour Relations Act, 1995* – Responding party alleged that one individual could not speak or read English, and that another individual was told that the membership application was “not a union card” and he then signed it without reviewing it – Union argued that the allegations, raised months after the filing deadlines set out in the Board’s initial decision in the application, and only after the union had withdrawn its position on a number of individuals previously disputed, ought to be dismissed for delay and further that there was no genuine issue raised requiring a hearing – Union further alleged that neither allegation should cause the Board to question the membership evidence – Responding party argued that Board must be satisfied that union representatives conducted themselves in a fashion that was “beyond reproach” – Only once union established this threshold level

of conduct could the Board inquire into whether or not the individuals acted reasonably – Responding party argued that there was no delay, since it raised these concerns as soon as they were known to it – Board found that the allegations would not be heard due to delay – Responding party did not explain why the exercise of due diligence could not have resulted in the allegations being made earlier – Permitting them to be advanced would be allowing the responding party to “draw another card after the [union] have already showed its hand” – Further, had the allegations not been dismissed as a result of delay, the Board would have determined that they did not warrant further inquiry – Card signers successfully filled out the cards with all of the correct information in the correct spaces, indicating that they had the opportunity to review the cards – Both individuals are presumed to be responsible adults – Allegations dismissed – Interim certificate issued – Matter continues

CARPENTERS’ REGIONAL COUNCIL,
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, RE: **JB & FT
CONSTRUCTION LTD.**; OLRB Case No. 1998-
24-R; Dated July 29, 2025; Panel: Neil Keating (20
pages)

Certification – Unfair Labour Practice – Practice and Procedure

– Union filed application for certification seeking remedial certification pursuant to s. 11 of the *Labour Relations Act, 1995* – Union sought to file declarations setting out

further allegations, some of which relate to events after the application for certification was filed – Responding party objected on the basis of delay and relevance – Responding party argued that declarations were not provided until several months after the events in question – Union argued that responding party was not prejudiced – Further, union argued that it filed the declarations as soon as possible after it received the relevant information – Board determined that the additional allegations should be permitted – Responding party had fully responded to the allegations – Hearing had not yet commenced – A central part of the Union’s case for remedial certification was that the responding party had intimidated workers such that they were hesitant to come forward – In those circumstances, greater leeway was appropriate – Declarations expand on the legal issues already before the Board – Objection dismissed – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: **UNITED BUILDING RESTORATION LTD.**; OLRB Case No. 1704-24-R & 1712-24-U; Dated July 10, 2025; Panel: Rishi Bandhu (7 pages)

Construction Industry – Certification – Open Period – Practice and Procedure – FCO applied for certification for its standard concrete forming employee bargaining unit – Shortly thereafter, IUOE filed partially overlapping application for its standard ICI and non-ICI bargaining unit – Employer argued that IUOE application should be deferred pending resolution of FCO application, pursuant to s. 111(3) of the *Labour Relations Act, 1995* – IUOE argued that overlap was minimal and most employees in the bargaining unit it applied for were not in the bargaining unit the FCO applied for – Even if FCO application failed and a bar were imposed, IUOE could still succeed and/or amend its application, which Board could determine now – Board concluded that IUOE’s request to allow its application to partly proceed on the basis of hypothetical determinations was not an option contemplated by s. 111(3) – IUOE was free to seek

to amend its application, but Board would not determine hypothetical questions that are not yet and may never be issues that need to be decided – Application adjourned pursuant to s. 111(3)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, RE: **COTTON INC.**, RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB Case No. 2947-24-R; Dated July 31, 2025; Panel: Danna Morrison (15 pages)

Construction Industry – Certification – Practice and Procedure – Union applied for certification – In its initial status submissions, union sought to add two individuals to the Schedule “A” list of employees – Employer’s responding status submissions asserted that one of the individuals did not perform work in the construction industry and that it was unlikely that the individual understood any membership evidence filed on her behalf due to an alleged language barrier but did not otherwise respond to the union’s position in respect of the work she performed on the application filing date – Union requested in its reply submissions that application be determined based on the pleadings – Employer then filed additional submissions before and after the first date of the case management hearing – Union objected to late-filed status submissions – Board refused to consider them, noting that employer’s first late submissions pleaded limited facts that did not clearly state its position, and that the second set of submissions was filed after the case management hearing had already begun – Delay of this nature was inherently prejudicial to the union – As a result, the individual was included in the bargaining unit – With respect to the validity of the membership evidence, Board noted that apart from claim that the individual “spoke very little English”, there was no claim of misrepresentation or even a clear assertion that the individual did not understand the card – Board noted that the concern was raised only by the employer and not the individual herself – No basis

for disregarding the membership evidence or to otherwise further inquire into the application – Certificate issued

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE: **SURE GENERAL CONTRACTORS INC.**; OLRB Case No. 2959-23-R; Dated July 30, 2025; Panel: Jesse Kugler (16 pages)

placed to give evidence concerning this issue – Procedural fairness requires that evidence be received in an orderly way so the parties can present their case and answer the case of the party opposite – Matter continues

KRISTA-LEE PROULX, RE: **SAULT AREA HOSPITAL (ICO ILA WATSON)**; OLRB Case No. 0643-24-UR; Dated July 7, 2025; Panel: Thomas J. Black (12 pages)

Occupational Health and Safety – Practice and Procedure – Applicant filed application asserting a violation of s. 50 of the *Occupational Health and Safety Act* – Application was dismissed as making out no *prima facie* case – Applicant then filed an application against a different entity, relying on the identical allegations set out in the original application – Application dismissed as an abuse of process and as a collateral attack on the Board's decision in the original application – Application dismissed

DAWIT TUQUABO, RE: **LUMENTUM**, RE: **SECURITAS CANADA LIMITED**; OLRB Case No. 0536-25-UR; Dated July 4, 2025; Panel: Peigi Ross (3 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.

Occupational Health and Safety – Practice and Procedure – Application under s. 50 of the *Occupational Health and Safety Act* – At first day of hearing, responding party's first witness's evidence concluded - After first day of hearing, applicant, who had previously been represented by counsel, advised that she was now representing herself – Applicant sought to continue cross-examining first witness – Applicant asserted that a new issue had arisen subsequent to the completion of the witness's evidence, and that responding party had not given her the names of all of its witnesses – Board held that the issue was not new but was ancillary to the question of whether or not the applicant had been reprised against – Further, another witness who had yet to testify was best-

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
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	November 10, 2025
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
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

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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 (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