ISSN 1712–4506 (Online)

Ontario Labour Relations Board HIGHLIGHTS

Editors: Andrea Bowker, Solicitor
Aaron Hart, Solicitor

September 2025

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 July/August 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 – True Employer – In response to the union's application for certification, Responding Party asserted that it was not the employer of any of the individuals in dispute, arguing that they were employed by subcontractor –Subcontractor provided respondent with machinery, machine operators, a foreman, and construction labourers – Subcontractor was responsible for health and safety, training, oversight, and driving workers to site – Subcontractor submitted invoices to the respondent – Subcontractor obtained construction labourers from a labour supplier – Applicant argued Responding Party engaged in a series of business arrangements to defeat an organizing drive – Applicant asserted the Responding Party had ultimate control over the terms and conditions of employment of the workers – Responding Party asserted it was not the true employer because it did not direct or control the workers – Board concluded that Responding Party was not the true employer – Subcontractor exercised fundamental control over the workers the applicant sought to include and paid for the workers' transportation as well as training – Although work was assigned by the Responding Party's site supervisor, the subcontractor's foreman assigned and directed the construction labourers, determining who would perform which work, and also assessing their work - Application dismissed

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **EDEN OAK INC**. et al.; OLRB Case No. 2598-22-R; Dated August 22, 2025; Panel: Geneviève Debané (16 pages)

Certification – Construction Industry – Union filed application for certification pursuant to s. 128.1 of the *Labour Relations Act, 1995* (the "*Act*") – Several employees then wrote letters to the Board making similar claims of intimidation and coercion and requesting that any membership evidence filed on their behalf be revoked – Union brought motion that the letters be disregarded without the need for a hearing, pursuant to Rule 39.1 and/or Rule 41.3 - Union argued that as revocations, none of the letters should be given any weight since they all post-dated the application filing date – Union further argued that none of the letters contained any particulars of any intimidation or coercion but simply made bald conclusory allegations – None of the letters suggested any misrepresentation in respect of membership evidence – Card were clear and were filled out by the card signers, and they

should be treated as reasonable adults and their cards given effect to – Employees argued that the letters and employee submissions indicated that employees were lied to and/or threatened with job loss – Employer argued that employees were unsophisticated and natural justice required that a hearing be held, and that if the material was lacking in specificity, particulars could be ordered – Board determined no hearing required – Board's jurisprudence is clear that since the *Act* requires the Board to determine membership support on the application filing date, purported revocations that post-date the application filing date are not material – Letters consisted of bald statements without material facts – No basis for concluding that individuals did not know what they were signing or any other reason to doubt the membership evidence – Motion granted – Matter continues

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1819, RE: **EXPLORE1.CA LTD**.; OLRB Case No. 0772-24-R & 0954-24-U; Dated August 6, 2025; Panel: John D. Lewis (17 pages)

Certification – Construction Industry – Voluntary Recognition – UA applied for certification in respect of construction and industrial employees of responding parties – Unifor intervened and asserted that it already held bargaining rights for Windsor employees – UA argued that voluntary recognition agreement ("VRA") was invalid but that if it was valid, Unifor had abandoned its bargaining rights – VRA covering Windsor employees signed in 2021 as an addendum to the collective agreement, but implementation provision indicated that it would not be enforced in respect of Windsor employees until 2023 – After execution of VRA, Unifor and responding parties bargained a renewal collective agreement but Windsor employees did not participate in ratification vote – Responding parties entered into individual contracts of employment with Windsor employees despite existence of collective agreement – Board found that addendum to collective agreement constituted valid VRA that was not tainted by employer support - Given agreement to waive application of collective agreement to Windsor employees, Board concluded that there was no abandonment – Unifor gave timely notice to employer of its intention to enforce the collective agreement as of the effective date, demonstrating it was actively pursuing its bargaining rights – Matter continues

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 787, RE**: SE CANADA INC. O/A BRYANT HEATING, AIR CONDITIONING & PLUMBING,** RE: UNIFOR, LOCAL 975; OLRB Case No. 0800-23-R, 0802-23-R, 0960-23-U, 0791-23-R, & 0798-23-R; Dated August 1, 2025; Panel: Jack J. Slaughter (22 pages)

Construction Industry – Certification – Practice and Procedure – Union filed an application for certification - Union challenged nine individuals on Employer's list – After hearing commenced and two witnesses were heard from, Union advised Board that Employer had agreed to remove five individuals from the list – Employer then withdrew an additional three individuals from its list – Union then brought a motion to determine the status of the remaining disputed individual under Rules 41.3 and 39.1 without *viva voce* evidence – Union argued that the Employer's pleadings, even if assumed to be true, did not demonstrate that the individual had performed bargaining unit work for a majority of his working day on the application filing date – Employer argued that the motion was brought too late in the proceeding – Employer also argued the Board previously dismissed a Union motion for the Board not to hear evidence concerning status – Union argued that there was no time limit for invoking Rules 41.3 or 39.1 – Union also asserted the motion raised a new issue being a question of law based on Employer's pleadings – Board allowed Union's motion – Board accepted Union

raised a new issue – Board balanced relevant labour relations considerations of saving the Board time and resources at an evidentiary hearing – On the merits, Board held that the Employer had not pleaded facts that would support a finding that the individual performed bargaining unit work for the majority of his work day on the application filing date – Certificate issued

CARPENTERS REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **MIRABELLI** CORPORATION; OLRB Case No. 0882-22-R & 1165-22-U; Dated August 28, 2025; Panel: Scott G. Thompson (18 pages)

