

The Labour Relations Act

Before The Ontario Labour Relations Board

Between:

Hamilton and District Sheet Metal Contractors Inc.,

Applicant,

—and—

Sheet Metal Workers' International Association Local
Union 537 Hamilton Ontario Branch,

Respondent.

Certificate

Upon the application of the applicant and in accordance with the provisions of the Labour Relations Act THIS BOARD DOTH ACCREDIT Hamilton and District Sheet Metal Contractors Inc. as the bargaining agent for all employers of employees for whom the respondent has bargaining rights in the Town of Burlington, the Township of Nassagaweya, the Town of Milton, that part of the Town of Oakville being south of the Town of Milton and west of Provincial Highway No. 25 to a point where the Oakville Creek crosses Highway 25 and that part of the Town of Oakville lying west of the Oakville Creek between Highway 25 and Lake Ontario all in the County of Halton; the City of Hamilton, the County of Wentworth, the Townships of Seneca, Oneida, Walpole, Rainham, North Cayuga, that part of the Township of South Cayuga lying west of County Road 36 and that part of the Township of Canborough lying west of County Road 15 all in the County of Haldimand and that part of the Township of West Lincoln lying between the easterly boundary of the County of Wentworth and Regional Road 16 as it extends from its intersection with Regional Road 63 to the Town of Smithville and Regional Road 14 as it extends from Smithville to the Shores of Lake Ontario, in the Electrical Powers Systems sector of the construction industry.

This certificate is to be read subject to the terms of the Board's decisions in this matter and accordingly the unit of employers described herein is to be read subject to any qualifications referred to in the said decisions of the Board.

.....Certificate of Accreditation:

The employers for whom Hamilton and District Sheet Metal Contractors Inc. becomes the bargaining agent under this certificate are Lancaster Sheet Metal Ltd., Riddell Sheet Metal & Roofing Limited, Robertson Building Systems Limited, H. Scott & Sons Limited, Schreiber Brothers Limited, Tri-cept Limited, Inrig Roofing & Sheet Metal Company Ltd., and such other employers for whose employees Sheet Metal Workers' International Association Local Union 537 Hamilton Ontario Branch may after April 28, 1975 obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the unit of employers described herein.

DATED at Toronto this 29th day of August, 1975.

ONTARIO LABOUR RELATIONS BOARD

"A. M. Brunskill"
Registrar

(SEAL)

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400 University Avenue
Toronto 2, Ontario

pute prior to launching formal proceedings. Nonetheless we are satisfied the Legislation anticipates that the settlement processes may voluntarily transpire thereafter for a period of fourteen days and with the aid of a Labour Relations Officer. We do not hold it consistent with the aims of the Legislation, however, that a grievor may malingering with impunity in bringing its dispute to a resolve. In our opinion, the Board would be duty bound to require a grievor to provide a reasonable explanation for any delay in the processing of a grievance before us. In the absence of such explanation and having regard to the prejudice that may have been caused the other party to the dispute, the Board may exercise like powers in disposing of the grievance as an arbitrator under the regular provisions of the Act. What the Board considers a reasonable explanation will obviously depend on the facts and circumstances of the case. One explanation that would most likely find favour with us are delays occasioned by sincere and *bona fide* attempts to resolve the dispute prior to initiating proceedings under the Act. We anticipate that a grievor seeking relief under section 112(a) will conduct itself with dispatch in attempting to resolve its complaint. In the event it delays in initiating a grievance or permits a time limit to expire under the grievance procedure contained in a collective agreement once pursued, the Board, in the absence of a reasonable explanation, may take appropriate measures that best suits the circumstances. This in the last analysis is how the Board conceives its powers with respect to section 37(5a) of the Act.

9. Finally, the Board entertained with great interest and concern the representations of the parties on the nature of the Board while exercising its powers under section 112(a) of the Act. We have concluded that any findings made with respect to those submissions ought to be made on another occasion and perhaps in another forum.

10. The instant reference is therefore to proceed to a hearing on its merits in accordance with paragraph 2 of the Board's initial decision.

[Minor amendment to accreditation. See paragraph 12].

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0176-75-R Hamilton and District Sheet Metal Contractors Inc., (Applicant) v. Sheet Metal Workers' International Association Local Union 537 Hamilton Ontario Branch, (Respondent) v. Electrical Power Systems Construction Association, (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and J. E. C. Robinson, Q.C.

