

ONTARIO LABOUR RELATIONS BOARD

Between:

Kitchener-Waterloo Construction Association,
Applicant,

- and -

Labourers' International Union of North
America, Local 1081,

Respondent,

- and -

Electrical Power Systems Construction
Association,

Intervener.

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

APPEARANCES AT THE HEARING: R.A. Werry, B.W. Binning,
J. Dolan and J. Watson for the applicant; Raymond Koskie
and L. Schertzberg for the respondent; H.A. Beresford
and C.A. Pickel for the intervener and Hydro Electric
Power Commission of Ontario; D. Horst for Employer No.
59 - Grand Valley Construction Maintenance of Kitchener
Ltd.

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 in
effect from August 6, 1970 to April 30, 1973. This
agreement is binding on more than one employer in the
geographic 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 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 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 fifty-two (52) 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 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 labourers 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. The respondent did not oppose this unit, but at the hearing counsel for the respondent did point out that with respect to some employers who would come within such a unit the respondent held bargaining rights for an area less than the full six Counties. Counsel for the applicant submitted, in turn, that this fact did not make the full six Counties applied for an inappropriate unit. An accreditation, he contended, was not designed to extend a union's bargaining rights, and an accreditation order would only affect an employer's operations in those areas for which the respondent possessed pre-existing bargaining rights. Having considered the representations of the parties, the Board finds that all employers of labourers 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. While this unit includes those employers for whom the respondent currently has bargaining rights over a geographic area less than the full six Counties referred to above, the Board's finding in this regard is limited to the issue of the appropriate unit, and is not a determination or finding as to the geographic scope of any existing or future bargaining rights.

6. At the hearing counsel for the respondent raised the issue as to whether the intervener and Hydro-Electric Power Commission of Ontario had status to appear before the Board on this matter. Neither are on the list of employers filed by the applicant as being in the bargaining unit. Further, neither are employers in the industrial, commercial and institutional sector of the construction industry, and thus they do not fall within the unit of employers which the Board in paragraph 5 above found appropriate for collective bargaining. As a result, the Board finds that neither the intervener nor Hydro-Electric Power Commission of Ontario has status to appear in these proceedings, and the intervention is accordingly dismissed.

7. Notice of this application was given to one hundred and thirty-five (135) employers in accordance with the Board's Rules of Procedure. At the hearing in this matter the applicant and 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 determined in paragraph 5 above:

- No. 11 - M. Balconi & Sons
- No. 18 - Cadillac Development Corporation Limited
- No. 22 - Carere Boles & Trimble Ltd.
- No. 31 - G.M. Delaney Construction
- No. 32 - Designed Construction
- No. 34 - Dietrich & Koehler Construction Limited
- No. 35 - Dineen Construction Limited
- No. 36 - Dinsmore Construction
- No. 43 - Eastern Construction Co.
- No. 44 - Eastern Construction Company Limited
- No. 47 - Foundation Building Construction
A Division of the Foundation
Company of Canada Limited
- No. 52 - Genan Construction Limited
- No. 56 - Global Construction Ltd.
- No. 89 - Murray Anderson Ltd.
- No. 94 - Perry Wilson Bldg. Construction
- No. 112 - T.W. Thompson Limited
- No. 119 - Unalta Construction Ltd.
- No. 126 - Whitman Construction
- No. 131 - Wimpey George Canada Ltd.
- No. 133 - Wolfond Construction Ltd.

The parties also agreed to the removal from the list of No. 59 - Grand Valley Construction Maintenance of Kitchener Ltd., and No. 85 - Martin-Stewart Construction Limited. In agreeing to these removals, however, counsel for the respondent emphasized that the agreement was without prejudice to any bargaining rights the respondent might have

with respect to these employers, and particularly was not to be construed as an agreement with the replies of the employers which indicated that the respondent was not entitled to bargain on behalf of any of their employees in the unit applied for by the applicant.

8. Notices of this application sent to three employers were unable to be delivered by the postal authorities in that the employers no longer occupied their former addresses. Further, efforts by Board staff to discern the new addresses, if any, of these employers were without success. As a result, the Board removes from the list:

No. 23 - P.R. Connolly Construction Ltd.
No. 37 - Louis Donolo (Ontario) Ltd.
No. 58 - Gorslino Construction Ltd.

