

*H*IGHLIGHTS

Ontario Labour Relations Board

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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 September/October 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.

Construction Industry - Certification - Unfair Labour Practice - Union filed application for certification - In the course of the hearing, the Responding Parties brought a motion asserting that the Union contravened section 87(2)(b) of *Labour Relations Act, 1995* (the “*Act*”) by seeking to intimidate or coerce a witness by attempting to speak to him in anticipation of his evidence - Two days before the witness was to testify, representatives of the applicant went to what they believed to be the witness’s residence - Union’s organizers testified that they wanted to speak with the witness to gather more information about work performed on the application filing date - They never spoke directly to the witness and were informed by the witness’s former partner that the witness no longer lived at the residence – Witness and witness’s ex-partner testified that they were annoyed by this visit - Employer asserted that the only possible inference to draw from this attendance was that Union intended to intimidate or coerce the witness - Board concluded that even if

the representatives of the applicant knew the witness was going to testify, nothing precluded that discussion to the extent that it did not surpass the limits imposed by section 87(2)(b) of the *Act* - No reasonable basis upon which to find that a person placed in the same circumstances would have viewed the actions of the Union’s organizers as intimidation or coercion in what was an attempt to speak with the witness – Motion dismissed - Matter continues

LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT, RE: **COZZA BROS. EXCAVATING LTD. AND/OR COZZA BROS. PAVING & HAULAGE LTD.**; OLRB Case No. 0104-23-R; Dated September 19, 2024; Panel: Michael McCrory (11 pages)

Duty of Fair Representation - Applicant alleged irregularities and wrongdoing related to union elections in which he sought to be a candidate for president – Applicant also complained about improper representation regarding his ongoing grievances concerning discipline and termination – Board determined that the applicant’s allegations about the union election process do not make out a *prima facie* case of violation of section 74 of the *Labour Relations Act, 1995* because they relate to internal union matters rather than Union’s representation of the applicant in connection with his employment – Union’s conduct of the ongoing grievances had been the subject of prior

applications to the Board, and those applications were dismissed as premature - Since this application also related to the ongoing grievances, the Board dismissed them as *res judicata* - Board declined to determine whether application also constituted an abuse of process - Application dismissed

GURUPDESH PANDHER, RE: WINDSOR UNIVERSITY FACULTY ASSOCIATION (WUFA); OLRB Case No. 0803-24-U; Dated September 26, 2024; Panel: Brian Smeenk (17 pages)

Sale of Business – Building Services - LIUNA filed application under sections 69 and 69.1 of the *Labour Relations Act, 1995* asserting that a sale of business occurred from S to P, after P replaced S as security contractor, and that P was therefore bound to the collective agreement between LIUNA and S - S provided security services to a mall and voluntarily recognized it as the bargaining agent - P was a party to a province-wide collective agreement with USW but was also bound to collective agreements with LIUNA concerning 3 commercial condominiums - At the time of the contract change, P offered S's guards continued employment at the mall and two employees accepted - P subsequently filled the other positions with members of the USW bargaining unit - Board found that an intermingling of employees between P and S had occurred and the differences between the LIUNA and USW collective agreements, combined with intermingling, gave rise to labour relations issues - Board considered its jurisprudence dealing with circumstances where there were competing collective agreements binding the predecessor and successor employer - Board concluded that in the circumstances, greater labour relations problems would be caused by binding P to the collective agreement between S and LIUNA - Labour relations considerations, including the likelihood of decreased controversy and litigation, favoured a larger bargaining configuration in these circumstances - Board

declared that P was not bound to the LIUNA-S collective agreement and that P-USW collective agreement applied

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE: STAR SECURITY INCORPORATED, AND PALADIN SECURITY GROUP LIMITED, RE: UNITED STEELWORKERS; OLRB Case No. 0405-23-R; Dated September 6, 2024; Panel: Brian D. Mulroney (32 pages)

Sale of a Business - Building Services - The Union and A were bound to a collective agreement covering employees who provided security services to D at a residential condominium – D terminated its contract with A and engaged FA for services at the same premises soon after – Union's application asserted that FA was a successor within the meaning of ss. 69 and 69.1 of the *Labour Relations Act, 1995* (the "*Act*") - FA denied that it was providing "building services" within the meaning of the *Act*, asserting that it had only contracted to provide lifesaving services and related instruction programs to condominium residents and security services were only incidentally performed – Union asserted that D had intended to use its own staff for security services after terminating A but later contracted with FA due to the high workload - Board found that FA never provided lifesaving services to anyone and offered no examples of lifesaving education or instruction on the condominium premises – Board found that FA performed services that were substantially similar to those provided by A – Conditions set out in s. 69.1 of the *Act* were therefore met - Application allowed

UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 1006A, RE: UNIVERSAL PROTECTION SERVICES OF CANADA CORPORATION DBA ALLIED UNIVERSAL SECURITY SERVICES OF CANADA AND FIRST AID AND CPR

HEALTHCARE PERSONNEL INC., OLRB Case No. 2938-23-R; Dated September 10, 2024; Panel: Rishi Bandhu (11 pages)

Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Unfair Labour Practice - Breach of Settlement -

Union filed application alleging violation of minutes of settlement (“MOS”) between Union and Employer that required that Union’s members remove and re-install “escalator skirting” – Union alleged that Employer breached the MOS by directing bargaining unit members not to remove the brackets securing the skirt to the escalator’s truss – Dispute over whether or not the term “escalator skirting” includes the skirt brackets – Union asserted that the skirt brackets should be treated as a reasonably and necessarily implied part of “escalator skirting” because they cannot be installed separately – Employer argued that the parties are sophisticated and would have made specific reference to skirt brackets if they intended to include them – Further, the skirt brackets are attached to the truss rather than to the skirt panel – Board found that the MOS requirement to remove and re-install “escalator skirting” does not extend to skirt brackets – In reaching this conclusion, Board reviewed the ordinary usages of the word “skirting” which commonly refers to skirt and skirt panels but not skirt brackets – Board also confirmed that sophisticated parties in a long term collective bargaining relationships would have chosen their wording carefully, and noted that the collective agreement contains specific references to other types of brackets but not skirt brackets - Application dismissed

INTERNAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50, RE: **OTIS CANADA INC.**, OLRB Case No. 0192-22-U, 0193-22-U & 1556-22-U; Dated September 23, 2024; Panel: Lindsay Lawrence (15 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

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Jitesh Parikh Divisional Court No. 409/24	0408-24-HS	January 21, 2025
Ahmad Mohammad Divisional Court No. 476/24	1576-20-U	Pending
Clean Water Works Divisional Court No. 401/24	1093-21-R	January 16, 2025
SkipTheDishes Divisional Court No. 378/24	0019-24-R	February 13, 2025
Bird Construction Company Divisional Court No. 363/24	1706-23-G	Pending
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	March 3, 2025
Yan Gu Divisional Court No. 306/24	0994-23-U	December 12, 2024
Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario Divisional Court No. 131/24	2442-22-U	October 31, 2024
Four Seasons Site Development Divisional Court No. 661/23	0168-17-R	September 25, 2024
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Adjourned
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
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
	(Sudbury)	
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

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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