

ONTARIO LABOUR RELATIONS BOARD

Between:

The Boilermaker Contractors' Association
of Ontario,

Applicant,

- and -

International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths, Forgers
and Helpers,

Respondent.

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

APPEARANCES AT THE HEARING: W.K. Winkler, R.C. Fillion
and W.J. Gibson for the applicant; Raymond Koskie and
John D. Carroll for the respondent.

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 party to a collective agreement with The Boilermaker Contractors' Association dated July 1, 1971 the term of which runs from July 1, 1971 to June 30, 1973. No question arises that more than one employer affected by this application is bound by that agreement and the Board therefore finds that it has jurisdiction under section 113 of the Act to entertain this application.

2. The applicant in the present case is a Corporation. In support of its application the applicant filed a copy of Letters Patent dated September 1, 1972, given by the Minister of Consumer and Commercial Relations for the Province of Ontario. These Letters Patent create The Boilermaker Contractors' Association of Ontario a Corporation without share capital. The applicant also filed a copy of By-Law No. 1 of the applicant association dated January 19, 1973. 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. The applicant also filed in support of its application 56 documents entitled Power of Attorney. These documents appoint the applicant as agent and representative for collective bargaining with the respondent and they further appoint the applicant as agent and representative to make an application for accreditation under The Labour Relations Act. The applicant also filed in support of these documents 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 have vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

4. The collective agreement referred to in paragraph 1 affects a geographic area involving 8 Provinces, one of which is the Province of Ontario. The applicant and the respondent agreed that the appropriate geographic area for accreditation in the present application is the whole of the Province of Ontario. The applicant and the respondent further agreed that pursuant to the collective agreement referred to employees have been employed in the following sectors of the construction industry:

Industrial, Commercial and Institutional;
Residential;
Sewers, Tunnels and Watermains;
Heavy Engineering.

Although an intervention was filed by the Electrical Power Systems Construction Association, since the present application does not affect the Electrical Power Systems sector of the construction industry they have withdrawn from the application. In view of the above the Board further finds that all employers of employees for whom the respondent has bargaining rights in the Province of Ontario in the industrial, commercial and institutional, residential, sewers, tunnels and watermains and heavy engineering sectors of the construction industry, constitute a unit of employers appropriate for collective bargaining.

5. Notice of this application was given to 117 employers in accordance with the Board's Rules of Procedure. At the hearing in this matter the applicant and the respondent agreed that the following employers should be removed from the list of employers in the unit of employers because the respondent was not entitled to bargain on behalf of their employees in the geographic area and sector in a unit of employers:

No. 11 - Bickerton Bridge & Steel Erectors Co.
No. 31 - Cecchetto & Sons Limited
No. 42 - Duncan Cranes Limited
No. 58 - Great Lakes Steel Products Limited
No. 64 - The M. W. Kellogg Co. Ltd. (Div. of Pullman)
No. 84 - The Hydro-Elec. Power Comm. of Ontario
No. 111 - The Board of Ed. For the City of Tor.

6. 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. 3 - Alcor Combustion Company of Can. Ltd. (Becco Div.) - Final Schedule "F"
- No. 18 - Burns & Roe Construction Corporation - Final Schedule "F"
- No. 19 - Burns and Roe Inc. - Final Schedule "F"
- No. 25 - Canadian Vickers Limited - Final Schedule "F"
- No. 29 - Casualt Engineering Limited - Final Schedule "F"
- No. 47 - Ferro Metal Ltd. - Final Schedule "F"
- No. 51 - Foresteel Industries Limited - Final Schedule "F"
- No. 52 - Forge Laurentienne Ltee. - Final Schedule "F"
- No. 69 - Leonard Construction Company - Final Schedule "F"
- No. 75 - Minto Machine & Welding Ltd. - Final Schedule "F"
- No. 79 - Nadrofsky Steel Erecting Limited - Final Schedule "E"
- No. 82 - Northern Power and Industrial Piping Limited - Final Schedule "F"
- No. 87 - Patterson-Yates-Smith Limited - Final Schedule "F"
- No. 90 - Pritchard Canadian Limited - Final Schedule "F"
- No. 97 - Rigging International/Neil F. Lampson Inc. (A Joint Venture) - Final Schedule "F"
- No. 113 - Travers Construction & Engineering Ltd. - Final Schedule "E"
- No. 116 - Wilson Engineering & Fabricating Limited - Final Schedule "E"

7. The number of employers who claimed to be excluded from the list of employers in the unit of employers in their Employer Filing did not appear at the hearing held in this matter. At the hearing the respondent produced a copy of the collective agreement it had with the following employers and the Board proposed to accept this collective agreement as evidence of bargaining rights. Accordingly, the following employers will be dealt with as follows:

