

ONTARIO LABOUR RELATIONS BOARD

Between:

Mechanical Contractors Association of  
Windsor,

Applicant,

- and -

Local 552, of the United Association of  
Journeymen and Apprentices of the Plumbing  
and Pipefitting Industry of the United  
States and Canada,

Respondent.

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

DECISION OF THE BOARD:

1. This is an application for accreditation in which the applicant seeks to be accredited as the bargaining agent for certain employers who have a bargaining relationship with the respondent in respect of certain of their employees. The applicant and the respondent are parties to a collective agreement dated July 22, 1971, the term of which extends from May 1, 1971 to April 30, 1973. This agreement is binding on more than one employer in the construction industry. The Board therefore finds that it has the jurisdiction under section 113 of the Act to entertain this application.

2. The applicant filed with this application Letters Patent dated October 4, 1967 by the Provincial Secretary for the Province of Ontario. These Letters Patent create a Corporation without share capital under the name of the Mechanical Contractors Association of Windsor. By Supplementary Letters Patent dated May 6, 1971, the objects of the Corporation were amended. Of note are the following objects introduced in the Supplementary Letters Patent:

(a) TO provide an organization of sufficient scope to embrace all facets of the plumbing and steamfitting industries and to consider and deal with the common problems of its members and any other persons whom the Corporation may be entitled to represent, and in all reasonable, lawful and proper ways to

promote the welfare of the said industries particularly as it relates to the construction industry in the said City of Windsor and in the said County of Essex and the County of Kent, in the Province of Ontario;

(e) TO administer and protect the members' interest and the interest of any other persons whom the Corporation may be entitled to represent in all labour matters;

(f) TO promote closer co-operation and harmony in union and management relations;

(g) TO assist in negotiations of union contracts or amendments thereto and to act in any dispute or difficulties arising under any union contract.

3. The applicant also filed a copy of the General By-Law of the Mechanical Contractors Association of Windsor. The By-Law is dated January 31, 1972. Article 36 of the By-Law reads as follows:

36. The Association may, in its own name or in the name of any body or group to which authority has been properly delegated, make application for accreditation within any sector or sectors in any geographical area or areas as defined under the Labour Relations Act or as determined by the Labour Relations Board, and each of the members of the Association who are affected shall be deemed to have authorized such application or applications on its behalf.

The Board is therefore satisfied that the applicant is an employers' organization within the meaning of section 1(1)(h) and section 106(d) of The Labour Relations Act, and further that it is a properly constituted employers' organization within the meaning of section 115(3) of the Act.

4. In support of its application the applicant filed Employer Authorizations on behalf of twenty-seven employers. These consist of separate authorizations for the industrial, commercial and institutional sector and the residential sector. The authorizations appoint the applicant to represent an employer as the bargaining agent for that employer and all other employers in

regard to employees covered by the collective agreement with the respondent trade union. The applicant has also filed in support of its representation documents a duly completed Form 62 in respect of these documents. 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 therefore 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 has requested a unit of employers consisting of all employers of plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices and welders for whom the respondent has bargaining rights in the Counties of Essex and Kent in the industrial, commercial and institutional sector and the residential sector. The respondent trade union agrees with this description of the unit of employers. The parties have informed the Board that the collective agreement referred to in paragraph 1 above, currently in force between the parties apply to both the sectors for which the applicant is applying. In addition, the Board notes the representation of the parties, which representation is reflected in the filings by the individual employers in their employer interventions, that the employers affected by this application work in both sectors of the construction industry. At the hearing in this matter a representative of three individual employers questioned the inclusion of the residential sector as appropriate for collective bargaining. Reference was made to a purported change in "bargaining patterns". However, such change was not substantiated nor was the effect of this change in relation to the appropriate sector made clear. The Board therefore finds that all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices and welders for whom the respondent has bargaining rights in the Counties of Essex and Kent in the industrial, commercial and institutional sector and residential sector of the construction industry, constitute a unit of employees of the respondent appropriate for collective bargaining.

6. In a previous decision of the Board dated September 11, 1972, the Board directed the Registrar to serve the employers on Revised Schedule "E" with notice of this application in Form 67. As a result of this direction notice was sent to thirty-four employers. All but seven of these employers have now made filings in the appropriate form with respect to this application. Of the seven employers from whom no filings were received two are apparently out of business and will therefore be removed from the list of employers affected by this application. These employers are -

E-22 - Riverside Mechanical Contractors Ltd.  
E-21 - White Plumbing & Heating Co. Ltd

With respect to the remaining five employers who have not made a filing, the applicant and the respondent have agreed as to the disposition of this case with respect to these employers. Those employers who have refused to make the appropriate filings have received notice of the application and have been cautioned that the Board may proceed in their absence. Accordingly the Board proposes to accept the agreement of the applicant and the respondent with respect to these employers.

E-11 - Cullen Plumbing & Heating is an employer for whom the respondent has bargaining rights and who has had employees in the year preceding the application, and had seven employees during the weekly payroll period immediately preceding the application.

E-14 - Harolds Heating Co. Ltd. is an employer for whom the respondent has bargaining rights and who has had employees in the year preceding the application, and had one employee during the weekly payroll period immediately preceding the application.

E-19 - Master Plumbing & Heating is an employer for whom the respondent has bargaining rights and who has had employees in the year preceding the application, and had four employees during the weekly payroll period immediately preceding the application.

