

# In the Court of Appeal of Alberta

**Citation: United Food and Commercial Workers Canada Union, Local No 401 v Sobeys Capital Incorporated, 2026 ABCA 12**

**Date:** 20260116  
**Docket:** 2503-0204AC  
**Registry:** Edmonton

**Between:**

**United Food and Commercial Workers Canada Union, Local No. 401**

Applicant

- and -

**Sobeys Capital Incorporated and Alberta Labour Relations Board**

Respondents

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**Reasons for Decision of  
The Honourable Justice Karan M. Shaner**

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Application for Permission to Appeal

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## **Introduction**

[1] The applicant, the United Food and Commercial Workers Canada Union, Local No. 401, seeks permission to appeal a decision of the Labour Relations Board (the Board), pursuant to s 145.1(1) of the *Labour Relations Code*, RSA 2000, c L-1 (the Code).

## **Background**

[2] The respondent, Sobeys Capital Incorporated, brought three grievances against the applicant. The grievances alleged the applicant breached contractual obligations under three collective agreements by broadcasting advertisements, which, among other things, defamed the respondent. The applicant contested the arbitrator's jurisdiction to hear the grievance, and the parties put that issue before him. The arbitrator found the applicant's alleged defamatory conduct happened during wage renegotiations that were mandated by the collective agreement. As a result, the arbitrator determined he had exclusive jurisdiction to hear the grievances. A hearing on the merits is set for October 2026.

[3] The applicant applied to the Board to review the arbitrator's decision on jurisdiction pursuant to s 145(2) of the Code, arguing the arbitrator's decision on jurisdiction was "final". The respondent applied for summary dismissal of the review based on prematurity. The Board dismissed the application without prejudice to the applicant's ability to seek review of the jurisdictional question following determination of the merits. *United Food and Commercial Workers Canada Union, Local No. 401 v Sobeys's Capital Incorporated*, 2025 ALRB 110 (CanLII) at paras 1 and 11 [*Decision*].

[4] Citing *Alberta Health Services for review of an arbitration v United Nurses of Alberta*, 2018 CanLII 43359 (ABLRB), the Board noted its power to hear reviews under s 145(2) as discretionary and that it will not consider review applications of preliminary decisions by arbitrators, except in exceptional circumstances. *Decision* at paras 2 and 8. The Board determined the arbitrator's decision on jurisdiction was preliminary, rather than final, and dismissed the review as premature. *Decision* at para 11.

[5] In this application, the applicant argues the Board presumed the arbitrator's ruling was preliminary without conducting an analysis; however, this is not the case. The Board determined the arbitrator's ruling was preliminary after considering case law submitted by the parties, and, ultimately, it made this finding based on the reasoning in *Synchrude Canada Ltd v Alberta (Human Rights and Citizenship Commission)*, 2006 ABQB 603 at para 22 [*Synchrude*]. The issue in *Synchrude* was whether an order of a human rights panel, which confirmed Synchrude was an

“employer” and subject to the panel’s jurisdiction, was a preliminary or a final order. The court concluded the order was interim or interlocutory, stating (at para 22):

Characterizing a decision as interim or interlocutory as opposed to final is not without difficulty. While I agree that the decision is a final one in the sense that the Panel will not reconsider the issue of whether Syncrude is an “employer” within the meaning of the *Act*, in my opinion, the decision is best characterized as an interim or interlocutory one in the sense that the merits of the complaint remain to be determined fully.

### *Test for Permission to Appeal*

[6] Section 145.1 of the Code permits Board decisions to be appealed, with permission, on a question of law or jurisdiction only. Identifying a question of law or jurisdiction is typically insufficient to be granted permission. There must be a reason for this Court to hear the appeal. The factors that inform this are: whether the point on appeal is significant to the practice; whether the point raised is significant to the action itself; whether the appeal is *prima facie* meritorious; and whether the appeal would unduly hinder the underlying action. *Association of Academic Staff of the University of Alberta v University of Alberta (Board of Governors)*, 2024 ABCA 350 [*University of Alberta*] at para 4; *Edmonton (City) v Amalgamated Transit Union, Local No 569*, 2023 ABCA 241 [*Amalgamated Transit*] para 9.

### **Discussion**

[7] In its Memorandum of Argument, the applicant frames the proposed question of law as: Did the Board err in its determination of whether a decision on an arbitrator’s jurisdiction is final or preliminary?

[8] To give effect to the legislative policy choice to limit second appeals, “this Court requires a robust analysis of whether the questions proposed are indeed questions of law”. *University of Alberta* at para 8. In *Canada (Director of Investigation and Research) v Southam Inc.*, 1997 CanLII 385 at para 35, the distinction between questions of law, fact, and mixed fact and law was explained as follows:

Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests. A simple example will illustrate these concepts. In the law of tort, the question what “negligence” means is a question of law. The question whether

the defendant did this or that is a question of fact. And, once it has been decided that the applicable standard is one of negligence, the question whether the defendant satisfied the appropriate standard of care is a question of mixed law and fact.

See also *Metcalfe v Metcalfe*, 2006 ABQB 798 at para 22; and *Alberta (Workers' Compensation Board) v Appeals Commission*, 2005 ABCA 276 at para 21.

[9] The applicant contends the Board did not correctly state or apply the law on whether a decision on an arbitrator's jurisdiction is final. Rather, the Board presumed this was so. This is not borne out in the *Decision*. As noted, the Board *did* conduct an analysis of whether the arbitrator's decision on jurisdiction should be characterized as preliminary or final. The Board decided the arbitrator's decision was preliminary by applying analogous principles set out in *Syncrude* to the factual matrix before it. There is no suggestion the Board misinterpreted those principles. Moreover, the applicant has not identified any specific legal test or binding authority the Board either failed to apply or misapplied. In short, the applicant has not identified a legal error. This is dispositive of the application.

[10] The factors set out in *University of Alberta* and *Amalgamated Transit* militate against granting permission to appeal. Given that the applicant has not identified a particular legal test that the Board misapplied or failed to apply in drawing its conclusion, it cannot be said there is *prima facie* merit to the proposed appeal. The arbitrator's decision on the jurisdictional question is significant to the grievance in that it affects forum and remedy; however, it is unclear how it affects the substance of the dispute between the parties.

[11] With respect to whether the proposed appeal is significant to the practice, the applicant argues it will provide clarity to employers, unions, and arbitrators. The applicant also suggests that by allowing the *Decision* to stand, in all cases where jurisdiction is in issue, parties will be forced to go to a hearing in one venue on the merits and then re-litigate in a different venue if an arbitrator is found to have erred in deciding jurisdiction. This, the applicant submits, will lead to inefficiency and duplicative processes, among other things. These arguments are not convincing. The Board's decision does not foreclose entirely on the possibility of parties being able to apply for review of jurisdictional questions prior to the merits being heard. The Board referred expressly to its discretion to review interim or preliminary orders in in rare and exceptional circumstances. *Decision* at paras 2 and 10.

[12] Finally, an appeal to this Court would result in further delay in getting to the merits of the grievances. The arbitration is scheduled for October of 2026. Those dates may be lost pending the outcome of what appears to be a weak appeal.

**Disposition**

[13] The application for permission to appeal is dismissed.

Application heard on January 8, 2026

Reasons filed at Edmonton, Alberta  
this 16th day of January, 2026

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Shaner J.A.

**Appearances:**

K. Nychka

J. Diebert (no appearance)  
for the Applicant

D.S. Bailey, KC

for the Respondent Sobeys Capital Incorporated

K. McGreer

for the Respondent Alberta Labour Relations Board