- No. 7 - Anderdon Mechanical Contractors Ltd. -
Final Schedule "F"
- No. 12 - Bird Oil Equipment Ltd. - Final Schedule "F"
- No. 22 - Canadian Equipment Sales & Service Co. Ltd. (Cesso)
Final Schedule "F"
- No. 27 - Caldwell Tanks Inc. - Final Schedule "F"
- No. 37 - Day & Zimmerman, Inc. - Final Schedule "F"
- No. 43 - Emcor Inc. - Final Schedule "E"
- No. 44 - Exchanger Sales & Service Ltd. -
Final Schedule "F"
- No. 50 - Fluor Canada Ltd. - Final Schedule "F"
- No. 53 - Formex Ltd. - Final Schedule "F"
- No. 61 - Interprovincial Construction Ltd. -
Final Schedule "F"
- No. 68 - Laing Installations Limited - Final Schedule "F"
- No. 73 - McNulty's Welding Limited - Final Schedule "F"
- No. 85 - P.F.P. Installations - Final Schedule "F"
- No. 88 - Poole Construction Limited - Final Schedule "F"
- No. 106 - Spiers Bros. Ltd. - Final Schedule "E"
- No. 109 - Sunny Corner Mechanical Ltd. - Final Schedule "F"
- No. 114 - Tray Installation and Inspection Company Ltd.
Final Schedule "F"

8. On the basis of the foregoing considerations and the filings by individual employers the Board has drawn up the following lists of employers. These employers listed on Final Schedule "E" are those who have indicated that they had employees affected by the application in the year preceding January 31, 1973, 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"

Andco Anderson Limited
Adam Clark Company Ltd.
Aldershot Industrial Installations Limited
Allied Industrial Piping Company Limited
Arc-Way Welding (1972) Limited
Babcock & Wilcox Canada Ltd.
Bacon Engineering Limited
Bridge & Tank Company of Canada Limited
John N. Brocklesby Transport Limited
Canadian Bechtel Limited
Canadian Erectors Limited
The Canadian Kellogg Company Limited
Canadian Brown Steel Tank Company (1960) Limited
Cape Installations Ltd.
Catalytic Enterprises Limited
Combustion Engineering - Superheater Ltd.
Comstock International Ltd.
Dewar Insulations Inc.
Dominion Bridge Company Limited
Drummond Welding & Steel Works Ltd.
Fab-Co Metals Limited
Foster Wheeler Limited
E. S. Fox Limited
Fraser-Brace Engineering Co. Ltd.
Great Lakes Fabricating, A Division of Glascar
Limited
Horton Steel Works, Limited
Kel - Gor Fabricating Ltd.
Lackie Brothers Limited
The Lummus Company Canada Limited
Arthur G. McKee & Company of Canada, Limited
MLW - Industries (MLW Services Limited)
Ralph M. Moore Industrial Installations Limited
Nadrofsky Steel Erecting Limited
National Construction Corp. Ltd.
The Ralph M. Parsons Company
Joy Manufacturing Company (Canada) Limited
Process Mechanical Contractors Limited
Procor Limited Ecodyne Limited
Proweld Company Limited
Reliable Mechanical Contractors Inc.
Research-Cottrell (Canada) Ltd.
Sarnia Cranes Limited
Sheafer-Townsend Limited

Sombra Welding Limited
Specialty Welding & Machine Co. Ltd.
Spiers Bros. Ltd.
Stearns-Rogers Canada Ltd.
Taylor Engineering & Construction Company Limited
The Toronto Iron Works Company
Travers Construction & Engineering Ltd.
Wilson Engineering & Fabricating Limited
Cana Industrial Contractors Ltd.

FINAL SCHEDULE "F"