E-24 - Skippy's Plumbing Co. Ltd. is an employer for whom the respondent has bargaining rights and who has had employees in the year preceding the application, and had one employee during the weekly payroll period immediately preceding the application.

E-26 - Steen Mechanical Contractors is an employer for whom the respondent has bargaining rights and who has had no employees in the year immediately preceding the application.

7. With respect to the twenty-seven employers who made filings, a number of these employers have stated in their filing in Form 68 that the respondent trade union is not entitled to bargain on behalf of their employees. The applicant and the respondent have in a number of instances agreed with this representation and accordingly the following employers are removed from the list of employers affected by this application:

E-9 - Capital Homes Limited  
E-13 - Forestlyn Construction Limited  
E-15 - Hawthorne Village Limited Development  
Company  
E-27 - T. W. Thompson Limited  
E-33 - Wilson Plumbing & Heating of Tilbury  
Limited

In addition, for one employer who stated that the respondent was entitled to bargain on behalf of its employees the applicant and the respondent have now agreed that the respondent is not so entitled and this employer is also removed from the list of employers in the unit of employers:

E-4 - Bennett & Wright (Eastern) Limited

8. With respect to two employers who have stated that the respondent was not entitled to bargain on behalf of their employees, the respondent has filed with the Board documentary evidence showing that the respondent is entitled to bargain on behalf of certain employees of these employers. Accordingly, the Board proposes to accept this documentary evidence rather than the representations of these employers. Thus, E-7 - Calcott Company Limited and E-10 - Central Plumbing & Heating Ltd. will be included as employers in the unit of employers. E-7 - Calcott Company Limited will be placed on Final Schedule "E" in accordance with its other representations in Form 68 and E-10 - Central Plumbing & Heating Ltd. will be placed on Final Schedule "F" in accordance with its other representations in Form 68.

9. One employer E-28 - Walkerville Plumbing & Heating stated in its filing that the union was entitled to bargain on behalf of its employees and that it had employees in the year immediately preceding the making of the application. However, it stated it was not an employer in the construction industry. The applicant and the respondent have described to the Board's Examiner appointed in this matter the nature of the business carried on by this employer, and it is clear that that employer is an employer in the construction industry. Accordingly, E-28 - Walkerville Plumbing & Heating - is an employer in the unit of employers.

10. On the basis of the foregoing considerations and the filings of individual employers the Board has drawn up the following list of employers. Those employers on Final Schedule "E" are those who have indicated that they had employees affected by the application in the year preceding February 17, 1972, the date of the making of this application. Those employers on Final Schedule "F" have indicated that they have not had such employees.

FINAL SCHEDULE "E"

E-1 - Adam Clarke Company Ltd.  
E-2 - Anderson Mechanical Contractors  
E-3 - Atlas Heating and Air Conditioning Ltd.  
E-5 - Breen Mechanical & Electrical Contractors  
Limited  
E-6 - Mac. J. Brian Limited  
E-7 - Calcott Company Limited  
E-8 - Comstock International Ltd.  
E-11 - Cullen Plumbing & Heating  
E-12 - Fahrhall Mechanical Contractors Limited  
E-14 - Harolds Heating Co. Ltd.  
E-16 - Holek - Vollmer Corporation Limited  
E-17 - Jeff Kearn Ltd.  
E-18 - Marty's Plumbing & Heating  
E-19 - Master Plumbing & Heating  
E-20 - McAvoy Plumbing & Heating Co. Limited  
E-21 - Wm. Newton Contracting Ltd.  
E-23 - A. Ross Plumbing Co. Ltd.  
E-24 - Skippy's Plumbing Co. Ltd.  
E-25 - Southern Mechanical Contractors Ltd.  
E-28 - Walkerville Plumbing & Heating  
E-29 - Westside Plumbing & Heating of Windsor  
Limited  
E-30 - Whaling & Sons Ltd.  
E-32 - Windsor Furnace Ltd.  
E-34 - Windsor Mechanical Contractors Limited

FINAL SCHEDULE "F"

F-10 - Central Plumbing & Heating Ltd.  
F-26 - Steen Mechanical Contractors

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

11. 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 twenty of the twenty-four employers ascertained as the number of employers under section 115(1)(a) of the Act. The twenty employers so represented 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 employers in the unit of employers are represented by the applicant.

12. The entitlement of the employers' organization to accreditation is based on a "double majority". We have now dealt with the first of the majorities that an applicant must obtain, a majority of employers in the unit of employers. We now turn to determine whether those employers employed a majority of the employees affected by this application. The Schedule "H" which accompanied the Form 68, Employer

Intervention, filed by the individual employers sets out the number of employees that the employer intervener has at each job site with details of the location and the type of construction involved. By section 115(1)(c) the relevant payroll period is the weekly payroll period immediately preceding the making of the application, in this case the weekly payroll period immediately preceding February 17, 1972. For those employers who have filed a Form 68 and its accompanying Schedule "H" the Board is satisfied that such a period is satisfactory for the determination in section 115(1)(c).

13. On the basis of all the evidence before it and in accordance with the foregoing considerations the Board finds that there were one hundred and forty-eight employees affected by the application. The one hundred and forty-eight employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

14. The Board further finds that the twenty employers represented by the applicant employed one hundred and forty of these employees. The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of the employees as ascertained in accordance with the provisions of section 115(1)(c).

15. Having regard to all 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 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 17, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the unit of employers.

March 23, 1973

"D. E. Franks"  
for the Board