Reprisal - Practice and Procedure – Application pursuant to s. 50 of the *Occupational Health and Safety Act* – Board directed that the application proceed by way of videoconference based, in part, on the health concerns of the Applicant's advisor - Responding Party thereafter sought to exclude Applicant's advisor from the hearing based on further communication from the advisor's neurologist concerning medical risks associated with the advisor's attendance at hearings – Neurologist highlighted the need for the advisor to avoid stress to participate in the hearing process and recommended that undue or avoidable stress for the advisor be avoided – Responding Party took the position that the Applicant's advisor's participation was untenable in view of these conditions since the risks to the advisor could not reasonably be reduced or eliminated and that Responding Party would be unable to fully defend itself in the proceeding - Board noted that "open court" principle meant that in the normal course anyone, including the Applicant's advisor, was free to attend a hearing – Proceedings to date indicated that advisor had significant knowledge of the proceeding and Applicant's preference for advisor to attend was reasonable – Applicant's circumstances had to be weighed in the context of the adversarial nature of litigation and Rule 5.1-1 of the Law Society of Ontario's Rules of Professional Conduct which obliges a lawyer to advance every argument and ask every question that is helpful to the client's case - Neurologist's recommendations clearly conflicted with the Responding Party's counsel's obligations – Board concluded that the risk of an adversarial process was not to be shifted onto the Board or the Responding Party and that the decision to attend the hearing is the advisor's decision alone – Board stated there is no guarantee the environment will be free from undue stress or avoidable stress, and that the advisor and his neurologist needed to be aware of this – Request to exclude advisor dismissed – Matter continues

FRANK LEWIS SCUGLIA, RE: **BMO NESBITT BURNS INC. (BMO NBI)**; OLRB Case No. 1979-23-UR; Dated August 7, 2025; Panel: Michael McCrory (10 pages)

Unfair labour practice – CUPW brought unfair labour practice complaint concerning agreement between Uber and UFCW UFCW to exclusively provide specific "representational services to drivers and delivery people" working in Canada – Agreement permitted UFCW to represent workers in account deactivation appeals, disputes over accounts, and to meet with Uber to discuss health and safety as well as general relevant issues to drivers and delivery people – Agreement did not create bargaining rights – CUPW alleged Uber committed an unfair labour practice under s. 70 of the *Labour Relations Act*, *1995* (the "*Act*") by conferring exclusive representation rights to UFCW during a period in which CUPW was actively organizing drivers and delivery people – Organizing efforts by CUPW continued after the agreement was entered into – CUPW argued agreement was tainted by anti-union animus because Uber entered into the agreement because of CUPW's organizing drive – CUPW alleged the facts established the agreement interfered with its organizing drive that was more than incidental – CUPW requested the Board draw an adverse inference against Uber for failing to call evidence to explain the reason or motivation behind the

agreement and to establish whether Uber was aware of CUPW's organizing efforts – CUPW sought to have the same representational rights held by UFCW – Uber asserted there was no evidence to support a finding of anti-union animus – Uber argued there was no evidence to demonstrate that the agreement had more than an incidental impact on organizing efforts – Uber argued that the agreement did not impact a trade union's rights or responsibilities under the *Act* – Uber also argued that there was no evidence to show CUPW's organizing efforts were public knowledge – UFCW argued the remedy sought by UFCW was untenable – Board held that there was no unfair labour practice – No adverse inference drawn against Uber for not calling evidence – Board found there was no evidence to support CUPW's organizing efforts were materially impacted by the agreement – Board could not infer anti-union animus – No evidence to conclude Uber knew of CUPW's organizing initiatives before agreement was entered into – Application dismissed

CANADIAN UNION OF POSTAL WORKERS, RE: **UBER CANADA INC**., RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA); OLRB Case No. 1279-22-U; Dated August 15, 2025; Panel: Jesse Kugler (41 pages)

Unfair Labour Practice – **Statutory Freeze** – From March 2020 to July 2023, Responding Party paid for an employees' benefit premiums when employees were on extended leaves of absence because of the pandemic – These premiums were normally payable by employees themselves during an extended leave, or alternatively benefit coverage was waived during such periods - During period, the Responding Party communicated potential end dates to the premium holiday but continued to extend the coverage – In August 2022, the Union filed an application for certification – In July 2023, the Responding Party notified employees that it was reverting to its previous requirement that employees pay the premiums, or that coverage be waived - Union argued that Responding Party violated s. 86(2) of the *Labour Relations Act*, *1995* (the "*Act*") as a result – Union noted that as of May, 2022, no employees were on a pandemic-related leave of absence – Union argued that premium holiday had become the status quo since the Responding Party continued the holiday long past the need for pandemic-related leaves of absence - Responding Partyasserted that the "reasonable expectations" test was most appropriate in the circumstances – Responding Party argued that Union's position effectively sought to penalize the Responding Party for not cancelling the premium holiday quickly enough – Board noted that s. 86 of the *Act* was a no-fault provision and that several approaches had been enunciated in the Board's case law – Premium holiday was a temporary change that employees would reasonably have expected to end at some point – Responding Party had communicated to employees prior to the start of the statutory freeze that premium holiday would end at a future date – Board held the respondent ending the premium holiday was consistent with the "business as before test" because it was expressly temporary –At the time of the freeze, the only part of the "plan" previously communicated to employees that had not been implemented was its end date – If "purposive test" were applied, a reasonable employee would not have expected to bargain over the issue since the announcement significantly predated the application for certification –Application dismissed

PUBLIC SERVICE ALLIANCE OF CANADA, RE: **ONTARIO GAMING GTA LIMITED PARTNERSHIP C.O.B AS CASINO WOODBINE AND/OR GRANDSTAND CASINO**; OLRB Case No. 0323-24-U; Dated August 6, 2025; Panel: Brian D. Mulroney (30 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	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

(September 2025)

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	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