

ONTARIO LABOUR RELATIONS BOARD

Between:

Windsor Electrical Contractors
Association,

Applicant,

- and -

International Brotherhood of
Electrical Workers, Local Union
773,

Respondent.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members
J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: W. S. Cook, G. T. Howe and
J. P. Wilson appearing for the applicant; Neil D. McLean
appearing for the respondent.

DECISION OF THE BOARD:

1. In this application for accreditation the applicant seeks to be accredited as the bargaining agent for certain employers which have a bargaining relationship with the respondent. The respondent is a party to a collective agreement with the applicant. This collective agreement was entered into on May 28, 1973, and expired on April 30, 1975. There is no question that more than one employer which is affected by this application is bound by this collective agreement. The Board therefore finds that it has jurisdiction under section 113 of The Labour Relations Act to entertain this application.

2. The applicant is a corporation. In support of its application the applicant filed a copy of its Letters Patent dated March 1, 1967, given by the Provincial Secretary and Minister of Citizenship for the Province of Ontario. These Letters Patent create the Windsor Electrical Contractors Association a corporation without share capital. The applicant also filed a copy of its Supplementary Letters Patent dated October 25, 1971, given by the Minister of Financial and Commercial Affairs and a copy of its bylaws. On the basis of the material before it, the Board is 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 organization for the purpose of section 115(3) of The Labour Relations Act.

3. The respondent at the hearing argued that the Board ought not to accredit the applicant because the respondent had contributed financial or other support to the applicant. The respondent relied upon certain provisions of the collective agreement whereby a Joint Industry Fund was established. Under section 1004 of this collective agreement the employers who are covered by the collective agreement are required to make contributions to this fund. The contributions are computed on the basis of the number of hours worked by an employer's employees. The purpose of the Joint Industry Fund is to pay towards the cost of the apprenticeship training programme as operated by the Essex and Kent County Apprenticeship Council and to finance the education and training of journeyman and foreman to assist their improvement and advancement in the trade. Payments are made from the Joint Industry Fund to the Essex and Kent County Joint Apprenticeship Council. Contributions to this fund are administered by the Windsor Electrical Contractors Association. The Board heard evidence that the payments which are made by the employers to the Joint Industry Fund and the Essex and Kent County Joint Apprenticeship Council do not form part of the remuneration which is paid to the employees who are covered by the collective agreement. These employees do not pay income tax on any part of these payments. The Board heard testimony (which was uncontradicted) that the reason why section 1604 of the collective agreement records various monetary items is so that the employers who are covered by the collective agreement are able to point to their total wage liabilities when bidding on jobs. The Essex and Kent County Apprenticeship Council is administered by seven persons. Three are provided by the applicant, three are provided by the respondent and one is provided by the Ministry of Labour. In our view, the applicant has adopted a system for the assessment of employers who are covered by the collective agreement for the purpose of generally advancing the training of its present and potential employees of the employers. The Board finds that there is no evidence that any trade union or council of trade unions has participated in the respondent's formation or administration or has contributed financial or other support to it within the meaning of section 115(5) of The Labour Relations Act. In these circumstances, the applicant is entitled to have its application considered by the Board.

4. The applicant also filed in support of its application 11 documents entitled Employer Authorization. These documents appoint the applicant to represent the employer as its bargaining agent with the respondent and they further appoint the applicant as agent and representative to make an application for accreditation under The Labour Relations Act. The applicant also filed in support of these documents a duly completed Form 62, Declaration Concerning Representation Documents Application for Accreditation,

Construction Industry. The Board is satisfied that the evidence of representation meets the requirements set out in section 96 of The Board's Rules of Procedure and 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. The collective agreement which is referred to in paragraph one herein is effective within Kent County. Having regard to the representations before it, the Board finds that employees have been employed in the industrial, commercial and institutional sector in the residential sector. The Board further finds that all employers of journeymen electricians and apprentices for whom the respondent has bargaining rights in the County of Kent in the industrial, commercial and institutional sector and in the residential sector, constitute a unit of employers appropriate for collective bargaining.

