

ONTARIO LABOUR RELATIONS BOARD

Between:

The Resilient Flooring Contractors'
Association of Ontario,

Applicant,

- and -

Resilient Floor Workers, Local
Union 2965, United Brotherhood
of Carpenters and Joiners of
America,

Respondent.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members
H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Stephen J. Kettle for the
applicant and Harry T. Hinton for the respondent.

DECISION OF THE BOARD:

1. The name "Local Union 2965, The Resilient Floor Workers United Brotherhood of Carpenters and Joiners of America, A.F.L.-C.I.O." appearing in the style of cause of this application as the name of the respondent is amended to read "Resilient Floor Workers, Local Union 2965, United Brotherhood of Carpenters and Joiners of America".

2. 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 made on May 1, 1974, and expires on April 30, 1976. 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.

3. The applicant is a corporation. In support of its application the applicant filed a copy of its Letters Patent dated December 24, 1954, given by the Provincial Secretary for the Province of Ontario. These Letters Patent create The Resilient Flooring Contractors' Association of Ontario a corporation without share capital. The applicant also filed copies of its by-law number one dated December 30, 1954, and its by-law number two dated June 24, 1975. 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 purposes of section 115(3) of The Labour Relations Act.

4. The applicant also filed in support of its application 33 documents entitled Employer Authorization. These documents appoint the applicant to represent the employer as its bargaining agent with the respondent and they further vest all necessary authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent. The applicant also filed in support of these documents two duly completed Form 62's, 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 two is effective within Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing, the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario. Having regard to the representations before it, the Board finds that employees have been employed in the industrial, commercial and institutional sector and in the residential sector. The Board further finds that all employers of employees engaged in the installation of carpet, hardwood, resilient and related floor coverings for whom the respondent has bargaining rights in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing, the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario, in the industrial, commercial and institutional sector and in the residential sector of the construction industry, constitute a unit of employers appropriate for collective bargaining.

6. Notice of this application was given to 45 employers in accordance with the Board's Rules of Procedure.

7. Sterling Tile Company (hereinafter referred to as "Sterling") although notified of the hearing of this application failed to appear at the hearing. Subsequently, Sterling filed a late reply with the Board. In this reply, Sterling made certain representations regarding the extent of its bargaining rights with the respondent. Sterling has requested a hearing in order to present evidence and argument. In our view Sterling has had an opportunity to raise any objections it may have to this application for accreditation and at the time its reply was filed it was too late for Sterling to request a further hearing of this application. However,

the Board desires to comment on two aspects of Sterling's late reply. In paragraph three thereof Sterling states that "the respondent is entitled to bargain on behalf of the employees of the employer affected by this application" and in paragraph four thereof also states "The employer has employed employees affected by this application within one year prior to the date of the making of the application". Sterling refers to an "employer authorization" which it signed. The Board notes that the applicant has not filed an "employer authorization" with respect to Sterling. In addition, Sterling has made further representations to the Board with respect to an application for certification by the respondent with respect to Sterling. This application was withdrawn by the respondent. In our view, the mere filing of an application for certification which is subsequently withdrawn is not tantamount to an admission that the respondent does not possess bargaining rights for Sterling in the residential sector of the construction industry. The Board has considered all of the written representations of Sterling in making the instant decision.

8. Twelve 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. 6 Berkley Contracting - Final Schedule "F".
- No. 9 C. J. Broadloom Sales & Services Ltd. - Final Schedule "E".
- No. 17 DeLuxe Stair Cushion Ltd. - agreed by the parties to be removed from the list of employers.
- No. 21 Jepar Services Ltd. - agreed by the parties to be removed from the list of employers.
- No. 25 Lugus Carpet - Final Schedule "F".
- No. 30 Precision Contract Interiors Ltd. - Final Schedule "E".
- No. 32 Rickey-Reid Limited - Final Schedule "E".
- No. 33 Roy & Fils Ltee - Final Schedule "F".
- No. 35 Sevan Carpet Services - Final Schedule "F".
- No. 41 Tri-Tile Limited - Final Schedule "E".
- No. 42 Union Carpet Installations - Final Schedule "E".
- No. 44 E. Black & Associates - Final Schedule "F".

9. On the basis of the foregoing, the filings by the individual employers and the representations before it, the Board has prepared the following lists of employers. The employers listed on Final Schedule "E" are employers who

are indicated as having had employees affected by the application in the year preceding August 11, 1975, 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"

Arrow Acoustics & Flooring Company Limited
Artistic Broadloom Sales Div. of Caride Ltd.
Babiak Floor Coverings Limited
Barwood Sales (Ontario) Limited
Boyd-Leckie Limited
Brooks Marble & Tile Company Ltd.
A. Buchanan Floor Coverings Ltd.
C. J. Broadloom Sales & Services Ltd.
Calligaro Tile Company Limited
C. J. Duguid Flooring (Ontario) Limited
Cannon Carpet Installation Ltd.
Carpet Installations Company
Centre Leasehold Improvements Limited
Connolly Marble, Mosaic and Tile Company
Limited
Enka Contracting Limited
Granolite Company Limited
Knight Bros. Sales & Services Ltd.
Leader Terrazzo Tile Mosaic Limited
Northern Flooring Company Limited
Page Flooring Enterprises Inc.
Perfection Rug Co. Ltd.
Permanent Floor Laying Company Limited
Precision Contract Interiors Ltd.
Regal Tile Limited
Rickey-Reid Limited
Clifford Interiors Limited
Shoreway Flooring Ltd.
Sterling Tile Company
Terrazzo, Mosaic & Tile Company Limited
Tile Rite Ltd.
Trend Flooring Ltd.
Tri-Tile Limited
Union Carpet Installations
Darling Carpet Installations Limited
York Marble, Tile & Terrazzo Limited

Final Schedule "F"

Berkley Contracting
Crestile Limited
Foster Flooring Limited
Lugus Carpet

Olympia Interior Decorators Ltd.
Roy & Fils Ltee
Sevan Carpet Service
E. Black & Associates

The Board finds that the 35 employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application, and the number 35 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 29 of the 35 employers on Final Schedule "E". The 29 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 220 employees affected by this application during the payroll period immediately preceding August 11, 1975. The 220 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 29 employers represented by the applicant employed 184 of these 220 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 August 11, 1975, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

"R. A. Furness"
for the Board

June 11, 1976.