

ONTARIO LABOUR RELATIONS BOARD

File No. 1635-71-R

Between:

The Mechanical Contractors Association of
Ottawa,

Applicant,

- and -

Sheet Metal Workers' International Association,
Local Union 47,

Respondent.

File No. 1637-71-R

Between:

The Mechanical Contractors Association of
Ottawa,

Applicant,

- and -

Sheet Metal Workers' International Association,
Local Union 47,

Respondent.

BEFORE: D.E. Franks, Vice-Chairman, and Board Members
H J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: H.G. Burchell, J.B. Chadwick
and W.S. Cook for the applicant; Ronald S. Taylor and
Raymond Guertin for the respondent.

DECISION OF THE BOARD:

1. In these two applications the applicant is seeking to be accredited as the exclusive bargaining agent for units of employers who engage in collective bargaining with the respondent in respect of certain of their employees. The difference between these two cases is that Board File No. 1635-71-R relates to the residential sector of the construction industry, whereas Board File No. 1637-71-R relates to the industrial, commercial and institutional sector of the construction industry. In other respects the applications are similar. At the hearing in this matter the applicant made the request that the Board consolidate these cases. The Board re-

served its decision with respect to the consolidation of these matters; however, the two cases were heard together. The reasons for the request by the applicant will be discussed in paragraph 5 of this decision which deals with the appropriate unit of employers for accreditation.

2. With the exception of certain employers which will be dealt with specifically in paragraph 7 of this decision, all persons affected by both these applications have had notice of both applications. The Board is satisfied that no interests are involved which would be prejudiced by an order consolidating these two applications at this time. Accordingly these applications are hereby consolidated.

3. The applicant in this matter, The Mechanical Contractors Association of Ottawa, is a corporation under Part II of the Canada Corporation Act. Letters Patent of incorporation were issued by the Secretary of State of Canada on May 6, 1966. The Letters Patent of incorporation were issued under Part II of the Canada Corporations Act creating a corporation without capital. On July 13, 1971, Supplementary Letters Patent were issued by the Minister of Consumer and Corporate Affairs to The Mechanical Contractors Association of Ottawa, which extended the objects of the Corporation. Included in the extended purpose and objects granted by the Supplementary Letters Patent are the following objects:

(i) To represent all members, and non-members, who authorize the Association to act in their behalf, in the negotiation, general application, administration and interpretation of collective agreements, and in the arbitration of labour disputes;

(j) To become an accredited employer's organization under the Labour Relations Act of Ontario and to regulate relations between employers and employees in the plumbing and mechanical trades, and to represent such employers in collective bargaining within any sector or sectors of the plumbing and mechanical trades in any geographical area or areas as defined under the said Labour Relations Act, or as determined by the Ontario Labour Relations Board.

The Board is therefore satisfied that the applicant is an employers' organization within the meaning of section 106(d) of The Labour Relations Act, and that it is a properly constituted employers' organization for the purposes of

section 115(3) of the Act.

4. The applicant filed evidence of representation on behalf of twenty-one employers in these applications. The applicant also filed a duly completed Form 62, Declaration Concerning Representation Documents, in each case. The Board is satisfied that the applicant represents these twenty-one employers on whose behalf the evidence of representation was filed and that these employers on whose behalf such evidence was filed have given sufficient authority to the applicant to enable it to discharge its duties as an accredited employers' organization.

