

H Ontario Labour Relations Board **HIGHLIGHTS**

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in December 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.

Certification — Managerial Exclusion — Union filed application for certification in respect of dealers – Employer asserted that the Table Games Supervisors (“TGSs”) were managerial within the meaning of s. 1(3)(b) of the *Labour Relations Act, 1995* and therefore excluded from the bargaining unit – Employer argued that TGSs were first-level ‘eyes and ears’ of employer – Union asserted that the job duties and responsibilities of TGSs did not rise to the level of managerial functions – Board concluded that TGSs perform some monitoring and correcting roles, such as regulating the gaming process, but do not exercise discretionary power or authority that would warrant exclusion from collective bargaining – Perception of employees that TGSs are the face of management is not sufficient to make them managerial - Rights to collective bargaining are too important to be frustrated by appearances when reality does not match the appearance – Being the “eyes and ears” of the employer is one criterion among many when determining whether a role is managerial – Merely

reporting on an action where the decision is made by someone else is not sufficient to make a person managerial – To be excluded, an individual must have real and effective power of recommendation – TGSs are eligible for collective bargaining – Matter continues

PUBLIC SERVICE ALLIANCE OF CANADA RE: ONTARIO GAMING GTA LIMITED PARTNERSHIP COB AS CASINO WOODBINE; OLRB Case No. 0971-22-R; Dated December 24, 2024; Panel: C. Michael Mitchell (100 pages)

Construction Industry — Grievance Referral — Employers referred Union’s grievances to the Board under s. 133 of the *Labour Relations Act, 1995* – At issue was whether Union could seek to claim penalties available under Article 4.05 of collective agreement, which provided for significant damages for each day of non-compliance – Board concluded that damages were payable where the “Union files a grievance” alleging violation of the relevant section – In this case, although the Union had sought to amend the grievance to add it, the original grievance did not allege a breach of the relevant section - Board concluded that Article 4.05 of the collective agreement was mandatory and required that a category of impugned conduct under Article 4.05(i)–(iii) be alleged in the body of the grievance at the time of its filing – Allegations set out in the original grievances could not reasonably be said to

come within parameters of Article 4.05(i)-(iii) – Matter continues

SPR MASONRY INC, RE: MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY AND ITS MEMBERS, BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1, AND LABOURER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, AND MASONRY CONTRACTORS' ASSOCIATION OF TORONTO, INTERVENOR; OLRB Case No. 3018-23-G and OLRB Case No. 3058-23-G; Dated December 12, 2024; Panel: Michael McFadden (7 pages)

Related Employer / Sale of Business — Union brought application under ss. 69 and 69.1 of the *Labour Relations Act, 1995* (the “*Act*”) – B provided security services to retail store in mall – A replaced it – Dispute over whether or not these were “services provided directly or indirectly to a building owner or manager” – A argued that Board should analyze the circumstances through a commercial lease lens - Board relied instead on an interpretive focus on the purpose of this section of the *Act* and its remedial purpose, as explained in *Mulmer Services* – Board concluded that tenant-contracted security services are “related” to generic guard services of owners/managers or other tenants and such services involve the “premises” within the meaning of s. 69.1(1) of the *Act* – Board held this interpretation aligned with the policy basis for s. 69.1(1) – Application granted

UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 1006A, RE: UNIVERSAL PROTECTION SERVICES OF CANADA CORPORATION DBA ALLIED UNIVERSAL SECURITY SERVICES OF CANADA, AND BLACKBIRD SECURITY INC. DBA BLACKBIRD SECURITY; OLRB Case No. 2279-23-R; Dated December 6, 2024; Panel: Brian D. Mulroney (24 pages)

Related Employer / Sale of Business — Union filed an application for a successor and/or single employer declaration under ss. 1(4) and 69 of the *Labour Relations Act, 1995* (the “*Act*”) — RCW carrying on same economic activity in same location as GCF through continuation of general work performed by same kind of workers – RCW and GCF operate under common corporate entity which had decided overall plan before any “sale” took place – The terms “sells” and “sale” under s.69(1) are given very broad definitions and envisage that bargaining rights may be retained in severable part of a business – Section 69 should be given broad and liberal interpretation to give effect to its underlying labour relations purpose – Bargaining rights, once established, attach to the economic activity of the business rather than to a particular name and continue with the continuation of a business undertaking or part of it – Board concluded there was a sale of part of a business from GCF to RCW within the meaning of s. 69, since that part of the business was sufficiently similar to the predecessor operation - Board declined to issue a declaration that responding Parties were to be treated as one employer under s.1(4) – Declaration under s. 1(4) could create confusion over which union has bargaining rights and which collective agreement applies, and could be seen as expanding Applicant’s bargaining rights rather than protecting them – Board dismissed companion application under s. 70 which alleged that responding parties withheld information about what would happen to the store space during bargaining – Applicant was prepared to enter closure agreement without knowledge of what was to happen to space, so failure to disclose did not interfere with representation of employees – Remedy remitted to parties