Alcor Combustion Company of Can. Ltd.
(Becco Div.)
Algoma Maintenance and Service Ltd.
Anderdon Mechanical Contractors Ltd.
Bird Oil Equipment Ltd.
Brayshaws Steel Limited
C. F. Braun & Co. of Canada Ltd.
Brown & Root Ltd.
Burns & Roe Construction Corporation
Burns and Roe Inc.
Canadian Badger Company Limited
Canadian Equipment Sales & Service Co. Ltd. (Cesso)
Canadian Vickers Limited
Caldwell Tanks Ltd.
Casualt Engineering Limited
Checchetto & Sons Limited
Chemical Construction Corporation
Davie Steel Products Limited
Day & Zimmerman, Inc.
Delta Projects Limited
Emcor Inc.
Exchanger Sales & Service Ltd.
H. K. Ferguson Company of Canada Limited
Ferro Metal Ltd.
Fischbach and Moore of Canada Ltd.
Flanders Installations Ltd.
Fluor Canada Ltd.
Foresteel Industries Limited
Forge Laurentienne Ltee.
Formex Ltd.
Humphreys & Glasgow (Canada) Ltd.
Interprovincial Construction Ltd.
Kamyr Installations, Incorporated
Ken White Limited
Kingston Mechanical Limited
Laing Installations Limited
Leonard Construction Company
Robert McAlpine Ltd.
McNulty's Welding Limited
Minto Machine & Welding Ltd.
Mojan Limitee
Mon-Max Services Ltd.
Nooter Corporation

Northern Power and Industrial Piping Limited
Ocean Steel & Construction Ltd.
P.F.P. Installations
Patterson-Yates-Smith Limited
Poole Construction Limited
Pritchard Canadian Limited
Procon Refinery and Petrochemical Constructors
(Canada) Limited
Rigging International/Neil F. Lampson Inc.
(A Joint Venture)
Roger Forest Inc.
A. D. Ross & Company Limited
Sarnia Tank & Vessel
Saskatchewan Steel Fabricators Ltd.
Stone & Webster Canada Limited
Sunny Corner Mechanical Ltd.
Tray Installation and Inspection Company Ltd.
Wentworth Industries Limited

The Board finds that the fifty-two (52) employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application, and the number fifty-two (52) is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

9. 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-six (36) of the fifty-two (52) employers on Final Schedule "E". The thirty-six (36) 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.

10. 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 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 the application.

11. The Employer Filing further provides that an employer can claim that this payroll period is not the relevant payroll period for the purposes of this application. A number of employers in the present case made such a representation to the Board in their filing. These employers were further contacted by a Board examiner and asked to supply three representative payroll periods. A number of employers so contacted did not make any further filing. Accordingly, for the following employers the Board

proposes to use the payroll period immediately preceding the making of this application:

- No. 5 - Algoma Maintenance
- No. 24 - Canadian Kellogg Company
- No. 28 - Cape Installations Ltd.
- No. 41 - Drummond Welding & Steel Wks. Ltd.
- No. 42 - Duncan Cranes Ltd.
- No. 70 - The Lumus Company Can. Ltd.
- No. 86 - The R.M. Parsons Const. Ltd.
- No. 100 - Sarnia Cranes Limited
- No. 113 - Travers Const. & Eng. Ltd.
- No. 114 - Tray Installations and Insp. Co.

For the employers who made such additional filings the Board has chosen the weekly payroll having the number of employees closest to the average number of employees for the three weekly payrolls. Accordingly, for the following employers the Board has chosen the following payroll periods with the following results:

- No. 23 - Canadian Erectors Limited
May 20, 1972 - 5 employees
- No. 26 - Canadian Brown Steel Tank Co.
May 18, 1972 - 6 employees
- No. 34 - Combustion Eng.-Superheater Ltd.
April 2, 1972 - 45 employees
- No. 45 - Fab-Co. Metals Limited
December 17, 1972 - 48 employees
- No. 72 - Arthur G. McKee & Co. of Can.
September 17, 1972 - 53 employees
- No. 74 - MLW Services
June 29, 1972 - 18 employees
- No. 79 - Nadrofsky Steel Erecting Ltd.
July 29, 1972 - 18 employees
- No. 92 - Procon Limited
November 18, 1972 - 9 employees
- No. 96 - Research-Cottrell (Can) Ltd.
Nil Nil
- No. 107 - Stearns-Rogers Canada Ltd.
January 31, 1973 - no employees
- No. 110 - Taylor Eng. & Constr. Co. Ltd.
Nil Nil
- No. 112 - The Tor. Iron Wks. Ltd.
April 8, 1972 - 43 employees

For the remaining employers the Board is satisfied that the weekly payroll period immediately preceding January 31, 1973, is a satisfactory payroll period for the determination in section 115(1)(c) of the Act. On the basis of all the evidence before us and in accordance

with the foregoing considerations the Board finds that there were six hundred and sixty-six (666) employees affected by the application during the payroll period immediately preceding January 31, 1973. The six hundred and sixty-six (666) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

12. The Board further finds that the thirty-six (36) employers represented by the applicant employed four hundred and eighty-five (485) of these six hundred and sixty-six (666) employees. The Board is therefore satisfied that the majority of the 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.

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 4, 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 31, 1973, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

February 13th, 1974.

"D. E. Franks"
for the Board