APPEARANCES: *G. Moller for the applicant; J. Fletcher for the respondent; H. A. Beresford for the intervener.*

DECISION OF THE BOARD: January 15, 1976

1. This is an application for reconsideration dated September 16, 1975 filed on behalf of the Electrical Power Systems Construction Association (hereinafter referred to as "EPSCA") requesting review of a Board decision dated August 29, 1975 certifying the applicant association as the accredited bargaining agent for a unit of employers for whose employees the respondent trade union holds bargaining rights.

2. "EPSCA" submits that at no time did it receive notice of the applicant's application for accreditation notwithstanding its active intervention and participation in a previous application involving the same parties and the same unit of employers. Counsel asserts that "EPSCA" is an interested person that ought to have been made a party to these proceedings. It appears that during the course of the applicant's first application an issue arose in connection with "EPSCA's" status to intervene in that proceeding. Because that application was dismissed for reasons immaterial to the status question, the Panel of the Board seized with the issue made no definitive finding. (See Board File No. 5454-74-R).

3. Upon filing a second application for accreditation the applicant association made no reference in *The Application for Accreditation, Construction Industry* (Form 59) to "EPSCA" as an interested party. Paragraph 8 of Form 59 reads as follows:

"The name and address of any employer's organization, trade union or counsel of trade unions *which may have an interest in the application*".

Counsel argues that in the face of the representations and submissions put to the Board in the previous application in connection with "EPSCA's" interest in the outcome of those proceedings, the applicant ought to have referred to "EPSCA" as an employer's organization which "may" have had an interest in the second application. As a result "EPSCA" in being denied "notice" of the second application ought to be permitted at this time to make representations with respect to the propriety of the Board's order accrediting the applicant association.

4. In support of his submission counsel proceeded to demonstrate the nature and extent of "EPSCA's" interest in the proceedings. In this regard it was established to our satisfaction that "EPSCA" represented as members, employers whose names appeared on the Revised Lists of Employers determined in paragraph 6 and 7 of the Board's initial decision. Of these employers only Tricept Limited appeared to be affected by the accreditation proceeding at a time material to the application. Each of the other employers were excluded from the appropriate unit of employers. In this regard, counsel indicated that he was prepared to establish that a number of employers ought to have been considered by the Board in determining the count in that they were engaged in bargaining unit work at The Hydro Electric Project at Nanticoke. In other words, the Board discerned from counsel's submissions a challenge to the lists filed by the respondent in reply to the application.

5. Counsel also referred the Board to *The Ontario Precast Concrete Manufacturer's Association et al* case OLRB M.R. June [1973] 321. In that decision the Board determined that notwithstanding "EPSCA's" failure to establish an interest in the accreditation proceeding (in the sense that it could not satisfy the Board that it represented an employer affected by the outcome) it would permit "EPSCA" to intervene for a limited purpose. To the extent that the appropriate unit of employers could include "the electrical powers system sector", the Board was satisfied that "EPSCA" demonstrated some concern in the outcome of those proceedings. "EPSCA" was therefore permitted to participate in that application for the specific purpose of making representations on the inclusion or exclusion of the electrical powers system sector from the appropriate unit of employers. In a like manner counsel argues "EPSCA" ought to have had status to make representations with respect to the appropriate unit of employers in the instant proceeding.

6. The representative of the applicant association agreed that "EPSCA" did indeed appear and make representations with respect to its status to intervene in the previous application. Nevertheless it was submitted that the instant application constituted a fresh proceeding independent of any obligation on the applicant's part to advise the Board of "EPSCA's" potential interest. Indeed, in surveying the documents it was established that of the named employers alleged to be represented by "EPSCA" for collective bargaining purposes, each had filed upon notification of the application by the Board an *Employer Intervention, Application for Accreditation*, (Form 68) containing the information necessary to proceed with the application. To the extent that these persons were represented by "EPSCA", as agent, the Board ought to be satisfied that the notice requirements with respect to them have been met. Furthermore, it has not been demonstrated that any prejudice has arisen as a result of the failure to advise "EPSCA" of the proceedings.

7. Counsel in reply submitted that the mere filing of the second application so closely on the heels of the first raised the obligation on the applicant's part to inform the Board of "EPSCA's" potential interest. In the circumstances it may very well have been a reasonable assumption by the employers represented by "EPSCA" would have been advised of the proceedings. Had the applicant informed the Board that "EPSCA" "may have had an interest" in the application then its obligation would have been discharged.

