

*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 April 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.

NOTICE TO COMMUNITY – NEW VICE-CHAIR

The Board welcomes **Sam Marino** as a new full-time Vice-Chair. Sam Marino was appointed as Vice-Chair following an extensive career practicing labour and employment law. Called to the Ontario Bar in 2010, Mr. Marino maintained a balanced litigation practice, representing both employees and employers in matters relating to employment standards, human rights, and labour relations. His academic qualifications include a Master of Laws degree in Labour Relations from Queen's University, a Juris Doctor (J.D.) and an undergraduate degree from the University of Western Ontario, and a Bachelor of Education from Nipissing University.

Certification - Construction Industry - Displacement - Incumbent union asserted that two individuals, who were not its members, should not

be considered to be employees in the bargaining unit on the application filing date by virtue of the principles set out in *April Waterproofing* - Individuals were employed for several years prior to the displacement application - Incumbent had filed grievances complaining of their continued employment prior to the displacement application - Board was satisfied that the incumbent's repeated grievances and communications with the employer put the employer on notice of its violation of the collective agreement - However, the evidence fell short of demonstrating that the employer continued to employ the individuals for purposes that included the termination of the incumbent's rights - Employer considered that it was not, in fact, bound by the collective agreement - Individuals were long-service employees and evidence was more consistent with an intention to continue to employ them for operational reasons rather than to facilitate the displacement application - *April Waterproofing* argument dismissed - Matter continues

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **1425329 ONTARIO INC. C.O.B. AS INTERNATIONAL CONSTRUCTION SERVICES**; OLRB Case No. 0189-22-R; Dated: April 10, 2026; Panel: Neil Keating (13 pages)

Construction Industry - Certification - Employer identified six job sites in its response to the union's application for certification - Approximately a month later, in its status submissions, the employer indicated that two of the individuals in dispute worked at a different site that was not listed in its response - Union argued that the responding party should not be permitted to amend its response in this fashion, noting that although the site was under observation on the application filing date, once the site was not listed in the response, the union ceased any inquiries regarding that site - Union also argued that the employer had not made out a *prima facie* case that the employees performed bargaining unit work - Employer submitted that the error in its response resulted from information not being uploaded into the software that tracked its employees' location until later in the week the response was filed - Board denied the amendment - Employer had other ways to confirm employees' work location other than its software (which was only updated once a week) - Further, three-week delay between update and advising the union of the site was not explained - Site was also a large site with two multi-storey building being constructed, and work was being performed indoors - Union representative's presence on the site did not mean that the union was in a position to know where the work was being performed - No basis for permitting the amendment in view of the Board's case law - Certificate granted

CARPENTERS' REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **MUSKOKA CABINET COMPANY INC.**; OLRB Case No. 2738-25-R; Dated: April 21, 2026; Panel: Caroline Rowan (13 pages)

Construction Industry - Grievance - Union filed grievance after employer subcontracted work of offloading and moving a transformer from a rail car to a non-union subcontractor - Collective agreement restricted contracting-out of work performed on employer property - Union argued

offloading and moving work was normally performed by union members covered by the collective agreement, but that the employer had altered its contractual arrangements so that it did not take ownership of the transformer until it was already offloaded and moved to the employer's premises - Union argued that offloading and moving was performed on the employer's "property" even though it was done off-site - Employer argued that since it did not take ownership of the transformer until it reached the employer's site, it was not its property and the collective agreement did not apply - Employer argued that arrangement was made as a result of a number of transformers arriving at once, and difficulties in arranging subcontractors able to perform the work - Nothing in collective agreement obliged employer to take ownership at any particular location - Board concluded arrangements were not made in bad faith - "Employer's property" in the collective agreement could include both real and personal property and ought not to be interpreted narrowly - However, in this case the employer's rights, prior to delivery, were not sufficiently proprietary - Grievance dismissed

CANADIAN UNION OF SKILLED WORKERS, RE: **HYDRO ONE NETWORKS INC.**; OLRB Case No. 1723-25-G; Dated: April 27, 2026; Panel: Jordan Kirkness (21 pages)

Construction Industry - Grievance - Union filed grievance asserting that Employer had subcontracted work to a non-union subcontractor contrary to collective agreement - Employer initially contracted with two union subcontractors for the purpose of surfacing and tamping sections of track - When these subcontractors experienced difficulty completing the work, Employer supplemented with directly-hired labourers - Subcontractors ultimately left project - Employer then subcontracted with non-union subcontractors - Collective Agreement provided that if an employer experienced difficulty in complying with the subcontracting clause, the parties would meet to

“resolve this problem” - Union argued that Employer had not demonstrated that it had made efforts to obtain unionized subcontractors and had been unable to - Employer argued that it had made efforts, and when it retained a non-union subcontractor to attend to the work until it could find a unionized subcontractor, and had settled the matter by permitting the union access to the employees to attempt to organize them - Employer argued that Union had not provided it with any assistance in finding a unionized subcontractor - Board emphasized importance of subcontracting clauses and that in this collective agreement, there was not an absolute prohibition - Although it was clear that the Employer was in a difficult position, there was no evidence about the steps the Employer took in order to find a unionized contractor - Evidence did not support that a resolution had been reached within the meaning of the collective agreement - Grievance allowed - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527, RE: **ATKINSRÉALIS BUILDERS INC.**; OLRB Case No. 2006-23-G; Dated: April 10, 2026; Panel: Danna Morrison (30 pages)