UNITED FOOD AND COMMERCIAL WORKERS CANADA LOCAL 1006A, RE: LOBLAWS SUPERMARKETS LIMITED O/A LOBLAWS THE GREAT CANADIAN FOOD STORE AND LOBLAWS SUPERMARKETS LIMITED O/A THE REAL CANADIAN WHOLESALE CLUB, AND LOBLAWS INC;

OLRB Case Nos. 2196-21-R and 0635-22-U; Dated December 10, 2024; Panel: Brian O’Byrne (92 pages)

Unfair Labour Practice — Bargaining in Bad Faith — Employer brought application under s. 96 of the *Labour Relations Act, 1995* (the “*Act*”) alleging that the Union breached s. 17 of the *Act* - Dispute arose over Union’s response to Employer claim that a clause of an article of the collective agreement had been deleted in error prior to the parties agreeing to this article – Union asserted that language was agreed and would not alter it, and took the position that the Employer could not resile from the agreement – No evidence led by either party that this clause was discussed at all - Board found that Employer had made honest mistake and was entitled to withdraw its agreement during bargaining without violating the *Act* – Employer’s withdrawal of prior agreement was clear, but it did not follow up at subsequent bargaining meetings or through correspondence to test or confirm assertion that Union would not add language back into collective agreement – Further, application to Board was filed approximately twelve months after the events in question, on the eve of interest arbitration, and this conduct should not be rewarded – In view of excessive delay in the circumstances, application dismissed on the basis of delay and it was unnecessary to determine whether Union violated duty to bargain in good faith – Application dismissed

CHESHIRE HOMES OF LONDON INC, RE: **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA**; OLRB Case No. 0684-24-U; Dated December 23, 2024; Panel: Paul Young (18 pages)

COURT PROCEEDINGS

Judicial Review – Unfair Labour Practice – Board dismissed unfair labour practice application under s. 96(4) of the *Labour Relations Act, 1995* (the “*Act*”) brought by employer association

(“ETBA”) arising out of owner (“TDSB”)’s decision to withdraw a contract from a contractor due to conflict over which type of electrician was to be employed to perform the work – Board concluded that there was no labour relations purpose in inquiring into the application, that it had limited chance of success and there was limited utility to the remedies available – Applicant employer association (“ETBA”) sought judicial review – ETBA argued that the Board’s decision ignored the context of province-wide bargaining, was unjustifiably narrow in its view of the application and ignored the significance of the remedy sought – Responding Party TDSB argued that application was premature because ETBA had not sought reconsideration of Board’s decision – Court concluded that reconsideration would not be an adequate alternative remedy in the circumstances of this case such that application was not premature – Court concluded that Board fully apprehended the context of province-wide bargaining, concluding that there were two collective agreements binding on two separate sets of parties – Court also concluded that the Board’s conclusion that ETBA could not obtain damages on behalf of the contractor was reasonable – Finally, Board’s conclusion that the two collective agreements had existed side by side for 26 years without difficulty and that any issue that did arise could be resolved in a more appropriate forum (a grievance or a breach of contract claim) was reasonable – Application dismissed

ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO, RE: TORONTO DISTRICT SCHOOL BOARD, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, MAINTENANCE and CONSTRUCTION SKILLED TRADES COUNCIL and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 131/24; Dated December 5, 2024; Panel: Sachs, Matheson and Jarvis JJ (16 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
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
Jitesh Parikh Divisional Court No. 409/24	0408-24-HS	January 21, 2025
Ahmad Mohammad Divisional Court No. 476/24	1576-20-U	Pending
Clean Water Works Divisional Court No. 401/24	1093-21-R	January 16, 2025
SkipTheDishes Divisional Court No. 378/24	0019-24-R	February 13, 2025
Bird Construction Company Divisional Court No. 363/24	1706-23-G	April 10, 2025
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	September 11, 2025
Yan Gu Divisional Court No. 306/24	0994-23-U	December 12, 2024
Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario Divisional Court No. 131/24	2442-22-U	Dismissed
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Adjourned
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Dismissed for delay
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	2499-16-U – 2505-16-U	Pending

(January 2025)

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