6. Notice of this application was given to 29 employers in accordance with the Board's Rules of Procedure.

7. Seven employers failed to file returns. Having regard to the representations before it, the Board makes the following determinations pursuant to section 115 of The Labour Relations Act:

- No. 1 AAA Electric Co.-Final Schedule "E"
- No. 11 Electro Power Construction Ltd. -
Final Schedule "F"
- No. 13 Fahrhall Contractors Ltd. -
Final Schedule "F"
- No. 15 H. Furer Electric Limited -
Final Schedule "F"
- No. 17 Kentec Electrical Construction -
Delete (discontinued business
operations)
- No. 20 Moncur Electric Motors Limited -
Final Schedule "F"
- No. 22 Parr Bros. Electric Limited -
Final Schedule "F"

8. Four employers filed replies and claimed that the respondent is not entitled to bargain on behalf of their employees. Having regard to the evidence before it and to the representations of the parties, the Board finds that the respondent is entitled to bargain on behalf of the employees of these employers in the event that they employed persons in the unit referred to in paragraph five herein. Accordingly, the Board makes the following determinations pursuant to section 115 of The Labour Relations Act:

- No. 10 Electric Heating of Windsor Limited - Final Schedule "F"
- No. 21 Ralph M. Moore Industrial Installations Limited - Final Schedule "F"
- No. 19 Lessard Electric Limited - Final Schedule "F"
- No. 23 Birnie Electric Limited - Final Schedule "F"

9. On the basis of the foregoing, the fillings by individual employers and the representations before it, the Board has prepared the following lists of employers. The employers listed on Final Schedule "E" are the employers who are indicated as having had employees affected by this application in the year preceding October 15, 1974, the date of the making of this application. The employers on Final Schedule "F" are indicated as not having had such employees.

Final Schedule "E"

AAA Electric Co.
A. Rossini & Sons
Chatham Electric Co. Limited
Comstock International Limited
S./M. Electric Blenheim Limited
The State Electric Company Limited
Waffle's Electric Limited

Final Schedule "F"

Black & McDonald Limited
Blenkhorn & Sawle Limited
Delta Enterprises (Sarnia) Ltd.
Domestic Electric (Windsor) Ltd.
Ebbinghaus Electric Limited
Electric Heating of Windsor Limited
Electro Power Construction Ltd.
Enasco Limited
Fahrhall Contractors Ltd.
F. J. Rogers Limited
H. Furer Electric Limited
H. Pare Electrical Contractors Limited
Kudlak - Baird Limited
Lessard Electric Limited
Moncur Electric Motors Limited
Ralph M. Moore Industrial Installations Limited
Parr Bros. Electric Limited
Birnie Electric Limited
Rorison Industrial Electric Co. Limited
Roscoe Electric (Windsor) Limited
Tucker Electric Limited

The Board finds that the 7 employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application, and the number 7 is the number of employers to be ascertained by the Board under section 115(1)(a) of The Labour Relations Act.

10. On the basis of all the evidence before it, the Board finds that on the date of the making of the application the applicant represented 6 of the 7 employers on Final Schedule "E". The 6 employers is the number of employers to be ascertained by the Board under section 115(1)(b) of The Labour Relations Act. Accordingly, the Board is satisfied that a majority of the employers in the unit of employers is represented by the applicant.

11. The Schedule "H" which accompanied the Form 68, 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 Labour Relations 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 this application. On the basis of all the evidence and representations before it, the Board finds that there were 46 employees affected by this application during the payroll period immediately preceding October 15, 1974. The 46 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of The Labour Relations Act.

12. The Board further finds that the 6 employers represented by the applicant employed 41 of these 46 employees. The Board is therefore satisfied that the majority of the employers represented by the applicant employed a majority of the employees affected by this application as ascertained in accordance with the provisions of section 115(1)(c) of The Labour Relations Act.

13. 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 five herein, and in accordance with the provisions of section 115(2) of The Labour Relations Act for such other employers for whose employees the respondent may after October 15, 1974, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

September 11, 1975.

"R. A. Furness"
for the Board