

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 February of this 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.

Sale of Business – In the course of an application filed under s. 1(4) and 69 of the *Labour Relations Act, 1995* (the “*Act*”), the Union brought a motion that the responding parties be required to call further witnesses to testify - Union argued that the witnesses who had testified to date had not given evidence about several key issues in the application concerning the relationship among the responding parties - Board concluded that the responding parties had not yet fulfilled their obligation under sections 1(5) and 69(13) of the *Act* to adduce all material facts within their knowledge that are material to the allegation - Board directed that the responding parties were to have one or more further witnesses testify with better knowledge of the relevant facts - Board determined that although the Board could draw adverse inferences in such circumstances, it was not appropriate to do so at this point in the proceeding - Matter continues

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA RE:

RUNNYMEDE HEALTHCARE CENTER, UNIVERSALCARE INC., AND RUNNYMEDE LONG TERM CARE; OLRB Case No. 0690-25-R; Dated February 20, 2026; Panel: Brian Smeenk, KC (26 pages)

Jurisdictional Dispute - Construction Industry

– Labourers sought to withdraw the grievance underlying a jurisdictional dispute which was scheduled for consultation the same day, on a “without prejudice” basis, and to withdraw the notice of jurisdictional dispute as well - Labourers submit the Board decides only the jurisdictional dispute currently before it, not future or hypothetical disputes - Ironworkers and Operating Engineers argued that the Board ought to determine that the Labourers’ attempts to characterize their position as “without prejudice” is of no force and effect - Board concluded that it has never expressly declared that a party can or did withdraw a grievance underlying a jurisdictional dispute on a “without prejudice” basis - Any effect of the withdrawal on a future grievance would be decided if and when a new case is brought - Board agreed that a union may choose not to challenge an employer’s work assignment or may withdraw a challenge, but either action may have legal consequences, particularly if a jurisdictional dispute proceeding has already begun – As such, there is no longer any ongoing claim for the work in dispute by Labourers - Applications terminated as moot

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, **RE: AECON INDUSTRIAL, A DIVISION OF AECON CONSTRUCTION GROUP INC., AND AECON SIX NATIONS GENERAL PARTNERSHIP (COMPRISED OF AECON UTILITIES INC. AND SIX NATIONS OF GRAND RIVER UTILITIES LP);** OLRB Case Nos. 0340-25-G and 0767-25-JD; Dated February 26, 2026; Panel: John D. Lewis (14 pages)

Certification – Status Disputes - Dispute arose over whether an individual was an employee for the purpose of a certification application - Individual signed back an offer of employment prior to the application filing date and started work after the application filing date - Applicant argued that employment was conditional, that conditions had not been filled as of the application filing date, such that the employment relationship had not crystallized as of the application filing date - Applicant argued that individual had to have performed work for the Employer prior to the application filing date - Employer argued that he had a firm offer of employment and an expected starting date, such that he had an employment relationship sufficient to be entitled to vote - Board concluded that it was not necessary for the individual to have actually worked prior to the application filing date and that his employment was neither contingent nor conditional - As of the application filing date, however, the individual had neither attended at the workplace nor performed work, and that there was no intention that he would start work prior to the application filing date - As a result, the individual's connection to the workplace was not sufficient for his ballot to be counted - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, **RE: WEBBER INFRASTRUCTURE**

MANAGEMENT CANADA LIMITED; OLRB Case No. 1570-25-R; Dated February 27, 2026; Panel: Paul Young (15 pages)

Construction Industry - Certification - Bargaining Unit - Labourers sought to displace Carpenters in respect of bargaining rights under a flooring collective agreement applicable to Board Area 8 - Employees at work on the application filing date worked in Board Areas 8 and 18 - Carpenters and the Employer asserted that the bargaining unit applied for could not include Board Area 18 since the Carpenters had no bargaining rights covering that Board Area - Although the collective agreement between the employers' association and the Carpenters covered Board Areas 8 and 18, it is an accredited agreement only in respect of Board Area 8 - Employer is not a member of the employers' association and had not signed the collective agreement in its own name - Board applied its longstanding jurisprudence that the accreditation provisions in the *Labour Relations Act, 1995* (the "*Act*") do not create bargaining rights - Board found that while the recognition clause of an accredited collective agreement may be broader than the bargaining rights a union holds for an individual employer, that cannot expand the union's bargaining rights or bind that employer to the broader scope if the employer is not a member of the accredited association and has not itself signed the collective agreement - Nothing in the collective agreement required the Employer to apply any of the terms and conditions outside of Board Area 8 - Board concluded that Carpenters' bargaining rights and the appropriate bargaining unit description were limited to Board Area 8 - Since this finding resulted in a bargaining unit containing only one employee, the application was dismissed pursuant to section 9(1) of the *Act*

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, **RE: UNIVERSAL FLOORING INC.;** OLRB Case No. 0307-25-R; Dated February 10, 2026; Panel: Maheen Merchant (9 pages)

Reconsideration - Health and Safety - Application under s. 50 of the *Occupational Health and Safety Act* was dismissed as an abuse of process - Applicant sought reconsideration - Application was originally dismissed on the basis that the applicant's failure to conduct himself in an acceptable manner during a hearing, and the applicant's written submissions in response to the responding party's request to dismiss the application as a result did not give any indication that he would conduct himself differently - On reconsideration, the applicant argued that the Board should have given him an opportunity to correct his behaviour, among other arguments - Board found that the majority of the reconsideration was simply reargument - Applicant did not accept the severity of his behaviour - Board did not agree that the Applicant should be provided an opportunity to modify his behaviour when his written submissions (and his reconsideration request) gave no indication that he intended to do so - Board was further satisfied that there is no basis upon which a "reasonable and right-minded person" could find a reasonable apprehension of bias in this case - Request for reconsideration dismissed

