

ONTARIO LABOUR RELATIONS BOARD

Between:

Mechanical Contractors Association, Kingston,
Applicant,

- and -

Local Union 221 of the United Association of
Journeymen and Apprentices of the Plumbing
and Pipefitting Industry of the United States
and Canada,

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: B.W. Binning, Everett Leeder
and L. Wickett for the applicant; John Wityk for the
respondent; B.H. Stewart for the intervener; Carl Durant
for Grenville Plumbing & Heating Ltd.

DECISION OF THE BOARD:

1. This is an application for accreditation. At the time the application was made on January 30, 1973, there was in effect a collective agreement dated August 3, 1971, between the Mechanical Contractors Association, Kingston and the respondent trade union. That collective agreement was binding on more than one employer in the area and sector which are the subject matter of this application. The Board therefore finds that it has jurisdiction under section 113 of the Act to entertain this application.

2. The applicant filed with the application a copy of the constitution of the Mechanical Contractors Association of Kingston. The constitution was adopted at a meeting on November 17, 1971 and includes, inter alia, the following provisions:

ARTICLE 3 (C) To become an accredited employers' organization under the Labour Relations Act, as amended from time to time, or any legislation substituted therefor and to regulate relations between

employers and employees in the mechanical trade and all ancillary and allied trades and represent such employers in collective bargaining within any sector or sectors in any geographical area or area as defined under the Labour Relations Act or as determined by the Labour Relations Board.

ARTICLE 4 (D) The association shall not prevent any applicant from becoming a member of the association. The association shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any employer in connection with Labour Negotiations whether the employer is a member of the association or not, and shall not discriminate against any employer in the matter of fees, dues and levies whether or not the employer is a member of the association.

3. On the basis of all the evidence before it, the Board is 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 purpose of section 115(3) of the Act.

4. The applicant filed with its application evidence of representation on behalf of 19 employers. The evidence of representation is accompanied by a duly completed Form 62, Declaration Concerning Membership Documents. The evidence of representation is in the form of an Employer Authorization by which an individual employer appoints the applicant association to represent that employer as its bargaining agent in regard to the employees covered by the collective agreement with the respondent in the geographic area and the sectors of the construction industry which form the basis of this application. The Board is therefore satisfied that the applicant has filed evidence of representation on behalf of 19 employers and the Board is satisfied that the individual employers have vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

5. The applicant has applied to be accredited for the following unit of employers:

All employers of plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices and welders for whom the respondent has bargaining rights in the City of Kingston and the Counties of

Lennox and Addington, Frontenac, Leeds and including that part of the County of Grenville West of Edward Street in the Town of Prescott in the residential sector and in the industrial, commercial and institutional sector.

The respondent proposed substantially the same unit of employers with an exception to be dealt with later. It is clear that the applicant is not seeking accreditation in the electrical power systems sector of the construction industry, and on this basis the intervener has withdrawn from these proceedings.

6. One of the employers affected by this application appeared at the hearing and made representations concerning the appropriate unit of employers. That employer was Employer No. 17, Grenville Plumbing & Heating Ltd., whose operation is located in the Town of Prescott. The geographic area for which the applicant has applied divides Prescott along Edward Street, and the employer makes strenuous representations that this creates an almost impossible situation with respect to his operations. On the other hand, the geographic area in the unit requested is the geographic area set out in Clause 2 which is a recognition provision of the collective agreement referred to in paragraph 1 herein. While we appreciate that the drawing of geographic boundaries may cause inconvenience or even hardship for some employers, the Board in the present case proposes to follow its usual practice and use the area in the collective agreement as the appropriate geographic area for accreditation in the present case. However, we are satisfied that the solution to the problem raised by this individual employer is one which could be arrived at by collective bargaining between the applicant and respondent.

7. At the hearing in this matter the applicant requested an amendment to the unit of employers which would give effect to the unit of employers proposed by the respondent. This would include listing the trade, gas fitters, as well as plumbers, steamfitters and welders in the description of the unit of employers. We are prepared though with some reluctance to allow such an agreement in the interest of quality. The Board therefore finds that all employers of plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices, welders and gas fitters on whose behalf the respondent is entitled to bargain in the Counties of Lennox and Addington, Frontenac, Leeds and that part of the County of Grenville West of Edward Street in the Town of Prescott and in the industrial, commercial and institutional sector and residential sector of the construction industry, constitute a unit of employers appropriate for collective bargaining.

8. As a result of the filings by the applicant and the respondent the Examiner previously appointed by the Board drew up a list of 43 employers who might be affected by this application. Notice of this application and of the hearing in Form 67 was served on each of the employers by the Registrar in accordance with the Board's Rules of Procedure. A number of employers who have made filings have indicated that the proper name of the employer making the filing is different from that on the original list of employers. The Board proposes to use the name of the employer as set out in the employer's filing in Form 68 as the correct name of the employer.

9. On consideration of the filings of the various employers the applicant and the respondent have agreed to remove certain employers from the list of employers in the unit of employers. Thus;

No. 28 - Ontario Hydro, has been removed from the unit of employers since it is not involved in the sectors set out in the unit of employers.

