

*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 May of this year. These decisions will appear in the May/June 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.

Application for Certification – Construction Industry – Displacement – In its application for certification, Applicant identified one job site – Employer identified a different job site in its response – Intervention agreed with Employer’s job site, and submitted that application ought to be dismissed on the basis that the job site identified in the application either did not exist or did not refer to a construction site – Applicant acknowledged in its status submissions that the job site identified by the Employer and the Intervenor was correct – Employer and Intervenor maintained that application should be dismissed – Board refused this request – Board noted that there was no prejudice to either the Employer or the Intervenor since they had both identified the correct job site in a timely way – Prejudice existing in other cases, where a party had no timely notice of a relevant job site, did not exist here – Delay of 25 days in identifying a correct job site could, in different circumstances, prove fatal to an application but in the absence of prejudice, there was no reason to

dismiss in this case – Balance of issues to be referred to hearing – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: **ADLERS MAIN TILE & CARPET CO. LTD.**, RE: CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; OLRB Case No. 0144-25-R & 0262-25-U; Dated May 27, 2025; Panel: Jack J. Slaughter (9 pages)

Certification – Bargaining Unit – Application for certification for bargaining unit consisting of drivers, being seven of nine employees in the workplace – Employer disputed appropriateness of bargaining unit and sought inclusion of the other two employees in the workplace, the dispatcher and loader/operator – Employer argued that operations were highly integrated and the employment of all employees was interdependent – Union argued that drivers’ working conditions were substantially different from those of the dispatcher and loader/operator, their work was not integrated, their reporting relationships were different and they did not share a community of interest with the drivers – Board determined that bargaining unit applied for was not appropriate and that the bargaining unit should include the dispatcher and loader/operator – Terms and conditions of employment were the same, their skill sets were similar and their administrative structures were also similar – Board found that their work was interdependent in that the

drivers could not work without the assignments from the dispatcher, or without the Employer's product which was mixed and loaded by the loader/operator – Board also noted limited interchange between the positions in that a driver relieved for the dispatcher from time to time and the dispatcher relieved for the loader/operator from time to time – Serious labour relations harm would be caused by the excessive fragmentation of the bargaining unit – Matter continues

TEAMSTERS LOCAL UNION 879, RE: **CHEMTRADE CHEMICALS CANADA LTD**; OLRB Case No. 0086-24-R; Dated May 26, 2025; Panel: Tim P. Liznick (21 pages)

Certification – Construction Industry –

Responding Party asserted that a third party was the employer of one of the individuals in dispute, and that another individual in dispute was excluded pursuant to s. 1(3)(b) of the *Labour Relations Act, 1995*, and further that he performed no bargaining unit work on the application filing date – Applicant asserted that Responding Party had asserted insufficient material facts in support of any of its positions – Applicant brought motion under Rules 39.1 and 41.3 of the Board's Rules of Procedure for a determination of the "true employer" and status issues in respect of these individuals without a hearing – Applicant argued that there were no facts pleaded that, assuming them to be true, would distinguish the third party from the other labour suppliers described in the Board's jurisprudence – Applicant further argued that Responding Party had pleaded general facts suggesting that the alleged manager engaged in supervisory activities, but nothing that suggested he ought to be excluded under s. 1(3)(b) - Board granted motion – Board's case law makes it incumbent on a responding party asserting that a third party labour supplier is the true employer of employees to plead specific facts explaining why the third party is different from the other labour suppliers addressed in the Board's jurisprudence – In this case, the responding party did not do so – Responding Party did not plead any

facts suggesting that the third party provided any supervision or direction to the employee in question or that anyone from the third party had ever been present on the job site – Responding Party acknowledged that its superintendents were in regular contact with and provided direction to the employee – Further, Responding Party had not pleaded any facts suggesting that the alleged manager was anything more than a working foreperson – No facts asserted that he had any involvement in hiring, firing, discipline, layoff or any other factor that would impact other bargaining unit members – Finally, Responding Party's pleadings were scant regarding individual's activities on the application filing date but implied that he had performed the work of a carpenter – Both individuals found to be in the bargaining unit – Matter continues

CARPENTERS' REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **AZURE URBAN DEVELOPMENTS INC., AZURE WINONA INC. AND AZURECON INC.**; OLRB Case No. 1021-24-R; Dated May 20, 2025; Panel: John D. Lewis (23 pages)

Construction Industry – Certification – Displacement – Unfair Labour Practice –

CCWU applied to displace BMIUC's bargaining rights in respect of several employers – BMIUC argued that CCWU was an affiliated bargaining agent or "alter ego" of LIUNA such that the certification application was prohibited by s. 162(2) of the *Labour Relations Act, 1995* – CCWU and LIUNA argued that this issue did not require any further inquiry by the Board, relying on Rule 41.3 of the Board's Rules of Procedure and Board's past jurisprudence – BMIUC asserted that the current CCWU/LIUNA relationship was different from that described in previous cases - Board reviewed the facts pleaded in support of BMIUC's position and the Board's case law – Board concluded that a close relationship between the CCWU and LIUNA did not mean that CCWU had become LIUNA –