9. 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. 38 - Droge Construction Limited -
Final Schedule "F"
No. 106 - John E. Smith & Son Lath,
Plaster & Acoustical - Final
Schedule "F"
No. 113 - The Tidey Construction Company Limited -
Final Schedule "F"

10. 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. 2 - Abbey's Carpentry - Final Schedule "F"
No. 4 - Ace Welding & Boiler Co. Ltd. -
Final Schedule "E"
No. 5 - Acme Building & Construction Limited -
Final Schedule "F"
No. 6 - M. Alzner Masonry Contractor -
Final Schedule "F"
No. 7 - Andeen Construction Ltd. -
Final Schedule "F"
No. 14 - Blacker & Ronald Masonry Contractors -
Final Schedule "E"

- No. 15 - W. Born Contracting -
Final Schedule "F"
- No. 33 - Abe Dick Masonry Limited -
Final Schedule "E"
- No. 42 - Earl's Cement & Drilling -
Final Schedule "E"
- No. 46 - Filipowich Masonry Contractors Limited -
Final Schedule "F"
- No. 50 - Ga-Mar Construction Ltd. -
Final Schedule "E"
- No. 54 - Gerrits Plastering Co. Ltd. -
Final Schedule "F"
- No. 55 - Giamborardino, Sammy, Masonry Ltd. -
Final Schedule "F"
- No. 61 - E. Graziano & Bros. -
Final Schedule "E"
- No. 62 - A.P. Green Refractories (Canada) Ltd. -
Final Schedule "E"
- No. 64 - The John Hayman & Sons Company Limited -
Final Schedule "F"
- No. 66 - Hespeler Concrete Floor Ltd. -
Final Schedule "E"
- No. 67 - Hewson & Son -
Final Schedule "E"
- No. 70 - Inspiration Limited -
Final Schedule "F"
- No. 73 - John Keiper Construction Ltd. -
Final Schedule "F"
- No. 74 - James Kemp Construction Ltd. -
Final Schedule "F"
- No. 77 - Leader Masonry & Forming Limited -
Final Schedule "F"
- No. 78 - Leasehold Construction -
Final Schedule "F"
- No. 79 - Losereit Sales and Service Limited -
Final Schedule "E"
- No. 80 - W.A. McDougall Ltd. -
Final Schedule "F"
- No. 88 - Morlynn Construction Limited -
Final Schedule "F"
- No. 91 - Olympia & York Developments Ltd. -
Final Schedule "F"
- No. 96 - Pries Masonry Construction -
Final Schedule "F"

- No. 98 - R.S.W. Masonry -
Final Schedule "F"
- No. 100 - Renwick Construction Ltd. -
Final Schedule "F"
- No. 104 - Siebel L. Masonry Ltd. -
Final Schedule "F"
- No. 105 - Sirotek Construction Ltd. -
Final Schedule "F"
- No. 107 - Stemmler Construction -
Final Schedule "F"
- No. 108 - W.A. Stephenson Construction Co.
Limited - Final Schedule "E"
- No. 111 - B. Sturris Construction -
Final Schedule "F"
- No. 115 - The Tope Construction Co. Ltd. -
Final Schedule "F"
- No. 116 - Torin Construction Co. Ltd. -
Final Schedule "F"
- No. 120 - Valentine Enterprises Contracting -
Final Schedule "F"
- No. 121 - Visa Construction Co. Ltd. -
Final Schedule "F"
- No. 125 - Welcon Limited -
Final Schedule "F"
- No. 129 - Wm. Ford Construction -
Final Schedule "F"
- No. 130 - William Wolfe Construction Limited -
Final Schedule "E"
- No. 134 - Yolles & Rotenberg (Kitchener)
Limited - Final Schedule "F"
- No. 135 - Zanardo Construction Ltd. -
Final Schedule "F"

11. At the hearing in this matter it became apparent that seven employers had inadvertently not been served with notice of this application as mentioned in paragraph 7 supra. The Board subsequently served these employers with notice of the application. Of these seven employers only three made filings in Form 68. The applicant and the respondent have made no further representations in this matter and accordingly the Board proposes to accept these filings as made by the individual employer. As a result Doyle Hinton Ltd. and Perini Western Ltd. appear on Final Schedule "F". However, Cadco Construction (York) Limited is removed from the list of employers. With respect to the four employers who failed to make any filings, the Board has had no further representations from the parties

in this regard and,

Hunter & Maxwell Masonry Ltd.
Morlynn Const. Ltd.
Schlegel Masonry
Super Welding & Steel Mfg. Co.

are removed from the list of employers.

