

ONTARIO LABOUR RELATIONS BOARD

Between: Ontario Precast Concrete Manufacturers'
Association, Erectors Division,
Applicant,

- and -

Labourers' International Union of
North America, Local 506 and Labourers'
International Union of North America,
Ontario Provincial Council,

Respondents,

- and -

Electrical Power Systems Construction
Association,

Intervener #1.

BEFORE: G.W. Reed, Q.C., Chairman, and Board Members
E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: W.J. Hemmerick, Q.C., and W.A.
White for the applicant; R. Koskie, A. Neil, M.J. Reilly
and R. Ford for the respondents; and B.H. Stewart, H.A.
Beresford, W.J. Chenery and G.A. Pickell appearing for
Intervener #1, Electrical Power Systems Construction
Association and also for Hydro Electric Power Commission of
Ontario.

DECISION OF THE BOARD:

1. Having regard to the representations of the parties
at the hearing on September 17, 1973, and to the time at which
those representations were made, this application is dismissed
in so far as it relates to the respondent, Labourers Inter-
national Union of North America, Local 506 (hereinafter
referred to as Local 506).

2. This is an application for accreditation in which
the applicant seeks to be accredited as the bargaining agent
for a unit of employers. It is clear from the evidence before
the Board that the respondent, Labourers International Union
of North America, Ontario Provincial Council, (hereinafter
referred to as The Council), is entitled to bargain on behalf
of more than one employer in the sectors of the construction

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industry and in the geographic area which form the subject matter of this application. The Board, therefore, finds that it has jurisdiction under Section 113 of the Act to entertain this application.

3. On the basis of all the evidence the Board is satisfied that the applicant is an employer's organization within the meaning of Section 106(d) of the Labour Relations Act, and that it is a properly constituted employer's organization for the purposes of Section 115(3) of the Act.

4. In support of its application, the applicant filed employer authorizations on behalf of 14 employers and 15 applications for membership in the applicant. The applicant has also filed in support of its representation documents a duly completed Form 62. The Board is satisfied that the evidence of representation meets the requirements set out in Section 96 of the Board's Rules of Procedure. The Board is further satisfied that the individual employers on whose behalf the applicant has submitted evidence of representation have vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

5. In its application the applicant proposed a unit of employers in the following terms:

"All employers of employees engaged in all phases of the erection and finishing of precast concrete products and other components in the building and construction industry within the Province of Ontario."

Initially counsel for the applicant advised the Board that the application was intended to cover all sectors. Later the argument was advanced that there was a precast sector but this was subsequently abandoned and the following unit proposed:

"All employers of employees for whom the respondent has bargaining rights in the Province of Ontario in the industrial commercial and institutional sector, the residential sector, the sewers, tunnels and watermains sector, the roads sector, the heavy engineering sector and the electrical power systems sector."

It is to be noted that the pipelines sector has not been included because the members of the applicant have not worked in this sector. It was further proposed that a clarity note be included showing the type of work involved. Intervener #1 took strong exception to the inclusion of the Electrical Power Systems sector.

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6. The unit of employers proposed in the application appears to have been taken from the memorandum of Settlement between the applicant and Local 506, dated September 8, 1971 (Exhibit 23). The agreements filed with the Board between the applicant and the Council, Exhibits 17 and 20, do not contain the words "and other components". The agreement between the applicant and the Council, Exhibit 20, was to be effective until April 30, 1971. However, no notice was given by either party on or before February 1, 1971, and by Article 1.03 of the agreement, it was automatically renewed for a year from November 10, 1971. This agreement, Exhibit 20, was thus in force on November 9, 1971, the date this application for accreditation was filed with the Board.

7. The Board does not favour the unit ultimately proposed by the applicant because in our view in the particular circumstances of this case the term "has bargaining rights" is too broad since those bargaining rights could change with respect to the work to be performed. Furthermore we do not favour in this case, the inclusion of a clarity note in terms of the type of work involved. After considering the evidence and the representations of the parties we have come to the conclusion that the unit of employers should be defined in terms of the collective agreement in force between the parties at the date of the application but with the inclusion of sectors. We wish to make it clear however, that in so finding we are not saying that there is a new craft or trade consisting of precast workers.

