

# ALRB Finds Off-Site Warehouse Employees Not In Construction Industry



In an important win for construction employers in Alberta, the Alberta Labour Relations Board (the “**Board**”) recently determined that an employer in the wind farm sector operating warehouse distribution centres, physically separate from the four wind farm construction projects that it supplied, was not in the construction industry pursuant to the definition of construction set out in Alberta’s *Labour Relations Code* (the “**Code**”).<sup>1</sup>

This decision illustrates that warehousing operations, which are separate and independent from the construction site, will not be in the construction sector for the purposes of collective bargaining.

## Background

In *International Union of Operating Engineers, Local Union No. 955 v Omega Morgan Canada, Inc.*<sup>2</sup>, the Board considered four applications for certification by the International Union of Operating Engineers No. 955 (the “**Union**”) respecting the Employer’s operations at two distribution centres in Hanna, Alberta and Duchess, Alberta (the “**Distribution Centres**”). The Union’s primary position was that it should be certified as bargaining agent for a unit of general construction operating

engineers in the construction sector under the *Code* (the “**Construction Application**”). The Building Trades of Alberta intervened due to the potential policy implications surrounding the Construction Application.

The Employer provides logistics and transport services to Siemens Gamesa Renewable Energy Inc. (“**Siemens**”) for the supply of wind farm turbine components to four wind farm construction projects in southern Alberta (the “**Wind Farm Projects**”). The two Distribution Centres range from 78 to 251 kilometers away from the Wind Farm Projects being supplied. The Employer employs crane operators and riggers at the Distribution Centres to unload, store and then load the components for delivery to the Wind Farm Projects throughout southern Alberta.

## **Board Decision**

The Union argued that the work performed by the employers at the Distribution Centres was construction work typically performed by construction trades at laydown yards on or adjacent to construction sites in Alberta.

The essential issue before the Board on the Construction Application was whether the work performed at the Distribution Centres is more akin to warehousing than construction, as previous Board case law has clearly held that warehousing falls under the specific exemption to “construction” in the definition set out at Section 1(1)(g)(i) of the *Code*.

In determining that the Employer is not engaged in construction, the Board took particular note of the following:

1. There was no evidence of any integration or coordination between the Distribution Centres and the Wind Farm Projects, including that there was a limited presence of other trades and employees at the Distribution Centres, or employees of the general contractor or subcontractor.

The Board also noted that there was no communication between the Employer and anyone at the Wind Farm Projects.

2. The Employer had no role in the commissioning or installation of the components at the Wind Farm Projects.
3. The evidence indicated that on some occasions, the wind farm components were delivered directly from the port of entry to the Wind Farm Projects without being stored at the Distribution Centres. This evidence refuted the Union's assertion that the Distribution Centres are "integral" to the Wind Farm Projects.
4. The Board noted the lack of evidence regarding "just in time" delivery of the components.
5. The Distribution Centres were compact gravel yards which were "permanent" in the sense that they were not remediated at the conclusion of the Wind Farm Projects.

## Conclusion

The Board ultimately concluded that the work performed by the Employer was more akin to warehousing. Given that the Board has previously determined that supply includes the warehousing of materials, the Board determined that the Employer is not engaged in construction pursuant to the exception to the definition of "construction" found at Section 1(1)(g)(i) of the *Code*.

## Footnotes

1. [RSA 2000, c L-1](#).
2. [2024 ALRB 84](#).

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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