5. The applicant requested consolidation of these cases for the purpose of combining the sectors which were the subject matter of the separate applications. The applicant and the respondent are parties to a collective agreement dated May 10, 1971, which is binding on more than one employer in the area and sectors that are the subject matter of this application. The evidence is that this collective agreement forms the basis for the jurisdiction of the Board in both sectors of the construction industry. In addition, there is sufficient evidence that the employers and employees affected by this application work in both sectors which the applicant is seeking to have combined. On the basis of the evidence before the Board and in the light of the filings by the individual employers in Form 68 with respect to the applications for each sector separately the Board is of the opinion that this is a case where the appropriate sector of the construction industry for collective bargaining is a combination of the industrial, commercial and institutional sector and the residential sector. The geographic area of this collective agreement is "the City of Ottawa and the Counties of Carleton, Dundas, Glengarry, Grenville, Lanark, Prescott, Renfrew, Russell, Stormont and that part of Nipissing County South of a line from Mattawa on the Quebec border to the Northwest corner of Boyd Township, Southwest to the Northwest corner of Paxton Township". Since this collective agreement covers both sectors the Board is satisfied that the geographic area set out in the collective agreement is the appropriate geographic area for collective bargaining. The Board therefore finds that all employers of Sheet Metal Workers and Sheet Metal Worker apprentices for whom the respondent has bargaining rights in the Judicial District of Ottawa - Carleton and the United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry, the Counties of Grenville, Lanark and Renfrew and that part of the District of Nipissing south of a line from Mattawa on the Quebec border to the Northwest corner of Boyd Township, Southwest to the Northwest corner of Paxton Township in the industrial, commercial and institutional sector and residential sector of the construction industry, constitutes a unit of employers appropriate for collective bargaining.

6. Because the request to consolidate these two applications was not made until the hearing of this matter both applications had been processed in accordance with the Board's Rules of Procedure as separate applications up to that point. Thus, in each application the respondent and the applicant had submitted lists of employers affected the application to the Board's examiner, and as a result a list of employers was prepared by the Board and each employer on the list of employers was given notice of each application. The list of employers in Board File No. 1637-71-R which related to the industrial, commercial and institutional sector of the construction industry included two employers which were not listed in Board File No. 1635-71-R which related to the residential sector of the construction industry. These employers are Fraser-Brace Engineering Co. Ltd. (Commercial Division) and Stittsville Sheet Metal. These employers were not included in the list of employers relating to the residential sector because they were known by both the applicant and the respondent to be engaged only in industrial, commercial and institutional construction. Both of these employers are not only represented by the applicant, but are also claimed as members of the applicant association. Further, there is no doubt that these employers are employers in the unit of employers found to be appropriate in paragraph 5 since they are actively engaged in construction in the industrial, commercial and institutional sector of the construction industry. The Board is therefore satisfied that these employers have had sufficient notice of this application.

7. The Board sent notice of this application to forty-two employers. One other employer was subsequently added to the list of employers when a Form 68 was submitted by that employer. From this list of forty-three employers one employer C/S Construction Specialties Limited submitted in its Form 68 filing that it was not an employer in the construction industry. The applicant and the respondent agreed with this submission by the employer intervener and accordingly C/S Construction Specialties Limited is removed from the list of employers affected by the application. Two employers failed to make filings in Form 68. Accordingly, on the basis of the materials before the Board and on the agreement of the applicant and the respondent the Board finds that Larocque Installation is an employer on Schedule "E" and that for the weekly payroll period immediately preceding the application this employer had one employee. The Board further finds that Triway Sheet Metal Co. is also an employer on Schedule "E" and that for the weekly payroll period immediately preceding the application this employer had four employees affected by the application. One other employer did not file a Form 68, but by letter informed the Board that it was "no longer active in the Province of Ontario". The applicant and the respondent agreed that the respondent has bargaining rights for this employer, and further that

this employer has not had employees within the year immediately preceding the making of this application. Accordingly, Murray Kerson & Company Ltd. is an employer on Schedule "F".

8. The remaining employers on the list of employers have filed employer interventions in Form 68. The Board proposes to accept the representations of these employers as contained in their filings in Form 68. Thus, for instance, the Board will take as the correct name of the employer the name which the employer has set out in its Form 68. All of these employers but one agreed with the representations of the applicant and the respondent that the respondent is entitled to bargain on behalf of the Sheet Metal Workers in their employ. One employer, Ernest Leblanc Ltd. has in its Form 68 made representations to the Board that the respondent is not entitled to bargain on behalf of its employees. Neither the applicant nor the respondent has presented any evidence to the Board to refute this representation by that employer. Accordingly the Board finds that Ernest Leblanc Ltd. is not an employer in the unit of employers affected by this application.