Co-operation between trade unions is not the same as one trade union substantially controlling the other – Facts pleaded are not distinguishable from those in prior decisions where the Board has dismissed “alter ego” argument – CCWU also not an affiliated bargaining agent of LIUNA – Other issues in case to proceed to hearing – Matter continues

CANADIAN CONSTRUCTION WORKERS' UNION, RE: NU-WALL CONTRACTING LIMITED, RE: BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1; OLRB Case No. 2890-24-R, 2892-24-R, 2893-24-R, 2894-24-R, 2896-24-R, 2911-24-R, 2912-24-R, 2913-24-R, 2914-24-R, 2915-24-R, 2942-24-R, 2975-24-R, 2976-24-R, 3114-24-R, 3184-24-R, 0021-25-R, 0159-25-R, 0160-25-R, 0263-25-R, 3027-24-U, 3051-24-U, 3146-24-U, & 0297-25-U; Dated May 15, 2025; Panel: Alan Freedman (30 pages)

Construction Industry – Grievance – Union filed grievance contesting grievor’s termination for just cause – Union argued on a preliminary basis that Employer did not have reasonable and probable grounds to believe that grievor was under the influence of an intoxicant – Union argued that Employer had responded inappropriately by assigning the grievor work and allowing him to drive a company vehicle, thus nullifying its claim of reasonable and probable grounds – Board found that these responses did not undermine Employer’s grounds for suspicion – The supervisor who permitted the grievor to drive a company vehicle may have been a failure on the supervisor’s part, but did not affect whether or not the grievor appeared impaired – Although another supervisor assigned him work, that supervisor’s other actions were all consistent with a concern that the grievor was not fit for duty, including reporting his concern to his supervisors and creating a scheme to bring all workers back to the trailer so as to not single out the grievor – Regarding reasonable and probable grounds, a smell of marijuana would not be

sufficient by itself, but observations concerning other aspects of grievor’s appearance – Lack of credibility of one of the Employer’s witnesses did not undermine this evidence – Union’s preliminary motion dismissed – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625, RE: **HYDRO ONE INC.**; OLRB Case No. 1918-23-G; Dated May 26, 2025; Panel: Derek L. Rogers (25 pages)

Unfair Labour Practice – Interim Relief – Union sought interim reinstatement after four inside organizers were among six employees terminated on the same day as application for certification filed – Supporters had ceased contact with the Union thereafter - Employer asserted that it was not aware that individuals were organizing for the Union, although it was aware of the Union’s campaign – Employer asserted that terminations were required for cost savings, and that it selected the lowest-performing employees for termination – Employer further asserted that interim reinstatement was not required given that application for certification was already filed and vote already occurred – Board ordered interim reinstatement of one of the terminated organizers – Board noted that no documentation was filed in support of Employer’s claim that she was one of the lowest-performing employees, despite employees’ performance having allegedly been objectively assessed – This was an issue that should have been explained in the Employer’s materials, and the failure to do so was something the Board could take into account – This was especially so given that this organizer had been promoted prior to her termination and there was no indication of shortfalls in her performance – Further, although the application for certification was already filed, the status disputes and s. 8.1 objection in the application still had to be litigated, and the chilling effect of the termination of a key organizer would likely interfere with the Union’s ability to carry on the litigation – The other organizer was far less central to the Union’s campaign and the Board considered that interim

reinstatement of the main organizer would be sufficient to counteract the chilling effect –
Application allowed in part

WORKERS UNITED CANADA COUNCIL, RE:
TREE OF LIFE CANADA ULC; OLRB Case
No. 0200-25-IO; Dated May 27, 2025; Panel:
Roslyn McGilvery (22 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 |
|---|--|--------------------|
| 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 | November 10, 2025 |
| Troy Life & Fire Safety Divisional Court No. 342/25 | 1047-23-JD | Pending |
| Michael Kay Divisional Court No. 296/25 | 2356-23-U | Pending |
| Stephen Simpson Divisional Court No. 302/25 | 0104-23-R | Abandoned |
| David Johnston Divisional Court No. DC-25-00000450-00JR | 0780-23-U | Pending |
| Liseth McMillan Divisional Court No. 293/25 | 2463-23-U | Pending |
| Jacob (Yakov) Yavelberg Divisional Court No. DC-25-00001646-00JR | 1799-24-UR | Abandoned |
| 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 | Pending |
| 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 |
| 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 |
| Ahmad Mohammad Divisional Court No. 476/24 | 1576-20-U | Pending |
| 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 |

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| 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 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 |