

ONTARIO LABOUR RELATIONS BOARD

Between:

Kitchener-Waterloo Construction
Association,

Applicant,

- and -

The Grand River Valley District
Council of the United Brotherhood
of Carpenters and Joiners of
America on behalf of Local Unions
498, 949, 1940 and 2173,

Respondent,

- and -

Electrical Power Systems Construction
Association,

Intervener.

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

APPEARANCES AT THE HEARING: R. Werry, J.P. Dolan and
J.M. Watson for the applicant; Nelson C. Hilborn for
the respondent; H.A. Beresford and W. Chenery for the
intervener and Hydro Electric Power Commission of Ontario.

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. The respondent is signatory to a standard form of collective agreement with a number of individual employers dated August 11, 1970 and in effect until April 30, 1973. This agreement, which was in effect on November 17, 1972, the date of the making of this application, is binding on more than one employer in the geographic area and sector which are the subject matter of this application. The respondent in this application is a council of trade unions. Although this council of trade unions is made up of a number of trade unions, the collective agreement which is the basis of the Board's jurisdiction in the present matter is an

agreement made on behalf of four (4) locals of the United Brotherhood of Carpenters and Joiners of America, namely Locals 498, 499, 1940 and 2173. The Board therefore finds that it has jurisdiction under section 113 of the Act to entertain this application for accreditation.

2. The applicant in the present case is a Corporation. In support of its application the applicant filed a copy of Letters Patent dated April 23, 1925, given by the Provincial Secretary of the Province of Ontario. These Letters Patent create Kitchener-Waterloo Builders Exchange a Corporation without share capital. By Supplementary Letters Patent dated December 21, 1966, given by the Provincial Secretary and Minister of Citizenship of the Province of Ontario, the name of the Corporation was changed to Kitchener-Waterloo Construction Association. The applicant also filed a copy of the By-laws of the Kitchener-Waterloo Construction Association. On the basis of the materials filed with the Board we are satisfied that the applicant employers' organization 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 Act.

3. At the hearing the issue was raised as to whether or not the applicant is capable of fulfilling the duties of an accredited employers' organization throughout the entire geographic area it is applying to be accredited for. Although section 3(h) of the By-laws provides (in part) that:

The Associations' Directors may cause the Association to apply for Accreditation under The Labour Relations Act as the bargaining agent for a unit of employers for the purposes of regulating the relations between employers and employees in the construction industry and to represent such employers in collective bargaining within the sector of the construction industry in the Counties of Norfolk, Brant, Waterloo, Wellington, Dufferin and Grey.

The Association's Letters Patent set out its purposes and objects as being:

To establish a society which will enable the members thereof to carry on their affairs in accordance with commercial usages: to encourage and protect the building industry in the said City of Kitchener and the said Town of Waterloo and generally to encourage a spirit of co-operation amongst the members in

dealing with their various problems: to adjust labour difficulties: to co-operate with the municipal authorities in dealing with building by-laws and ordinances: and to establish and follow a code of conduct which will establish for them a reputation with the public for skill, fair dealing and business probity.

The issue, then, is whether the reference in the Letters Patent to the municipalities of Kitchener and Waterloo renders section 3(h) of the by-laws ultra vires and limits the allowable geographic area of operation of the applicant to what are today the Cities of Kitchener and Waterloo. The fact that the Letters Patent refer specifically to Kitchener and Waterloo only with respect to encouraging and protecting the building industry and not with respect to the other purposes including that of adjusting labour difficulties, may be sufficient to deal with this point. In addition, however, it is now settled law in Ontario that a corporation's activities are not limited solely to the purposes and objects set out in its Letters Patent. This arises from section 304 of The Corporations Act R.S.O. 1970 Chapter 89, which states:

A corporation unless otherwise expressly provided in the Act or instrument creating it, has and shall be deemed to have had from its creation the capacity of a natural person and may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial rights and powers.