8. At the hearing of this matter on November 4, 1975 the Board permitted "EPSCA" to intervene in that it demonstrated an interest in the proceedings and we undertook to provide written reasons therefore. At that time the parties were directed to meet with Mr. D. Aynsley, Labour Relations Officer, with a view to settling the list of employers and any other matter material to the appropriated unit of employers. In the interim the Board's certificate of accreditation was to be held in abeyance.

9. In applications filed under the provisions of the Act, the Board's *Rules on Practice and Procedure* are designed to confer the widest opportunity for persons who can demonstrate an interest in the outcome of our proceedings to participate in the deliberations. In achieving this end, the Board to some extent relies upon the co-operation of the named parties to advise the Board of any potential or likely person who would fall into that category. Although no legal obligation necessarily attaches to a party to inform the Board of potentially interested parties, none-the-less failure to do so may result in delays occasioned by adjournments or applications for reconsideration upon a potentially interested party learning of the proceedings. On the other hand, in most instances it is assumed that a party upon learning of its involvement (potential or otherwise) in a Board proceeding will advise its counsel, representative or agent and duly authorize him to participate in our deliberations in accordance with what may appear to be its best interests. It has never been incumbent upon any one party to safeguard the interests of another party upon being properly advised of the proceedings to the extent of assuring itself that appropriate counsel has been retained. Occasionally the Board, in having regard to our particular knowledge of a proceeding and the relative cohesiveness of the industrial relations community may direct the Registrar to inform a person of his potential interest in the proceeding. Any person, however, that relies upon the Board to provide this service does so at its own peril.

10. In ordinary circumstances we would have anticipated that the employers affected by the instant application and represented by "EPSCA" would have advised "EPSCA" upon being duly notified by the Board. In other words, it is incumbent upon a party to re-

tain and instruct its representative in advance of a hearing and failure to do so may foreclose any further opportunity to intervene for the purpose of reviewing the proceedings. In the peculiar circumstances of this case, however, "EPSCA" made representations to another panel of the Board with respect to its status to intervene in circumstances that can be best described as "on all fours" with the circumstances before this Panel of the Board. The applicant, although under no legal obligation to do so, failed to advise the Board of "EPSCA's" participation in the previous proceedings upon filing of the second application. This panel throughout the proceedings remained ignorant of "EPSCA's" potential interest until the filing of the instant application for reconsideration. The Board, in entertaining counsel's representations, determined that in these peculiar circumstances "EPSCA" ought to have been advised of the proceedings. As a result, the Board, having regard to the evidence of representation submitted in support of its assertion of an interest in the proceedings permitted "EPSCA" to make its submission in review of the Board's decision certifying the applicant as an accredited organization for the appropriate bargaining unit of employers.

11. In referring to the statements made in *The Ontario Precast Manufacturer's Association et al* case (supra), we are of the opinion that it was not the Board's intention to confer automatic status on "EPSCA" to participate (even for limited purposes in an accreditation proceeding. The Board in that case assumed a "lenient" posture with respect to "EPSCA's" status to participate having regard to the relative newness of the accreditation provisions of the Act and the potential contribution that could be made to a determination of the appropriate unit of employers in light of "EPSCA's" particular expertise of the Electrical Powers System Sector of the Construction Industry. We do not construe that decision as a licence justifying the intervention of "EPSCA" or any other person or association in an accreditation proceedings. Whether a person or association ought to be permitted to participate for the reasons cited in the decision referred to is at the discretion and invitation of the panel of the Board seized of the application. And that determination must be made on an *ad hoc* basis having regard to the particular circumstances of the case.

12. As a result of our ruling permitting "EPSCA" to intervene and participate in the proceedings and having regard to the parties' agreement submitted to the Board as a result of the Labour Relations Officer's inquiry, the Board directs that the following employers be added to the lists referred to in paragraph 6 of our initial decision:

Dewar Insulations Inc.
E. S. Fox Limited
Giffin Sheet Metals Limited

13. In all other respects, the Board confirms its original decision certifying the applicant association as the accredited bargaining agent on behalf of the employers constituting the bargaining unit found appropriate in paragraph 5 of its decision.