No. 30 - Ken Pugh Plumbing & Heating, has been removed from the list of employers because this employer has been out of business for sometime.

No. 40 - T. R. I. Plumbing & Heating Ltd., has been removed from the list of employers because this employer is really a duplication of Employer #42 - Tri-M Plumbing & Heating Ltd.

10. A number of the employers served with notice of the application have made no filings in Form 68. In such situations the Board has taken the view that these employers ignore these proceedings at their own peril and the Board deals with these employers on the basis of the materials before it and on the representations of the parties. Thus, with respect to the following employers the applicant and the respondent have agreed as to the manner in which these employers should be dealt with by the Board:

Employer No. 1 - Acme Plumbing -
This employer is in the unit of employers on Final Schedule "E" and had one employee in the week immediately preceding the making of the application.

Employer No. 10 - Connolly & Twizzell (Eastern) Limited - This employer is in the unit of employers on Final Schedule "E" and had three employees in the week immediately preceding the making of the application.

Employer No. 14 - Ford Mechanical -
This employer is in the unit of
employers on Final Schedule "E"
and had one employee in the week
immediately preceding the making
of the application.

Employer No. 18 - Industrial Welding -
This employer is in the unit of
employers on Final Schedule "P".

Employer No. 25 - Master Mechanical &
Industrial Contractors Limited. -
This employer is in the unit of
employers on Final Schedule "E" and
had four employees in the week
immediately preceding the making
of the application.

Employer No. 42 - Tri-M Plumbing &
Heating Ltd. - This employer is in
the unit of employers on Final Schedule
"E" and had two employees in the week
immediately preceding the making of
the application.

11. Two of the employers who made filings have indicated that the respondent is not entitled to bargain on behalf of their employees. In the face of any evidence by the applicant or the respondent contradicting this representation the Board proposes to accept the representations of these individual employers. Accordingly, Employer No. 2, Aiton Pipe Work & Process Plant Ltd. and Employer No. 39, Stephens - Adamson Division of Borg-Warner (Canada) Limited have been removed from the unit of employers.

12. The Board accepted the representations of the remaining employers who have made filings and as a result of these filings and the above considerations the Board has drawn up the following Final Schedule "E" and Final Schedule "F".

FINAL SCHEDULE "E"

Acme Plumbing
Aldershot Industrial Installations Limited
Andreynolds Company Limited
Joseph Barrett (1969) Limited
Black & McDonald Limited
E.G. "Bud" Edmunds Plumbing
Connolly & Twizzell (Eastern) Limited
Eichley Canada Ltd.
English & Mould Limited
Ford Mechanical
E. S. Fox Limited
Graves Bros. Limited

Grenville Plumbing & Heating Limited
Kingsport Plumbing & Heating Co. Limited
Kingston & Salmon Limited
Thomas Lemmon & Sons Limited
J. Lewin Inc.
Jim Magee Plumbing & Heating Ltd.
Master Mechanical & Industrial Contractors Limited
Ralph M. Moore Industrial Installations Limited
Murphy Bros. Plumbing & Heating Limited
Process Mechanical Contractors Limited
Paul Radke Plumbing & Heating Ltd.
Ram Mechanical Contractors Limited
Wm. Roberts Mechanical Limited
Gilles Roy Plumbing & Heating
Sayers & Associates
Sharpe's Plumbing & Heating Limited
Harold R. Stark Ltd.
Steen Mechanical Contractors Limited
A. Thornton & Sons Limited
Tri-M Plumbing & Heating Ltd.
Williams Welding

FINAL SCHEDULE "F"

Bennett & Wright (Eastern) Limited
Benoit & Kerson Limited
Durcard Mechanical Contractors Ltd.
Industrial Welding
MacKinnon Mitchell and Associates
Div. of Adam Clark Company Ltd.

The Board finds that the 33 employers on the Final Schedule "E" are the employers who had employees in the year immediately preceding the making of this application, and the number 33 is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

13. On the basis of all the evidence before it the Board finds that on the date of the making of this application the applicant represented 19 of the 33 employers on Final Schedule "E". The 19 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 the majority of the employers in the unit of employers are represented by the applicant.

14. The Schedule "H" which accompanied the Form 68 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) of the Act the payroll period immediately preceding the making of this application is the relevant weekly payroll period for determining the number of employees affected by the

application. The Board is satisfied that the weekly payroll period immediately preceding January 30, 1973, is a satisfactory payroll period for the determination in section 115(1)(c) of the Act with one exception. Employer No. 17, Grenville Plumbing & Heating Limited, has suggested that the appropriate payroll period should be the week ending July 21, 1972, and the applicant and the respondent agreed that this would be the appropriate period for this employer. In that week that employer had 8 employees affected by the application. On the basis of the evidence before us and in accordance with the foregoing considerations the Board finds that there were 146 employees affected by the application. During the payroll period determined in accordance with section 115(1)(c) of the Act the 146 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

15. The Board finds that the 19 employers represented by the applicant employers' organization employed a total of 89 employees in the relevant weekly payroll period. The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of employees 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 the appropriate unit of employers in paragraph 7 above, and in accordance with the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after January 30, 1973, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the appropriate unit of employers.

December 4, 1973

"D. E. Franks"
for the Board