The Ontario Court of Appeal in Walton v. Bank of Nova Scotia (1964) 43 D.L.R. (2d) 611, held that the effect of this section is to allow a corporation to carry on activities not specifically provided for in its Letters Patent. Further, it held that any restrictions on this general power must be stated in positive terms and cannot be merely implied from the language used. As Schroeder J.A. stated at p. 620:

The definition of "express" contained in Murray's English Dictionary when the word is applied to a law, stipulation or grant, etc., is that it is used in the sense of "expressed and not merely implied; definitely formulated; definite, explicit." In my opinion the word "expressly" is used in section 287 [now section 304] in this sense - meaning that a provision of the Act or instrument

creating the corporation does not have the effect sought to be attributed to it unless it is stated in express and positive terms, directly, and not merely by implication from the language used.

In that the Letters Patent of the applicant do not expressly limit its activities to what are today the Cities of Kitchener and Waterloo, the Board hereby finds that the applicant is capable of fulfilling the duties of an accredited employers' organization throughout the entire geographic area it is applying to be accredited for.

4. In support of its application the applicant filed documentary evidence of representation on behalf of thirty-nine (39) employers. The evidence is entitled "Employer Authorization" and in each case is signed on behalf of the individual employer giving such authorization. The authorizations are in a standard form and the effect of each is to appoint the applicant association to represent the individual employer as bargaining agent in regard to the employees covered by a collective agreement with the respondent in the geographic area and sector of the construction industry which are the subject of this application. Each authorization also vests in the applicant "all necessary authority...to enable it to discharge the responsibilities of an accredited bargaining agent under The Labour Relations Act." The applicant also filed a duly completed Form 62, Declaration Concerning Representation 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 further satisfied that the individual employers on whose behalf the applicant has submitted evidence of representation has 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 carpentry employees for whom the respondent has bargaining rights in the Counties of Waterloo, Wellington, Dufferin, Brant and Norfolk in the industrial, commercial and institutional sector. Having considered the representations of the parties, the Board finds that all employers of carpenters and carpenters' apprentices for whom the respondent has bargaining rights in the Counties of Waterloo, Wellington, Dufferin, Grey, Brant and Norfolk in the industrial, commercial and institutional sector of the construction industry, constitute a unit of employers appropriate for collective bargaining.

6. At the hearing counsel for the intervener raised the issue as to whether the intervener and Hydro Electric Power Commission of Ontario fall within the unit of employers for which the applicant seeks to be accredited for. On agreement of the parties the Board finds that neither the intervener nor Hydro Electric Power Commission of Ontario are employers in the industrial, commercial and institutional sector of the construction industry, and thus neither fall within the unit of employers which the Board found in paragraph 5 supra to be appropriate for collective bargaining.

7. Notice of this application was given to seventy-two (72) employers in accordance with the Board's Rules of Procedure. A number of employers failed to file returns. In these circumstances the parties have agreed that the disposition of these employers for the purposes of section 115 of the Act is as follows:

- No. 4 - Art Laboratory Furniture Limited -
Final Schedule "E"
- No. 22 - Dunder Construction Limited -
Final Schedule "E"
- No. 23 - Eaglewood Construction Co. Limited -
Final Schedule "E"
- No. 30 - G.I.L. Construction Ltd. -
Final Schedule "F"
- No. 31 - The John Hayman & Sons Company
Limited - Final Schedule "E"
- No. 34 - Konvey Construction Company Limited -
Final Schedule "F"
- No. 46 - O'Brien Installations Ltd. -
Final Schedule "F"
- No. 57 - Steward & Hinan Construction
Limited - Final Schedule "E"
- No. 58 - H. G. Susgin Carpentry - Final
Schedule "E"
- No. 68 - William Wolfe Construction Limited -
Final Schedule "E"

8. A number of employers who claimed to be excluded from the list of employers in the unit of employers in their Employer Filings and who did not appear at the hearing held in this matter had their claims challenged by the respondent

at the hearing. As a result of evidence rendered by the respondent the Board accepted the respondent's position, and has decided to deal with the following employers as follows:

- No. 5 - Ashman Industries (1966) Ltd. - Final Schedule "F"
- No. 21 - Dietrich & Koehler Construction Ltd. - Final Schedule "F"
- No. 28 - Frankel Formwork Company Limited - Final Schedule "E"
- No. 43 - Mitchell Construction Company (Canada) - Final Schedule "F"
- No. 53 - W. G. Ross Building Corp. Ltd. - Final Schedule "F"

9. Two employers who in their filings indicated that they came within the unit of employers set out in paragraph 5 supra but did not have employees affected by the application in the year preceding November 17, 1972, the date of the making of this application, had their claims challenged by the respondent. Neither of these employers appeared at the hearing held in this matter. As a result of evidence rendered by the respondent the Board accepted the respondent's position, and has decided to deal with these employers as follows:

- No. 38 - McKay-Cocker Construction Limited - Final Schedule "E"
- No. 61 - Trend Millwork & Cabinets Limited - Final Schedule "E"

10. The parties agreed to the removal from the list of employers in the unit of employers of Employer No. 54 - Ryco Limited - as being merely a duplication of Employer No. 52 - Robertson-Yates Corporation Limited.