8. The evidence establishes that the members of the applicant perform work in all sectors named in Section 106 (e) of the Act with the exception of the pipeline sector. It also establishes that work is performed throughout the Province by members of the applicant. The question left to be determined is whether the electrical power systems sector should be excluded from the unit of employers appropriate for collective bargaining.

9. In considering the question of whether to include or exclude a sector one of the tests employed by the Board has been whether the employers involved in the accreditation application have worked in the sector. See for example the General Contractors Section of the Toronto Construction Association v The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721, (hereinafter referred to as Ironworkers Local 721) [1971] OLRB REP 719, where the Roads sector was excluded because employers affected were not working in this sector. See also Mechanical Contractors Association Hamilton v The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 67, (1972) OLRB REP 923 where the residential sector was combined with the industrial, commercial and institutional sector because the collective agreement in question covered both

sectors and work was performed in both sectors though admittedly of a limited nature in the residential sector.

10. On the other hand the Board has been somewhat reluctant to exercise its discretion under section 114(1) to combine sectors and has not issued an accreditation certificate covering all of the sectors set out in section 106(e). Again the Board has not included the electrical power systems sector in any certificate issued up to this time. The issue was faced in the Ironworkers, Local 721 case and the sector was excluded "having regard to the evidence of what appears to be a highly complicated structure of collective bargaining in the electrical power systems sector" Immediately following this portion of the decision the Board excluded the roads sector because the employers affected were not working in this sector. It is reasonable to assume from this that had the employers affected not been working in the electrical power systems sector the reason for excluding the roads sector would have applied equally to the case of the electrical power systems sector. But different reasoning was applied to that sector. This conclusion is reinforced by the fact that G. & H. Steel Service of Canada and Gilbert Steel Ltd. described in the Ironworkers, Local 721 case as the companies which do the largest volume of work in the reinforcing steel field in the area affected by that case, were, on the evidence in this case, members of the intervener as of March 11, 1971. (See Exhibit #14). In any event the highly complicated structure of collective bargaining in the electrical power systems sector is given as the reason for excluding that sector in the Ironworkers, Local 721 case.

11. On the evidence before us in this case it is clear that a highly complicated structure of collective bargaining was in existence in the sector at the time this application was made. The evidence also establishes that significant efforts are being made by the parties to that bargaining structure, and by certain employers, members of the intervener, to effect changes in that structure in order to establish an orderly industrial relations system in the sector. The evidence also establishes that in many respects the electrical power systems sector differs materially from other sectors and these differences should be taken into account in determining whether the collective bargaining structures, existing or proposed, in the sector should be materially altered. After having given careful consideration to all of the arguments advanced by the applicant and respondent for inclusion of the sector in the unit of employers in this case we do not consider it advisable in all of the circumstances to combine the electrical power systems sector with the other sectors involved in this case.

12. In coming to this conclusion we have not sought to define what is included in the electrical power systems sector. Whether it be described as in Article 1.1 of Exhibit 36, as contended by the intervener, or whether the sector is broader in scope makes no difference for present purposes. If it is indeed broader, that is the sector excluded in this case.

13. Having regard to all the above considerations the Board finds that all employers of employees engaged in all phases of the erection and finishing of precast concrete products in the building and construction industry for whom the respondent has bargaining rights in the Province of Ontario, in the industrial, commercial and institutional sector, the residential sector, the sewers, tunnels and watermains sector, the roads sector and the heavy engineering sector, constitutes a unit of employers appropriate for collective bargaining.

14. On the basis of materials filed by the applicant and the respondents, a list of 29 employers who might be affected by this application was drawn up. Twenty-three of these appeared on Schedule E and were numbered from E-1 to E-23 and six of these appeared on Schedule F were numbered from F-1 to F-6. In accordance with the Board's Rules of Procedures notice of this application to all of the employers on these lists of employers were sent.

15. On the basis of the information supplied by the applicant and the respondents, the Board was unable to effect service of the notice of this application to two employers. Consequently, E-15 London Precast and E-20 The Rigger have been removed from the lists of employers affected by this application. In addition the parties have agreed to the exclusion of E-3 Bennett & Wright (Eastern) Ltd. from the lists of employers. The Board further notes that F-5 E & M Precast Ltd. is a duplication of E & M Precast Ltd. and consequently F-5 was removed from the list of employers.

