

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 April of last year. These decisions will appear in the March/April 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 – Reconsideration – Applicant filed application for certification under s. 128.1 of the *Labour Relations Act, 1995* – Responding party did not respond, and application was granted – Request for reconsideration filed asserting that responding party did not employ anyone in the bargaining unit and requesting that certificate be rescinded – Board noted its jurisprudence permitting, in appropriate cases, late responses where responding party asserts that it was not the employer of any of the individuals said to be in the bargaining unit – In this case, the responding party had not explained why it did not respond to the certificate more quickly or what steps it took to address it once the application was delivered to it, or after the certificate issued – Responding party also asserted in its request for reconsideration that there were only two, not four, individuals at work on the project, giving rise to prejudice to the Union since there was an apparent dispute as to what occurred on the application filing date – Responding party gave no explanation for

not filing a response or for why it asserted individuals (who had been paid pursuant to a rate sheet without negotiation) would be considered independent contractors – Request for reconsideration dismissed

CARPENTERS' REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **E4 HOMES INC.**; OLRB Case No. 1144-24-R; Dated April 24, 2025; Panel: C. Michael Mitchell (12 pages)

Certification – Construction Industry – Termination of Bargaining Rights – Practice and Procedure - Application for termination filed prior to conclusion of application for certification – Applicant argued that a vote should be held and the consideration of the termination application be postponed pursuant to s. 111(3)(b) of the *Labour Relations Act, 1995* (the “*Act*”) until the certification application was resolved – Board held that since there were no bargaining rights yet granted, there was no bargaining unit in which the applicant could be working – Application was untimely as a result – s. 111(3)(b) of the *Act* could not render timely an application that was otherwise untimely – Application dismissed

HARRY EVANS, RE: ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA AND UA

LOCAL 46, UA LOCAL 67, UA LOCAL 71, UA LOCAL 401, UA LOCAL 527, UA LOCAL 628, UA LOCAL 663, UA LOCAL 787, UA LOCAL 800, RE: **ARCON ELECTRIC LTD.**; OLRB Case No. 3145-24-R; Dated April 3, 2025; Panel: Neil Keating (4 pages)

Certification – Unfair Labour Practice – After hearing into status disputes had commenced, employer conceded all status disputes one month before the statutory open period commenced – Union argued that the Board should delay issuance of certificate until after the open period had closed – Union argued that employer’s conduct constituted fraud within the meaning of s. 128.1(5) of the *Labour Relations Act, 1995* (the “Act”) – Employer argued that Board should not artificially close the open period by delaying the issuance of the certificate – Board noted that it does not look behind parties’ agreements to determine the reasons or motivation for them – Section 128.1(5) was not engaged – Dispute was not whether or not a certificate should issue, but when it should issue – Although Union’s frustration was understandable, nothing in the unfair labour practice previously filed by the Union would affect the outcome in the certification application – No outstanding issues in certification and therefore no basis for delaying certificate issuing – Certificate granted

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE: **39 SEVEN INC.**; OLRB Case No. 1109-24-R; Dated April 16, 2025; Panel: Alan Freedman (12 pages)

Certification – Unfair Labour Practice – Parties raised several status disputes in application for certification – After twelve hearing days into status disputes, employer conceded all status disputes as well as outstanding dispute over correct identity of responding party, one week prior to scheduled hearing date and three weeks into the statutory open period – Union argued that Board should delay

issuance of certificate until after the open period had closed - Union discovered additional potential related party and filed a single employer application and an unfair labour practice application complaining of employer’s concession of all disputes during the open period – Employer promptly conceded single employer application and insisted that certificate issue immediately – Board reviewed case law and concluded that there was no basis to delay issuance of certificate – Effect of concessions was that there was no longer any dispute between the parties requiring litigation – Board does not look behind agreements to determine the reasons or motivation for them - Timing and nature of employer’s concessions, which included agreement that a dissolved entity was a proper party to the application left no doubt as to the employer’s intentions – However, unfair labour practice filed by Union complaining of these events could not alter the result in the certification application – Board has a statutory duty to apply the Act - Certificate granted

LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT, RE: **COZZA BROS. EXCAVATING LTD., COZZA BROS. PAVING & HAULAGE LTD. AND COZZA BROS. TRUCK REPAIR LTD.**; OLRB Case No. 0104-23-R; Dated April 22, 2025; Panel: Michael McCrory (16 pages)

Certification – Unfair Labour Practices – Applicant filed unfair labour practice application several months after vote conducted in application, but prior to vote being counted – Issues in application were not identified in the post-vote submission period – After voter eligibility issues were determined and the vote counted, more than 50% of the ballots cast were against the applicant – Applicant then requested that the Board proceed with the unfair labour practice complaint, and that the certification application not be finally decided until the unfair labour practice complaint was determined, since the Applicant sought relief under s. 11 of the *Labour Relations Act, 1995* including a

second vote – Applicant argued that there was no delay since it should have a reasonable period of time to investigate allegations of wrongdoing, and since the delay was less than a year there was an onus on the other parties to demonstrate prejudice – Board held that the relevant time period was the five-day period set out in Rule 11.2 regarding post-vote representations, not the Board’s general approach to delay where there is no deadline for filing – Instead onus was on the Applicant to demonstrate why allegations were made outside the period for post-vote submissions – Explanation in this case was insufficient – The most serious allegations made by the Applicant should have come to light prior to the vote when they were alleged to have occurred - Where a party alleges misconduct in the run up to or concerning the vote itself, it must raise such a complaint promptly – Parties had no forewarning that there were any issues about the vote other than two relatively minor issues – Approach to delay in a certification application was not the same as the approach to delay in other proceedings – Conclusion of certification application would not be delayed pending hearing of the unfair labour practice – Application dismissed

TORONTO HOSPITALITY EMPLOYEES UNION – CSN (THEU-CSN), RE: **FAIRMONT ROYAL YORK**, RE: UNITE HERE, LOCAL 75; OLRB Case No. 0186-22-R; Dated April 11, 2025; Panel: C. Michael Mitchell (19 pages)

Termination of Bargaining Rights – Open Period – Practice and Procedure – Application for termination of bargaining rights filed electronically on March 26 – Application identified application date as March 25 – Application was accompanied by a letter requesting that the Board treat the application as having been filed on March 25 as the applicant made efforts to file it electronically in the afternoon of March 25 – Board declined to treat application as filed on March 25 – Assuming the applicant encountered difficulties in filing the application electronically in the afternoon

of March 25, there were other means for the applicant to file the application on March 25 – Since the application referred to March 25 and not the application filing date, March 26, the Board could not make the findings required under s. 63 to determine that a vote should be ordered – Application dismissed

PASCAL BOURGON, RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, IBEW CONSTRUCTION COUNCIL OF ONTARIO AND IBEW LOCAL 586; OLRB Case No. 3109-24-R; Dated April 1, 2025; Panel: Alan Freedman (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, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Stephen Simpson Divisional Court No. 302/25	0104-23-R	Abandoned
David Johnston Divisional Court No. DC-25-00000450-00JR	0780-23-U	Pending
Liseth McMillan Divisional Court No. 293/25	2463-23-U	Pending
Jacob (Yakov) Yavelberg Divisional Court No. DC-25-00001646-00JR	1799-24-UR	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	Pending
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
Ahmad Mohammad Divisional Court No. 476/24	1576-20-U	Pending
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 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