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

FINAL SCHEDULE "E"

A.C. and S. Contracting Ltd.
Ajax Engineers Limited
Len Ariss and Company Limited
Art Laboratory Furniture Limited
Lavern Asmussen Limited
Ball Brothers Limited
A. Battaglia Construction Company Limited
Bohn Tile Company Ltd.
Brandon General Contractors Ltd.
Cameron-McIndoo Ltd.
E.G.M. Cape & Company Ltd.
Cooper Construction Company (Eastern) Limited
Cromer Construction Limited
J.I. Crowe & Son Ltd.
D-K Construction Ltd.
Dunder Construction Limited
Eaglewood Construction Co. Limited
W.H. Ellinger Limited
Ellis-Don Limited
Finley W. McLachlan Ltd.
Frankel Formwork Company Limited
The John Hayman & Sons Company Limited
Karley & Kroetsch Construction Limited
Kerstone Contractors Limited
Losereit Sales and Service Limited
London Acoustics Limited
W.A. McDougall Limited
McKay-Cocker Construction Limited
K.A. Mace Limited
E.S. Martin Construction Limited
Martin-Stewart Contracting Limited
Milne & Nicholls Ltd.
Monteith-McGrath Limited
Neate Construction Ltd.
Wm. Parker Construction Limited
Poole Construction Limited
Prestige Acoustics Limited
Renwick Construction Limited
Schultz Construction Limited
Schwenger Construction Limited
Stewart & Hinan Construction Limited
H.G. Susgin Carpentry
Thomas Construction (Galt) Limited
Traugott Construction Ltd.
Trend Millwork & Cabinets Limited
The Valley City Manufacturing Company Limited
Welcon Limited
Whitman Contracting Limited
Oscar Wiles & Sons Ltd.
William Wolfe Construction Limited
Ed. Witmer & Sons Limited
Witmer-Lazenby Limited
Wolfond Construction Limited
Zorge Construction Co. Limited

FINAL SCHEDULE "F"

Ashman Industries (1966) Ltd.
Beco Equipment Limited
Boyd & Smith
Canadian Engineering and Contracting
Co. Limited
Casey-Hewson Construction Limited
Dietrich & Koehler Construction Ltd.
The Foundation Company of Canada Limited
The Frid Construction Company Limited
G.I.L. Construction Ltd.
Konvey Construction Company Limited
Mitchell Construction Company (Canada)
O'Brien Installations Ltd.
Perini Limited
Robertson-Yates Corporation Limited
W.G. Ross Building Corp. Ltd.
Walney Construction Limited
G.S. Wark Limited

The Board finds that the fifty-four (54) employers on Final Schedule "E" are those employers who had employees in the year immediately preceding the making of the application, and the number fifty-four (54) is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

12. 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 thirty-four (34) of the fifty-four (54) employers on Final Schedule "E". The thirty-four (34) employers 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.

13. The entitlement of an 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 type of construction involved. By section 115(1)(c) of the Act 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 November 17, 1972. The Board is satisfied that such a payroll period is the satisfactory payroll period for the determination in section 115(1)(c) of the Act.

14. On the basis of all the evidence before it and in accordance with the forgoing considerations the Board finds that there were four hundred and seventy-nine (479) employees affected by the application during the weekly payroll period immediately preceding November 17, 1972. The four hundred and seventy-nine (479) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

15. The Board further finds that the thirty-four (34) employers within the unit represented by the applicant employed three hundred and eighty-seven (387) employees of these four hundred and seventy-nine (479) employees. The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of the employees affected by the application as ascertained in accordance with the provisions of section 115(1)(c) of the Act.

16. 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 5 supra, and in accordance with the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after November 17, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

May 21, 1974

"D. E. Franks"
for the Board