12. 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"

Able Masonry (Kitchener) Ltd.
Ace Welding & Boiler Co. Ltd.
Len Ariss & Company Ltd.
Lavern Asmussen Limited
Ball Brothers Limited
A. Battaglia Construction Company Limited
Blacker & Ronald Masonry Contractors
Brandon General Contractors Limited
Western Caissons (1969) Limited
Cooper Construction Company (Eastern) Limited
Cromar Construction Limited
Culp Bros. Ltd.
Cunningham-Limp Ltd.
D.J. Masonry Ltd.
D.K. Construction Ltd.
Abe Dick Masonry Limited
Dunker Construction Limited
E.G.M. Cape & Company Ltd.
Earl's Cement & Drilling
Frankel Formwork Company Limited
Ga-Mar Construction Ltd.
Howard Gedney Construction
George and Asmussen Limited
A. Gorgi Masonry Limited
Alfred Grassing & Son Limited
E. Graziano & Bros.
A.P. Green Refractories (Canada) Ltd.
Helm Lathing Co.
Hespeler Concrete Floor Ltd.
Hewson & Son
Kappeler Masonry Ltd.
Karley & Kroetsch Construction Limited
Konvey Construction Company Limited
Witmer Lazenby Limited
Losereit Sales and Service Limited
McKay-Cocker Construction Ltd.
Finley W. McLachlin Construction Co. Limited

E.S. Martin Construction Ltd.
Milne & Nicholls Limited
Monteith-McGrath Limited
Wm. Parker Construction Limited
Poole Construction Limited
Pyndyk Masonry
Reinhardt Masonry Limited
Schultz Construction Limited
Schwenger Construction Limited
W.A. Stephenson Construction Co. Limited
Stewart & Hinan Construction Ltd.
Stradiotte Bros. Construction Limited
Traugott Construction Ltd.
Twin Masonry Ltd.
Wm. Warden Lathing & Plastering
Whitman Contracting Limited
Oscar Wiles and Sons Ltd.
William Wolfe Construction Limited
Ed. Witmer & Sons Limited

FINAL SCHEDULE "F"

A.C. & S. Contracting Limited
Abbey's Carpentry
Acme Building & Construction Limited
M. Alzner Masonry Contractor
Andeen Construction Ltd.
The Austin Co. Ltd.
W. Born Contracting
Byers Construction Ltd.
Camston Limited
Canadian Engineering & Contracting Co. Ltd.
Custom Plastering
Droge Construction Limited
Eaglewood Construction Co. Limited
Ellis-Don Limited
Filipowich Masonry Contractors Limited
The Frid Construction Company Limited
Gerrits Plastering Co. Ltd.
Giamborardino, Sammy, Masonry Ltd.
Harbridge & Cross Limited
The John Hayman & Sons Company Limited
Hunter & Maxwell Ltd.
Internorth Construction Company, Div of the
Northsted Group Ltd.
Inspiration Limited
John Keiper Construction Ltd.
James Kemp Construction Ltd.
Leader Masonry & Forming Limited
Leasehold Construction
W.A. McDougall Ltd.
McNamara Corporation Limited
Morlynn Construction Limited
The Northsted Group Limited
Olympia & York Developments Ltd.

Perini Limited
Pries Masonry Construction
R.S.W. Masonry
Renwick Construction Ltd.
Robertson-Yates Corporation Limited
Siebel L. Masonry Ltd.
Sirotek Construction Ltd.
John E. Smith & Son Lath, Plaster & Acoustical
Stemmler Construction
B. Sturris Construction
The Tidey Construction Company Limited
Thomas Construction Company Ltd.
The Tope Construction Co. Ltd.
Torin Construction Co. Ltd.
Valentine Enterprises Contracting
Visa Construction Co. Ltd.
Walney Construction Limited
G.S. Wark Ltd.
Welcon Limited
Wm. Ford Construction
Yolles & Rotenberg (Kitchener) Limited
Zanardo Construction Ltd.
Doyle Hinton Ltd.
Perini Western Ltd.

The Board finds that the fifty-six (56) 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-six (56) 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 us the Board finds that on the date of the making of the application the applicant represented thirty-nine (39) of the fifty-six (56) employers on Final Schedule "E". The thirty-nine (39) 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.

14. 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.

15. On the basis of all the evidence before it and in accordance with the foregoing considerations the Board finds that there were four hundred and fifty-three (453) employees affected by the application during the weekly payroll period immediately preceding November 17, 1972. The four hundred and fifty-three (453) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

16. The Board further finds that the thirty-nine (39) employers within the unit represented by the applicant employed three hundred and ninety-two (392) of these four hundred and fifty-three (453) 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.

17. 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 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 November 17, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

March 11, 1974.

"D. E. Franks"
for the Board