16. All of the remaining employers made filings in the appropriate form. A number of these employers claim exclusion from the unit on the basis that the respondents did not represent their employees. No evidence to contradict this assertion was filed by any of the other parties and in accordance with its normal practice in these applications, the Board proposes to accept the uncontested claim of the individual employer. Accordingly, the following employers have been removed from the list of employers:

E-5	Canadian Crane Rentals
E-8	Durie Cast Stone
F-1	A.B.C. Structure Toronto
F-4	Durie Mosiac Marble
F-6	Precast Contractor.

17. One of the employers Durie Mosiac and Marble Ltd. E-9 made a filing to the effect that the respondent had no bargaining rights with respect to its employees. However, the filing also indicates that the employees listed on Schedule H filed by the employer, that is, those employees for whom the respondent is entitled to bargain were represented by Local 527. Local 527 is a member of the respondent Provincial Council and is a party to Exhibit 20 referred to above. Accordingly, the Board finds that E-9 is an employer in the unit of employers. With respect to another employer E-1, Amherst Crane Rentals Ltd., the employer's filing indicates that it is an employer in the unit of employers. Although the applicant has alleged that this employer should be removed from the lists of employers no evidence in support of this contention was presented to the Board and accordingly the Board accepts this filing by the individual employer.

18. One employer whose filing indicates that it is an employer within the unit of employers included a submission that because of the nature of its work namely: Modular Construction, it ought to be excluded from the unit of employers. However, we can see no basis for excluding this employer merely because it uses a technique which differs from other employers in the unit. Accordingly, the Board rejects the request by E-17, Modular Precast Concrete for exclusion from the unit of employers.

19. Having regard to the foregoing considerations and the filings by the individual employers given notice of this application, the Board has drawn up the following final Schedule E and the final Schedule F:

Final Schedule E

E-1	Amherst Crane Rentals Ltd.
E-2	Artex Precast Limited
F-2	B & B Stone Limited
E-4	Beer Precast Concrete Limited
E-6	Domtar Construction Materials Ltd., Siporex Division
E-7	Dufferin Precast Company
E-9	Durie Mosiac & Marble Ltd.
E-11	Freelance Erector Ltd.
E-12	General Concrete Ltd.
E-13	Jespersen-Kay Systems Limited
E-14	The Jewel Stone Co. Ltd.
E-16	Mitchell-Mudry Limited
E-17	Modular Precast Concrete Structures Limited and Company
E-18	Pre-Con Company
E-19	R and R Precast Erectors Ltd.
E-21	Sandrin Precast Limited
E-22	T.N. Erectors Limited
E-23	Wilson Concrete Products Limited.

Final Schedule F

E-10 E & M Precast Limited
F-3 Connolly Marble, Mosaic & Tile Company
 Limited.

20. The Board finds that the 18 employers on Final Schedule E were those employers who had employees in the year immediately preceding the making of the application and the number 18 is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

21. On the basis of all the evidence before us the Board finds that on the date of the making of the application the applicant represented 14 of the 18 employers on Final Schedule E. The 14 employers is the number of employers to be ascertained by the Board under section 115(1)(b) of the Act. Accordingly, the Board is satisfied that a majority of the employers in the unit of employers are represented by the applicant.

22. The Schedule "H" which accompanied the Form 68, Employer Intervention (or Employer Filing), filed by the individual employers sets out the number of employees that the employer has at each job site with details of the location and the type of construction involved. By section 115(1)(c) of the Act, the payroll period immediately preceding the making of the application is the relevant weekly payroll period for determining the number of employees affected by the application. The Board is satisfied that the weekly payroll period immediately preceding November 10, 1971, is a satisfactory payroll period for the determination in section 115(1)(c) of the Act. On the basis of all the evidence before us and in accordance with the foregoing considerations the Board finds that there were 299 employees affected by the application during the payroll period immediately preceding November 10, 1971. The 299 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

23. The Board further finds that the 14 employers represented by the applicant employed 271 of these 299 employees. The Board is therefore satisfied that the majority of the employers represented by the applicant employed a majority of the employees affected by the application as ascertained in accordance with the provisions of section 115(1)(c) of the Act.

24. Having regard to all of the above findings a Certificate of Accreditation will issue to the applicant for the unit of employers found to be an appropriate unit of employers in paragraph 13, and in accordance with

the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after November 10, 1971, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

March 7, 1975.

"G. W. Reed"
for the Board