9. On the basis of the materials filed with the Board by the applicant, the respondent and the individual employer interveners, the Board has compiled the following Final Schedule "E" of employers who have a collective bargaining relationship with the respondent and who have had employees within the year immediately preceding the making of this application:

Airco Heating Co.
Airgo Mechanical Limited
Asbestos Erectors of Canada Ltd.
Beaver Engineering Limited
Bill Boivin Plumbing & Heating Ltd.
C. & S. Heating Co. Ltd.
Calor Mechanical Limited
Canvent Ltd.
Comstock International Ltd.
Delphis Cote Limited
Covertite (Ontario) Limited
Thomas L. Crawford
Ray Cyr Roofing
Econo Heating (Ottawa) Limited
E. S. Fox Limited
Fraser-Brace Engineering Co. Ltd. (Commercial Division)
Heather & Little Limited
Gervais-DesJardins Mechanical Ltd.
Irving Contracting Ltd.
Kalinger & Son Roofing Limited
Laframboise Mechanical Ltd.
Samuel Lampert & Co. Ltd.
Lapointe Plg. & Htg. Ltd.
Larocque Installation

B. Leblanc Spec. Const.
J. Lewin & Co. Inc.
Marset Contracting Limited
Paul Menard Mechanical Ltd.
Modern Mechanical Co. Limited
Robertson-Irwin Limited
Westeel Rosco Ltd.
J. D. Sanderson Co. Ltd.
J. R. Seguin & Fils Limited
Stittsville Sheet Metal
Thompson Bros. Mechanical Contracting Limited
Triway Sheet Metal Co.
Guy Villeneuve Construction Limited
T. Welch & Son Limited, Roofing Contracting
Clearview Plumbing & Heating Ltd.

The Board has also compiled a Final Schedule "F" which lists those employers who have a collective bargaining relationship with the respondent, but who have not had employees in the year immediately preceding the making of this application:

Murray Kerson & Company Ltd.
Thermec Limited

The Board finds that the number of employers on Schedule "E" totalling thirty-nine is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

10. As noted above the applicant has filed evidence of representation with respect to twenty-one employers. On the basis of all the evidence before us the Board finds that on the date of the making of this application the applicant represented twenty of the employers ascertained as the number of employers under section 115(1)(a) of the Act. The twenty employers so represented by the applicant 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 employers' organization. In this regard it is perhaps worth noting that a number of employers indicated in their employer intervention in Form 68 that they were in support of the application. However, with respect to four of these employers the applicant did not submit written evidence of representation in accordance with the Board's Rules of Procedure and as a result have not been included in the determination that the applicant represents a majority of employers in the unit of employers.

11. The entitlement of an employers' association to accreditation is based on a "double majority". We have now dealt with the first of majorities that an applicant must obtain - a majority of employers in the unit of employers. We now turn to the matter of whether these employers employed a majority of the employees affected by the application. On the basis of the filings by individual employers in Schedule "H" accompanying the employer intervention the Board finds that in the weekly payroll period immediately preceding February 18, 1972, the employers found by the Board to be employers within the meaning of section 115(1)(a) of the Act employed a total of three hundred and ninety-eight employees. The Board is of the opinion that the weekly payroll period immediately preceding February 18, 1972, is a satisfactory payroll period for the purposes of making the determination required in section 115(1)(c). Accordingly, the Board finds that there were three hundred and ninety-eight employees affected by the application. The three hundred and ninety-eight employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

12. The Board further finds that the twenty employers represented by the applicant employers' organization employed a total of three hundred and forty-six employees during that weekly payroll period. The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of employees as ascertained in accordance with the provisions of section 115(1)(c) of the Act.

13. Having regard to all the above findings a Certificate of Accreditation will issue to the applicant for the unit of employers found to be the appropriate unit of employers in paragraph 5 and in accordance with the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after February 18, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the appropriate unit of employers.

February 16, 1973

"D. E. Franks"
for the Board