Successor Employer - Building Services - SG and S both had contracts for security services at a commercial site - SG was bound to a collective agreement with the union - S expanded its security services, employing more guards while SG's guards continued to work at the same location - Contract was then retendered, and S successfully bid on it, displacing SG - Parties agreed that the conditions for a successor declaration under s. 69.1(3) of the *Labour Relations Act, 1995* (the “Act”) existed - S took the position that because it employed 36 non-union guards and there were only 14 employed by SG, there was intermingling and, pursuant to s. 69(6) of the *Act*, the union's bargaining rights ought to be extinguished given the greater number of non-union employees - Alternatively, a vote should be ordered - Union argued that its bargaining rights should be

continued as there were no labour relations problems that would arise - Board concluded that there was no integration of the business - Extinguishing bargaining rights, or ordering a vote - would undermine the protections that s. 69.1 was meant to provide - Commercial arrangement that resulted in increase of non-union employees should not lead to the elimination of the union's bargaining rights - Declaration of successorship granted

UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 1006A, RE: **SECURIGUARD SERVICES LIMITED, AND SENTINEL SECURITY INC. DBA SENTINEL SECURITY PLUS AND/OR SENTINEL SECURITY ELITE PROTECTION GROUP**; OLRB Case No. 1045-24-R; Dated: April 27, 2026; Panel: Peigi Ross (19 pages)

Unfair Labour Practice - Bargaining in Bad Faith - Applicant union argued that employer, which was contracted to provide cleaning services at the Ontario Science Centre, bargained in bad faith either by resiling from an agreement that had been reached, or by refusing to continue bargaining - Union argued that the employer tabled an offer, at a meeting held after the parties knew of the intended closure of the Science Centre - Union's counteroffer included an acceptance of the employer's offer - Alternatively, the employer's lengthy silence after the union's counteroffer represented a refusal to bargain - Employer asserted that after the Science Centre became non-committal regarding the funding of certain costs associated with the termination of employees, the employer was justified in changing its position - Board concluded that union's “counteroffer” was an acceptance of the employer's offer - That offer was made with the Science Centre's “blessing” and a representation that the Science Centre would be funding the employer's offer - Nothing about the employer's offer was conditional on such funding - Board concluded that the employer had violated the duty to bargain in good faith and directed the parties to resume bargaining - Application granted

ONTARIO PUBLIC SERVICE EMPLOYEES
UNION/SYNDICAT DES EMPLOYÉS DE LA
FONCTION PUBLIQUE DE L'ONTARIO,
RE: **DEXTERRA GROUP INC.**; OLRB Case
No. 2496-24-U; Dated: April 13, 2026; Panel: John
Martelli (23 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.

COURT PROCEEDINGS

Judicial Review - Constitutional Question -

Union applied for certification in respect of certain of employer's construction and non-construction employees - Employer asserted that it was federally regulated such that Board had no jurisdiction to consider the application - Employer performed construction and maintenance work on railways, notably flash-butt and other welding to join lengths of rail - Employer is the only company providing flash-butt welding services in Canada - This work constituted 80% to 90% of the work performed for CN and CP - Employer also performed other types of welding for CN and CP, as do other companies, some of whom are bound to collective agreements with the Union - Board found that employer was subject to provincial jurisdiction - On judicial review, employer argued that the Board misapplied the derivative jurisdiction analysis, failed to consider the relationship between the railways from the perspective of the employer, and followed the decision in *Madysta* in error - Court found that Board's analysis was correct - Employer's operations not integral to the operations of federal undertaking because to find otherwise would be to determine jurisdiction based on the technology or equipment used, and not on a functional basis - Board properly considered relevant factors in making its determination - Application for judicial review dismissed

HOLLAND L.P., RE: LABOURERS
INTERNATIONAL UNION OF NORTH
AMERICA ET AL.; Divisional Court File No. DC-
25-00000641-00JR; Dated: April 17, 2026; Panel:
Matheson, LeMay and Schreck JJ (13 pages)

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Mark Handelman Divisional Court No. 284/26	2132-24-UR	Pending
Phil Tamming Divisional Court No. 224/26	0719-25-U	Pending
Eleftheria Pilios Divisional Court No. 223/26	0889-24-U	Pending
Arian Nourishad and Farhat Qureshi Divisional Court No.	1716-24-PS	Pending
Amir Attaran Divisional Court No. 3156-26	1590-25-U	Pending
Amir Attaran Divisional Court No. 3157-26	1763-25-UR	Pending
Benjamin Kortee Divisional Court No. 206/26	2025-25-U	Pending
Peter Miasik Divisional Court No. 099/26	0492-25-U	Pending
Neda Raji Divisional Court No. 3150-26	2004-21-UR 1498-24-UR	Pending
Service Employees International Union, Local 2 Divisional Court No. 051/26	0999-25-MR	Abandoned
Classic Tile Contractors Limited Divisional Court No. 1006/25	0069-25-R	Pending
CLV Group Inc. Divisional Court No. 3102/25	2645-24-R	Pending
PBC Development and Construction Management Group Inc. 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	June 18, 2026
David Tucci Divisional Court No. 660/25	2831-24-UR	Dismissed

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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	Dismissed
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
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	Dismissed
Michael Kay Divisional Court No. 296/25	2356-23-U	June 24, 2026
David Johnston Divisional Court No. 450/25	0780-23-U	Dismissed
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
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
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