KORY READ, RE: PVS LOCATES, AND OEC; OLRB Case No. 0115-24-UR; Dated February 12, 2026; Panel: Maheen Merchant (9 pages)

Termination - Construction Industry - Applicant brought termination application which was dismissed on the basis that the evidence of employee wishes filed in support of it could not be accepted - Applicant then filed a second termination application - On the second application filing date, no employees were at work in the bargaining unit - Applicant argued that the "day of application" test should not apply because the application was brought under s. 63 of the *Labour Relations Act, 1995* (the "Act") - Employer supported applicant's argument - Union argued that there was no basis for applying a different test - Board dismissed the application on the basis that no employees were in the bargaining unit on the

application filing date - Neither the applicant nor the employer provided a reason for departing from the Board's longstanding approach - Whether brought under s. 63 or s. 132 of the *Act*, there was no dispute that the application related to construction industry bargaining rights - That the first application was filed late in the open period and then dismissed as defective, leaving very little time for a further application to be filed, was not a valid reason to depart from the Board's longstanding approach to voter eligibility in a construction industry representation application - Application dismissed

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, **RE: GATTA HOMES INC. AND 1784510 ONTARIO LIMITED AND 1000706636 ONTARIO LIMITED;** OLRB Case Nos. 2246-25-R, 2859-25-R and 2952-25-G; Dated February 11, 2026; Panel: Jack J. Slaughter (10 pages)

COURT PROCEEDINGS

Judicial review – Certification - Board certified Union for a bargaining unit of meat department workers of the Employer, confirming that they constituted a craft within the meaning of section 9(3) of the *Labour Relations Act, 1995* (the "Act") - Further, the Board found that the applied-for bargaining unit was appropriate under s. 9(1) of the *Act* - On judicial review, Employer argued that the decision was unreasonable and contrary to the principles for certification set out in previous Board decisions - Employer argued that the certification of a small craft unit while the majority of the Employer's employees remained non-union was absurd - Divisional Court found that Board's application of its jurisprudence relating to craft units was consistent and reasonable - Board's conclusion that the applied-for bargaining unit was appropriate, because the functional integration of departments at the store would not cause labour relations harm if the Union were certified only for

the meat department workers, was also reasonable
- Application dismissed

SOBEYS CAPITAL INC., RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 633 AND ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 385/25-JR; Dated February 13, 2026; Panel: R. Lococo, S. Nakatsuru, M. Kurz JJ (14 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.

Judicial Review - Health and Safety - Applicant asserted a reprisal claim under s. 50 of the *Occupational Health and Safety Act* - Application was deferred pending resolution of a related proceeding before the Human Rights Tribunal of Ontario - Applicant then sought to proceed with his application to the Board - Applicant was of the view that the employer had not responded to directions made by the Board and asked for a default decision as a result - Board found that the employer had responded to the application, even if it had not responded to certain directions, and declined to determine the matter on a default basis - Applicant sought judicial review - Divisional Court issued notice under R. 2.1 of the *Rules of Civil Procedure* that the Court was considering dismissing the application without a hearing, since the application sought review of an interim discretionary decision of the Board - Court concluded that the application was patently premature, and that the principle that absent exceptional circumstances, the Court should not interfere in ongoing administrative proceedings was one to be “scrupulously” followed to avoid fragmentation of proceedings - Board’s decision to hold a hearing in the application before it was not an exceptional circumstance - Application dismissed under R. 2.1.01 on the basis that it was “doomed to fail”

PARESH C. ASHAR, RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. DC-25-00000546-00JR; Dated February 10, 2026; Panel: Justice O’Brien (3 pages)

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Peter Miasik Divisional Court No. 099/26	0492-25-U	Pending
SEIU Local 2 Divisional Court No. 051/26	0999-25-MR	Pending
Classic Tile Divisional Court No. 1006/25	0069-25-R	Pending
CLV Group Inc. Divisional Court No. 3102/25	2645-24-R	Pending
PBC Development Divisional Court No. 3103/25	2645-24-R 0020-25-U	Pending
Ottawa Valley Kitchens Ltd Divisional Court No. 3111/25	1011-25-R	Pending
Shaochun Huo Divisional Court No. 868/25	2837-24-U	Pending
Mir Hashmat Ali Divisional Court No. 838/25	1067-23-U	Pending
David Tucci Divisional Court No. 660/25	2831-24-UR	March 23, 2026
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	March 30, 2026
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	Dismissed
Mary Spina Divisional Court No. 078/25	2542-24-U	Pending
Cai Song Divisional Court No. 493/25	2510-23-U 2766-23-UR	Dismissed

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Sobeys Capital Inc. Divisional Court No. 385/25	1383-22-R	Dismissed
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	June 24, 2026
David Johnston Divisional Court No. 450/25	0780-23-U	October 14, 2025
Liseth McMillan Divisional Court No. 293/25	2463-23-U	Pending
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	April 30, 2026
TJ & K Construction Inc. Divisional Court No. DC-24-0002949-00-JR	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	Dismissed
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
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

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Myriam Michail Divisional Court No. 624/17	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16	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	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	3205-13-ES	Pending